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FOREWORD

As Martin Luther King, Jr. (1929-1968) an American Baptist minister and social activist, once said "the quality, not longevity, of one's life is what is important." This Special Issue (SI) marks the Silver Jubilee celebration of KIIT Deemed to be University. For a journal to evolve, what is perhaps more important is that it contributes to the scholarly discourse on social and criminal justice matters. In this age of constant change, it is a testament to the efforts of the past and current editors to not only have sustained the journal but to evolve and adapt to the times. And although I have had the pleasure to contribute to the journal, I have not seen any of the earlier editions to see how the breadth and scope of the articles have evolved.

I was kindly invited by the Managing editor of this SI, **Dr. Arpita Mitra**, to prepare a short Foreword to this special issue. As someone who has had the honour of being invited to speak and conduct workshops at several universities throughout India, I have acquired an appreciation for the efforts of its students and fellow faculty members. However, while there is much that I can commend the students and colleagues on, I have also observed areas where reforms and processes could/should be reviewed and arguably changed to ensure that the trajectory of its' students and the colleagues who strive to raise their national and international profile can keep pace with what is happening globally. This is also true of my country – Canada - but since this is an Indian-based journal and all the contributions are from Indian scholars, I direct my comments to the primary audience who might read this SI.

I will first offer a brief summary of the articles included in this volume and their relative contribution to academic discourse. I will conclude with some final thoughts which I trust will be seen as constructive comments from someone who is not a native Indian citizen but as someone who has had the pleasure and honour to be a guest of several universities throughout India since 2016.

As mentioned, this Special Issue marks the Silver Anniversary of the University and includes articles that cover a range of social, legal, and justice-related issues. The topics/themes range from the value and importance of sound leadership.

The article by **Patnaik** draws on the profound ideological ideas and philosophy that exemplified the 'life and times' of Gandhi. The author provides the reader with some sage observations and recommendations for leadership values that align with Gandhi's life and work. Perhaps the most powerful (from a Westerner's perspective) come from one of the quotes used in the article

"'Power with not Power Against". This is not the place to debate is leaders are born or made, as I believe we can all be leaders if we understand and can actualize the fundamental principles covered in this article (see, for example, one the classic books on leadership – that of J. Kouzes & B. Posner (2017) "The leadership Challenge").

The following article in this SI is by **Srivastava** and **Srivastava**. Using a legal and human rights lens, the authors examine the evolution of victims' rights and victim compensation in the aftermath of being a victim of crime. The authors note how the role of victims has evolved and plays an integral role in the 'justice' process. Although by most international standards victimology is well established in India, it is clear from the article that there is still a need to the Indian criminal justice system could benefit from introducing or adapting various provisions that further enliven the protection of victims' rights. As the concept of justice continues to evolve, this article serves to shed some (new) light into the importance of victim rights and victim services.

The next article by **Dash** is a pragmatic but noteworthy contribution that should have appeal to students and young scholars as the author discusses how to effectively conduct a literature review for legal research. Again, the article should/could arguably be recommended to any aspiring law student since learning how to write a peer reviewed article, let alone engage in sound legal research is an acquired skill that usually requires practice. In particular, the article addresses a fundamental element of how to prepare a scholarly paper.

In the following article, **Shahi** introduces the reader to a new term that has been coined by the author – "forentronic". Admittedly, I had not heard of the term until I read this article. This reflects the dynamic nature of criminology and criminal justice. Although the term may not yet be widely used it reflects the ever evolving and dynamic nature of crime (e.g., cybercrime, hacking, money laundering, etc.). Therefore, we might anticipate that like such phrases as hacking, augmented reality, and cybercrime, among numerous others have become part of the criminological and criminal justice lexicon, so might forentronic. Regardless, the mere fact that the term has been coined speaks to the growing awareness and (relative) importance it (might) play in clearly defining a new phenomenon in criminology.

The article by **Manaswini** and **Sarkar** addresses yet another interesting topic that only a decade or so ago would not have been the focus of any academic paper – that is, the use on mobile apps. As the authors point out, not only have smart phone become omnipresent but the proliferation of mobile apps has also created some challenges that deserve consideration because as with any social media application, what are typically introduced to facilitate the management of our busy and sometimes complex lives, mobile applications can be used for nefarious activities. Using an exploratory approach,

the discusses some of the legal issues involved in the App as a trademark in mobile commerce.

In the following article, **Dash** and **Kumar Sahu** draw on several survey reports to examine the effect and implications of mergers and acquisitions between pharmaceutical companies and their effect on the overall economic growth in India. Given the rate at which India has and is emerging as a major player in the pharmaceutical industry the topic and issues covered in this article are timely and represent a noteworthy contribution to an important issue.

In the next article **De** presents an informative insight into the critical topic of human trafficking. Although acknowledged as a transnational crime, De limits the scope of his article to the Asia Pacific region. Drawing on empirical evidence, De points out that while the various initiatives in the region are commendable, greater effort needs to be taken to operationalize and enforce the legal mechanisms that are already in place to combat human trafficking. The article serves to high the importance two of the United Nations anti-human trafficking pillars, that is prosecution and partnership (i.e., cooperation).

The following article was written by **Mookherjee** and **Bhattacharya**. This article touches on a subject matter that is not widely examined within academia but is deserving of the attention that the authors raise. Specifically, drawing largely on established international journal the authors identify several criteria to help make the peer review process more effective for Indian-based journals. For example, the authors highlight the need for a more dynamic role of Indian editor to ensure a more rigorous and professional review process. The authors suggest that Indian-based journals need to establish an ethical framework for peer reviewers to ensure that a standardized format, style, and other pedagogical elements are followed during the per review process.

This Special Issue would not be 'complete' without an article that speaks to the impact of COVID-19 in the justice system. In this case, the effect COVID-19 has had on policing and the additional responsibilities they had in trying to ensure the safety and well-being of the people they serve. And while there has been much media coverage of the risk that in other front-line workers like doctors and nurses faced, less attention was given to the risk that law enforcement faced while trying to ensure people were following in trying to ensure the safety measures by the public were being followed. **Mishra** discusses the vital and risky role that the police faced and how they (needed) to adapt to the pandemic.

Yogesh Mishra is the author of the next article. The article focuses on the controversial and problematic issue of drug trafficking in India. Mishra begins the article by describing how the extent of drug trafficking has grown over the years and presents a myriad of challenges not only for the users of the drugs but its relative impact on public safety. The balance of the articles examines the relative effectiveness of Indian law in addressing the drug trafficking

problem. What should be clear after reading the article is that drug trafficking is a highly profitable and manipulative business that is often associated with other forms of crime (e.g., money laundering or corruption), further complicating our effort to combat crime.

The following article in this special issue is by **Kundu**, which focuses on the growing issue and concern of space-related travel and debris. In particular, Kundu describes some of the current legislation that is designed but arguably limited in how to address the space environment and what steps could be taken to ensure that just as it is necessary to protect our environment, it is essential that we also protect outer space. Kundu concludes with some observations about how private entities can, and should, play a more responsible role in ensuring outer space's safety and 'health'.

The next article addresses the controversial and sensitive topic of abortion in India and globally. The article's authors are **Pradhan, Behera, Mallik**, **and Garikapati**. The authors begin by noting that while abortion is a global issue, the relative risk to women's health and their fundamental right to choose is more important and often' overlooked'. Specifically, the authors describe how many jurisdictions have antiquated laws that restrict women's rights to have an abortion and the potential implications of such restrictions. Using a human rights lens, the authors discuss how such restrictive laws need reform to respect women's rights and freedoms to make choices about their bodies. In the later part of article, the authors examine the recent amendments to the Medical Termination Act of 2021 and how it aligns with fundamental human rights for women in India.

The topical issue of cybercrime and data breaching is the theme of the second to the last article. Other research has reported that an email-related phishing attempt has targeted some 96 percent of organizations and that the problem is increasing and evolving. Therefore, this article is yet another noteworthy contribution to this special issue. The authors are **Akram Khan** and **Mehta**. A largely descriptive article, the authors offer a comprehensive overview of the various forms of data breaching and their relative impact as well as the merging and evolving laws which have been designed to try and curb the growing problems related to cybercrime and data breaching.

In closing, it is reasonably certain that I will not be able to write (if invited) a Foreword to the Special Issue to mark the 50th anniversary of the University. But, despite our all-evolving methods and techniques of disseminating scholarly knowledge, I hope that the journal will adapt to ensure that it can continue to serve as an excellent platform for allowing not only Indian scholars and students a venue for disseminating their work but also attract international contributions that will help to further enliven the discourse and intellectual exchange that makes our learning process so enriching. Some basic steps that can be taken to stimulate the changes include, among others: invite

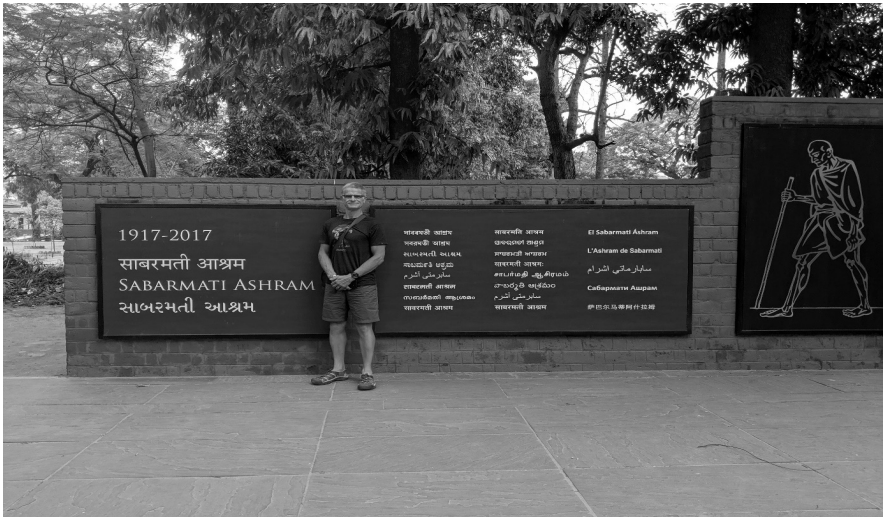
recognized scholars from outside of India to serve as Board members and reviewers, publish special issues that examine issues from an international perspective, but which also include observations/commentary on how the article might relate to India, reflect on some of the pragmatic issues covered in a couple of the articles in this issue - e.g., how to ensure rigorous literature reviews and include articles that are original and contribute to the potential growth of our knowledge on a particular subject matter, and creating clear guidelines for how articles are submitted and reviewed. For example, one of the 'workshops' I have been asked to present to students (and colleagues) at various universities throughout India is how to write and submit an academic article for a peer reviewed journal. At the risk of sounding boastful, the workshop has always been warmly embraced by those who attend. I gauge this by the quality and richness of discussions that ensue and some of the follow ups I receive from students.

Finally, I congratulate the Editorial Team and the KJLS journal for reaching the milestone, and I look forward to following its success and impact in the years to come. I also trust that the reader will enjoy not only reading the articles in this SI but also enrich their knowledge, be inspired to perhaps contribute to the journal, and offer ideas to inspire their research.

Prof. John Winterdyk (Criminology)

Mount Royal University

Calgary, AB. CANADA



SILVER JUBILEE CELEBRATION AT KALINGA INSTITUTE OF INDUSTRIAL TECHNOLOGY, DEEMED TO BE UNIVERISTY

The Kalinga Institute of Industrial Technology (KIIT), an Institution of Eminence, and the pride of Odisha has made a significant mark in Times World University Ranking-2023. Prof (Dr.) Achyuta Samanta, Founder of Kalinga Institute of Industrial Technology (KIIT) and Kalinga Institute of Social Sciences (KISS) who is an eminent educationist, philanthropist, and social worker is a familiar name in the whole world. From 2022, KIIT celebrates its SILVER JUBILEE by taking 1997 as the base year as it had started its Bachelor and Master Degree programme. To commemorate the celebration, each week has been dedicated to a particular department to record the activities in the past and the way forward. The celebration started on 16th November, 2022 with a grand ceremony and will continue till 16th February, 2023, the Foundation Day of KIIT. The celebration, marked as "Soil to Silver," will feature 30 events, which includes a Vice Chancellors Conference, inviting speakers from various fields.

At the Launching Ceremony of the Silver Jubilee approximately 100,000 students, faculty, and staff were in attendance. Hon'ble Founder cited the memorable day to be the culmination of 4Gs – Grand, Glitter, Gorgeous and Grandeur. The celebration included cultural events performed by students of KIIT and KISS and fireworks.

KIIT also observed "Kritajna"- The Parents Meet on 4th December, 2022, to mark the Silver Jubilee Celebration in order to express profound gratitude to the parents. At the school level, Legal aid camp was organized by the faculty members of Law School where most of the parents came up with property, marriage, and divorce related issues. This gave an opportunity to address the possible solutions to their long pending legal issues. Additionally, health check-up, movie shows and cultural activities were also lined up as a part of the event, Kritajna. The parents were found rejoicing their inner child by engaging in fun activities that were specifically tailored for them.

Further, KIIT was happy to host the Alumni Meet- "Kamyaab" organized on 17th December, 2022. Alumni of KIIT from all around the world had joined in to celebrate the 25th Anniversary of their Alma Mater. An alumni meet at School of Law was arranged in the morning where the alumni were welcomed by the first-year students. They were engaged in various programs along with

an interaction session with faculty and students. The alumni were excited to visit the photo-exhibition, library, moot court room, and the technologically equipped classrooms. The day ended with Founder's meet with the alumni.

There are more upcoming events to commemorate the Silver Jubilee celebration of KIIT in the coming weeks.

CONTENTS

ARTICLES

Book Review

MAHATMA GANDHI'S VISION OF DEMOCRATIC LEADERSHIP

—Sanghamitra Patnaik*

ABSTRACT

The beauty of Leadership lies in creating leaders not followers. Leaders are responsible to transform the values and goals of an organization. The true quality of a leader is to integrate individual interests with the interests of the organization by motivating people to move toward a common or shared goal. Mahatma Gandhi as a leader believes in transforming the word in to action. Freedom Movement of India reflects the mobilizing force of Gandhiji to turn it in to a mass movement. He as a leader always believes in 'Power with not Power Against'. The focus of the article is to analyse various nuances of Gandhiji's pragmatic leadership qualities that set the ethics of leadership.

INTRODUCTION

Politics is the most crucial human activity that involves governance. Ethics is the set of principles those regulate the activity of governance and administration. Before we focus on Gandhian Ethics of leadership that imbibes his vision of a true leader it is necessary to focus on the two schools of thought – Idealism and Realism.

Idealism as an approach is optimistic in character. This School was represented by St. Simon, Richard Cobden, Aldous Huxley, Russell, Mahatma Gandhi, Wilson and Margaret Mead. It gave emphasis on the role of education and international institutions to bring a better world. It focused on the Positive side of human nature. It proceeded with the assumption that the harmony of the interests was not impossible.

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Hans J. Morgenthau is the main exponent of realist theory. For him the central focus of realism was power. He defined power as "man's control over the minds and actions of other man" (Morgenthau, 1993).

The Realists focused on the Pessimistic view of human nature. They highlighted Group egoism- the social groups view themselves as different as and better than the other groups. It helped in understanding the dynamics of social conflict. They believed in Inevitability of social conflict. Their focus was on how to manage conflict and not on eliminating conflict as propagated by idealists. There was always a conflict between the groups those who benefited from the status quo and others who would benefit from changing the status quo. The realist ideas could be traced as far back as the ancient Greek historian- Thucydides.

THE DYNAMICS OF POWER

Power is the central theme of politics and ethics regulates the power. For Neoclassical Realists like Morgenthau, (1965, *Animus Dominandi*- The Human *Lust* for power) Morality was different in public and private sphere. International politics should be guided by *situational ethics and political wisdom- prudence, judgement, resolve, courage and moderation etc.* Machiavelli and Kautilya supported the idea by prescribing to dual standard of morality.

Kautilya gave due emphasis on synchronizing politics with ethics as far as internal administration was concerned. But he prescribed a different ethical norm in relation to the state's preservation. The King was allowed to follow immoral methods / treacherous means to preserve the state. The State was identified as an ethical institution by Kautilya's Arthashastra. It aimed at the material and moral development of the people. The administration of the state was known as Dhramasasan or the rule of virtues and morality. The King should adhere to moral means in the internal administration of the state.

GANDHIAN ETHICS OF POWER

Mahatma Gandhi (1869-1948) as discussed belonged to the School of Idealists. He gave equal importance to means and ends. For him ethics and politics should go hand in hand. Religion should not be separated from politics. His definition of power was unique. Power should not be used to dominate other by force or used against anybody/entity. Instead, power according to him got expanded when it was shared with others. The base of his ethics of power was very much dependent on who exercised it. His concept of power embraced the techniques of Non-Violence, Truth and Satyagraha.

NON- VIOLENCE

Non-Violence or Ahimsa was one of the basic ingredients of Gandhiji's political philosophy. Gandhiji interpreted non-violence as a positive force. The highest violence could be met by highest non-violence. It was the technique of silently defeating and destroying evil by good and exchanging love for hatred

Non-Violence comprised of certain ingredients like truth, inner purity, fasting, fearlessness, non-possession of property and perseverance. Truth could be realized by non-violence. Truth was God to him. He said, "For me, truth is the sovereign principle which includes numerous other principles. This truth is not only truthfulness in word but truthfulness in thought also and not only the relative truth of our conception, but the absolute Truth, the eternal principle, that is God." (http://www.mkgandhi.org/truth/intro.htm)

Fasting supported non-violence to exert moral force against whom it is directed. It cleaned up the body, mind and soul. Fearlessness was required on the part of the individual to realize the true power of non-violence. A coward person could not exercise the power of non-violence. It required moral courage and patience.

SATYAGRAHA

Satyagraha in its literary sense is "Agraha in Satya" means holding fast on to Truth. He was much influenced by Thoreau's essay on civil disobedience. It was a technique of pursuing truthful ends through purest love –force and soul-force. For him non-violence and Satyagraha were synonymous. It contained moral force that could be used by the individual and the communities in both domestic as well as public life.

It was always accepted as a weapon of the strong individual. It aimed at public welfare and not limited by narrow selfish interests of the individual. It was the moral weapon of the strong to fight against injustice, wrong deed, oppressions and exploitations. It was considered by Gandhiji as the inalienable right of the individual.

Satyagraha was based on a definite and rigid code of conduct. A true Satyagrahi got the courage to sacrifice and suffer for the cause of Truth and public welfare. He should not submit under pressure or fear. He must be a person of discipline, self-control, purity of mind and actions. Satyagraha was different from passive resistance.

SWARAJ

The word Swaraj is understood as self-rule and self-restraint. For him, Swaraj is freedom from poverty. He emphasized on economic freedom to put an end to the exploitation of the masses. He was of the opinion that the village can be revived only with the revival of village industries. Swaraj should be based on non-violence while it was guided by cooperation and collaboration instead of competition and conflict. Individual was to contribute according to one's own capacity to the common goal of the nation and society He was of the opinion that the independence must begin at the bottom. The panchayat or republic should have full power which would consist of a number of villages and the structure should be 'ever –widening and never ascending' order. Gandhiji visualized life as oceanic circle where individual is placed at the centre who will be always prepared to mingle his interest with the interest of the village and the village will be ready to perish for the circle of villages till the whole becomes one life. Life should not be a pyramid where the apex is sustained by the bottom. His notion of democracy under Swaraj meant empowerment of every Indian. Democracy must in essence, therefore mean the art and science of mobilizing the entire physical, economic and spiritual resources of all the various sections of people in the service of common good of all." (Talk 12.03.1939). He says, "My notion of democracy is that under it the weakest should have the same opportunity as the strongest. That can never happen except through non-violence." (Harijana 18.05.1940)

Thus Gandhi's Swaraj focused on continuous effort on the part of the government for upliftment of the poor. In his booklet "Constructive Programme"he highlighted different programmes of action in socio-economic fields for the welfare of women, schedule, tribes, and scheduled casts in particular and poor masses in general. He imbibed the idea of inclusive welfare by eliminating untouchability and encouraging communal harmony.

SARVODAYA

Gandhi's Sarvodaya was very much influenced by Ruskin's 'Unto the Last'. He acknowledged that this book exerteded the most radical and revolutionary influence on his life and philosophy. The idea of Sarvodaya was reflected in the word itself-Sarva and Udaya. Sarva means all and Udaya means upliftment. So Sarvodaya stood for the universal welfare. Commitment to all kinds of sacrifices, even unto death, for the welfare of others was the core theme of Sarvodaya. Kautilya's Arthasastra, a masterpiece of treatise on diplomacy and state craft prescribed that the ruler should take care of his subjects as "In the happiness of the subjects lies his happiness, in their welfare his welfare. Whatever pleases himself he shall not consider as good, but whatever pleases

his subjects he shall consider as good.(Kautilya, Arthasastra, Book-I, Chapter VII.)

The essence of Gandhi's ethical views in politics is reflected in the following statement:

"Man's ultimate aim is the realization of God, and all his activities, social, political, religious, have to be guided by the ultimate aim of the vision of God. The immediate service of all human beings becomes a necessary part of the endeavor, simply because the only way to find God is to see Him in His creation and be one with it. This can only be done by service of all. And this cannot be done except through one's country". (Socialism of My Conception, pp. 140 - 141).

According to Gandhi the individual's true nature can only be realized within the family. For him, Self-actualization occurs only within the society, not beyond it. The core theme of idea of Sarvodaya is Truth and Non-violence while trusteeship remained at its epicenter. Holding on to truth and non- cooperation was the strategy adopted to resolve the conflict and disagreement in the society. It strived to bridge the gap between 'haves and havenots' through general welfare irrespective of various differences based on caste, religion, sex or occupation.

Through Trusteeship, he strived for bringing social transformation. The trustee is considered as the repository of talent and wealth who can use the resources for the common good. Gandhi's concept of trusteeship helped to balance the natural asymmetries between individuals and communities.

Gandhiji's idea of universal welfare revolved round the village on which the superstructure of nation was built up. The 'village' stands as the symbol of 'power with' fulfilling our multiple personal and social obligations in a very compressed, close and compact form. It reflected the principle of 'Swadeshi' by shared local efforts.

Gandhi confirmed Kantian idea of innate moral dignity of all human beings. According to him the head and the soles of the feet are equally important for the human body. So nobody should be allowed to dominate the other on the basis of his talent or wealth. Each individual's role was equally important for growth of the society and nation.

END AND MEANS

According to Gandhiji, the means justified the end which contested Realist ideas of public morality and private morality and Kautilya's dual standard of

morality. Deliberating on the Ends and Means he said strongly: "They say that 'means are after all means'. I would say that 'means are after all everything'. Indeed, the Creator has given us limited power over means, none over end... The means may be likened to a seed and the end to a tree; and there is the same inviolable connection between the means and the end as there is between the seed and the tree. Means and end are convertible terms in my philosophy of life." (M.K. Gandhi, 17-7-1924) He insisted on close connection between the means and the end by showing the example of expecting roses by planting noxious weed. He said we reap exactly as we sow. (Gandhi, Hind Swaraj, 10, 286-287).

RELIGION AND POLITICS

He prescribed a close rapport between religion and politics. While supporting for justified means to achieve the end he never rejected politics in favor of morality. For him both politics and religion shared common goal – welfare of the common people.

The immoral action by man was responsible for all kinds of evils and crisis. It was the religion that prescribed a certain code of conduct to regulate human behavior. No religion propagates for achieving selfish interest by rendering harm to other individual. He believed in Universal Religion based on humanism. By religion he did not mean any particular sect. It was the belief in the ordered moral governance. Any attempt to separate religion from politics would certainly pave the way for destruction of the society. According to Mahatma Gandhi, politics divorced of religion would make individual corrupt, selfish, unreliable, materialistic and unrealistic. Politics without religion according to him was like a death-trap because it killed the man from within.

CONCLUSION

Gandhi's concept of 'Sarvodaya' was based on a healthy give and take between the individual and society. Each contributed to the other's moral, spiritual and socio- economic development, happiness and prosperity. It was built up on the firm foundation of truth and non-violence. It enveloped social welfare in its entirety.

Gandhiji's concept of religion based on humanism was the gist of all religions. It manifested in the goal of each and every political institution to work for human rights, peace and prosperity. He did not feel the urgency of segregating religion from politics rather he pointed out the indispensability of religion to strengthen politics, political institutions and governance starting from local to global.

As a pragmatist, Gandhiji advanced the idea of redefining power by adhering to Truth and Non-violence. He emphasized on the concept of 'power with' instead of 'power against'. According to him people are the epicenter of power-the ultimate voice of 'Democracy' and an effective leadership creates a strong base to connect the people with the system of governance to feel the spirit 'Democracy' in its true sense.

REFERENCES

1. Chatterjee Margaret, Gandhi and the Challenge of Religious Diversity: Religious Pluralism Revisited, *(*Promilla & Co., New Delhi, 2005).
2. Chatterjee Margaret, Gandhi's Religious Thought, (Macmillan, London, 1983).
3. Gandhi Mohandas K 1961- 1999. Collected Works of Mahatma Gandhi [hereafter CWMG], 100 vols. New Delhi: Government of India, Ministry of Information & Broadcasting, Publications Division. From <http:// www.gandhiserve.org/cwmg/cwmg.html>. (Retrieved variously between June and August 2012).
4. Gandhi MK 1927. An Autobiography or The Story of my Experiments with Truth. Translated by Mahadev Desai. Vol. I was published in 1927 and Vol. II in 1929. From http://wikilivres.ca/wiki/An_Autobiography_or_The_Story_of_my_Experiments_with_Truth (Retrieved on 12 September 2012).
5. Gandhi, Hind Swaraj, 10, 274. Gandhi, "Is It Non-Co-Operation?" 27, 369.
6. Morgenthau, Hans J., Politics Among Nations: The Struggle for Power and Peace, (Alfred A. Knopf, New York, 1978) pp. 4-15.
7. M.K. Gandhi, "Preface to Indian Home-Rule *CWMG*, Mar., 20, 1910,p. 458.
8. M.K. Gandhi, "Hind Swaraj" *CWMG*, Nov., 22, 1909.
9. M.K. GANDHI, "*SPEECH AT MEETING OF DECCAN PRINCES" CWMG*, Jul. 28, 1946, pp. 371.
10. M.K. GANDHI, "*IS IT NON-CO-OPERATION*?", *CWMG*, May, 8, 1924, p. 369.
11. M.K. GANDHI, "*LETTER TO THE TIMES OF INDIA", CWMG*, August, 22, 1919, p.304.
12. M.K. Gandhi, "*THEN AND NOW*," *CWMG*, Jan., 17, 1929, p. 4.

13. M. K. GANDHI, "*FOREWORD TO 'CONSTRUCTIVE PROGRAM—ITS MEANING AND PLACE*", *CWMG*, Nov. 13, 1945, p.325.

14. M.K. GANDHI, "*MY NOTES",CWMG*, Aug., 30, 1925,PP. 362-363.

15. M.K. GANDHI, "*ATROCITIES BY OFFICIALS*," *CWMG*, Sept.23, 1928, p.342.

16. M.K. GANDHI, "*POLICY OF MAKING KHADI SELF-SUPPORTING*(23-9-1928),"*CWMG*, Sept., 23, 1928, p.45.

17. M.K. GANDHI, "*THE OLD STORY"*, *CWMG*, Jul., 25, 1929, pp.247-248.

18. M.K. GANDHI, "*AHIMSA IN PRACTICE*", *CWMG*, Jan., 27, 1940, P.245.

VICTIMS RIGHT TO COMPENSATION: AN ANALYSIS OF LEGAL DEVELOPMENTS

—Ashok Kumar Srivastava[*] and Rohan Srivastava[**]

ABSTRACT

Compensation to the victims of crime and victims of other legal injuries is an issue associated with the violation of basic human rights of an individual. State as protector and guarantor of individual's rights is under a duty and obligation to provide remedy to such individuals. The criminal justice system is there to provide remedy to the victims by way of punishing the offender, but what pain and suffering he or she, passed through post victimization was least concern of the state. The change in this thought process at international and subsequently at national level by way of insertion of some new provisions for protection of victims rights, has been of some relief to victims of crime and victims of other legally prohibited acts. This paper has been focused by looking into the position of victims of different types since ancient days till now, and various developments which have been brought up with respect to protection of the rights of the victims in our country.

Key words - Victim, victimology, victimization, compensation, criminal justice system.

INTRODUCTION

The term "Victim" is not new for the modern legal and social regime. As this term has its close connection with every society and the harm or injury caused by a person against any person or his property in that society. So, any society whether ancient or modern is supposed to have witnessed the

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sufferings and status of victims as a social phenomenon, and must also have dealt with the protection of the rights of the victims as per the then existing social norms or legal system of their own time and place. Thus, for instance the Mesopotamian society and culture which existed and prospered much before the Bible was written or the civilizations of the Greeks and Romans flourished, also had its own principles of law for punishing the offenders and justifying or compensating the victims. The Hammurabi Code of Babylonian Empire compiled and in scripted between 1792-1750 B.C.E. allowed the principle of "an eye for an eye and a tooth for a tooth" as a principle of relief and justice to the victim[1]. Though this principle can be regarded as the principle of punishment to the wrongdoer, but at the same time can also be regarded as the method of compensating the victim in the same degree as the offender has done the harm. This system of justice was requiring the punishment as equal or just severe enough than the harm caused by the offender, and known as the principle of *lex -talionis*, This method of punishing the offender is an example of the retributive method of punishing the offender. Ancient Indian justice delivery system was also not devoid of the principle of compensation to victim in the event of harm to his body or property or both. This is evident from various ancient scriptures, which show that the victims of crime were being compensated by the offender. Similarly, where a trader's goods and merchandise were being robbed in any kingdom, the king was compensating the victim in the event of non recovery of the goods and merchandise, or the native of that place were bearing the responsibility of compensating the victim. The ancient law giver of our country Manu also mentions about the duty of the offender to compensate the victim or the injured for the cure of the injury, or for the loss to his property, or damage caused by him.[2] A person may be a victim of various circumstances and situations, which he had to handle in the absence of any protection and safeguard in his own way and as per his own capacity. The role of the protector of an individual's rights and properties i.e., of King or State as the case may be, comes for consideration in those cases, which were brought into their notice or knowledge for providing justice to the victim by punishing the wrongdoer. It is thus evident that during the ancient period the victim

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1 Hammurabi's Code: An Eye for an Eye -.US History org.

2 2. Manusmriti, Verse, 8.287& 288.

अङ्गावपीडनायांचव्रणशोणितयोस्तथा

समुत्थानव्ययंदाप्य:सर्वदण्डमथापिवा ।।२८७ ।।

aṅgāvapīḍanāyāṃ ca vraṇaśoṇitayostathā |

samutthānavyayaṃ dāpyaḥ sarvadaṇḍamathāpi vā || 287 ||

In the case of injury to limbs, as also of strength and of blood,—the man should be made to pay the expenses of recovery, or the whole amount as 'fine.'—(287)

द्रव्याणिहिंस्याद्योयस्यज्ञानतोऽज्ञानतो·पिवा

सतस्योत्पादयेत्तुष्टि राज्ञेदद्याच्चतत्समम् ।।२८८ ।।

dravyāṇi hiṃsyād yo yasya jñānato'jñānato'pi vā

sa tasyotpādayet tuṣṭiṃ rājñe dadyācca tatsamam || 288 ||

When a man, either intentionally or unintentionally, damages the goods of another, he shall be liable to him and pay to the king a fine equal to it.—(288).

was getting compensated by the offender. But when we look into our criminal justice administration system in the modern time then we find that it is more pro-centric towards protecting and safeguarding the rights of the accused than looking into the plight and condition of victim. This is evident, when we see and examine various legislative provisions mentioned in the constitution and the procedural law of our country as the fundamental rights or procedural safeguards to the accused person[3].This unsatisfactory and unjustified system of justice mechanism in our as well as the legal systems of other countries, invited the attention of many scholars at national and international level for a debate and discussion regarding the development of the legal policy for the purpose of protecting the rights and interests of the victims, who are the main affected person, but left unattended in the whole process of criminal justice mechanism. As a result of such debates and discussions amongst the legal scholars many countries started to give a fresh look with respect to such existing problem and incorporated various victim's remedial measures in their criminal justice systems. The question for consideration and review of the existing provisions for victims rights starts with the query that, whether the State's responsibility in a criminal case is limited merely to registering the case, conducting investigation thereto and then start of the prosecution proceedings? Don't the state own any other responsibility towards the victim's of the crime? This new approach of study concerning victims under the broader perspective of criminology is named as victimology. This branch of study therefore encompasses within it various rights of victims in a Welfare State with respect to restitution, rehabilitation and protection. The present paper is making an investigation as to the development of victimology as a separate branch of study and also to find out various progress and developments, which have taken place towards the protection of rights of the "victims" abroad and in India.

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[3] . See, The Constitution of India .

Article 14 - *Equality before law.*

Article 20 - *Protection in respect of conviction for offences.*

Article 21- *Right to Life and Personal Liberty.*

Article 22 - *Protection against arrest and detention in certain cases.*

Article 39-A - *Equal Justice and Free Legal Aid.*

See, The Criminal Procedure Code, 1973.

S. 41-D -*Right of arrested person to consult an advocate of his choice during interrogation.*

S. 49 - *No unnecessary restraint.*

S. 50 - *Person arrested to be informed of grounds of his/her arrest and of right to bail.*

S. 54 - *Examination by the medical officer of arrested person.*

S. 56 - *Person arrested to be produced before Magistrate or Officer In charge of Police Station.*

S. 57 - *Arrested person not to be detained for more than twenty four hours.*

S. 304- *State to provideLegal aid to accused at the State expense in certain cases.*

S. 374 - *Appeal from conviction.*

S. 436 - *Right regarding release on bail.*

DEVELOPMENT OF VICTIMOLOGY AS A SEPARATE BRANCH OF CRIMINOLOGY

The term Victimology, which has its relationship with the victims, though may be of late origin in the legal arena, but the term victim is not new as this term was used by many criminologists in their criminological study. But the use of the term Victimology, can be said to be of late origin of about 1947, when the Romanian Lawyer Benjamin Mendelsohn used this term in his writing, an article "A New Branch of Bio-Psycho-Social Science, Victimology, 1956". In this article he had used this term and had advocated for creation of a World Society of Victimology. Since Mendelsohn was the first person, who used the term Victimology, therefore he is also regarded as the father of the Victimology. Besides Benjamin Mendelsohn, the name of Hans van Hentig, Colorado and Fredric Werthamare are also associated with the development of the word victimology as a separate branch of criminology.

The term victimology from an academic point of view may be treated as consisting of two elements:

1. A Latin term "victima", which means 'victim' and
2. A Greek term "logos", which means 'knowledge' 'science' 'a discipline'.

The earlier approaches of the scholars regarding victimological study were subjected to strong criticism, as they were basing their study of victims and their victimization as a result of victim's own fault, which can be observed by looking into various theories propounded by them, like 'victims precipitation theory' given by 20th century criminologist Marvin Wolfgang, the 'lifestyle exposure theory' given by Hindelang, Gottfredson & Garofalo,1978, the 'Routine activity theory' given by Cohen & Felson1979, and the 'deviant place theory' given by Seigel,2006. The question of criticism arises in these theories as they don't provide the extent of lifestyle exposure or degree of relationship between offender and the victim for precipitation of self-victimization by the offender. Another reason which can be cited here against these theories, which blame the victim for his or her victimization, is that the victim being a member of society would like to be with other members of the society, and would not think of himself or herself to be victimized by another member of the society. We cannot keep in seclusion or aloof any member of the society from mixing with others or cannot put a check on his or her freedom to move or go anywhere. Thus, it is the individual's mind set and his or her upbringing, which can be regarded as one of the reasons behind victimization of any other person and not because of the victim's own conduct. Lifestyle or precipitation theory fails to justify its claim when we compare two places, one where crime is very few and people live and travel without any fear and threat to their life

and property, and the other where the crime is more as because of the lack of proper human development and life necessities.

WHO IS VICTIM?

In a general and common parlance, the term victim may include all such persons who have become the pray of any kind of illegal and injurious act against their body or property or both resulting into social, economic, or psychological deprivation to him or her. The Oxford English Dictionary defines the term victim as "A person who has been attacked, injured, or killed as a result of a crime, a disease, an accident, etc". This definition does not seem to be wide enough to cover other kinds of victims, who are not directly harmed or victimized but have been subjected to victimization. This definition covers those persons as victims, who are subjected to some harm as a result of a crime or accident. So, it primarily includes within victim all such persons, who are subjected to injury or harm to body or property or both as a result of illegal activities. But a person may become a victim of many other such acts or circumstances which may not have been covered within the act of crime or accident, but the person has become the victim. For instance, a person or group of persons may have suffered harm or injury or there is substantial impairment of their legal or fundamental rights, due to an act or omission of another person. Similarly persons who are dependent directly on the victimized person, as well as those, who are subjected to any kind of harm due to discrimination, natural disasters, inhuman treatment or disease, etc., may also be treated as victim within the broader scope of the term victim. As a result of worldwide new approach and new thinking for giving justice to the victims of crime the United Nations through it's "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985"[4] gave an exhaustive definition of the term "Victims" in articles 1 and 2 of the Declaration as mentioned below,

> **Article 1**. *"Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws prescribing criminal abuse of power.*
>
> ***Article 2**. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the*

[4] Adopted by General Assembly Resolution 40/34, 29th November 1985.

> *victim. The term "victim" also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.*[5]

When we read and analyze the above definition given by the United Nations, then we find that the definition is more exhaustive and covers not only the victims of any criminal activity but also such victims, who are subjected to victimization due to impairment of their fundamental rights as well as those who have become so due to victimization of direct victim, say for instance the spouse, dependents etc. Further, according to above definition of victim, a person may also become a victim regardless of the fact that the perpetrator is identified, prosecuted, convicted or not and irrespective of the fact of being made victim by the acts or omissions of his or her own family members as well as become a victim due to criminal abuse of power by any authority. Thus the definition given by the United Nations Declaration covers within its ambit all such persons who are subjected to victimization either directly or indirectly due to any prohibited acts of others.

VICTIM'S RIGHTS OF COMPENSATION AND RELATED LEGAL DEVELOPMENTS IN INDIA

The Indian side of law with respect to protection of the rights of victims have been found as suffering from many anomalies and weaknesses from the point of compensatory jurisprudence. The State thinks that its duty towards the victim is fulfilled after seeing the accused is prosecuted and punished. Though, our Constitution lays the foundation for adopting the general public assistance measures in the Part III, dealing with "Fundamental Rights" , and Part IV, dealing with "Directive Principles of the State Policy". But the measures have not been applied and used in cases of victims of crime. The provision regarding "Right to life and Personal Liberty" under Article 21 may be given an interpretation to include the life of victim as well. So also, Article 41of the Constitution of India requires, that the State shall make effective provisions for "securing the right to public assistance in cases of disablement and in other cases of undeserved want". These constitutional provisions in Part III and Part IV of the Constitution of India along with Fundamental Duty in Article 51-A, which requires every citizen of India to develop humanism may be well considered to apply in cases of a victim as well, when the question of protection of his rights by the State comes into question. The Apex Court of India on many occasions through its verdict pointed out about the need of inclusion of compensatory justice system in our Criminal Justice Administration system. Thus, in this regard reference can be made of the Supreme Court's case of

[5] *Ibid.*

Hari Singh v. *Sukhbir Singh*[6], the Apex Court had opined that the principles of compensation to crime victims need to be reviewed and expanded to cover all cases. It was further opined that the compensation should not be limited only to the fines or penalties, but the State should accept the responsibility of providing assistance to the victims out of its own funds even in those cases, where the offender is not traceable or identified. Similarly in the case of *Tehal Singh* v. *State of Punjab*[7] , it was pointed out by the Apex Court , as to how the victims are neglected in the criminal justice system, and observed that these deficiencies can be rectified by the legislature keeping in mind the concept of a Welfare State. So also, the Apex Court in the case of *State of Gujarat* v. *High Court of Gujarat*[8], has observed that in our effort to look after and protect the human rights of the accused or human rights of the convict, we cannot forget the victim or his family in case of his death or who is otherwise incapacitated to earn his livelihood because of the crime committed by an offender.

The new thinking and developments at the national and the international level regarding protection of the rights of victims, received the attention of the Law Commission of India as well, which made many important recommendations to the Government of India for protection of the rights of the victims of crimes by way of compensation through its 152nd and 154thReports. The Law Commission of India in its 154th Report very clearly made recommendations for giving a new look towards the protection of the rights of the victims of crimes by adopting the compensatory measures. The law dealing with criminal justice administration, the Code of Criminal Procedure,1973 was silent in defining the term "Victim". It was the year 2008, when by the Code of Criminal Procedure (Amendment) Act, 2008 the definition of the term "Victim" was inserted in the code by introducing new clause 'wa' in section 2 of the Code of Criminal Procedure,1973.Thus, according to this new clause, the term "Victim" is defined to mean "a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "Victim" includes his or her guardian or legal heirs"[9]. An insight and analysis of this definition of "Victim" under the Code of Criminal Procedure,1973, expresses that it is concerned or limited in its scope and application by circumscribing its ambit to the victims of crime and their dependents, as the definition includes his or her guardian as well as the legal heirs. The other kinds of victims besides the victims of crime, as have been covered by the definition of United Nations Declaration of Basic Principles of Justice for victims of crime and Abuse of Power, 1985, may be subjected to remedies under the other public laws or private laws if the act causing loss or injury against them is not of criminal in nature. Thus,

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6 (1988) 4 SCC 551.
7 1980 Supp SCC 400 : AIR 1979 SC 1347.
8 (1998) 7 SCC 392.
9 S. 2 (wa) of the Criminal Procedure Code, 1973.

for instance if there is violation of legal or fundamental rights of a person, then the Courts are providing the remedy by way of ordering the violator of rights to pay compensation to the injured person or ordering the State to compensate the victim. Similarly damages or loss to property caused by natural calamities are taken care by the States by providing financial assistance to such victims out of the Special Relief funds within the power of the States. As a relief measure S. 357 of the Code of Criminal Procedure, 1973 provides a discretionary power to the trail court for passing an order of sentence with fine or a sentence (including a sentence of death) of which the fine forms the part recoverable from the offender/offenders to be paid in full or in part at the discretion of the court to the person against whom offence has been caused or be deposited towards defraying the expenses properly incurred in the prosecution. This discretionary power with the court was not uniform in its application and also not been properly exercised in providing relief to the victims, resulting in different types of hazards like financial, psychological and health, on the part of the victim. On the other hand, we find many protective safeguards being provided to the offenders under different provisions of law on the ground of his human rights and fundamental rights. This inequitable equilibrium of justice between the victim and offender led with many criticisms on the part of criminologist and the social activists. The Apex Court of our country has also on many occasions came forward through its judgments as a major crusader for protection of the rights of the victims. As a result of Apex Court's judgments and the demand for justice to victims by the Law Commission, the Government if India appointed a Committee under the Chairmanship of Dr. Justice V.S. Malimath for submitting its report on reforms of the Criminal Justice System of India.

Dr. Justice V.S. Malimath Committee Report on Reforms of Criminal Justice System (2003) – The Committee which was appointed to look into the criminal Justice system in India vehemently pointed out in its report about the crisis the criminal justice system in India is passing through. The Committee observed regarding the justice to victims that-

> " ……. *People by and large have lost confidence in the Criminal Justice System ..... Victims feel ignored and are crying for attention and justice .... There is need for developing a cohesive system, in which, all parts work in co-ordination to achieve the common goal*"[10].

As a result of Committee's Report, a new section 357A, was inserted by an amendment in the Code of Criminal Procedure, 1973, vide Act 5 of 2009 in view of Notification dated 31-12-2009, which is seen as a measure step taken by the Government in the direction of protecting the rights of victims by the

[10] Committee on Reforms of Criminal Justice System (2003), Part 1, p. 75.

States by assisting the victim from its own resources, where the compensation to the victim under section 357 of Criminal Procedure Code was not adequate or where the case ended in an acquittal or discharge and the victim was helpless without any measure of compensation and rehabilitation. Insertion of this section removed the bar of the Trail Court to award compensation based on conviction of the accused and strengthened the hands of the Trail Courts in awarding compensation even in those cases where the accused person is acquitted or discharged or even non identified. In cases where the victim was found dead, the section authorizes the dependents of the victims to make an application to the State or the State Legal Service Authority for grant of compensation. On receipt of such application the State Legal Service Authority (SLSA), will direct the District Legal Service Authority (DSLA) to make an enquiry and submit its report on victims' application within two months' time. Thus, provision has been made for providing compensation to the victim or his dependents from the state fund on the recommendation of the State legal service Authority, which will also decide the quantum of compensation to be given to the victim. However, the observations of the Apex Court of India in *Suresh* v. *State of Haryana*[11], can be seen as a pointer to negative approach of the authorities responsible for application of the principles towards the achievement of its objectives.

TYPES OF VICTIMS

On an analysis of the definition of "Victim" given by the Criminal Procedure Code, 1973, and the definition given by the United Nations Declaration of 1985, the victims may be classified into "primary" and "secondary". Primary victims are those, who have suffered the direct harm or injury, and the secondary victims may be those, who are not directly affected but indirectly affected because of the harm or injury of the primary victim, for example the dependents like legal heirs including aged parents etc.

The modern-day victimologists refer to a third category of victims as well, calling them as "tertiary" victims, and putting such persons in this category, who on account of relationship with the primary victim are subjected to humiliation and disgrace. But from the victimological point of view it is the direct victim and his or her dependents who should be primarily the point of concern for restitution and rehabilitation, who practically can be identified and rehabilitated. An insight into both definitions given by the Code and the U.N. Declaration 1985, may also indicate the two main types of victims, i.e., primary and secondary. One of the complicated questions which arises after the primary and secondary victims are identified and the accused person is convicted or acquitted, is with respect to complicity of the victim in

[11] (2015) 2 SCC 227 : AIR 2015 SC 518.

the commission of the crime. In USA, the complicity of victim in the occurrence of the crime against him or her reduces the amount of compensation. So, in our criminal justice system also barring few serious types of offences like murder, sexual assault, acid attacks, arson etc. the compensation may be decided keeping in view the complicity of the victim as well, which the court may consider for justice. In certain cases, compensation to secondary victims needs to be looked from their human rights perspective. For example, if the secondary victim is a minor, school going child, a wife or infirm parents, then compensation to such persons by the state is a constitutional duty, which the state must provide in a welfare state[12]. Rights of primary victims to get compensation has now been recognized, which the courts must recognize as a rule rather as an exception.

COURTS AND THEIR APPROACH IN PROTECTING AND SAFEGUARDING VICTIMS' RIGHTS

It can be seen from various decisions of the various courts that there are both types of decisions ordering assistance or overlooking the assistance to the victims, which can be observed by some of the Supreme Court's decisions. Thus, in *Ankush Shivaji Gaikwad* v. *State of Maharashtra*[13], the Apex Court after coming to know that despite the statutory provisions and victims assistance schemes provided by the States , the victims rarely get the benefit of the provision and the scheme. The Apex Court therefore made this mandatory for the Trail Courts to pass the order of compensation to the victims and in cases where compensation order was not made the court must provide the reasons in their order. This fact reveals that in some cases the Trial Courts were hesitant to pass in their orders the provision for compensation to the victims of crime in spite of having the supportive provisions for victim's relief.

A similar type of observation was made by the Apex Court in *Suresh* v. *State of Haryana*[14]**,** where the Court had expressed the view, which was brought to its notice that, even after five years, award of compensation to victim of crime has not become a rule, and even the interim compensation is not being granted by the Courts. The maximum limit of compensation fixed by the States is seemingly low and is not keeping with the object of compensatory legislation.

The Apex Court also pointed out towards the duty of the Trail Courts, on taking cognizance of a criminal offence, to ascertain "*whether there is tangible material to show commission of crime, whether the victim is identifiable, and*

[12] See, arts. 21 & 41 of the Constitution of India.
[13] (2013) 6 SCC 770 : AIR 2013 SC 2454.
[14] (2015) 2 SCC 227 : AIR 2015 SC 518.

whether victim of crime needs immediate financial, medical...relief." The Apex Court further pointed out that "*if the court is satisfied on an application or on its own motion, direct for the grant of interim compensation subject to final compensation to be decided later by the court*".

This observation of the Apex Court throws a light towards the fact of lack of seriousness and non-equitable compensation reliefs to the victims of similar crimes and in other crimes.

As a result of the Supreme Court's critical observations in some of its judgments[15] and directives given to the States for creation of victim's relief fund, and with the insertion of section 357A in the Criminal Procedure Code, 1973 , various states in co-ordination with the Central Government created the victim's relief fund for their own State. However, this scheme lacks the uniformity amongst the states with respect to compensation amount in specific types of offences. The Central Government with an initial corpus amount of Rs. 200 crores, supported and supplemented the existing disparity based Victim Compensation Schemes notified by the States / Union Administrations, in order to encourage them to effectively implement the Victim Compensation Scheme(VCS) notified by them under the provisions of section 357A of the Code of Criminal Procedure, by providing financial support to victims of varios crimes especially sexual offences including rape, acid attacks, crime against children, human trafficking etc.[16]

CONCLUSION

On the basis of the perusal and analysis of the various provisions dealing with the compensation to the victims of crime in India, it is evident that the scope of the victims compensation has to be enlarged, so that various other categories of the victims may also be brought within the scope the term "Victim". The courts at the trail stages should also play an active role in passing the order for compensation in genuine cases for the loss or injury to the victims, in addition to the existing provisions of the fine or punishments. In serious types of the offences like murder, rape, grievous hurt, sexual assaults of any kind and acid attacks etc. the remedy of compensation should be quick and immediate in order to provide quick relief to the victim or his dependents. A uniform and victim friendly mechanism for award of compensation should be adopted by all states as their moral and legal obligation as a welfare state.

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[15] See, Kewal Pati v. State of U.P., (1995) 3 SCC 600, Chairman, Railway Board v. Chandrima Das, (2000) 2 SCC 465, Nilabati Behera v. State of Orissa, (1993) 2 SCC 746, Khatri v. State of Bihar (1981) 1 SCC 623, Union Carbide Corpn. v. Union of India, (1989) 1 SCC 674.

[16] For detail Central Victim Compensation Fund (CVCF) guidelines and minimum compensation amount , refer, circular No. 24013/94/Misc./ 2014-CSR.III, Ministry of Home Affairs, Govt. of India, Dt. 13th July 2016.

AN OVERVIEW ON THE SYSTEMATIC LITERATURE REVIEW FOR THE LEGAL RESEARCH

—Sidhartha Sekhar Dash*

ABSTRACT

Successful research needs a systematic and methodological approach. It is to know the existing work systematically to identify the gaps for further exploration and to make an addition to the existing knowledge of legal studies. Introduction of the Systematic Literature Review in the works of Legal discipline shall make the works more scientific and methodological. The paper offers an overview of the Systematic Literature Review to the legal scholars with further readings on the area.

Keywords: Literature Review**,** SLR., Legal Research, Systematic Literature Review, Search String.

INTRODUCTION

A legal scholar when faces any question to do research or attempts to prepare a manuscript, the important research skill among others is to conduct the review of literature in a fair and organised way. The literature review is the foundation of academic research. The literature review summarises the body of literature that is relevant to the article. It is a methodological approach where existing literature is collected and further those are analysed to answer a specific question. If one ranks the order of deficiencies in any cited manuscript, the literature review section of a paper remains among the top five causes of rejection of a paper[1]. To address this, the most robust, organised and stream-

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1 McKercher, B., Law, R., et. al., *Why Referees Reject Manuscripts*. Journal of Hospitality & Tourism Research, 31(4), 455–470 (2007), https://doi.org/10.1177/1096348007302355

lined method of approaching the review of research works is the *systematic literature review or SLR*.

WHAT IS SYSTEMATIC LITERATURE REVIEW

A systematic literature review, Cochrane says, attempts "to identify, appraise and synthesize all the empirical evidence that meets pre-specified eligibility criteria to answer a given research question[2]"."Systematic literature reviews originated in medicine and are linked to evidence based practice[3]".

"A successful review involves three major stages: planning the review, conducting the review, and reporting the review.[4]" The systematic literature review answers all the descriptions of these stages. It is a type of literature review that collects and critically analyzes multiple research studies or papers through a systematic process. The purpose of this type of Literature Review is to provide an exhaustive summary of the available literature relevant to a research question.

It is different to the traditional authoritative review, as it needs identification of the current literature, the limitation of the literature, its quality and potential. The authoritative or opinionated review helps a researcher to approach poorly conducted research but this method allows imprecise and unreliable presentation of evidence. This can be overcome if the study design is conducted with meticulous planning and execution. The systematic literature review can be used in legal research in many fruitful ways like demonstrating the legal or policy impact and outline crime prevention. This can also help to point research gaps, identify potential areas for future research, outline crime prevention strategies and the extent to which a problem is understood.

STEPS OF CONDUCTING SYSTEMATIC LITERATURE REVIEW

To conduct a systematic literature review a researcher need to set guidelines before the review that helps him to reduce down the focus of the project.

(According to the study in the field of hospitality and tourism, content analysis of 373 referees' reports of manuscripts submitted to 35 journals where rejection or major revision was recommended, 50.9 % of the manuscript were rejected on the literature review section of a paper).

2 McKercher, B., Law, R., et. al., *Why Referees Reject Manuscripts.* Journal Of Hospitality & Tourism Research, 31(4), 455–470. (2007), https://doi.org/10.1177/1096348007302355.

3 *Library Guides: Literature Review: Systematic Literature Reviews (2016).* https://libguides.csu.edu.au/review/Systematic.

4 Kitchenham, Barbara & Stuart Charters, *Systematic Literature Reviews in Software Engineering*, Keele University and Durham University, EBSE-001 (2007), https://userpages.uni-koblenz.de/~laemmel/esecourse/slides/slr.pdf.

This makes the research methodology transparent and replicable[5]. Pittway (2008) "outlines seven key principles behind systematic literature reviews. Those are, Transparency, Clarity, Integration, Focus, Equality, Accessibility, and Coverage[6]". During the systematic literature review, a researcher can use different kinds of literature like Legislative Acts, Cases laws, law commission reports, journal and newspaper articles, NGO Reports, parliamentary discussions, Policy decisions, and other governmental reports.

A. Putting Down the Rules or Protocol

The researcher must pen down the rules for the systematic literature review and do a daily track of his research activities. This shall help him to make a timeline of his project, keep track of the decision-making process.

B. Research Question

"Literature reviews are research inquiries, and all research inquiries should be guided by research questions. Research questions, therefore, drive the entire literature review process"[7]. After penning down the rules for the systematic literature review, the researcher should determine his research question. This helps to shape what literature is to be included and what excluded. "While conducting the review, unforeseeable problems may arise that requires modifications to the research question and/or review protocol. An often-encountered problem is that the research question was too broad and the researchers need to narrow down the topic and adjust the inclusion criterion[8]". The researcher should have clear in his frame of mind the appropriate information needed to answer his research question. Additionally, the researcher can also explain as to why the criteria were selected.

C. Knowing what to search for

This is one of the important steps for conducting the systematic literature review. When a legal researcher tries to search in any specific domain of study, say revenue laws, he may encounter thousands of works on the search site. This is known as putting suitable *search-string*. "A suitable *search-string* for a

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5 Reshchikov, A. & van Achterberg K., *Review of the Genus Metopheltes Uchida, 1932 (Hymenoptera, Ichneumonidae) with Description of a New Species from Vietnam*. 2 Biodiversity Data Journal. (2014), https://doi.org/10.3897/BDJ.2.e1061.

6 *Library Guides: Literature Review: Systematic Literature Reviews (2016).* https://libguides.csu.edu.au/review/Systematic.

7 Irimia R. & Gottschling M., *Taxonomic Revision of Rochefortia Sw. (Ehretiaceae, Boraginales)*. Biodiversity Data Journal 4: e7720. (2016), https://doi.org/10.3897/BDJ.4.e7720.

8 Xiao, Yu & Maria Watson, *Guidance on Conducting a Systematic Literature Review*, Journal of Planning Education and Research. (2017), https://doi.org/10.1177/0739456X17723971.

search engine is specific, inclusive and aware of the variability in terminology/ reporting[9]". Since most of the search site's engine delivers end-results by algorithmic assessments search or keywords, to weed out published manuscripts of other paradigms the researcher should use *well thought out* keywords/ search strings**.** The researcher must be consistent with his search string. Moreover, he must record the search string as this is a requirement to state in the manuscript. The researcher can use the automatic searches in the search engine to narrow down the search further, like, years of publication of the judgements, specific HC or only the SC. This depends upon the inclusion or the exclusion criteria of the researcher. The specifics of the search depend upon the search engine used.

D. Where to search

There are various search engines in the legal field. Say for example a person is searching Indian case laws on a subject. He can opt for a non-paid and free search engine like Indiakanoon.org. Researchgate, Mendeley and SSRN. Multiple search engines should be used by a researcher in the systematic review. Also for paid software like HeinOnline, Manupatra, for qualitative data analysis ATLAS.ti. It all depends upon the preference of the researcher and the subject matter of the work.

After this the researcher is to manage and interpret the findings according to the objective of the research. And finally, the researcher is to structure his review in order to find the research gap, if any.

SUGGESTED BOOKS

A few Suggested pieces of literature on the Systematic Literature Review are reflected here for the researchers.

1. Fink, A. (2014). Conducting Research Literature Reviews: From the Internet to Paper. Los Angeles, CA: SAGE. **2.** Hagen-Zanker, J. & Mallet, R. (2013). How to do a Rigorous, Evidence Focused Literature Review in International Development: A Guidance Note. Working paper Overseas Direct Investment. **3.** Oliver, S., & Sutcliffe, K. (2012). Describing and analysing studies. Gough, D. A. & Oliver, S. In An Introduction to Systematic Reviews. London, UK. SAGE. **4.** Pittaway, L. (2008). Systematic Literature Reviews. Thorpe, R. & Holt, R. In The Sage Dictionary of Qualitative Management Research. London, UK. SAGE. **5**. Siddaway, A. (2014). What Is a Systematic

[9] *How to Write a Systematic Literature Review: A Guide for Medical Students (n.d.).* Cardiff. ac.uk. Retrieved Sept. 7, 2022, from https://sites.cardiff.ac.uk/curesmed/files/2014/10/NSAMR-Systematic-Review.pdf.

Literature Review and How Do I Do One? **6.** Snel, M. & de Moraes, J. (2018). Doing a Systematic Literature Review in Legal Scholarship. The Hague, NL. Eleven International Publishing.

CONCLUSION

Our legal discipline needs to enhance rigor in literature reviews. While the fields of science vigorously engaged in discussions to improve the quality of literature reviews, the legal discipline should not fall behind in discussing its various aspects and adopting methodological approach to literature review. This paper introduced the concept and steps for the systematic literature review to our scholars to enrich the discussion.

FORENTRONIC EVIDENCE

—Sarvesh Shahi*

ABSTRACT

The new term 'Forentronic' has been coined by the author to show the connection between electronics and forensics and their use in proving a criminal case. The need for correct forensic evidence interpretation is now more than ever recognised, and courts are looking to their experts for assistance in this extremely challenging field.

Evaluating the strength of the conclusions and presenting them in a clear and complete manner necessitates understanding of both the subject at hand and the principles behind appropriate information balance. In light of this opinion, the author, in the present paper, has made a sincere effort to bring clarity on the important terms like 'electronic evidence' and 'forensic evidence'. Further, the paper highlights the use of electronics in forensic science investigation and how the court has analyzed the relevancy of this evidence in proving the facts in issue that arose in a case and what logic has been given for admissibility and reliability of that evidence.

Keywords: Forensic Evidence, Electronic Evidence, Court, Investigation

INTRODUCTION

The transition of thought from the physical to the technological environment is how societal communication takes place. Smartphones, computers, digital cameras, printers, and other information and communication technology equipment are used in the virtual world. In contrast to the physical world, the virtual world provides several chances for crimes such as voice phishing, identity

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theft, child pornography, hacking, and so on. The significance of electronic data is often used when it comes to establishing or refuting a truth or fact, the data that is used as evidence in court.

The growth of communication networks and advanced technology have significantly altered the process of transmitting information in all fields. The usage of digital media in illegal operations has grown to the point that each criminal inquiry now generates electronic evidence. Nevertheless, due to the fast increase in the number of cases using electronic evidence, law enforcement, and the judiciary have all-too-often found themselves unprepared to cope with the new difficulties that have arisen as a result of such evidence.

Crimes have a digital component in today's world. They are either committed with digital technology or information about crimes is located in an electronic format. As a result, evidence from digital storage media or digital communication services is routinely discovered and gathered in litigation or criminal prosecution. Electronic evidence serves the same goals as traditional evidence, but it also raises several issues and risks, particularly during the collection process, such as potential privacy breaches.

Despite major scientific advances and huge increase in forensic services, a little research about the usage and effect of forensic evidence in criminal trials has been published. As a result, the intrinsic usefulness of forensic evidence in enhancing case outcomes remains, to a large part, an assumption that has to be tested.[1]

The relevance of forensic evidence, on the other hand, has been thoroughly examined by Indian criminal courts. The court took into account the trustworthiness and admissibility of various types of forensic evidence, medical and psychological proof, from DNA and digital forensics, as well as more odd areas such as fibre analysis, face mapping, and voice recognition. These problems were looked at from two different viewpoints by the court, first, in the acceptance of such evidence in lower courts, and secondly, on appeal, in the admission of such material as new evidence. In the two cases, the court has adopted a pragmatic response to allow for the admission of forensic evidence that has been assessed useful and trustworthy.[2]

In light of this, the paper focuses on the use of electronics in presenting forensic evidence before the court. It further highlights the significance

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[1] Ira Sommers & Deborah Baskin, *The Influence of Forensic Evidence on the Case Outcomes of Rape Incidents*, 32 The Justice System Journal 314–334 (2011).

[2] Lissa Griffin, *Forensic Evidence and the Court of Appeal for England and Wales*, DIGITALCOMMONS@PACE (2016), https://digitalcommons.pace.edu/lawfaculty/1013/ (last visited Mar. 22, 2022).

of electronic evidence blended with forensic evidence in terms of relevancy, admissibility and reliability factor. The complete analysis of use of methods for presenting scientific evidence is done in the present research paper.

As a result, it's important to revisit the Indian Courts' evidence standards, methods of proof, handling, and weighting of forensic and electronic evidence. Recent judgements are discussed where authenticity of forentronic evidence is judged by the court.[3]

MEANING OF THE TERM EVIDENCE

Law is materialist; it is unable to see the truth without the help of evidence. Evidence is an eye through which the law can see and identify the truth. Evidence is the means to ensure justice. It is the vital weapon to win the case and a precondition to justice. It is a species of proof or probative matters legally presented before court of law. Evidence is defined as anything that seeks to demonstrate or refute the existence of an asserted fact, according to Black's Law Dictionary.

MEANING OF FORENSIC SCIENCE EVIDENCE

The term forensic emanates from the Latin forensis, which means "of or before the forum." Nowadays, there are several definitions that defines the word forensic science. It's sometimes referred to as applying the method of science to the resolution of legal disputes. Laboratory work is restricted and constricted in some situations, and forensic science techniques applied at the crime scene are disregarded.

In India, forensic science, a tool for assisting in the discovery of the crime and supporting the Criminal Justice System in bringing the perpetrator to justice, appears to have finally matured. Field science, laboratory science, and medical science are all part of forensic science. It refers to the use of various scientific findings in the legal system. It is the application of science to the law in its broadest sense. As time has passed, society has become more complicated, the rule of law has become increasingly important in regulating the actions of its citizens. The use of scientific knowledge and technology to define and enforce such rules is known as forensic science.[4]

Different scientific methodologies and procedures are used to investigate crimes and address legal concerns in criminal cases. It is the science of

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[3] Stephen Mason & Daniel Seng, Electronic Evidence 36–69 (University of London Press, 2017).

[4] Jackson Andrew R.W. & Julie M. Jackson, Forensic Science 467 (Pearson Prentice Hall, 2008).

connecting people, places, and things in criminal crimes, as well as how scientific disciplines may help in criminal case investigation and adjudication.[5] Forensic science is utilized in civil proceedings to determine paternity, examine documents, and resolve other legal issues. Science is useful because it has the ability to deliver accurate, timely, and frequently conclusive knowledge on a particular issue. This can be accomplished by employing a wide range of specialized disciplines of study or knowledge.[6]

Forensic Sciences encompasses much more than DNA tests, blood samples, and FSL reports, and if we are to keep up with the times, society and government institutions must be well-equipped with technology. When AI (Artificial Intelligence), Robotics, and Drone Technologies knock on the door, policymakers and stakeholders must not rely on antiquated investigation and prosecution systems to protect the Rule of Law or the Adjudication Process. The police investigation and prosecution in court must be based on scientific study rather than rely on witness testimony. The concepts and instruments of forensic sciences should be well-understood by police officers, public prosecutors, and trial judges.

MEANING OF ELECTRONIC EVIDENCE

It's not simple to define what we mean when we say "electronic" evidence. The evidence we're working with is sometimes known as 'digital evidence' or 'computer evidence.' Electronic evidence is any evidence that has been digitally captured or transferred.[7] Computer hard drives, floppy discs, optical discs, , remote internet storage, mobile devices, network servers, memory cards, emails, and other storage devices can all be used to store such information.[8]

Understanding the meaning of various technical phrases often used in the technology world is the first barrier to overcome when dealing with electronic evidence. The sort of evidence we're working with is known as electronic evidence, digital evidence, or computer evidence, amid other terms. When data from the real world is processed into binary numeric representation, as seen in digital music and digital images, the word "digital" is extensively utilized in computer science and electronics.

Digital evidence is referred to as data that has probative value or is communicated in binary form, as well as data recorded or data can be sent in binary

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5 Robin Feldman, The Role of Science in Law, Oxford Scholarship Online (2009).

6 Barry A.J. Fisher, William J. Tilstone & Catherine Woytowicz, Introduction to Criminalistics: the Foundation of Forensic Science 328 (Academic Press, 2009).

7 Mark M. Pollitt, Report on Digital Evidence, D4–89 (Mar. 22, 2022, 8:20 PM), https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.304.8748&rep=rep1&type=pdf.

8 Michele C. S. Lange et. al., Electronic Evidence and Discovery: What Every Lawyer Should Know 72 (American Bar Association 2006).

format that can be used in court. The term digital is too broad, while the word binary is too narrow because it only refers to one type of data, as we've shown.[9]

In a nutshell, electronic evidence refers to any evidence that is stored digitally rather than on paper or in a physical form. A few years ago, most law practitioners would have laughed at the idea of processing or using electronic evidence. With the prevalence of electronic business documents, e-mail, bank information saved on home computers, and a wide range of Internet activities, few would argue that electronic evidence will play a significant role in future court cases.[10] A piece of evidence produced using a mechanical or electronic process is referred to as "electronic evidence." It encompasses, but is not restricted to, electronic mails, documents in text, deleted files, spread-sheets, databased files , data backups, and other files stored on floppy discs, zip discs, microfilms, pen-drives, faxes, hard-disks, memory cards, CD-ROMs, smartphones, and other devices.[11]

According to the Explanation to Section 79A of the IT Act, digitalized evidences, digital audio & video, mobile phones, and digitalized fax machines all fall under the category of evidence in an electronic format, which encompasses any data of probative value that is preserved or disseminated in electronic form. During civil or criminal trials, courts can allow the usage of digital evidence, for example the electronic mails, instant message histories, digitalized pictures, databases, contents of computer memory, word processing documents, spreadsheets, internet browser histories, backing up and keeping safe electronic data, and using secure electronic signatures are all options, tracks from the Global Positioning System, records from a hotel's electronic door, audio or video on a computer, and so on.

USE OF ELECTRONICS IN FORENSIC SCIENCE INVESTIGATION

Computer forensics and electronic evidence is a recent addition to the arsenal of legal evidence. A significant and controversial debate has erupted about electronic evidence among legal specialists, in contrast to many prior forensic professions, which were frequently brought into the courtroom without

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[9] Dr. Swarupa Dholam, *Electronic Evidence and Its Challenges*, 1-14, (Mar. 22, 2022, 8:23 PM), http://mja.gov.in/Site/Upload/GR/Title%20NO.129(As%20Per%20Workshop%20List%20title%20no129%20pdf).pdf.

[10] Jim Calloway, Family Advocate 8-9 (American Bar Association, 2006).

[11] A. Venkateswara Rao, *Admissibility of Electronic Evidence*, (last visited Mar. 22, 2022, 8:30 PM) https://districts.ecourts.gov.in/sites/default/files/Webinar%20on%20Admissibility%20of%20Electronic%20Evidence%20By%20Sri%20A%20Venkateshwara%20Rao.pdf.

any legal wrangling, and review. Various legal systems have taken different approaches to deal with this new dilemma.[12]

Previously, forensic science techniques were mostly used to investigate rape and homicide, which are examples of more severe crimes. Forensic techniques, on the other hand, are increasingly being utilized to assist large-scale criminal investigations such as burglary, car theft, and robbery. Through the use of forensic tools and processes, modern policing has substantially increased its capacity to overcome such kinds of crimes. Detailed study of the crime scene and forensic evidence analysis is frequently used to solve crimes nowadays. Forensic scientists' work is essential not only through criminal prosecutions and investigations, as well as in the civil disputes, large-scale man-made and environmental catastrophes, and worldwide crime investigations. The capacity to process a crime scene correctly by recognising, gathering, and conserving all pertinent evidence is built on a teamwork-oriented methodology, technology instruments and GPS locating, data analysis, mobile phone tracking, moving image analysis, and artificial intelligence are examples of sophisticated investigation skills, as well as the ability to recognize, collect and preserve all relevant physical evidence.[13]

A novel strategy that has gained traction is known as 'forensic triage', that has attracted a lot of interest in the fields of forensic science and law enforcement, comes before the inspection and the experts in digital evidence review and analyse electronic evidence. The phrase "digital forensic triage" refers to a collection of techniques, approaches, software, and technology that can help individuals at prioritising their digital forensic investigations more efficiently. Forensic triage is not appropriate in all cases. It should only be used after a thorough risk assessment and by employees who have received the necessary training. In this regard, there are certain parallels between law enforcement and the medical profession. A police officer who has been educated in the use of a breathalyzer, which is used in the triage process to make informed judgments concerning a driver who is accused of being inebriated. The officer doesn't have to be knowledgeable with the field of science depicted in the gadget, instead, he or she only has to be properly educated to configure, operate, and analyze the findings it produces, as well as decide how to best proceed with the investigation.[14] Similarly, not everyone who works in an accident and emergency room is a brain surgeon. Instead, certain members of staff have

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[12] Stephen Mason & Daniel Seng, Electronic Evidence 36–69 (University of London Press, 2017).

[13] Henry C. Lee & Elaine M. Pagliaro, *Forensic Evidence and Crime Scene Investigation*, J. Forensic Investigation, (Mar. 22, 2022, 8:45 PM) https://www.avensonline.org/wp-content/uploads/JFI-2330-0396-01-0004.pdf.

[14] Marcus Rogers et. al., *Computer Forensics Field Triage Process Model*, 1 The Journal of Digital Forensics, Security and Law 19–37 (2006).

received training on how to evaluate symptoms and refer patients to the most appropriate therapy using basic procedures and technology.

Because the technology and procedures for digital forensic triage are still in their early stages, they must consider the necessity for adequate training and accreditation. To avoid the omission of any essential data, an appropriate risk assessment will also be necessary. It may be claimed that if every piece of digital material found is not thoroughly examined, significant evidence would be lost. In certain circumstances, this may be valid, however, it should be emphasized that even if all of the gadgets that were submitted for investigation have been thoroughly examined, there is yet a chance that not all devices have been confiscated and their data evaluated.[15]

In a recent case of *Subhradeep Mazumder* v. *LIC*,[16] the petitioner took the preliminary test and then the main examination, however his fingerprints and biometric imprints were determined to be mismatched during the process. Despite this, he passed both exams. Some biometrics-related instructions were included in the call letter sent out prior to the main test. In a letter dated March 19, 2020, the petitioner was informed that the respondents' higher office would not allow him to continue working as an Assistant owing to his status as "Not Matched" in the Biometric authentication performed on February 3, 2020.

The Court concluded that there is no technique available to it to resolve the issue posed in this writ petition decisively as to how and whether the petitioner's biometric impression was genuine or not. The respondents were directed to reject the representation and re-examine the case in light of the facts put out in the writ petition and the representation, according to the Court. The Court further advised that respondents use the forensic investigation to determine whether the petitioner's assertion regarding the legitimacy of the petitioner's thumb imprint is true.

Likewise, courts have highlighted the significance of both electronic and forensic science evidence in another case of *Bharat Jatav* v. *State of M.P.*,[17] because of a long wait for DNA or Ballistic reports from the appropriate authorities, the Court used this occasion to bring attention to the pending matters (bail petitions and criminal proceedings before the trial Court). The court believed that there was still more work to be done in the field of forensic sciences and their application in legal administration and education.

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[15] Faye Mitchell, *The Use of Artificial Intelligence in Digital Forensics: An Introduction,* 7 Digital Evidence and Electronic Signature Law Review 35 (2010).

[16] Subhradeep Mazumder v. LIC, 2021 SCC Online Tri 484.

[17] Bharat Jatav v. State of M.P., 2021 SCC OnLine MP 2111.

OVERSEAS ADMISSIBILITY OF FORENTRONIC EVIDENCE

Before the development of forensic science, the trial process mainly depends on oral evidence; confessions and eyewitness testimonies. These evidentiary processes have limitations. Because of different factors human beings might fail to remember exactly what was conducted at the crime scene. The development of forensic science would cover the limitations of oral evidence and objectively support the justice system.[18]

The admissibility and handling of expert forensic testimony concerning DNA that is based on experience and knowledge rather than statistics is a serious problem. This circumstance can develop when there isn't enough material to do accurate testing or when the problem is a transfer mechanism rather than identification.

DNA is the quintessential subject in which the court is requested to consider new evidence that was not accessible at the time of the case was heard owing to a lack of scientific development. When DNA evidence was still in its infancy in the 1980s, the court discussed about the testing technique, the analysis of test results, and the involvement of specialists. As DNA testing became a well-established branch of forensic investigation, when new challenges arises. In a scenario where DNA discoveries were used as evidence in the court, samples that haven't been analysed were subsequently discovered that it could be put to the test. Likewise, additional in-depth tests have been established that either confirm or refute the evidence presented at trial.[19]

The admission as well as the need of expert medical testimony have also been a common topic of discussion for the court. Typically, the cases entail the prosecution presenting medical evidence to show the cause of death or to substantiate a physical harassment charge that is founded solely on the assertions of the victim or the plaintiff. The court usually concentrates on the witness's experience and special training; the resources that a witness has accessibility to and on which his or her viewpoint is based (actual samples or not) ; expert or other proof that backs up or validates that point of view; and the judge's instructions to the jury on how to evaluate that evidence were clear and accurate. The reason behind the death of an individual in homicide cases and the verification of sexual abuse accusations are the two most commonly discussed topics.

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[18] Behaylu Girma, *Forensic Science Evidence Under Ethiopian Criminal Justice System: The Case of Homicide In Addis Ababa*, ACADEMIA.EDU, (Jun. 2014) https://www.academia.edu/42005735/FORENSIC_SCIENCE_EVIDENCE_UNDER_ETHIOPIAN_CRIMINAL_JUSTICE_SYSTEM_The_Case_of_Homicide_in_Addis_Ababa (last visited Mar 22, 2022).

[19] R. v. Keran Louise Henderson, [2010] EWCA (Crim) 1269.

Unbiased opinion on the veracity of someone else's statement or testimony is less straightforward than instances needing forensic verification of mental capacity. Despite the fact that the defence was unable to present a case based on diminished ability during the time of a trial, the court has freely accepted new clinical evidence and invalidated the convictions in numerous mental-capacity instances.[20]

The constitutionality of forensic computer analysis also been questioned. Examination of computer data has been necessary for computer offenses involving child pornography to determine if it was "knowing" to have child pornography and to track down the source. Expert evidence has been acquired in a more conventional situation to indicate that police records have been manipulated.[21] The admissibility of voice identification evidence was also taken into consideration by the court. Furthermore, this proof is based on the comparative expert's experience and knowledge rather than statistical data.[22]

ADMISSIBILITY IN INDIAN COURTS

Until the year 2000, the Indian Evidence Act of 1872 there were no specific rules in admitting the acceptance as well as the importance of digital evidence. It fell behind contemporary technological advances in terms of content. As a result, the law has to be changed to recognize transactions that involve other forms of electronic communication include EDI (Electronic Data Exchange). The Information Technology Act of 2000 (Act 21 of 2000) was passed as a result. The IT Act is established on the United Nations Commission on International Trade Law's Model Law on Electronic Commerce. In addition to amending the Indian Evidence Act, 1872, the Indian Penal Code, 1860, and the Banker's Book Evidence Act, 1891, the IT Act primarily acknowledges the transactions that are carried out through the help of EDI (Electronic Data Interchange) i.e., computer-to-computer communication and other means of communication. Under Schedule II to the IT Act, 2000, new sections 65A and 65B of the Evidence Act are introduced to accommodate electronic evidence admissibility. According to Section 5 of the Evidence Act, only facts that are in dispute or significant can be offered as evidence.[23]

A judge can rule on the admission of evidence under Section 136 of the Evidence Act. The Judge has the authority to question how the evidence presented is relevant, so that during trial, the evidence can be restricted to important facts and not stray beyond the focus of the case. The judge will next have

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[20] R. v. Inglis, [2010] EWCA Crim 2269.
[21] R. v. O'Shea, [2010] EWCA Crim 2879.
[22] R. v. O'Doherty, [2002] NICA B51.
[23] Vivek Dubey, *Admissibility of Electronic Evidence: An Indian Perspective* 4(2) Forensic Res Criminol Int. J. 58-63 (2017).

to decide whether or not it is admissible. In light of the controversy, it's interesting taking a look at how Indian courts handle DNA, medical, psychiatric, computer evidence, fingerprint and face mapping data, as well as voice and fibre.

In the respective case of State of Bihar v. Radha Krishna Singh, the Supreme Court of India ruled that the authenticity of a document is one thing, and its probative value, on the other hand, is entirely different, and the two cannot be combined.[24] During the investigation, ensuring the integrity of electronic evidence and when dealing with traditional physical or documentary evidence, the trial procedure presents distinct obstacles. The complexity of networked computers exacerbates a number of typical issues. This article does not cover the particular challenges that arise in networked contexts but rather concentrates on a few specific issues related to protecting the integrity of data obtained through stand-alone electronic media. The manipulation of electronic documents are too simple that they can be easily duplicated, changed, updated, destroyed (but not erased), or intercepted.

In Jagdeo Singh v. State,[25] the Delhi High Court ruled that the blocked phone calls on CDs given to the trial court, which were afterward evaluated by a forensic expert, did not fulfill the criteria of section 65B of the IEA, and could not be scrutinized by the Court for any purpose.

An important observation was made by the Punjab and Haryana High Court in the respective case of the Vinay Kumar v. State of Haryana,[26] that a forensic report is the bedrock of a case under the NDPS (Narcotic Drugs and Psychotropic Substances) Act, and that if it is not presented with the charge-sheet, the whole case would be dismissed.

In Jose Luis Quintanilla Sacristan v. the State of U.P.,[27] The Court opined that the report of Forensic Science Laboratory is a public document, and in this regard the made reference to the provisions of Section 293 Cr.P.C. and observed, as per the provision of Section 293 Cr.P.C., the report of State Forensic Science Laboratory is admissible in evidence.

Photographs and sketches are critical tools in forensic investigations. They include more details than several pages of text. They offer an objective record and greatly increase the weight given to medico-legal testimony when incorporated into autopsy practice.[28]

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[24] State of Bihar v. Radha Krishna Singh, (1983) 3 SCC 118 : (1983) 2 SCR 808.

[25] Jagdeo Singh v. State, 2015 SCC Online Del 7229.

[26] Vinay Kumar v. State of Haryana, CRR-712-2021 (O&M).

[27] Jose Luis Quintanilla Sacristan v. State of U.P., 2021 SCC OnLine All 531.

[28] Navin Kumar Jaggi & Sayesha Puri, *Relevance of Photos and Drawings in Forensic Pathology By: Navin Kumar Jaggi & Sayesha Puri Latest Laws*, LATEST LAWS.COM

The expert sketches and drawings are scrutinized by the court. In some cases, forensic artists may be summoned as testimony in court. Expert witnesses are what they are called, since they are well-versed in both art and forensic sciences. Artists may typically share their comments and perspectives on a sketch or another type of artwork as expert witnesses to aid in the prosecution of a case. The prosecution or defence may summon artists to testify, or on rare occasions, by the defense. In any scenario, they might be asked to defend and explain their work to the jury. The objective of forensic art is to aid in the identification of criminals, apprehend, and convict perpetrators.

CONCLUSION

The use of forensic procedures in criminal investigations has changed dramatically as a result of technological advancements, for example, the construction of DNA databases and fingerprinting systems that are fully automated. These advances, however, are insufficient to cause a complete overhaul of the investigation process. They must be incorporated into and related to current 'human' acts in the investigation process for this to happen.[29] To be admissible, digital evidence must fulfill legal requirements in terms of collection, preservation, transmission, and presentation.[30] Electronic evidence gathered during an inquiry in violation of the law would be deemed inadmissible and thrown out of court.

Despite these concerns, the Supreme Court has debated the application of forensic evidence in the criminal process extensively. It has examined the trustworthiness of different types of forensic evidence as well as the impact of forensic evidence on a criminal trial several times and in great detail. Simultaneously, it has been open to receiving new evidence on appeal, at least conditionally, to analyze new forensic evidence that has come to light and account for valid scientific breakthroughs. The Court has provided extensive advice to practitioners who are deciding whether to accept or reject forensic evidence, and it has made a genuine effort to safeguard the integrity of forensic evidence entering the court system.

(Mar 22, 2022, 7.40 PM) https://www.latestlaws.com/articles/relevance-of-photos-and-drawings-in-forensic-pathology-by-navin-kumar-jaggi-sayesha-puri/pdf.

[29] Sarah-Anne Bradbury & Andy Feist, *The Use of Forensic Science in Volume Crime Investigations: A Review of the Research Literature*, FINDINGS 268 (Mar. 22, 2022, 7:50 PM), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/115849/hoor4305.pdf.

[30] Olivier Leroux, *Legal Admissibility of Electronic Evidence* 1, 18 International Review of Law, Computers & Technology 193–220 (Mar 22, 2022, 8:10 PM) https://www.tandfonline.com/doi/abs/10.1080/1360086042000223508.

MOBILE APPS: AN UNVENTURED ASPECT OF TRADEMARK LAWS ACROSS THE LEGAL SYSTEMS

—Manisha Manaswini[*] and P.K. Sarkar[**]

ABSTRACT

In the contemporary society life without Smart phones is a hardship, difficult to bear. Smart phones are considered smart as they provide platforms to download various Apps that make life easier. Mobile Apps have become omnipresent in the present contemporary society. Today, App developers and providers are not just from entertainment and media companies and game studios but come from all sectors. However, with the explosion of mobile apps in the mobile-commerce certain nuances specifically pertaining to the branding of the App, dealt under the domestic Law of Trademark of each country, should be taken into consideration. Prior to adopting any trademarks that includes logos or slogans or names for your app, it would be judicious to implement searches so as to ensure that the relevant mark is available for use and using the same will not infringe any third person's rights. This paper evaluates the ambiguity in the search mechanism and in the policies of different mobile- App developers that conflicts with the basic characteristics of Trademark law and renders it inadequate to deal with mobile Apps. This article also addresses the legal issues involved in the App as a trademark in mobile-commerce. Methodology used by the researcher is descriptive, explanatory and deductive in the absence of any legal definition of mobile-Apps and legal provisions.

Key Words: Mobile Apps, Trademark, mobile-commerce, App-platform, Infringement

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INTRODUCTION

There exists a synergistic relationship between technology and society from the dawn of humankind. It started with the invention of simple tools and continues into invention of computers, tabs, smart phones etc. In the contemporary society people are enjoying a great level comfort with the invention of smart phones with the advancement in science and technology. Smart phones are playing a vital role in offering users an extraordinary platform for communication as well as by offering access to a wide range of mobile applications (mobile apps).

UNDERSTANDING MOBILE APPS

Mobile Apps are essentially the software applications that are used in mobile phones which offer certain functions. Each App is designed separately to work on different and specific mobile operating systems such as IOS, Android, Windows Mobile, Tizen etc.[1] These Apps can be downloaded by the users from the repository of Apps that is maintained by each mobile platform owner for e.g. Google Play for Android and Apple's App Store for IOS. Some Apps can be downloaded for free, while others require a payment to be down by the users for downloading and enjoying them on their smart phones.[2] Now Apps are available to users of smart phones globally and are searchable based upon their names or key words. Hence, mobile Applications have made possible for many businesses to go 'on-the-fly' with minimal investments involved sometimes as low as few thousands.[3] Businesses whether large, medium or small are creating mobile Apps ("Apps") and are encouraging their consumers for using them to avail various services. Especially in the business- to- customer space (B2C space), many companies have even shifted from their websites towards a 100% App-only model. According to some researches users with Android operating system had even more than 1.5 million Apps to choose and download from, as of May 2015. Apple's App Store users were offered 1.4 million Apps, while the users of Windows Mobile and Blackberry respectively offered 3,40,000 and 1,30,000 Apps. Another research reports states that more than 100 billion Apps are being downloaded each year that accounts to aggregate revenue of more than $40 billion USD[4]. These numbers are expected to grow significantly in the future.

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1 Md. Rashedul Islam, Md. Rofiqul Islam, Tahidul Arafhin Mazumder, *Mobile Application and Its Global Impact*', International Journal of Engineering & Technology IJET-IJENS vol. 10 No. 06; available at http://www.ijens.org/107506-0909%20ijet-ijens.pdf Last accessed on 9-11-2021

2 *See also* 1.

3 *See also* 1.

4 Council of the European Union, '*Online Platforms Accompanying the document Communication on Online Platforms and the Digital Single Market*'; available at http://data.consilium.europa.eu/doc/document/ST-9727-2016-ADD-1/en/pdf Last accessed on 9-11-2021.

MOBILE APPS AS TRADEMARKS

Humans have always endeavoured to make life easy and development of mobile Apps have contributed a lot towards this. Now almost every service and products are just a touch away. Apps are searchable and distinguished by their names, and also have logos to differentiate one from the other. Apps are of great help as they can be used to carry out a wide range of day- to-day activities such as booking a cab or movie/show tickets, ordering food from restaurants, paying bills, checking train/bus/flight schedules, monitoring heart beat rate, physical activities etc.[5] In addition to this, even transactions like making payments, buying or selling of securities etc. can be executed through various Apps. There are some Apps that allow you to play games as also some Apps that provide information relating to topography, weather, and altitude etc.[6] In order to get more users or customers companies advertise their Apps in various mediums such as print and electronic media. Once an App has been listed on the repository of Apps for example App Store or Google Play, it can be downloaded and utilized by anyone, irrespective of the place where they are. Paid apps have a system of revenue hare arrangement, the revenue generated is shared among the owner of the app and the platforms carrying it.

Hence, clearly, Apps have now become central to the various provisions of day-to-day services and a major facilitator of trade and commerce. In the present day's digital world, Apps act as service providers that connect with the consumers of different goods and services. Now they are becoming the best channel for exhibiting one's services and good often at a global platform irrespective of any jurisdictional limitations. Thus, it provides every company big or small an opportunity to access global customer base very easily and cost effectively. Therefore, it can be said that the App is a trademark in mobile-commerce as it connects the consumer and the service provider and also distinguishes the goods and services of different providers from each other. Because of the global reach of Apps, even the small companies can access customer base globally just as effortlessly and cost-effectively as the larger companies.

Trademarks are the registered rights that ensures by taking some formal steps one can benefit from the potential protection which is available under the law. A trademark can be a word or words, symbol, or combination that indicates the source of a product or services and distinguishes it from the goods and services of another. The definition of 'trademark in the Trademarks Act of

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5 Aaron Smith, *Part III: The Impact of Mobile Phones on People's Lives*, The Best (And Worst) of Mobile Connectivity, Nov. 30, 2012; available at http://www.pewinternet.org/2012/11/30/part-iii-the-impact-of-mobile-phones-on-peoples-lives/ last accessed on 9/11/2021.

6 James Kendrik, Mobile Technology: The Amazing Impact on Our Lives; available at http://www.zdnet.com/article/mobile-technology-the-amazing-impact-on-our-lives/ last accessed on 9-11-2021.

1999 will help us to understand better how a mobile App is a Trademark. In the Trademarks Act of 1999, 'trademark' has been defined in Section 2(zb) "*as a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and—*

(i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and

(ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark"[7]

The key phrases of the Apps often help the users in reaching it. It is also possible that Apps which show up in a search is owned by entities belonging to other jurisdictions as Apps have a global platform and is accessible by anyone irrespective of the place. If a user wants to download an app for booking train tickets might search for 'book train tickets' or 'booking a train' on Google Play or App Store and then select one of the Apps from the search dropdown. While there will always be some well informed users who carefully research various Apps in advance and download the one they believe is best for them, an average user may not have sufficient time to compare and choose from the multiple Apps. Hence, an App with descriptive name, i.e a name that defines the service or function provided by the App, becomes more popular.[8]

At present, no government body or central authority is there that gives approval for App names. Neither statutory nor internationally accepted protocols nor procedures are there for naming an App. As a matter of fact, a simple search for a keyword in Google play or Apple's App Store unveils dozens of Apps having similar names. Such a situation of many Apps having similar names can create confusion and deception. It may also help less popular Apps to gain popularity at the cost of another genuine and popular provider. Mobile

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7 Narayanan P. (2004), Law of Trade Marks and Passing off (6th ed.). Kolkata: Eastern Law House, p. 3.

8 Aaron Smith, *Part III: The Impact of Mobile Phones on People's Lives*, The Best (And Worst) of Mobile Connectivity, Nov. 30, 2012; available at http://www.pewinternet.org/2012/11/30/part-iii-the-impact-of-mobile-phones-on-peoples-lives/ last accessed on 9/11/2017.

App platforms before giving approval for inclusion of an App do not perform any type of checks for conflict of names or trademark screening searches for determining whether an App infringes another's trademark or App name. However, both Apple and Google explicitly prohibit apps that infringe or might infringe third-party trademarks. They have a hands-off approach towards such cases where the onus is on the trademark owners to police their own trademarks. They have their own terms and conditions in such situations. Apple has authority to remove any content that deems to be "unsuitable." Under the term, "unsuitable" it clearly includes any app that infringes the trademark rights either of Apple or any third party or violates the rights of a third party. However, no statuary rule or accepted protocol is there to be followed by various mobile App platform providers before approving an App to be placed in their store or for considering whether another trademark or IP rights is being infringed or not[9]. Hence, it can be summarized that the mobile App's world is different from other services broadly for three reasons:

- Global reach/ Access to a global mass
- Absence of any approving or naming authority that performs any similar name-check mechanism or trademark screening searches
- Existence of many mobile App platform providers with no uniform policies.

Such characteristics cause mobile Apps to be primarily in conflict with the concepts of trademark law as Trademark law is territorial in nature, it discourages confusion due to existence of similar marks and it has designated forums for approval of any trademark and perform trademark screening searches to check any case of trademark infringement. Now let's briefly analyze various existing trademark laws in order to understand why they might be inadequate for dealing with mobile Apps.

Registration of a trademark gives the owner of the mark an exclusive right to use the mark in order to distinguish his product/service in the territory where registration is granted to the mark. Thus the principle of universality of a trademark was not an accepted concept world over. Various Conventions on the protection of industrial property, such as the Paris Convention, the Madrid Convention and other international treaties on trademarks accept this territorial limitation of a trademark. All these international instruments appreciate the territorial sovereignty of any country with regards to grant of exclusive rights for the use and commercial exploitation of the mark in trade and commerce within its territory. Hence, it is possible that two different owners who are unrelated to each other to get registration and the right use the same trademark

[9] Policy guidelines of Apple; available at <https://developer.apple.com/app-store/review/guidelines/> Last accessed on 11/11/2021.

exclusively in different countries. However, there is an exception to this concept territoriality of a trademark i.e., the protection given to the well-known marks.

(TRIPS) Trade Related Intellectual Property Rights agreement says: -

> *"Article 6 bis of the Paris Convention (1883) shall apply, mutatis mutandis, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark."*
>
> *The Paris Convention Articles 6 bis says: The countries of the Union undertake, ex officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith."*[10]

Hence, both the TRIPS Agreement and the Paris Convention mandate that every country that is a signatory to the convention should recognize "well-known marks" whether or not it is registered in that said country. Some countries have also jointly enacted common laws to recognize the validity and ownership of the trademarks across their territories for example the Uniform Benelux Trademark Act. The European Union also accepts a common market and ownership of a trademark for the countries of the Union. Apart from these few exceptions, the concept of territoriality or the territorial nature of the trademark law is appreciated and still prevails.

Indian Trademark Act of 1999 defines a "well-known trade mark" in Section 2(zg) in relation to any goods or services as *"a mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of*

[10] Article 6 *bis*, Paris Convention for the Protection of Industrial Property, 1883. India became a signatory of Paris Convention for the Protection of Industrial Property on Dec. 7, 1998.

trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services."[11]

Thus, it can be concluded that an owner of a trademark ,which is not well-known in a country and is not used in that country, has got no rights to prevent another user in that same country from using that trademark or similar mark. It is already known that mobile Apps, by their true nature, go beyond the conventional boundaries or territoriality from the very beginning. A mobile application which is developed by an individual in some remote corner of the world may become one of the most famous or popular Apps on the platform which will be downloaded and then used by hundreds and thousands of people across the world. So, it is possible a start-up brand even to achieve global reach in a very little time i.e. few months. Hence, it is possible that a traditional trademark which is registered in one country and has enjoyed monopoly in the said country could potentially be threatened by a Mobile App with a similar or the same name.[12]

There is an increasing trend among owners of trademarks which is registered in one country are challenging the owners of different mobile Apps with the same or similar name and is created all-together from another country where the former is not registered. There may be cases even where the trademark is used for completely different classes of goods and services and whereas the App is for completely different category of goods or services. In such cases the plaintiff or the registered owner of the traditional trademark might argue on the grounds that he being a registered owner of the mark in that county has the exclusive right to use the mark and the owner of the App is infringing upon his rights by offering digital service via the same App having the same or similar trademark as the App is used by consumers from the said country. This argument has some merit as registration of the trademark gives exclusive rights for the use of the mark across the country where it I registered for the same or similar goods and services. The mobile-App provider can put forward counter argument that proprietary rights of the concerned mark is absent in the registered trademark owner's country but there is no restriction in creating and using a similar mark in the App provider's country or any other country and moreover the access to products or services via a digital medium using infrastructure and facilities of another place cannot be considered as a violation of the proprietor's rights. Thus, the fundamental concepts of trademark law especially the principle of 'territoriality' in relation to mobile-App as trademarks that easily transcend sovereign territorial domains is debatable.

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[11] Narayanan P. (2004), Law of Trade Marks and Passing off (6th ed.). Kolkata: Eastern Law House, p. 4.

[12] Arina Shulga, *Legal Issues Relating to Mobile Applications Development*, Sept. 27, 2012; available at <http://shulgalaw.com/doc/Docracy-Legal-Considerations-Relating-to-Mobile-Apps-Development.pdf> Last accessed on 15/11/2021.

CONCLUSION

Surprisingly, until now no significant international efforts are there to create a policy or procedure to address the conflicts between Mobile App names and trademarks. There are millions of mobile- Apps created and is made available for the users on various mobile-App platforms. Thousands of App are getting added daily. Despite of all these facts, there is not a single centralized mechanism for approving the names of Apps. Neither there exist any international treaties nor agreements in order to guide or regulate the naming of mobile Apps and granting rights of ownership to the owners of mobile Apps. Such an absence of any proper designated mechanism is a drawback. Prior to adopting any trademarks for your app, it is thus prudent to implement search mechanisms in order to ensure that the relevant mark is available for use and by using the same any third person's rights conferred by registration of Trademark is not infringed. This prior search further helps in avoiding the risk of be required to rebrand in case your app is released because of an infringement complaint. If you plan to make available your app in a number of different countries, adoption of an international brand protection strategy is worth considering.

The fundamental concepts of trademark law especially the principle of 'territoriality' in relation to mobile-App as trademarks that might easily transcend the sovereign territorial boundaries is debatable. Thus, the concept of territoriality accepted internationally in relation to trademark is a huge obstruction in enforcing the trademark rights against the owner of mobile Apps. I therefore strongly believe that international policies and procedures must be shaped relating to this matter sooner rather than later to avoid the threats that are going to flood the courts of law.

INTERFACE BETWEEN COMPETITION LAW AND INTELLECTUAL PROPERTY RIGHTS IN INDIAN PHARMACEUTICAL SECTOR

Lipsa Dash[*] and Gyanendra Kumar Sahu[**]

ABSTRACT

Competition is one of the strongest pillars on which the market/ economy rests. Though not defined in law but competition is generally understood to mean the process of rivalry to attract more customers or enhance profit or both. The competition in market thus, promotes efficiency and innovation, ensures abundant availability of goods and services of acceptable quality at affordable price and offers wider choice to consumers. The authors in the current paper would be looking in to various survey reports on mergers and acquisitions between pharmaceutical companies and its effect on the overall economic growth in India. The researchers would also attempt at finding out whether the competition laws of India are well equipped and effective enough to check abuse of dominance and anticompetitive practices within the Indian Pharmaceutical Sector. The pharmaceutical industry being a constantly evolving knowledge-based industry and being driven by advanced technology in the form of inventions & innovations is more vulnerable in terms of unauthorized use and exploitation of the underlying ideas of novel researches in situations of mergers and acquisitions. Intellectual property legislations and competition law have different objectives, the former protecting private rights and the latter adopting a pro-consumer approach. Authors in this paper would critically analyze the interface between competition law and Intellectual property rights laws appreciating the fact that the growth of the pharmaceutical industry depends on the proper functioning and integration of both these laws harmoniously to achieve the desired result.

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Keywords: Intellectual Property Rights, Patent, Competition Law, Pharmaceutical Industry, Abuse of Dominance, Merger & Acquisitions.

INTRODUCTION

"Colloquially, market competition means that sellers independently seek the favor of buyers in order to maximize their profits or other business goals. Buyers sell products at prices that maximize their utility and sellers prefer to sell their products at prices that maximize their profits.[1]" In this context, it can be said that "competition is not defined by law.", but is generally understood as a competitive process to win more customers, increase profits, or both. Competition makes businesses more efficient and offers consumers lower prices and give you more choices. This allows optimal utilization of available resources. It also improves consumer well-being as consumers can buy more or better-quality products at lower prices. Fair competition is beneficial to consumers, producers/traders and ultimately society as a whole as it stimulates economic growth. As such, competition in the marketplace promotes efficiency and innovation, increases the availability of affordable goods and services of acceptable quality, and provides consumers with greater choice.

The Indian economy, which has become more globalized and liberalized, is witnessing fierce competition. Better regulation and decision-making mechanisms are needed to institutionally support healthy and fair competition. For this reason, the government set up a committee in October 1999 to review the existing "MRTP Law", shift the emphasis from anti-monopoly to promotion of competition, and propose a modern competition law. On the recommendation of this Commission, the Competition Act 2002 was enacted on his January 13, 2003. Competition law deals with market failures due to restrictive business practices in the market. Restrictive commercial practices can take many forms, including agreements to limit competition, cartelization, predatory pricing, tying, maintaining resale prices, and abuse of a dominant position is not limited to competition law includes development of a series of policies aimed at promoting competition in local markets and preventing anti-competitive business practices and unwanted government interference. Competition law also aims to curb the abuse of market power by dominant firms. Furthermore, competition law aims to eliminate monopolies in the production process, thereby encouraging new firms to enter the market. Maximizing consumer welfare and increasing production value are some of the primary objectives of competition

[1] Kumar Amitabh *Competition Law at a Glance*, available at http://www.competition-commission-india.nic.in/faq.htm; Last accessed on 20th December 2021.

law.[2] To this end, the Competition Law also introduced provisions for the establishment of the Indian Competition Commission. However, the competition law gives the CCI sufficient powers to ensure that companies involved in anticompetitive practices face serious consequences. except that it includes all entities within its scope and allows the Commission to investigate, investigate, investigate, regulate and decide the activities/issues of any person or entity. All PSUs, corporations, societies, municipalities, etc., are within the scope of this law."

The authors of this project sought to provide an analysis of prevalent anti-competitive practices in the Indian pharmaceutical industry and the role of competition law in curbing them.

STATUS OF THE INDIAN PHARMACEUTICAL INDUSTRY

The pharmaceutical industry is a highly technical and knowledge-intensive industry. This dynamic and research-intensive field is fundamentally influenced by regulatory frameworks aimed at:

a) promoting research and innovation in drug development and manufacturing;

b) protect consumers from potentially harmful effects of medicinal products;

c) Control of public and private drug spending.

The government began encouraging the growth of pharmaceutical manufacturing by Indian companies in the early 1960s and the Patents Act of 1970 enabled the industry to become what it is today. Until the 1970s, the Indian pharmaceutical market was primarily supplied by large international companies. These state-owned enterprises have been the cornerstones of the sector's growth since the 1970s. At that time, the Indian government wanted to reduce its dependence on pharmaceutical imports and create an independent sector through flexible patent laws. This made India an unattractive place for international companies, many of whom have since left the country.

INTERFACE BETWEEN INTELLECTUAL PROPERTY RIGHTS AND THE PHARMACEUTICAL SECTOR

Intellectual property rights are generally viewed as the most important economic asset for business units and research organizations. The pharmaceutical

[2] The Competition Commission of India (CCI) is a body corporate having perpetual succession and a common seal, established under the Competition Act, 2002.

industry is highly regulated. Every aspect of the new drug lifecycle is regulated, from patent filing to market approval, commercial use, patent expiry, and generic competition. All major players in the pharmaceutical industry, manufacturers, wholesalers, retailers and prescribing physicians are also subject to regulatory controls.

As the core business expands, the industry is forced to adapt its business model to the changing operating environment. The first and most significant change was the amendment to the Indian Patent Act, which came into effect on 1 January 2005, reintroducing product patents for the first time since the Aspects of Intellectual Property Rights (TRIPS) Treaty, 1972. Protection of intellectual property rights, especially patents, is essential to ensure a steady stream of innovative new medicines. There is evidence that the pharmaceutical industry relies more heavily on patent protection for innovations than other industries. The research and development process for new drugs is costly and risky. A relatively small number of new chemicals never receive marketing authorization. Of these, only a few are commercially successful. Most of a pharmaceutical manufacturer's revenue comes from a relatively small number of products.

Thus, the pharmaceutical market in India owes its current growth and success to the Patents Act of 1970 which brought in the concept of patents in the pharmaceutical sector. And with the *amendment in 2005 the following benefits emerged*:

1. Reduce the manufacturing costs in terms of license fee
2. Reduce the costs involved in research and development
3. Diffusion of technology and knowledge through reverse engineering

"The lack of patent protection made the Indian market undesirable to the multinational companies that had dominated the market, and while they streamed out, Indian companies started to take their places."

"Regulatory changes in India in 2005 have made the manufacture of 'new' generic medicines significantly more difficult. Foreign medicines that enjoy 20 years of patent protection cannot be copied using alternative manufacturing methods. It was no longer possible to sell in the domestic market. Therefore, a change of direction was required in the Indian pharmaceutical industry, now focusing on self-developed medicines and contract research or manufacturing for Western pharmaceutical companies."

In line with international standards, the industry is now covered by product and process patents valid for 20 years. Indian companies that want to copy the drug before the patent expires have to pay hefty licensing fees. Indian

pharmaceutical companies can no longer simply copy foreign patented medicines and offer them to the domestic market using alternative manufacturing processes. As a result of these major changes in India's pharmaceutical patent law, the country's pharmaceutical industry is in the process of turning. The new focus is increasingly on in-house developed drugs and contract research and production for Western pharmaceutical companies.

Meanwhile, a weakening patent system and a number of protectionist measures have accelerated the development of a large domestic pharmaceutical industry in India, making it possible to supply the population with a large number of medicines. You can identify the following characteristics:

- Net worth of $8 billion.
- 8-9% growth in PA.
- Exported to nearly 212 countries.
- Play an important role in promoting public health and the right to health.
- It requires a lot of skill and knowledge.

INTERFACE BETWEEN INTELLECTUAL PROPERTY RIGHTS LAW AND COMPETITION LAW

Competition laws combat anticompetitive agreements, prohibit abuse of a dominant position, regulate mergers and acquisitions, and empower consumers by rationally providing more choice and better-quality products. recognized as the most effective mechanism for facilitating efficient allocation of resources for the ultimate benefit of price. Intellectual property rights strike a balance between the exclusive rights of the owner and the interests of society. The owner of the intangible property is given the exclusive right to commercially exploit the intellectual creation and obtain exclusive rights to it. An IPR consists of a set of rights that give the owner the right to exclude other users from accessing the product for a limited period of time. Intellectual property rights aim to confer monopoly power that requires contradictions in competition policy in order to promote innovation on the one hand and ensure adequate market competitiveness on the other. Intellectual property rights provide incentives for economic players to produce more products and innovate to drive dynamic product growth, which is one of the objectives of competition policy. IPR competition is allowed as a reward. However, competition law regulates competition in order to eliminate unfair profits held by monopoly holders.

ANTI-COMPETITIVE AGREEMENT IN THE PHARMACEUTICAL SECTOR

As the pharmaceutical sector continues to grow and become more important, the need to investigate anti-competitive behavior within it in light of the provisions of the Competition Act 2002 has become stronger.

A. Legal provisions:

1. Section 3 Prohibiting Anti-Competitive Agreements. An anti-competitive agreement is an agreement that significantly restricts competition. Anti-competitive agreements include both horizontal and vertical agreements. Horizontal agreements: These exist between competitors who are in the same stage of production, supply, distribution, etc. Examples - cartels, collusion, bid rigging, market sharing, etc. Vertical Agreements: - These exist between parties at various stages of production, supply, distribution, etc.
2. Article 19 governing investigation of anti-competitive agreements.
3. Article 27. This concerns an order issued by the Commission following an investigation into agreement or abuse of a dominant position.

Pharmaceutical companies often enter into agreements and joint venture agreements at every stage of the manufacturing process. For example, in the research and development stage (eg to pool patented know-how) and/or in the marketing and promotion stage (eg to leverage complementary marketing strengths). The pharmaceutical industry is therefore the most vulnerable to anti-competitive practices. Specific anti-competitive practices in the pharmaceutical and healthcare systems covered by Section 3 of the Act are collusion, including cartels, binding sales, exclusive supply agreements, exclusive distribution agreements, refusal to do business, and maintenance of resale prices. Some of these are discussed below:

B. Cartels[3]

"A cartel is said to exist when two or more enterprises enter into an explicit or implicit agreement to fix prices, to limit production and supply, to allocate market share or sales quotas, or to engage in collusive bidding or bid-rigging in one or more markets. An important dimension in the definition of a cartel is that it requires an agreement between competing enterprises not to compete or to restrict competition."

[3] Cartel is defined in section 2, sub-section (c) of the Competition Act, 2002.

The Competition Act mandates that cartels would be presumed to be anti-competitive, but also provides for an efficiency defense, namely that nothing in the relevant subsection shall apply to any agreement, if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

Pharmaceutical companies often enter into agreements which results in the boycott of manufacturer`s products till a favorable margin are arrived at and where the enhanced margins imply higher prices for the consumers. Hence, directly or indirectly determine purchase or sale prices. This result of the increase in the price proves to be detrimental to consumers. In such a scenario, companies are in a position to lure the doctors or the chemists to sell their brand in lieu of commission or higher margin, respectively. However, it could also put consumers at risk in the hands of pharmacists promoting high-margin brands.

Therefore, it is necessary to punish and deter such acts, ensure that all parties comply with the rules of free and fair competition, and that the benefits are generally brought to businesses and consumers, and that some are not cornered. We need competition laws to In this connection, compulsory generic prescriptions, prescribing with the generic chemical name of the drug instead of the brand name helps confirm the relationship between the doctor and the pharmaceutical company.

C. Patents and the pharmaceutical sector

Patents can stifle competition by conferring monopoly status. Therefore, there is no level playing field for competitors in the market when it comes to prices. This is unfortunate, as the price differential that can be introduced by effective competition from generic competitors is evident. Patent owners may pay competitors who wish to challenge their patents. Such payments to a competitor may even exceed the profits that competitor would have made by entering the market. These are known as reverse payments. This can be illustrated by the case of an agreement between a branded drug manufacturer and a generic drug manufacturer. Abbott has patented Hytrin (used to treat high blood pressure). In 1998, Abbott's sales of Hytrin in the United States were US$542 million (over 8 million prescriptions). Abbott's patent on Hytrin was nearing expiration. Abbott predicted that his Geneva entry with a generic version of Hytrin would save him more than $185 million in Hytrin sales in just six months. Abbott would pay Geneva about $4.5 million a month to keep Geneva's generic version of Abbott's own drug out of the U.S. market, potentially costing consumers hundreds of millions of dollars a year. Geneva has also agreed not to launch a generic version until another competitor in the

market commits. Such agreements are considered anti-competitive because they prevent competitors from entering.

ABUSE OF DOMINANCE IN THE PHARMACEUTICAL SECTOR

As mentioned above, patents grant a patent owner a monopoly status, and abuse of this monopoly status can occur. Such abuse of a dominant position is one of the biggest competitive problems the pharmaceutical industry may face with the introduction of a new patent system.

"Advantage refers to a position of strength that enables a firm to act independently of its competitive strengths or to exert favorable influence on competitors, consumers and the market. Abuse of a dominant position include imposition of unfair terms or prices, predatory pricing, restrictions on production/markets or technological development, creation of barriers to entry, application of different terms to similar transactions, denial of market access, including abuse to obtain a dominant position: Hoffman-La Roche v. Commission (1979) argued that, barring exceptional circumstances, a large market share in itself could be evidence of a dominant position.

STATUTORY PROVISIONS:

1. Section 4: Prohibiting dominant position: or ii) to favorably influence competitors, consumers, or relevant markets;
2. Section 19: To the procedural aspects of investigations into a company's dominant position.
3. Article 27. It refers to orders that may be issued by the Commission after investigating practices of abusing a controlling position. 4. Article 28 on splitting of companies enjoying a dominant position.

Pharmaceutical companies inflate the prices of their patented products or are unreasonable in terms of licensing terms. The 2005 Patent Law Amendment introduced the Product Patent System (Product Patents Across Industry Boundaries - 20 Years). This gave us the freedom to set the price of our patented products. Longer patent life, slow market entry of cheaper generic drugs, and extensive patent claims hinder technology adoption and eliminate competition. Additionally, the threat of infringement proceedings as a tactic to keep generics out of the market demonstrates the dominance of the sector. Thus, abuse of a dominant position in the pharmaceutical industry impedes fair competition among companies, exploits consumers, and makes it more difficult for other players to compete on the dominant company's merits.

INTERFACE BETWEEN PHARMACEUTICAL SECTOR AND THE COMPETITION LAW

Given the growth of the pharmaceutical industry and the high-profile mergers and acquisitions taking place in the sector, this leads to anti-competitive practices. combining generally involves acquiring control, shares, voting rights, or assets; acquiring control of a company when the controller of one company controls another company engaged in a competing business; Includes intercompany mergers and intercompany mergers. Legally specified thresholds for assets or turnover.

STATUTORY PROVISIONS

1) Section 5, which deals with what is denoted by a combination of enterprises and persons, delineating the specific circumstances as per which the acquisition of one or more enterprises by one or more persons or acquiring of control or merger or amalgamation of enterprise.
2) Section 6, which provides for regulation of combinations.
3) Section 20 which concerns inquiry into combinations.
4) Section 28, which allows for division of enterprises enjoying dominant position.
5) Section 29 and Section 30, which lays down the procedure for investigation of combinations.
6) Section 31, which enumerates the orders of the Commission on certain combinations

CONCLUSION

"Patent rights provide the carrot by giving the original manufacturer the exclusive right to manufacture the patented drug for a limited period of time. Competition law prevents originators from abusing their monopoly rights, It provides a bar to protect entry into the generic drug market after the patent expires. In this context, India is becoming more and more important as a pharmaceutical manufacturer.

The pharmaceutical industry is expanding globally and player and market behavior characterized by unique characteristics prevailing in the industry, player and market behavior, global pharma industry, and it should be noted that the Indian pharma industry is not, at first glance, one competitor The market environment puts information asymmetries and structural uniqueness to work, but many practices in the pharmaceutical supply chain are fraught with

competition concerns. There is no established global rulebook on competition law. Countries have considerable discretion in setting their own competition laws that facilitate globalization. India has an independent regulatory authority. The competition board may appeal to the Competition Appellate Tribunal. This important step should sensitize members of competition boards and courts to the latest techniques of competition analysis. Moreover, therefore, the pro-competition provisions must be fully enforced in practice. This is an important period in the history of innovation in India, especially in the field of Indian pharmaceutical industry. India is poised to become a major center of global innovation and Indian pharmaceutical companies are at the heart of this process. Providing the right incentives for incremental pharmaceutical innovation can propel India along this path and encourage the development of medicines that meet the needs of Indian patients. Therefore, the pharmaceutical industry needs more regulation as there is no sector regulation and competition law can fill the essential gaps. Further research is needed on the relationship between intellectual property rights and competition law, with a particular focus on the pharmaceutical sector.

HUMAN TRAFFICKING: ISSUES AND SOLUTIONS IN THE LIGHT OF REGIONAL CO-OPERATION

—Rituparna De*

ABSTRACT

In the current era there has been a rampant rise in crime rate across the international borders and this can be traced as one of the biggest negative impacts of globalization. In the process of globalization, illegal migration is one of the main aspects which might in turn lead to human trafficking. Human Trafficking takes place in several forms and due to several reasons. This article primarily aimed to draw the focus towards the seriousness of the particular crime by explaining the various forms in which it takes place and the growing need in taking initiatives to dismantle the practice through regional cooperation. The article has limited its scope to the Asia Pacific Region only and therefore, discussed about the institutional bodies that are functioning in this arena. Two such bodies are ASEAN and PIF. The article has also covered the working of the trans-regional structures who are effectively working to curb the growing menace in the world at large. Two of which are the ARF and the ASEM, even the Bali Process is discussed to show the importance of such international conferences upon the national laws. In the last part the article has concluded by stating a point worth noting that even though the initiatives taken are commendable but the laws in this regard also requires strict enforcement mechanism.

Keywords: Human Trafficking, Globalization, Trans-regional, Asia Pacific Region, Enforcement.

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INTRODUCTION

Numbers of people have started moving beyond national borders due to the several reasons which such as to live, to work etc. and the driving factor is mostly globalisation. But the matter of concern is that most of the time people are forced to work as sex workers, labours or as slaves. According to a data of 2004 each year around 600,000 to 800,000 men, women and children's are trafficked beyond borders among that 80% of them are women & girls while 50% of them are minors. Most of victims are trafficked mainly for sexual exploitation and for labour.

In the 21st century human trafficking is one of the main criminal offence including narcotics as well as small arms. The practise of human trafficking helps criminal organisations as well as their customers to make around billion of dollars in the revenues. In Asia Pacific region the problem of human trafficking came in to being as an important issue as number of people are being trafficked to and beyond the regional states especially for labour or sexual exploitation.

DEFINITION AND LIMITATION

The major issue in understanding the subsistence of trafficked individuals lies in the absence of functional definition of "trafficking" and the "traffickers". The application of international protocols and laws differs even when the nation states is in agreement with the same pertinent international laws. For the purpose of same subject matter, the definition of Protocol to prevent, Suppress and Punish Trafficking in Persons, can be used. The protocol states trafficking in Person as:

"the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation".

Other than the definitional problem, there is a noticeable issue of lack of any exact number of individuals who are trafficked from one country to another.

FORMS OF HUMAN TRAFFICKING

- **Trafficking for Sexual Exploitation**: this form of trafficking remains mostly unknown worldwide as its nature demands secrecy so reliable statistics is not available. Traffickers take the earnings from their slaves

and move them around the whole country so that they cannot be associated with any particular area.

E.g. In London according to a report of ACPO 2,212 brothels were identified and police estimated that near about up to 50% of those working in the brothels have been trafficked.

- **Trafficking for forced labour**: In the UK many people trafficked mainly boys and men so as to carryout work on farms or in factories for little or no payment. They are forced to live in terrible conditions and their passports are confiscated by the traffickers. In early 2012 Some British men were rescued from a site in the area of Bedfordshire where they were forced to work for the whole day and no payment was given to them.

- **Trafficking for Domestic Servitude:** Domestic workers are vulnerable due to the exploitation from their employers. They work alone and totally get depend on their employers for the work, for accommodation as well as for immigration status. If the employer does not respects the rights of their migrant domestic workers then the domestic workers have no or little bargaining power and they find themselves in the invisible situation of slavery. In the UK domestic servitude cases include both adults & children migrants.

- **Child Trafficking:** children's are trafficked for almost all type of exploitation ranging from sexual, forced, domestic servitude, forced marriage, illegal adoption & participation in criminal activities including pick-pocketing, ATM theft, shoplifting etc. when the trafficked children's are abandoned, they have no money and identification. They are especially vulnerable to rape & physical abuse.

NEED FOR REGIONAL COOPERATION TO COMBAT HUMAN TRFFICKING

Human Trafficking is such an offence that seldom takes place in isolation. It is always a web of criminals that gives result to such heinous crime. This formation takes place across territories and regions and many a times even involves those officials who are entrusted with the responsibilities to maintain law and order. This factor makes the crime much more deadly and uncontrollable in nature. Therefore, it is pertinent that the policy makers across nations join hands and take effective steps to fight the rapidly growing menace.

The chain of criminals that form the network doesn't only limit them to human trafficking but also gets involved in various other criminal activities. This well build network gives them a leeway to smoothly carry out all kinds

of illicit acts. As Adamoli et al. observed, "a criminal group with already-trained personnel, already-equipped means, already tested trafficking routes, already-developed corruption networks, already-existing contacts in different countries of the world, will move into new illicit markets (adding new activities to the ones which it already specialises)".[1] Human trafficking in itself involves several other criminal acts like identity fraud, threats, abuse, bribery or money laundering[2] which are required to conduct the act of trafficking.

Indeed it has become a matter of great concern across the globe yet the states haven't adopted any extensive approach in view to the growing scenario. There are multiple reasons for which such a deficiency in adopting a proper approach can be witnessed among the nations. One of the major reasons being lack of funds, many developing nations suffers from this. Then it is has also been observed that there is a reluctance among the nations in regard to ratification of treaties, protocols and conventions which are formulated for the protection of people from trafficking. Few examples of such treaties are Protocol to Prevent, Suppress and Punish Trafficking in Persons, the Pacific Islands Forum (PIF) group, etc. This attitude towards common consent does not allow setting a uniform legal standard across regions and thus limiting the states to adopt an inter-operable legal system that might help in preventing the crime of human trafficking across the border. It is undeniable that each nation is standing at a different footing in terms of development therefore this variation of attitude towards ratification. However, joint effort is the need of the hour and it can only be achieved through common ratification across regions.

TRENDS OF HUMAN TRAFICKING IN ASIAN PACIFIC REGION

East Asia

In the present situation when the East Asian states are moving towards a common goal of political, economic and social integrity, there is being a consequential rise in human trafficking. Thus, it was quite important that in the 2004 Plan of Action for an ASEAN Socio-Cultural Community under the title of "Building a Community of Caring Societies", there is a call to "Strengthen regional mechanisms and networks for combating human trafficking".[3] It must be understood in a sense that the intra-regional flow of trafficked human

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1 Sabrina Adamoli et al.,ORGANISED CRIME *Organized Crime Around the World*, HELSINKI: EUROPEAN INSTITUTE FROM CRIME PREVENTION AND CONTROL, 1998, p. 17.

2 Ralf Emmers et al., *Institutional Arrangements to Counter Human Trafficking in the Asia Pacific,* ASEAS. 493, 490-511(2006).

3 *See* Appendix A for ASEAN Socio-Cultural Community (ASCC) Plan of Action. Vientiane, 29 Nov. 2004.

beings is actually the exploitation of the citizens of one country by the other country and in order to build a relationship of harmony and trust such practices must be stopped. The major weapon by which prevention of cross border trafficking can be done is through regional cooperation among different institutions. The body that is working in this particular region with similar objective is ASEAN (Association of Southeast Asian Nations).

Asean

In the middle of the 1990's the ASEAN became cautious and concerned about rampant growing transnational crimes taking place across the borders. Among all these criminal activities human trafficking held a major part. In order to control the same ASEAN took a major step that is they made a declaration named 'ASEAN Declaration on Transnational Crime'[4] which was adopted in the year 1997. The declaration has served dual purposes like firstly; it has laid down principles in regard to fighting of the transnational crimes and secondly, has set up institutions in the form of AMMTC (ASEAN Ministerial Meeting on Transnational Crime). It is through this institution, the home ministers of all the member nations of the declaration come together and have meeting minimum once every two years. The utmost aim that this institution endeavors to achieve is to coordinate the acts taken up by different nations against the menace. In the year 1999, the AMMTC accepting the ASEAN Plan of Action to Combat Transnational Crime had supported "the exchange of information, legal and law enforcement cooperation, training, institutional building and other cooperative measures."[5] Another institution was also set up named, 'Senior Officials Meeting on Transnational Crime' (SOMTC). The prime function of it is management and enforcement of actions approved by the AMMTC and suggesting certain means by which the action plan can be effectively carried out. It had also come up with a particular "Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime and received approval by the second SOMTC in May 2002".[6]

The Work Programme consisted of certain acts which primarily focus on prevention of human trafficking by dissemination of information among the member countries. Therefore, the member states in order to fulfill the purpose the member states are asked to share "relevant laws, regulations and bilateral agreements as well as international treaties"[7] which are being ratified by them. They were also informed to forward the reports of their individual countries to the Secretariat of the ASEAN and make all aware of the laws and regulations

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4 ASEAN Declaration on Transnational Crime, Manila, the Philippines, 20 Dec. 1997.

5 *Supra* note 2 at 6.

6 Work Programme on Terrorism to Implement the ASEAN Plan of Action to Combat Transnational Crime, Kuala Lumpur, Malaysia, 17 May 2002.

7 *Supra* note 2 at 6.

related to human trafficking in their own country. This programme moreover tries to create a strong bond between the member states by criminalizing the people who are trafficking, harmonizing national laws and by signing several bilateral and multilateral agreements with one another.[8] The programme also talks about providing "effective training and different courses to officials with the responsibility of law enforcement and this would be done mainly through several conferences and regional training programmes". The basic aim of which would be to concentrate on "the post-repatriation, rehabilitation and protection of victims".[9]

Another significant body working to prevent human trafficking under the direction and supervision of AMMTC is the ASEAN Directors-General of Immigration Departments and Heads of Consular Divisions of the Ministries of Foreign Affairs (DGICM). Certain decisions were taken in regard to the DGICM in December 1999 while the third meeting in Yangon was in progress. At that time two decisions were mainly taken first, that the body would meet at an annual basis every year and second, there will be establishment of the Ad-hoc High-level Experts Group on Immigration Matters. The group then onwards mainly worked upon building "an institutional structure to coordinate collaboration on immigration issues, make action plan to deal with these matters, and to form a directory of immigration focal points."[10] The Ad-hoc High-level Experts Group met for the first time in Philippines in April, 2000 and on this meeting they strengthened their determination to fight against the criminals involved in human trafficking by disrupting all the criminal associations. The cause was further strengthened when an initial draft of declaration against the trafficking of women and children was prepared by the immigration and consular officials and also by the proposal made by the officials for an ASEAN Plan of Action on Immigration and Consular Matters.[11] It was mainly the efforts of the DGICMs and the Ad-Hoc High-Level Experts Group that pumped up the adoption of the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children in November 2004.[12] This Declaration urged the ASEAN countries to strengthen the regional cooperation among the countries in order to combat human trafficking.

In the Southeast Asia the body called ASEANAPOL (ASEAN Chiefs of Police) deals with the matter of trafficking of persons, especially of women and children. The main objective of this body was projected in its annual meeting which was primarily to build a sense of cooperation among the police officials

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8 *Id.*

9 *Supra* note 6 at 8.

10 Joint Press Statement of the 3rd Meeting of ASEAN Directors-General of Immigration Departments and Heads of Consular Divisions of ASEAN Ministries of Foreign Affairs, Yangon, Myanmar, 13-14 Dec. 1999.

11 *Supra* note 2 at 6.

12 *Id.*

in regard to human trafficking. In May 2005, when ASEANAPOL held its 25th Conference, it took up a resolution in the rate of information dissemination regarding the identities, movements and activities of transnational criminal organizations involved in human trafficking.[13] This body also persuaded member countries to indulge into bilateral or multilateral agreements in order to advance cooperation on the control of border areas and also against human trafficking.[14]

Asean+1

In the year 2002 during the 6th ASEAN-China Summit in Phnom Penh, both signed the Joint Declaration of ASEAN and China on Cooperation in the Field of Non-Traditional Security Issues.[15]It was for the first time in history that the ASEAN has cooperated with any of its +3 partners in this particular area. There are several non-traditional security issues which were matters of concern for both ASEAN and China but the declaration has taken profound in relation to human trafficking specially for women and children. The declaration has clearly stated than a joint effort shall be made between both for the purpose of exchanging information, doing research and also taking initiative against the crime. In the year 2004, the declaration was further strengthened through "the signing of a Memorandum of Understanding (MOU) between ASEAN and China on non-traditional security issues".[16] The MOU maintained the model of the declaration with an addition of certain other factors like collaboration in enforcement of laws.

Japan is another among the other ASEAN+1country which have not entered into any kind of accord with ASEAN in relation to curb human trafficking. Nonetheless, certain provisions under the ASEAN Japan Joint Declaration for Cooperation to Combat International Terrorism have the capacity to restrict the illegal acts of the traffickers. For example, an undertaking to "Strengthen immigration controls to prevent the movement of terrorists and provide assistance to address border and immigration control challenges" as well as a commitment to "Continue to support development projects that aim at reducing poverty and socio-economic disparity and injustices, as well as promoting the elevation of standard of living, in particular of underprivileged groups and

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[13] *Id.*

[14] See "Joint Communique of the 25th ASEAN Chiefs of Police Conference", Bali, Indonesia, 16-20 May 2005

[15] Joint Declaration of ASEAN and China on Cooperation in the Field of Non Traditional Security Issues. (Phnom Penh, 4 Nov. 2002).

[16] Memorandum of Understanding Between the Governments of the Member Countries of the Association of Southeast Asian Nations (ASEAN) and the Government of the People's Republic of China on Cooperation in the Field of Non-Traditional Security Issues, Bangkok, 10 Jan. 2004.

people in underdeveloped areas".[17] This provisions even though do not directly combat human trafficking but instead keeps a check on the borders which in turn affects the network of traffickers.

South Korea even though being a part of the ASEAN+3 Ministerial Meeting on Transnational Crime (AMMTC+3) and Senior Officials Meeting on Transnational Crime+3 (SOMTC+3) consultations is least in maintaining institutional relation with ASEAN in regard to human trafficking.

Even though several efforts are being made through ASEAN in the Asian region still the problem of human trafficking is persisting unlike EU and this is mainly due to insufficient means for enforcing the laws in a proper and strict manner. However, it has become successful in regard to spreading of awareness among common public and in creation of a background upon which further work can be done in future.

South Pacific

The issue of Trafficking of human beings was not a very high profile issue in the region of south-pacific as initially this was undertaken on the voluntary and willing basis. These countries of Pacific island been used like a transportation points on Australia, New Zealand, and the US as number of people travel with the intention of settling in the pacific island countries. The Focus of national authorities as well as regional bodies is on whether by the migration which is voluntary is either legal or illegal. As the migrants who are illegally coming they are more vulnerable to the treatment which is exploitative resulting they have been trafficked after being moved from their source country.

PIF

At the regional level, "Pacific Islands Forum" i.e., (PIF) is the main organisational body in south pacific region dealing with related issues of human trafficking). PIF is supported by the "Pacific Immigration Directors Conference" i.e. (PIDC), The "Pacific Island Chief of Police" i.e., (PICP) &"Oceania Customs Organisation" i.e.,(OCD). IWGBMI which is the "informal Working Group on Border Management Issues" came in to being in the year 2004 of December with the help of secretariat in turn consulting the OCD, PIDC & PICP so as to promote intelligence-led & communicative approach mainly to face crimes across the international borders. This IWGBMI has been established by PIF only[18]. the aforementioned group is working like an "issues and

[17] ASEAN-Japan Joint Declaration for Cooperation to Combat International Terrorism, Vientiane, 13 Nov. 2004.

[18] *See* Pacific Islands Chiefs of Police, "Pacific Region Border Management -Issues".

awareness group" with the reason to advance the ideas for the change & for the future of the regional approaches it is important regarding human trafficking as the problems in managing the legal and illegal immigration becomes a problem to the already improved anti trafficking efforts. In the Pacific, because of lack of high technology & infrastructure Border control has been restricted. Most of the endorsements rests on paper only that is they have not been computerised. In some countries for travelling in holidays no requirement of visa is there which ultimately makes so difficult to find out whether someone left the country or not. The problem of passport of being forged or illegally obtained in the region.[19] For border controls some other initiatives have also been taken like countries started sharing and collecting information through intelligence bulletins on irregular or illegal migration. PIDC Countries helped in implementation of "advance passenger information system" across pacific. Because of resource limitations pacific islands countries closely cooperate and participated at the regional level.

Thus PIF secretariat became active in the formulation of the legislation which is of best practice, immigration policing for the consideration by the member states to standardise it as well as to avoid the overlapping in the development of such programmes. It shows that in the past these ideal practices have not been implemented & these dishonest things in the police and immigration forces are quite impossible to remove.

In the current times such states are facing a problem to meet the required demand of "more pressing" extending beyond the boundaries criminal threats First- Pacific Countries had faced problem to meet the requirement of new "counter –terrorist" called under the UN resolutions even though all these efforts of such kind are quite helpful in the condition of when they are serving for more than one purpose[20].

Example: According to the security policies as well as foreign policies which helpsthe pacific countries to meet the requirement of counter- terrorism. Australian & New Zealand governments both funded such specific projects which helps to improve in to and out of the pacific the border control and immigration. Rest other broader initiatives to combat the transnational crimes in the general terms also have the similar benefits.

"The Pacific Transnational Crime Coordination Centre" (PTCCC) is an Australian federal police initiative which gives the region new & valuable information sharing unit. It is the first one in this regard of the regional level

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[19] *See* for example, *Fiji Tip Leads to Arrests in New Caledonia*, PACIFIC MAGAZINE, 25 Aug. 2005.

[20] Hon Prime Minister Helen Clark, Opening Address to Pacific Roundtable on Counter-Terrorism, Intercontinental Hotel Wellington, 10 May 2004.

that capitalises the Australian federal police assisted Transnational Crime Units (TCU).PIF helps in improving capacity of legislature in the country and in the best possible way to train the trainers in the border control and policing programmes through its mentor programme. Despite Broader framework

"Interest in the anti-human trafficking initiatives came in to picture on larger basis in last two years by because of the fallout from numbers of illegal immigrants that begun to settle within the pacific"

- By increase in the number of "child sex tourism" in the region.[21]
- By increasing presence because of organised crime.[22]

Official efforts in fighting against the issues of human trafficking, smuggling of people and illegal immigration flourished in the following year which resulted in the accurate and targeted policies came in to picture at the regional level. By renewed efforts it can be seen that they want pacific countries to ratify the "UN convention against the transnational organized crime" including the "protocols" relating to smuggling and trafficking in persons in addition to it drafting of legislation relating to "model regional sexual offences" that deals with the object of including a new law to fight against the "sexual servitude" and recruiting for trade for sex deceptively. Its approach is to promote victim centered approach in response to the concerned phenomenon[23].In "the Asia pacific inter-governmental consultation on refugees, displaced persons and migrants" south pacific countries were represented. It was the established in 1996 with the aim to improve "inter-governmental cooperation" in concerned areas. The "Pacific Regional Policing" Initiative establishment is an important centre for the sharing of information, generation of knowledge about the human trafficking in the region. The "Pacific Police keeping Force" creation is a support for regional cooperation in this area. As there is no continuous communication on the topic of human trafficking among the PIF and the other regional bodies and no. of member countries related to either the "APEC" or "Bali Process" which is having some of trans-regional coordination? This cooperation helped with the help of growing awareness regarding the incidents of trafficking from Asia to Pacific region. The Asia- Pacific institutions are looking for to fight against the "transnational trafficking flows" and it can be seen as the evidence by policymakers who are actively looking for a solution regarding the issue even though when the policies of states and its programmes are inadequate. Since 1997 ASEAN started working to counter the human trafficking and after a decade fruits came in to being in the form of policy development as well as resource sharing by all member states. In south pacific

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21 Toni Hassan, *Child Sex Problem Growing in Pacific*, PORT VILA PRESSE, Mar. 23, 2006.

22 Kent Atkinson, *Triads Spinning Murderous Web*, New Zealand Herald Online, Oct. 25, 2005.

23 Correspondence with Shaun Evans, Law Enforcement Advisor, Pacific Islands Forum Secretariat, 15 Sept. 2005.

"micro states" are facing more objections as in regional infrastructure and law enforcement cooperative organizations have developed, a more regional response to address the human trafficking threat has emerged. Considering both "East Asia & South Pacific institutions" no. of "trans-regional institutions" are there among which 'ARF' and 'ASEM' are the most progressive ones.

TRANS-REGIONAL STEPS TO COMBAT HUMAN TRAFFICKING

Human trafficking networks do not restrict itself within the Asia Pacific countries instead it stretches itself all over the globe. This is the main cause for different regions to indulge themselves into agreements with other countries for dismantling the threats of transnational crimes such as human trafficking. If we look into the Asian Pacific region then such undertakings are present in the form of the ASEAN Regional Forum (ARF) and the Asia-Europe Meeting (ASEM). Other than this the Bali Process which will be further discussed below has also been adopted by the International Organizations and NGOs.[24]

The ARF and ASEM

In the Asia Pacific Region one of the major institutions fighting the cause of illegal human trafficking is ARF. This body in several of its meeting have taken certain concrete steps to curb the growth of illegal migration thereby limiting the rise in the rate of human trafficking across the borders. Under the 7th ARF Ministerial Meeting, July 2000 a decision was taken to form an Experts' Group Meeting (EGM) on Transnational Crime (TNC) which was co-chaired by the Republic of Korea and Malaysia. In this meeting the primary focus was on "piracy, illegal migration and the illicit trafficking of small arms".[25] Later in the year 2000, the members of ARF were recommended to get into bilateral and multilateral agreements in relation to dissemination of relevant information, coordination among law enforcing bodies and matters related to illegal migration.[26] In the next EGM meeting which was held in April 2001, illegal migration was considered to be a serious threat for the ARF member countries participants and referred to as "its serious economic, social and security implications to the Asia-Pacific region".[27] The regional states were also cheered by the EGM to sign "the UN Protocol to Prevent, Suppress and

[24] *Supra* note 2 at 6.
[25] *Id*.
[26] CO-CHAIRMEN'S SUMMARY REPORT OF THE ARF EXPERTS' GROUP MEETING ON TRANSNATIONAL CRIME, SEOUL, REPUBLIC OF KOREA, 30-31 Oct. 2000.
[27] CO-CHAIRMEN'S SUMMARY REPORT OF THE ARF EXPERTS' GROUP MEETING ON TRANSNATIONAL CRIME, KUALA LUMPUR, MALAYSIA, 16-17 April 2001.

Punish Trafficking in Persons, Especially Women and Children and its Protocol against the Smuggling of Migrants by Land, Air and Sea". [28]

In the ASEM, several transnational bodies in the Asia Pacific region have adopted schemes to combat human trafficking. "In October 2002 an ASEM seminar on Promoting Gender Equality to Combat Trafficking in Women and Children was convened "as part of a wider ASEM work plan on trafficking".[29] The focal point of the next conference which was held in September 2003was to develop such policies which will be beneficial for both trafficked women and children through a joint collaboration between the states and different NGOs. Even though after the meeting as such no further discussion was made in this regard but the ASEM has not abandoned it and this was evident from the 2004 meeting where along with other issues the issue of human trafficking was extensively discussed.

The Bali Process

During 2000-2001, there has been rapid increase in smuggling in the water areas between two countries, Australia and Indonesia, due to which a meeting was conducted in February 2002 where the problem was extensively discussed. This meeting that is the Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime involved almost thirty eight countries around the Asia Pacific, North America and Europe and various International Organizations and NGOs. Even though in this Bali Process no institutionalized form has been adopted but it still played a significant part in dealing with trafficking issues.

In the next two ministerial conferences that were held in 2002 and 2003, the process involved activities of issue-oriented workshops, and the issues were "identity fraud, child sex tourism, protection of victims, and the development of model legislation". These activities are coordinated by different countries such as New Zealand and Thailand through law making and law enforcement processes. And the other countries also coordinate their work in this regard with the UNHCR and the IOM.

Even with its non-binding nature the Bali Process gained huge significance in terms of establishing a strong anti-trafficking regime. This process has helped different bodies and other NGOs at regional level to initiate legislations and form judicial bodies to fight human trafficking. One such step has

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[28] *Supra* note 2 at 6.

[29] COMMIT, Coordinated Mekong Ministerial Initiative Against Trafficking in the Greater Mekong Subregion: Senior Officials and Ministerial Meetings: Proceedings, Yangon, 27-29 Oct. 2004, p. 68.

been taken up by the Asia Regional Cooperation to Prevent People Trafficking (ARCPPT) within the Greater Mekong Sub-region.

RECOMMENDATION AND CONCLUSION

Human Trafficking is one of the most dreadful crimes affecting the Asia Pacific region in the present era. In this region little has been done to mitigate the problem at the state level but an enormous rise can be noticed in the past years in relation to the regional level efforts. The methods that are mostly being adopted by these regional institutions are such that they firstly, try to seek the underline reason of vulnerability of people who are the victims of this crime and thereby mitigate the problem from its core. It also involves certain other steps such as investigating the immigration process, keeping an eye over the borders etc. But in order to adopt a more comprehensive approach necessary and sufficient funds are required which is the major backdrop in the present scenario.

Even though the efforts that are taken up by the regional institutions are commendable till date but it's worth mentioning that they are mostly based on principles and the measures of enforcing them is not at all in a manner it should be keeping in mind the seriousness of the crime. The two main bodies working in the particular region, ASEAN and PIF mainly asks the member countries to focus on information sharing, creating awareness, developing the capacity of institutions etc. whereas stricter steps were required in terms of enforcement of laws and judicial collaboration.

Other than the financial problems there are certain other factors that creates hindrance in the pathway of regional cooperation and such factors includes firstly, preference of governmental bodies to take up steps within the nation rather outside it and this is mainly due to the complexities involved in relation to jurisdictional problems, problems in relation information sharing, formation of immigration laws etc. secondly, even though the region has sanctioned to the UN Conventions in regard to human trafficking implementing with the help proper planning becomes a tedious task, lastly, the region also faces the problem of insufficiency of proper institutional bodies to take up the cause and fight against the threat of trafficking.

But the fact remains that in order to fight with the problem in the particular region joint actions are required without which it would always pose a threat and would project the negative side of globalization. Thus, the region should overcome with all the above mentioned difficulties and join together for the common welfare of vulnerable human beings. And it would only be possible with the willingness of citizens and government of different countries.

A CRITICAL OVERVIEW OF PEER REVIEWING IN ACADEMIC JOURNALS AS A QUALITY ASSURANCE MECHANISM: LEARNING FROM THE GLOBAL EXPERIENCES

—Ujal Kumar Mookherjee[*] & Shreyasi Bhattacharya[**]

ABSTRACT

Peer-Reviewing is considered to be the most acceptable method of assessing the quality and improving the standards of research papers both globally and in India. However, the process of peer-reviewing has its own set of detractors who raise a number of issues with the process of peer review. They range mainly from who can be considered to be a good peer reviewer? What are the essentials of a good peer review? What is the standard of care that is desirable from a peer reviewer? How can reviewer bias be effectively addressed within the framework of peer-review? The devotion on understanding these issues in the Indian context is at best scant, highlighted by the severe dearth of literature dealing with the same. In this article, the researcher seeks to delve into the intricacies of the aforesaid issues. For this purpose the researcher has relied extensively upon literature from other countries, circumscribing the issues at hand. The objective is to learn from the global experiences- how to make peer reviewing more effective in India. The author here seeks to highlight the need for a more dynamic role for the editor of a journal. Further, there is a need to evolve an ethical framework for peer reviewers so as to develop a universally acceptable language for the peer reviewers.

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Keywords: Bias, Double-Blind, Ethics, Peer Review, Publication, Research

INTRODUCTION

The increased focus upon research standards in the context of higher education, in India is a phenomenon which is not outlying the global trend that envisages the creation of a "knowledge society"[1] through global participation. This universalization, however egalitarian it may sound does come in with its own pitfalls which needs to be steered clear of.[2]

Whenever we talk about research, the image of Prometheus, the great Greek fictional legend, presents itself to our mind. New knowledge ultimately is somewhat heroic inasmuch as it seeks to reform our existing false beliefs and provides us with fire that shapes the advancement of our civilisation. The interference of an outsider here maybe deemed to be unwanted as it tends to "pervert or derail this endeavour."[3]

In today's world however, research is no longer like the invention of fire- rather is a full-fledged business in which investments are made by several large corporations and are also used to reap up benefits- pecuniary or otherwise. Academic progress markers mandate publishing research works in an all or nothing fashion, leading to the eventual growth of a publication industry that not only has to cater to the increasing demand, but also has to continually enhance the standard of research work undertaken in the country. In such a context, assessment of the quality of research, taking efforts to remove biases that undermine its worth and constantly striving for its improvement are all essential cogs in the wheel.

One of the most accepted ways through which the quality of research is assessed is the system of peer review. It not only seeks to suppress bias, but also is an important instrument in advancing or enhancing the quality of research. Having said so, the process of peer review is often criticised on a number of grounds. Some of the major issues that arise are- what makes a good peer reviewer? What is the standard of care/skill that must be expected of

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1 A concept associated with the phenomenon of globalisation in 1970s. This term derives from Peter Drucker. It implies a society where knowledge has become the most important resource. Milan Kovacevic & Nebojsa Pavlovic, *Globalization and the Knowledge Society*, 62 Ekonomika, Journal for Economic Theory and Practice and Social Issues (2016), https://ideas.repec.org/a/ags/sereko/290329.html (last visited 9 Dec. 2020).

2 *Id.*

3 Shaun Goldfinch & Kiyoshi Yamamoto, Prometheus Assessed? Research Measurement, Peer Review, and Citation Analysis 1 (2012).

a person who reviews another's work? How do we address bias that may creep into the process of peer review- both institutional and personal?

In India, scant attention has been given to some of these issues. That is well reflected by the dearth of literature on these points. This article focuses upon the commons problems that plagues the peer review process globally. The objective is to generate a discourse within the Indian academia so that the issues sought to be highlighted draw the necessary attention that they deserve within the country. The research have also looked at probable solutions for addressing these issues, placing reliance on the work that has been done in some of the countries in this regard and also based on the author's own analysis of the issues. Two of the most popular models of peer review in India: single blind and double-blind peer review have been emphasized in this article.

AN OVERVIEW OF PEER REVIEW

Cambridge Dictionary defines peer review (in its noun form) as the process of reading, checking and giving opinion about something that has been written by an expert in a specific subject area by another scientist or expert in the same subject area or a piece of work in which it is done[4]. It is used as an evaluative process that determines the quality of a work and makes positive contribution towards improving the same. Most commonplace usage of peer review is in the domain of academic publication[5]. The Elsevier lays down three fold objective of the peer review

a) Validates of academic work

b) Improving the quality of the research to be published

c) Provides networking opportunities within[6]

But besides the scholarly publication process, peer review is an established component of professional practice[7], the academic reward system[8] and is also being advocated as a mechanism for formative assessment and for providing feedback to the law students, with regards to any research or allied work which they undertake at the college/university level[9].

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4 'Peer Review https://dictionary.cambridge.org/dictionary/english/peer-review (last visited Dec. 1, 2020).

5 Andrew Noble, *Formative Peer Review: Promoting Interactive, Reflective Learning or the Blind Leading the Blind*, 94 U. Det. Mercy. L Rev. 443 (2017).

6 What is Peer Review? https://www.elsevier.com/reviewers/what-is-peer-review (last visited Dec. 9, 2020).

7 Carole J Lee, *Bias in Peer Review*, 64 J. Am. Soc. Inf. Sci. Technol. 2 (2013).

8 *Id.*

9 A process whereby students give feedback to students. *See* Noble (n 5).

This does not mean that the idea of peer review does not have any detractors. It is very hard to define peer review in operational terms. It can very well be said, that its defects are more easily identified than its attributes[10]. But the hallmark of it is that inspite of everything, it hardly shows any signs of going away[11]. The next section makes an effort to look into some of the issues that surround the process of peer review.

History of Peer Review

The origins of peer review are often related back to the formation of national academies in 17th century Europe[12]. It was with the formation of the Royal Society of London (1662) in this regard is an important landmark[13].

The first instance of peer review in publication can be traced to the publication of the first scientific journal "Philosophical Transactions" (in house journal of the Royal Society of London) under the editorship of Henry Oldenburg after he was appointed as the Secretary to the Royal Society[14]. The first peer-reviewed publication is thought to be the "Medical Essays and Observations" published by the Royal Society of Edinburgh[15]. Before this, editors of scientific journals did not prefer the process of taking outsider input while publishing a research work. Rather, that was not the practice back then[16]. So when the first journal on the collection of scientific essays- *Journal de Scavans* was introduced by Denis de Sallo in 1665, it did not have any peer review mechanism in place[17]. The process became more and more prominent in the context of the Second World War[18] and thereafter when research became a very important facet in a world that was gradually navigating to a regime of research superiority as opposed to mere military superiority as a mark of overall strength of a nation in the international plane.

What Makes a Good Peer Reviewer?

Now, before proceeding any further in weighing up the balances on advantages and disadvantages of peer review, the first question that needs some

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[10] Richard Smith, *Peer Review: A Flawed Process at the Heart of Science and Journals*, 99 J. R. Soc. Med. 178 (2006).

[11] *Id.*

[12] Lee, *supra* note 43, at 3.

[13] Lee, *supra* note 43, at 3.

[14] Jay W. Rojewski & Desirae M. Domenico, *The Art and Politics of Peer Review*, 20 J. career tech. edu. 41 (2004).

[15] Madhuri S. Kurdi, *"Scholarly Peer Reviewing": The Art, its Joys and Woes*, 59 Indian J. Anaesth. 465 (2015).

[16] *Id.*

[17] Dale J. Benos et al., *The Ups and Downs of Peer Review*, 31 Adv. Physiol. Educ. 145 (2007), https://www.physiology.org/doi/10.1152/advan.00104.2006 (last visited Sep 23, 2022).

[18] Kurdi, *supra* note 125, at 465-466.

deliberation is who is a peer? Or, to put it more bluntly, who can be a peer reviewer. Now, the question may seem to be a rather harmless one, but this has its own set of difficulties. The latent questions are aplenty. When one approach a doctor, she can identify who a doctor is. She most certainly know the standard of care that the doctor needs to adhere to while she treats her. But such questions become tougher to understand in the context of a peer review. A peer reviewer is supposed to be an expert on the subject area/ area of the topic at hand. The question of determining who is an expert may be a tricky one and so is the question- who or what qualities make for a good peer reviewer? Even more tricky perhaps is the question of standard of care/skill that can be expected of the reviewer[19]. As Smith points out in his article:

> *"Somebody saying `The paper looks all right to me', which is sadly what peer review sometimes seems to be. Or somebody pouring all over the paper, asking for raw data, repeating analyses, checking all the references, and making detailed suggestions for improvement? Such a review is vanishingly rare."*[20]

Coming to the question of qualities of a good peer reviewer, while it is almost a universally accepted fact that peer reviewing is critical to the process of selecting articles, "remarkably", very little study, in fact, has taken place to identify good and bad reviewers[21]. In an article published in the Pubic Library of Science Medical Journal consisting the report of their own study on this area, the authors Michael L Callaham and John Tercier mentions about three studies that have sought to address the issue as to what factors make for a good peer reviewer[22]. The authors themselves point out towards that the results of their own study and the previous ones does not really go a long way inasmuch as identifying the factors that make for a good peer reviewer[23]. Having said that, the results of the studies are, if not anything, persuasive in breaking away from a number of our, what may be said, misconceptions about understanding of certain factors which we feel makes for a good peer reviewer.

The authors list certain factors that make for relationship of previous training and experience of journal peer reviewers to subsequent review quality. The authors conclude that "skill" in scientific peer review is as ill-defined as "common sense" and hence, it is unlikely that the journals and editors will be successful in systematically improving their selection of reviewers[24]. The study

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[19] Michael L. Callaham & John Tercier, *The Relationship of Previous Training and Experience of Journal Peer Reviewers to Subsequent Review Quality*, PLoS medicine e40 33 (2007) 33.

[20] Smith, *supra* note 120, at 178.

[21] Callaham, *supra* note 129.

[22] *Id.*

[23] *Id.* at 38.

[24] *Id.*

reveals that certain characteristics which are normally associated with good peer reviewing like academic rank, being on the study section of grant review have not been shown enhanced performance. In fact, in one of the earlier studies conducted by Stossel[25] in 1983 reveals a low rating in review quality in the "high status" reviewer group. Another study shows that reviewers less than 40 years of age had a better record in terms of review quality (2% variance)[26].

Another conclusion of the study was that the criteria of "expertise"- identified in studies prior to that of Callaham and Trecier to be a significant positive factor, was insignificant[27]. Factors like editorial board membership experience and hailing from a university environment were concluded to be positive factors in quality peer review[28]. Being principal investigator on a grant did not prove to be any positive stimulus and membership of Institutional Review Board revealed a negative upturn[29].

While the conclusions of these researches reveal certain important markers regarding how certain common perceptions regarding peer review and the skills involved in peer review may in fact be false, placing over-reliance on the study is certainly not advisable because. The authors themselves concede that based on their study it would not be possible to identify any type of formal training that may enhance the performance of the reviewers as there may indeed be none[30]. Enhanced performance, authors say may depend on other personal factors like scepticism, thoroughness, motivation, inherent talent in detecting design weaknesses, the quantification of which is difficult owing to the lack of a predictive model[31]. Further, most of these researches are limited to the field of medicine and conducted in Europe. What significance it has in the domain of a social science like law and in a country like India is a question that has to be answered.

What we may roughly conclude however is that the question- who is a good peer reviewer is very difficult to answer.

Bias in Peer Review

The question of desirability of peer-review has always been fraught with a host of controversies. Concerns have been raised in relation to the bias in the

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[25] Thomas P. Stossel, *Reviewer Status and Review Quality*, 312 N. Engl. J. Med. 658 (1985), https://www.nejm.org/doi/10.1056/NEJM198503073121024 (last visited Sept. 23, 2022).

[26] Nick Black et al., *What Makes a Good Reviewer and a Good Review for a General Medical Journal?*, 280 JAMA 231 (1998), https://doi.org/10.1001/jama.280.3.231 (last visited Sept. 23, 2022).

[27] Callaham, *supra* note 129, at 37-38.

[28] *Id*.

[29] *Id*.

[30] *Id.* at 38.

[31] *Id*.

process, fairness, unnecessary delay that peer reviewing may cause and general ineffectiveness of the process itself[32] as the process often fails to detect the flaws in a manuscript and is unable to unearth the corruption and scientific misconduct.[33] Of the aforesaid, the author will particularly focus on the issue of bias in this article, more because of the constraint with regards to the limitation of the size of this paper.

"Bias" in peer review has been defined as some sort of "violation of impartiality in the evaluation of a submission."[34] Impartiality, in the context of peer evaluation, has been defined as the ability residing in a peer reviewer "to interpret and apply evaluative criteria in the same way in the assessment of a submission."[35] However, even to the authors who came up with this definition, such a situation may at best be regarded to be an ideal situation.

Bias in assessing manuscripts may arise due to a number of factors. Sometimes, the prestige of the author herself is a source of a biased review. For eg: a senior professor in a reputed University is much more likely to get her research published than a younger academic from a not-so-reputed setup. In a study conducted on the peer-reviewed grants for awarding long term fellowships to post-graduate researchers in the domain of bio-medicine revealed that researchers who are affiliated with prestigious institutions tend to fare better in regards to securing such fellowships.[36] In a study conducted by researchers Peters and Cerci (popularly known as the Peters and Cerci Study), 12 papers were resubmitted to the same psychology journals who had published them within the last three years under fictitious names.[37] The original authors were persons affiliated with institutions that were more prestigious than the fictitious authors. The journals concerned did not use blind-reviewing. Certain cosmetic changes were made to disguise the papers, but there was no change in the content. The result of the study revealed that 25% of the papers were detected to have been published previously. 89% of them were in fact rejected[38] on the ground that the studies contained serious methodological flaws.[39]

Nationality or the language of the manuscripts also have been shown to result in bias. Authors belonging to the same country where the journal is published often receive preference, though the data in this regard is not clear.[40]

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32 Benos, *supra* note 127, at 146.
33 *Id.*
34 Lee, *supra* note 43, at 4.
35 *Id.* at 7.
36 *Id.*
37 J. Armstrong, *Point of View: Peer Review of Scientific Papers*, Marketing Papers (1984), https://repository.upenn.edu/marketing_papers/224. (last visited 22nd Sept. 2022).
38 *Id.*
39 Lee, *supra* note 43, at 7.
40 *Id.*

The same goes for language also. The rates of acceptance for abstracts written from English speaking and non-English speaking countries vary, though, in case of blinding, this gap was reduced to a great extent.[41]

Certain studies have found gender-based bias to be a reality in peer review, while certain other studies have concluded that such biases no longer exist.[42]

Single-Blind and Double-Blind Peer Reviewing

Peer-Reviewing is widely conducted in three different forms. They are:

- Single-blind peer review
- Double-blind peer review
- Open peer-review[43]

Single blind peer review is a process where the identity of the reviewer is shielded. It has certain advantages and disadvantages. The anonymity of the reviewer lowers the chances of reviewer influence by the author. However, since the author identity is not shielded from the reviewer, there are greater chances of a biased review. Such a bias may result from prestige, academic standing, gender, nationality, race and language of the authors.[44]

Often, in order to avoid the aforesaid pitfalls, double blinding is preferred. In this model, both the reviewer's and the author's identity are shielded from each other. However, double blinding may be a tedious process which increases the expenses of publication and also may slow down the review process substantially.[45]

Open access reviews are also becoming increasingly popular. In an open access review, the manuscripts are first put-up to the public at large, inviting their comments on the papers. Elsevier talks about triple blinding method also wherein the author identity is unavailable to the editors also. However, these two are beyond the scope of analysis of the current paper.

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41 *Id.*

42 'What Is Peer Review?' <https://www.elsevier.com/reviewers/what-is-peer-review> accessed 9 Dec. 2020.

43 Types of Peer Review | Wiley, https://authorservices.wiley.com/Reviewers/journal-reviewers/what-is-peer-review/types-of-peer-review.html (last visited Sept. 23, 2022).

44 *Id.*

45 'What is Peer Review?' <https://www.elsevier.com/reviewers/what-is-peer-review> accessed 9 December 2020.

In a study conducted on the reviewer bias in single blind and double blind peer review[46], the some of the findings that the researchers come up with is worth mentioning in this context. With regards to bidding behaviour of the reviewers, it was found that bidding, in general is lower in single blind as opposed to double blind. Also, single blind reviewers bid for papers form top institutions in preference to others. In case of double blinding however, this is not the case.[47] Further, a reviewer in single blind review, who had the knowledge of the author's background, was more likely to recommend the acceptance of a manuscript authored by someone famous someone from a top law school or a company.[48]

COUNTERING THE ADVERSITIES IN PEER REVIEW

Double blind may be said to go some way into solving the problem of bias in assessing researches. While, bias which may arise due to things like standing of the author, her gender, her colour, her nationality may, to a greater extent, be nullified by double-blind reviewing. However, double blinding does not in itself solve all the problems. Bias as to the content of the manuscript, the stance of the reviewer on a particular issue, bias as to the language used by the author- all of these remain pretty much intact even in double blinding.

As regards to countering the adversities with regards to the quality of peer reviewing, certain measures have been suggested by various researchers bordering around having a code of conduct, setting up an uniform guidelines and structured response sheets.[49] Having a code of conduct may be beneficial to a certain extent, but enforceability of the same is always and issue. Further, a code does not help in solving unconscious bias.[50]

Some other studies have recommended peer reviewing by a group of peer reviewers with any decisions thereupon being taken by a majority of the reviewers.[51] One of the major drawback of this is that the entire process of peer review may become too expensive.

Discussion between authors and reviewers is also one of the methods suggested[52], but even in such a discussion, the ball remains in the reviewer's court ultimately.

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[46] Andrew Tomkins, Min Zhang & William D. Heavlin, *Reviewer Bias in Single- versus Double-Blind Peer Review*, 114 Proceedings of the National Academy of Sciences 12712 (2017).

[47] *Id.* at 12712.

[48] Tomkins, *supra* note 156, at 12712.

[49] Douglas P. Newton, *Quality and Peer Review of Research: An Adjudicating Role for Editors*, 17 Accountability in Research 130, 134 (2010).

[50] *Id.*

[51] *Id.*

[52] *Id.*

Open peer review can be an effective way of countenancing the issue of quality, but Newton et all believe that it may make peer reviewers reluctant to participate in the process of review[53]. Also, this may induce the researchers to arrive at safe conclusions in their researches that can please the audience, rather than ones which are accurate.

Holbrook et all suggest in their study with regards to review of PhD theses, that the reviewers should not be the ultimate decision-making authority. Rather, the weight to their reviews must be kept in mind, but the decision should ultimately rest on the hands of someone else[54]. Newton et all, apply this model into peer review of manuscripts. According to them, the editor must apply her mind critically to the reviews received and then arrive at a decision, without relying completely on the reviewers[55].

All of these present some compelling possibilities for enhancing the effectiveness of the peer review process, but none of these are without its own set of pitfalls.

CONCLUSION: LEARNING FROM THE GLOBAL EXPERIENCE

The review of the vast array of scholarly literature on the subject fails to unearth any quick-fix solutions to the issues relating to peer reviewing that have been highlighted over the course of this work. What can be underlined from this is that a lot more attention has to be given to peer reviewing both globally and more particularly, in India.

Having said that, this work does go towards busting certain myths and providing pointers towards developing a better framework for peer reviewing.

The major issues that have been highlighted over the course of this paper are:

a) Qualifications for being a peer reviewer

b) Standard of care/skill required in peer review

c) Bias in peer review- both conscious and unconscious

Based on the aforesaid study, the following suggestions maybe given:

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[53] *Id.* at 134.
[54] *Id.* at 135.
[55] *Id.*

1) *Previous publication in the domain of research can be a good criterion for selecting peer reviewers:* What are the qualities of a good peer reviewer is doubtful. However, one of the criteria that must be looked at while choosing a peer reviewer is having previous experience of working in the field upon which the manuscript focusses. Any previous work or publications in the domain may demonstrate a person's overall knowledge in the area and thus the editorial board can be assured of the reviewer's familiarity with the area of research. This is especially important in a country like India, where often things like a person's seniority, the academic rank is used to determine her expertise.

2) *Academic rank may not be a good criterion for selecting peer reviewers:* As the various studies in this area indicate, younger reviewers with a motivation to work may be preferred as opposed to a person of merely higher academic rank. Greater academic rank is not always a good marker for selecting a peer reviewer.

3) *Developing a universal standard of care/skill and ethical framework for peer reviewers is the requirement of time:* It is highly desirable that a universal standard of care/skill required for peer reviewers is evolved so as to at least speak in the same language everywhere. Additionally, a universal ethical framework for peer reviewers is necessary to clearly disseminate the dos and don'ts of peer review amongst prospective peer reviewers. Any transgression there from may be dealt with at the institutional level.

4) *Having multiple peer reviewers from diverse backgrounds may work towards countering bias in peer review:* With regards to elimination of bias in peer reviewing, double-blinding is a much more effective way of attaining the objectives rather than single. If it is plausible to have multiple peer reviewers, the editors must not hesitate to engage them. Having reviewers from diverse background goes a long way in eliminating bias that may arise out of institutional affiliation of the reviewer and the subject matter of the manuscript. Involving the authors in a more deliberative mode of peer reviewing, wherein the author is provided with an opportunity to interact with the peer reviewers- facilitating an exchange of ideas may go to a large extent in enhancing the effectiveness of the process. However, the cost effectiveness of such an approach may be an hinderance. In this regards, the editor's role is critical.

5) *More dynamic role of the editor/editorial board is necessary:* The editor must also apply his own mind in evaluating the worth of the evaluations of the peer reviewers and should only make his decision thereupon. The role of the editor in this regard must not be merely mechanical. But it is necessary to imagine the role of the editor as the fulcrum around which the entire process revolves.

Traditional peer review models do suffer from a number of shortcomings and it is indeed the need of the hour to re-valuate the nature of peer reviewing that academic journals follow. Several new modes of reviewing like the Open Peer Review models are being adopted in order to make the process more transparent and interactive[56]. However, how far that goes in enhancing the quality of research is suspect. Use of technology like blockchain in the process of peer review is a recent development that comes up with a lot of promise[57]. How far they will be effective in reorienting the process of peer reviewing is something that can be understood only in the future.

Having said that, what remains true is that indeed scant attention has been provided to peer review in India, reflected by the scant literature that is available in the country in this regard. The country is still grappling with the issue of predatory and dubious publications that has formed the underbelly of the Indian research industry. The issue of circumventing and bypassing the process has been the focus, that has led to the UGC (University Grants Commission)[58] issuing a number of regulations in the past decade[59]. However, focus on the quality of peer reviewing process in academic journals has been a lot lesser. The recently introduced UGC CARE protocol which is the basis on which the UGC CARE List is prepared lists peer review process as one of the criteria on which a journal is to be evaluated before it being listed in the CARE List[60]. However, such an evaluation needs to be a qualitative analysis of the how peer reviewing was done rather than merely looking at the process mechanically. Also, the entire mechanism fails to locate culpability on the reviewers who give poor-quality reviews.

Overall, the focus needs to be redirected towards revamping peer review in light of new knowledge and technical innovations if the quality of research work that is being published in the country is sought to be enhanced.

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[56] See, Siladitya Jana, *A History and Development of Peer-Review Process*, 66 Ann. Libr. Inf. Stud. 152 (2019).

[57] DIGITAL SCIENCE & JORIS VAN ROSSUM, *Blockchain for Research*, (2017), (last visited Sept. 23, 2022).

[58] The University Grants Commission, established under the UGC Act is the body tasked with determining and maintaining standards of research in universities in India. For further details, See 'University Grants Commission: Mandate' <https://www.ugc.ac.in/page/Mandate.aspx> (last visited on 24 May 2021).

[59] See, Bhushan Patwardhan, *A Critical Analysis of the UGC Approved List of Journals*, 114 Current Science 1299 (2019). Also, 'CONSORTIUM FOR ACADEMIC AND RESEARCH ETHICS' https://ugccare.unipune.ac.in/Apps1/User/Web/About accessed 24 May 2021.

[60] 'Consortium for Academic and Research Ethics' https://ugccare.unipune.ac.in/Apps1/User/Web/About accessed 24 May 2021.

REFERENCES

- Armstrong J, 'Point of View: Peer Review of Scientific Papers' [1984] Marketing Papers <https://repository.upenn.edu/marketing_papers/224>
- Benos DJ and others, 'The Ups and Downs of Peer Review' (2007) 31 Advances in Physiology Education 145
- Callaham ML and Tercier J, 'The Relationship of Previous Training and Experience of Journal Peer Reviewers to Subsequent Review Quality' (2007) 4 PLoS medicine e40
- Goldfinch S and Yamamoto K, *Prometheus Assessed? Research Measurement, Peer Review, and Citation Analysis* (Chandos 2012)
- Jana S, 'A History and Development of Peer-Review Process' (2019) 66 Annals of Library and Information Studies 152.
- Kovacevic M and Pavlovic N, 'Globalization and the Knowledge Society' (2016) 62 Ekonomika, Journal for Economic Theory and Practice and Social Issues <https://ideas.repec.org/a/ags/sereko/290329.html> accessed 9 December 2020
- Kurdi MS, '"Scholarly Peer Reviewing": The Art, Its Joys and Woes' (2015) 59 Indian Journal of Anaesthesia 465
- Lee CJ and others, 'Bias in Peer Review' (2013) 64 Journal of the American Society for Information Science and Technology 2
- Newton DP, 'Quality and Peer Review of Research: An Adjudicating Role for Editors' (2010) 17 Accountability in Research 130
- Patwardhan B and others, 'A Critical Analysis of the UGC Approved List of Journals' 114 Current Science 1299.
- Smith R, 'Peer Review: A Flawed Process at the Heart of Science and Journals' (2006) 99 Journal of the Royal Society of Medicine 178
- Stossel TP, 'Reviewer Status and Review Quality' (*http://dx.doi.org/10.1056/NEJM198503073121024*, 13 January 2010) <https://www.nejm.org/doi/10.1056/NEJM198503073121024> accessed 7 December 2020
- Tomkins A, Zhang M and Heavlin WD, 'Reviewer Bias in Single- versus Double-Blind Peer Review' (2017) 114 Proceedings of the National Academy of Sciences 12708.

POLICING IN COVID ERA: A STUDY IN THE INDIAN CONTEXT

—Sushree Saswati Mishra*

ABSTRACT

The dangerous virus of Corona in today's pandemic period of COVID-19 has affected not just one but thousands of life around the globe. This furious pandemic have created many hurdles and unexpected problems not just for the health sector workers but also the law enforcement agencies. During this period, the Indian Police became the frontline workers to render services by expanding their functions to numerous job roles across the country. Central and State Govt have taken various measures to protect their citizen from this highly spreading virus. This actions include lockdowns, social distancing, use of mask and sanitizers, restriction on travelling etc, which are often controlled and supervised by the police officers under the command of the higher law enforcement agencies. This comes on top of existing duties as the police are expected to maintain order and continue neighbourhood policing operations, all while under a greater strain on resources. The Pandemic related job role of the police extends to the utilization of the police domain experience of crowd control, public order management, investigation of criminal acts, deterrence of the law-breaking behaviours and intelligence collection of anti-social activities. Generally, the role of Police as a protector of security threat and maintaining law and orders are well defined in various articles, but the role played by the police during this COVID 19 pandemic are still not clear enough. In this paper we will analyse the different new roles played by the police in India during COVID 19 pandemic. Other than that, the article will focus on different organisational structural change due to the pandemic crisis and evolving issues related to the preparedness, the response and the recovery from the pandemic faced by the police of India.

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KEY WORDS - *Community policing, Frontline workers, Lockdown, Policing, Pandemic*.

INTRODUCTION

The Covid-19 pandemic is one of the century's most serious governance challenges. It imposed varying degrees of restrictions and lockdowns all around the world, with law enforcement incharge of implementing them. As the "*health-related crisis created by COVID 19*" spreads across the country, the frontier protection agency, the Indian Police Force has consciously strived to provide numerous levels of service while juggling an ever-growing list of obligations. The enforcement of lockdowns has been one of the most difficult tasks faced by the police and other government agencies in the world's most populous democracy, where the government was forced to impose the first phase of countrywide lockdowns, initially for three weeks beginning in the last week of March 2020, and the next ended, due to the government's fear of the Pandemic spreading among its 1.3 billion people.[1]

When India imposed what might be the world's strictest lockdown in March 2020, police were intended to carry out the state's writ in less than four hours. The adoption of new protocols requires more visibility and more frequent engagement with the general population. Following the first nationwide shut-down, several further extensions and continuations of region-specific restrictions were imposed. The most distinct recollection of the first Indian lockdown, which occurred in March 2020, was of streams of people wandering across abandoned highways in the scorching summer heat, sometimes without food, water, or appropriate footwear.[2]

The lockdowns also led in one of the world's worst reverse migrations of workers from cities to rural. Millions of migrants and their families had to travel long distances due to a shortage of trains and buses, unable to exist in cities without jobs or solid incomes. As a result, the police's role in the Pandemic grew to cover another key area of state responsibility: supporting the crisis-stricken weak, impoverished, and helpless who needed emergency transportation to hospitals, critical commodities, food, and relief supplies. This included ferrying dead bodies and aiding with funeral rituals if no one was present to claim the body.[3]

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1 Kapoor, V., *IACP Facets of Police Response to Pandemic Crisis in India*, The IACP.org, https://www.theiacp.org/sites/default/files/iacp%20Factes%20of%20Police%20Response%20to%20Pandemic%20Crisis%20in%20India.pdf.

2 Status of Policing in India Report.(n.d.). *Policing in the Covid-19 Pandemic*, (2020-2021), https://www.csds.in/uploads/custom_files/1629182720_SPIR%202020-2021%20Vol.%20II.pdf.

3 *Id*.

At one point, the police department was at the epicentre of this worldwide health disaster, and they worked as hard as they could, ranking second only to health workers as critical actors, during their course to render crisis-mitigation services despite the continuous rise in danger and unimaginable high levels of expectation from them in the aftermath of widespread anxiety and in security in society.[4]

In this article we will discuss the findings of the role of police under 4 major interfaces police is having to the management of the pandemic, namely; Enforcing the lockdown through movement restriction, Assistance to the Vulnerable during the Crisis, Contact Tracing and the Use of Investigation and Intelligence Skill and the First Responder Interface and Personal Risks involved during the pandemic.

CONCEPTUALIZATION

On the streets of India, a new generation of police officer were seen. They were handing out food and medicine, accompanying the patients to the hospital, and performing songs in the streets, which although not apart of their job profile was done to ease the stress existing in the society at that point of time. Furthermore, this is done without regard for caste, religion, location, class, or any other personal qualities.[5]

During the first ever Covid-19 lockdown, Indian police were seen displaying a completely new side of them, a visual that was formerly incomprehensible. The global spread of COVID-19 had drastically impacted everyday living. Since its discovery in November 2019, the illness has spread fast around the world. The sickness was first detected in India on January 30, 2020, in the state of Kerala, in a student returning from the region Wuhan, the alleged birthplace of the virus. The disease's incidence increased rapidly in India and Kerala in March 2020, following a lack of attention and initiative from the common mass, which imposed a extremely high level of pressure over the Policeforce.[6]

The term police is derived from the Latin word '*politia*', which refers to the position of a state. The term refers to a regulatory system that is responsible for keeping order and implementing the rule of law. Policing is the science of

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4 *Id.* at 1.

5 Johns Hopkins University, *COVID-19 Case Tracker* Coronavirus Resource Center, (2020), https://coronavirus.jhu.edu.

6 Kumar T.K., *Role of Police in Preventing the Spread of Covid-19 Through Social Distancing, Quarantine and Lockdown: An Evidence-based Comparison of Outcomes Across Two Districts*. International Journal of Police Science & Management, (2021), 23(2), 196–207, https://doi.org/10.1177/14613557211004624.

keeping the peace and maintaining order in a continually changing society.[7] The police have been a reason to dread for the common mass since the birth of the concept of police in 1861, when the British designed the modern police system to establish their Raj. The image of a police officer brandishing a lathi and dressed in khaki has long been associated with the country's police force. Despite this, police officers have been doing more than simply abusing their authority throughout the years. They've been offering a wide range of services, from conflict resolution to the protection of the weak[8]. The truth is that cops are mostly problem solvers. Even when such services are not mentioned in the Police Act, they serve the residents in a variety of ways. In his notion of the Problem Oriented Policing, the renowned scholar Herman Goldstein coined the term and concept of "police", stating that all functions should be understood as coming from officers' efforts to address citizens' problems. He stated that it is a common misconception that the role of the police is to govern human activity through the use of criminal laws. In truth, criminal laws are only one tool in a police officer's arsenal; there are many others.

Policing entails dealing with these issues by leveraging the officer's legal and moral authority. The benefit of thinking of cops as problem solvers is that it allows them to do more than just enforce the law and investigate crimes. If the focus is on the end result of police, which is to produce a safe, secure, peaceful, and harmonious society, then the colonial model of acting as the strong arm of the state must be abandoned. The modern professional police force in India must be envisioned as one that collaborates with residents to solve local problems and work with the people. In this perspective, the core ideas of community policing, such as making residents co-producers of their own safety and security, become more meaningful and practical. India requires a police force that respects residents' sovereignty and collaborates with them. Police, in order to solve residents' problems, will constantly require their assistance and collaboration. The years of reformation and changes of life dynamics.

LITERATURE REVIEW

There is limited literature that explores the impact of pandemics or more generally public health emergencies on policing. While the lack of academic literature on the effect of COVID-19 on policing can certainly be attributed to the ongoing nature of the current pandemic, there is little academic or grey

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[7] Garg, R.G. and Singh, A. *Police and Policing in India-A Historical Perspective*. IPLeaders, (2020 Oct. 22), https://blog.ipleaders.in/police-policing-india-historical-perspective.

[8] India, P.T., *Coronavirus: Delhi Govt Orders Closure of Schools, Colleges Till March 31* Business Standard, (2020 March 12), https://www.business-standard.com/article/pti-stories/coronavirus-cases-in-india-reach-74-delhi-govt-announces-shutting-down-of-schools-colleges-cinema-halls-120031201514_1.html.

literature exploring the impact of previous pandemics on police work[9], who provide an initial evidence scan on the possible impacts of COVID-19 on the New Zealand police. Because the literature on the effect of pandemics on policing operations is scarce, this review uses other natural disasters as proxy. While this may seem problematic in some regards[10] argue that disease outbreaks should be treated as other natural disasters and in fact, many challenges are the same. Overall, there view found that the literature in the field is limited but that especially the nexus of policing and public health is an emerging field with many promising studies. Pandemics are rare events that pose extreme challenges to societies and governments.[11] The rarity of the event poses challenges to identify instruments and methods to respond to the problem at both policy and field implementation levels. It is a great responsibility, and state powers have been mainly exercised to: (a) promote public health, morals, safety and the general well-being of the community; and (b) regulate private rights in the public interest.[12] The powers of the state to respond to public health threats include powers to regulate private property and detain individuals.[13] Public health laws are based on the ideals of the common good and communitarian goals and on the legal principles of 'sic utere tuo ut alterum non laed as' (use that which is yours so as not to injure others), and 'salus publica suprema lex est' (public well-being is the supreme law).[14] Police, generally used to prevent and detect crime, maintain public order and provide service to the community,[15] have historically had a role in enforcing public health laws,[16] Public health laws require the police to enforce quarantine, social distancing and take measures to interrupt spread of the disease.[17]

Management of the COVID-19 pandemic required the collaboration of public health and law enforcement agencies. In India, police have been used to control epidemics since the late 19th century,[18] and a system of quaran-

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[9] R. Jones, C. Jones, C. Cantal (n.d.), *COVID-19 and Policing, Performance and Research Insights*, Evidence Based Policing Centre, Initial Evidence Scan 2020.

[10] A. Ricciardi, M.E. Palmer, N.D. Yan, *Should Biological Invasions be Managed As Natural Disasters?* BIOSCIENCE 61(4)(2011)312–317.

[11] Jain V., Duse A. and Bausch D.G., *Planning for Large Epidemics and Pandemics: Challenges from a Policy Perspective*. Current Opinion in Infectious Diseases 31(4)(2018) 316–324.

[12] Galva J.E., Atchison Cand Levey S, *Public Health Strategy and the Police Powers of the State*, Public Health Reports 120(1)(2005)20–27.

[13] *Id*.

[14] Gostin L.O., Burris Sand Lazzarini Z., *The Law and the Public's Health: A Study of Infectious Disease Law in the United States*, Columbia Law Review 99(1999) 59–128.

[15] Wilson J.Q., Varieties of Police Behavior: the Management of Law and Order in Eight Communities. Cambridge, MA: Harvard University Press (1978).

[16] Richards E.P., The Role of Law Enforcement in Public Health Emergencies: Special Considerations for an All-Hazards Approach. Washington, DC: US Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (2006).

[17] *Id*.

[18] Harrison M., *Quarantine, Pilgrimage, and Colonial Trade: India 1866–1900*. The Indian Economic & Social History Review 29(2)(1992)117–144.

tine and inspections has been used extensively. The Epidemic Disease Act of 1897[19] empowered the police to act during an epidemic. With the advent of the COVID-19 pandemic, the Epidemic Act was strengthened through an amendment. There are also other existing laws that empower the state to take legal action to control undesirable activities during an epidemic, such as Sections 188, 269 and 270 of the Indian Penal Code,[20] and Sections 51 to 60 of the Disaster Management Act, 2005.[21]

Home quarantine, social distancing and lockdown are the main measures adopted by different countries to respond to the pandemic.[22] Examining data from Hubei and other provinces in China concluded that the quarantine procedure, individual behaviour change and a policy of containment controlled transmission of the disease in China,[23] found evidence from China, Denmark, Norway and South Korea that lockdown along with adherence to social distancing, resulted in a significant reduction in infection. Similar results have been reported by studies from different parts of the world.[24]

Enforcement of public health laws is resource- and labour-intensive, has a high degree of risk and could cause resentment among people. Enforcement of public health laws through coercive methods may have the adverse impact of failing to reduce spread of the disease and also result in diminished legitimacy of the police.[25] Police efforts have a varied range of outputs of detection of violations, arrests and prosecution. There is, therefore, a need for an evidence-based evaluation of the outcomes of police efforts. Evidence-based analysis of police work calls for the scientific evaluation of police practices to assess what works best.[26] There has been no evidence-based research using systematic evaluation of data to ascertain whether police action contributed to the outcome of mitigating spread of the disease.

AIMS AND OBJECTIVE OF THE STUDY

In the absence of any other broad legal framework available centrally, India invoked the National Disaster Management Act 2005. The National Disaster

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19 The Epidemic Disease Act, 1897.

20 Indian Penal Code, 1860, § 188, 269 and 270.

21 Disaster Management Act, 2005, § 51 to 60.

22 Maier B.F. and Brockmann D., *Effective Containment Explains Subexponential Growth in Recent Confirmed COVID-19 Cases in China*. Science 368(6492): (2020)742–746.

23 Singer H.M., *Short-term Predictions of Country-specific COVID-19 Infection Rates Based on Power Law Scaling Exponents*. arXiv:2003.11997(2020).

24 Dehning, J., Zierenberg, J., Spitzner, F.P., Wibral, M., Neto, J.P., Wilczek, M., & Priesemann, V. (2020). *Inferring Change Points in the Spread of Covid-19 Reveals the Effectiveness of Interventions. Science*, 369 (6500). https://doi.org/10.1126/science.abb9789.

25 *Id.* at 8.

26 Lum C., Koper C. and Telep C.W., *The Evidence-based Policing Matrix*. Journal of Experimental Criminology 7:(2011)3–26.

Management Authority, established under this act, which is ex-officio chaired by the Prime Minister, gave the Central Government the power to give orders to any authority in the country to enforce compliance in the public interest.[27] Under the same act, the police were given a central role in the enforcement of laws and regulations that changed from time to time with the introduction of extraordinary powers.[28]

During the lockdown, general crime reduced by 60-90 percent in various regions as per The Federal Report edition of 2020, but India's unacceptably high rate of jail fatalities stayed practically steady.[29] While the role of the police has always normally been well defined during traditional security threats and emergencies, it was far from normal scenario during the COVID-19 pandemic, which added yet another layer to the already complex work structure of the police response. In fact, unlike the public health services plans, most national response plans to COVID-19 do not address or simply reference the role of the police in broad and generic terms, which further raises a lot of ambiguity.

In this paper it will be our primary concern to-

- Understand the role of police in covid-19 pandemic.
- Finding out the various policing functions during the lockdown.
- Focus on different organisational & structural change due to the pandemic crisis.
- Understanding evolving issues related to the preparedness, the response and the recovery from the pandemic faced by the police of India.

THEORETICAL FRAME WORK

Every concept is based on a theoretical aspect. Similarly, when we are focusing on the policing function and different functions of the police it also have their back by some theories. Analysing the evolution of police system in India, From Mansabdari to Modern community policing it had developed.

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[27] Slater J., & Masih N., *In India, the World's Biggest Lockdown has Forced Migrants to Walk Hundreds of Miles Home*. The Washington Post, (2020 March 28), https://www.washingtonpost.com/world/asia_pacific/india-coronavirus-lockdown-migrant-workers/2020/03/27/a62df166-6f7d-11ea-a156-0048b62cdb51_story.html.

[28] Yamunan S., *Tablighijamaat: How did the Government Fail to Detect a Coronavirus Infection Hotspot?* SCROLL.IN, (2020 April 1), https://scroll.in/article/957891/tablighi-jamaat-how-did-the-government-fail-to-detect-a-coronavirus-infection-hotspot.

[29] Sunshine J., & Tyler, T.R., *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*. Law Society Review (2003) 37(3), 513–548, https://doi.org/10.1111/1540-5893.3703002.

Following a famous theory of Continental theory, the ancient police system could be developed. According to this theory, the Police are the servant of the highest authority and police have little or no share at all in their duties or have any connection with them. From this theory the medieval policing can be explained. The police here were not at all friendly or cooperative to the people rather they were strict and were acting as part of the state. Thus, this approach was not prevalent for longer period of time. This model was quite often found in countries like France, Italy and Spain where the centralized Govt. was the dominant Governmental structure.

Another theory that came up with time was Home rule theory. In this the police were considered as the servants of the community who defend the effectiveness of their function upon the express wishes of the people.[30] Thus, this theory gave rise to the concept of community policing. From this it can be well inferred that police are no more stricter or servant of the state only rather they are getting cooperative to the community members so that they can share their problem and with effective patrolling and surveillance, problems can be solved. This is prevailed in countries like England and United states where there is a decentralized form of Govt. Other than these two models, Patrolling is considered to be the backbone of the police function and it can be well explained by the Koper Curve theory.[31] This theory believes that crime is less likely to happen in certain hot spot areas where there is a presence of police which is noticeable for all. Patrolling got its evolution from foot patrolling i.e. Walking the beat to vehicular patrolling in different mode of transportations. This theory was supported By the Sacramento Police department study in 2011.

METHODOLOGY

In this qualitative research the dimensions of policing in covid era is explored in the Indian Scenario using only secondary data. This study is a doctrinal study (non-empirical type of research). Doctrinal research is also known as traditional or pure form of research for acquiring knowledge. In this study, secondary sources like books, internet databases articles, journals have been are used. From the collected material and the information, there searcher proposes to justify the need of the study and tries to achieve the core aspects of the study mostly using books, articles, journals, etc.

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[30] *Take Online Courses. Earn College Credit. Research Schools, Degrees & Careers.* Study. com | Take Online Courses. Earn College Credit. Research Schools, Degrees & Careers (n.d.). https://study.com/academy/lesson/police-operations-theory-practice.html.

[31] *Differentiate the continental theory of Police Service from the home (autosaved).docx - 1. differentiate the continental theory of Police Service from: Course hero.* 1. Differentiate the continental theory of police service from | Course Hero. (n.d.), https://www.coursehero.com/file/69083168/Differentiate-the-continental-theory-of-police-service-from-the-home-Autosaveddocx.

FINDINGS OF THE STUDY

From the above study, we can divide the findings of the study under few major headings.

MAINTAINING PUBLIC LAW & ORDER AS WELL AS ENFORCING THE LOCKDOWN

Imposing strict lockdowns always proved to be a difficult undertaking all over the world, as it includes implementing a strong lifestyle modification mechanism and redo while the police struggled to figure out how to successfully do it. The Indian police force were fully involved in enforcing the lockdown since the inaugural day the largest global lockdown initiating on the 24th day of March 2022, with a strong sense of duty, responsibility and passion in order to prevent the virus from spreading across the country and safeguard people at large. The movement restrictions become difficult to implement because the social ethic of tightly knit community life, along with the street cultures of everyday life expressions, colloquial lifestyles as well as professions, the human tendency to adjust to a hot and humid climate where access to open spaces[32] becomes a basic necessity, the economic compulsions of poor who work on daily waged survival options, and the panic of the closure of essential services which led to large crowds on the streets, became the question of the prime hour, adding to the horror of the lockdown and compounding the police's problems. This put a tremendous amount of works train on the police to enforce the limits, as some began to follow the laws while others remained stubborn. The police quickly understood that, for all practical purposes, the entire responsibility for enforcing the quarantining procedures in India had been placed on their highly outnumbered shoulders.

To enforce the lockdown, police officers were despatched across the country in different forms, ranging from patrolling vehicles, security patrols, and mass deployment along public areas from the first day of the lockdown. In most of the parts of urban India, severe movement limitations were imposed through the notifications of law and administrative authorities who were expressly empowered by law, specifically the relevant sections of the criminal and administrative laws, necessitating the involvement of law enforcement, a challenge that the Indian police eagerly accepted. These demands occasionally led to coercive practises, drawing unfavourable attention to the police. However, without resorting to excessive coercion, the bulk of Indian police agencies'

[32] Reicher S. & Stott C., *Policing the Coronavirus Outbreak: Processes and Prospects for Collective Disorder.* Policing: A Journal of Policy and Practice, (2020), 14(3), 569–573, https://doi.org/10.1093/police/paaa014.

workforce was successful in imposing the lockdown through stringent access control and movement limitations.

In India, public order and control functions have been an inherent element of police work because police officers are socialised into a policing job position from the outset, with public order management and crowd control functions considered the most important abilities in policing. Managing high population densities in constrained locations while prioritising safety and public order becomes engrained in police procedures. This type of public order and legal enforcement mechanism can be a challenge for the police in terms of delivering unwarranted incident-free, stampede-free, safe and secure public events, congregations requiring public order management skills, challenging large crowds, restricting free access, and controlling unwanted and unnecessary public movements within their predefined and detailed skill set and prioritised job role.[33]

The police authorities' role to regulate crowds and limit movement as required by law has been spelled forth in the larger interest of society; which has most likely worked in the case of limitations and lockdown, most notably in the event of a COVID 19 Pandemic. The 'greater benefit of society' for safe quarantine and garnering society's participation was heavily emphasised among those street level police officers who were seen using physical force or penalising persons who were discovered disobeying the lockdown guidelines. Although this underlying human propensity was not seen throughout the country and was not experienced in most states, when it did arise, the press and popular resistance were able to bring it down. As the poor and defenceless became targets of this sort of police action, the police leadership recognised that this passion for order and control, which is a built-in police system employed to deal with criminals, offenders, and lawbreakers needs to be limited. Despite the fact that all police authorities have condemned, prohibited, and reprimanded this anomaly, further professional standards, behavioural and ethical norms, and training inputs must be implemented.

AID TO THE VULNERABLE DURING THE EMERGENCY

The law enforcement role especially that of the police force, on the other hand, began to alter as a result of a variety of causes, making officers more compassionate and service-oriented while also realising their call to duty and the obligations and responsibilities that the Pandemic has imposed on them. The increased presence of police on the streets resulted in police coming into contact with misery, vulnerability, and poverty far more than any other

[33] *Id.* at 32.

professional group, with the exception of health care providers, as police began to effectively restrict normal life and movements in order to enforce the lockdown. This interactional so occurred with impoverished urban migrant workers who began walking back to their rural homes, causing the pain of people who rely on daily income for food and other necessities. The police had a direct engagement with this sorrow, and the limited presence of other stakeholders and social elements on the field compelled them to take on this obligation to address this vulnerability. By the second week of the lockdown, most police forces had begun some kind of feeding programme for the poor, either by becoming a bridge between community kitchens run by governments and charities in distribution networks, or by opening a personal or organisational drive by the police personnel themselves in feeding the poor on the side lines of their job to effect the lockdown's movement restrictions.

As more charities and public contributions approached the police to distribute or successfully engage in feeding programmes or basic goods distribution programmes, the police became active in cooperating with other government and non-governmental groups in relief activities. The public's faith in the police to deliver and reach out grew as they saw the police interact with relief efforts, their service orientation, and their connections with individuals in need. The police's ability to sympathise and connect with the impoverished and vulnerable people has been highlighted by the police reaction to the country's health crisis and its conjunction with the lockdown.

Although the capability of the law enforcement authorities and police authorities had not been highlighted or remarked on by Indian police analysts. he continuous socialisation of Indian police officers into community orientation, as well as their exposure to the execution of legislation relating to social justice and anti-discrimination, did result in a pro-poor norm establishment in their orientation and practise over time. This is also due to particularly representative recruiting procedures in inducting civilian police constabulary, with a substantial number of which coming from a rural base representative of many castes and groups, as well as social and economic difficulties. Because of their related advantage in recognising vulnerabilities owing to social and economic compulsions, the constabulary's representational nature has the potential to sympathise with weaknesses seen during these difficult times.

This sensitive constabulary receives positive guidance from a sensitive leadership that has been working tirelessly in improving community orientation and emphasising law enforcement related to the protection of the vulnerable sections of society, which has resulted in the inclusion of a public service ethic and provulnerability norm in police capacity building[34]. This adminis-

[34] AlJazeera, *'Future is Scary': Poor Hit Hardest by India Coronavirus Lockdown*. Poverty and Development News AlJazeera, (2020 April 9) https://www.aljazeera.com/news/2020/04/

tration, which is nonetheless held responsible to a human rights-friendly constitution, has been attempting to main stream a pro-poor ethic through the cautious inclusion of social justice, human security, and human rights problems in police training. This is supplemented by the substance of social justice legislation taught to them and the incorporation of soft skills training science in police curriculum during the last two decades.[35]

APPLICATION OF POLICE SKILLS TO FULFILL PUBLIC HEALTH OBJECTIVES

The use of police skill sets in investigations and intelligence is another key area of police interaction with Pandemic management. For contact tracing, an epidemiological field of practise, police domain competence in investigation and forensics has been in high demand. During these periods of fast transmission of the infective virus, as the health system tries to manage its resources and reach, the contact tracing requirements to control the pandemic demand immediate assistance. The police services across India have actively contributed to these attempts at contact tracing, drawing backward and forward links between the affected people, deciphering the pattern of infection transmission, and identifying those who come in to touch with the infected section of the society. The police's fundamental investigative abilities, together with the Indian police's expanded ability in cybercrime investigation developed over the previous two decades of practise, have proven to be a great resource in the investigation of COVID 19 impacted people 'contact tracing.

The police used CDR Analysis of the affected people's mobile phones, as well as other cyber forensic tools, to track down contacts from affected people in spread across the country, to the affected population in the wide area of India, the list goes on from Indian states, state to state. To unravel contact histories and build models of spread, cyber police wings, district police sets, and other specialised police investigative units are collaborating with health specialists to investigate the travel history and mingling behaviours of the afflicted or possibly affected persons. To assist in contact tracking, police throughout India are leveraging their improved capacity to investigate and apply cyber forensic technologies and digital investigative abilities. This task does not end with locating and identifying these people. The police role includes physically tracing these individuals and accompanying medical personnel in order to reach out and assist them in persuading the identified individuals to be tested, hospitalised, or isolated in accordance with health procedures. Because of the stigma linked to the virus, health workers and front-line police officers have

scary-poor-hit-hardest-india-coronavirus-lockdown-200409105651819.html.

[35] Yadav S., *AIIMS Doctors Beaten up by Policemen in Bhopal*, Return to Frontpage, (2020 April 10), https://www.thehindu.com/news/national/other-states/aiims-doctors-beaten-up-by-policemen-in-bhopal/article31303279.ece.

had to deal with the fury of identified infected people and their relatives, who have resorted to violent attacks on health and police personnel. These developments have increased the significance of police presence during testing, contact tracing, and quarantining processes and practises, as well as the requirement for frontline employees to be safe. The police's ability to persuade emotionally charged mobs, tolerance in dealing with abusive behaviour, and tough handling of circumstances to affect order and compliance are all put to the test. They must ensure their own safety as well as the protection of vulnerable health and municipal personnel. The police have dealt with the majority of these situations with patience and without violent retribution, demonstrating a unique sense of grit in the face of difficulty and turmoil, even at the expense of personal safety.

The police, for their part, have faced this problem with patience, determination, and service orientation, as seen by the number of success stories of police officers contributing to this work that have appeared in local newspapers, social media, and electronic media around the country. Personal Risks and the First Responder Interface The police have been subjected to physical attacks and have been exposed to the virus during their interactions with the infected persons, putting their own safety at danger. The violent attacks that various police teams and people have lately experienced while seeking to impose mobility restrictions may be categorised into four primary categories. Many times, police officers have been attacked with hazardous weapons, abused, and stoned in a variety of locations. The second main source of risk for police is during contact tracing and quarantining procedures, when officers have been met with the rage of people who refuse to be hospitalised or quarantined in accordance with health policy and have retaliated violently. Police interaction with affected people while checking and interacting with potentially affected people; accompanying health-care personnel on testing drives, quarantine order distribution, quarantine-related transportation, dealing with defiant people who are infected but refuse to follow quarantine rules, and other similar first-responder duties are the third and one of the most major and unavoidable sources of risk. The extreme dearth of first responder gear and protocols used by cops, as well as the expectations placed on them as part of the different aspects of their employment, increases their exposure as well as raises the chances of their direct contact with the infection. These patterns demonstrate how vulnerable the police work is to being impacted. Due to the nature of police work in teams, when social separation is difficult to create, this risk is heightened. The fourth line of protection comprised of the families of police officers who are participating in pandemic response, directly as well as indirectly. Since a result of police officers' exposure to the virus, the vulnerability of their families has increased, as numerous police departments have recorded cases of the virus spreading among police family members. Public Authority Staff comprising the frontline workers, who worked unconditionally on the front lines, whether in the health sector or the police, have proved to be of invaluable assets in the fight against the epidemic. The pressing and urgent needs of the present are to

recognise their value and worth, as well as to make timely arrangements for their safety and welfare. These are risk considerations that must be factored into policies aimed at maximising police efficiency so that they can benefit from their involvement in pandemic control while also keeping the police force and its staff safe and motivated.

DISCUSSION AND CONCLUSION

The number of people who broke the lockdown in the early days of the imposition did significantly decrease over the period of time. Over the due course of time, People became more aware and well-organized than in the beginning of the lockdown. The police's role in garnering support from public also aided in gaining the trust of the general public, lowering the level of escalation between the communal forces. Apart from the police's vital role, the government's role is also critical during an out break. The role played by the police are tremendous and been successful to a lot extent. Effective management of crowd and other service delivery was to an extend a great and new role played in the streets of the States. Not just the stricter rules but also the leniency had been shown by the police in many genuine cases. Police have assisted the general publics in many services as well. Though in initial days the police and other public took time to get accustom with the new crisis. But with time it has been able to build a support and cooperation to each other and building community policing. The fight against coronavirus had been more effective as a result of excellent cooperation among the public, the police, and the government, among other stakeholders. These lockdowns undoubtedly had a variety of socio - political and economic consequences, but "with careful management both at a general policy level and in terms of sensitive community-based and dialogue led policing, it will be possible to maintain a sense of common endeavour" they were able to draw on the community as a key resource in dealing with the crisis with the help of modern policing.

DRUG TRAFFICKING- AN ORGANISED CRIME AND ILLICIT NETWORK DYNAMICS IN INDIA

—Yogesh Mishra*

ABSTRACT

Drug trade has existed for decades. Depression and other moods have often been treated with alcohol, antidepressants, and marijuana. Since opioid affects only a few numbers of people, it has always received little attention. Additionally, the active chemicals used were less toxic in prior years. The appearance of such drugs as heroin, amphetamines, and methamphetamine has put the problem on the front burner. Drugs have affected millions of people both physically and emotionally, but have led to other societal problems such as organised crime, official, and financial corruption in various ways all over the world. The expansion of networks for moving and transportation of drugs, alterations of views, and changes in principles brought on the early part of the twentieth century's increase in substance addiction. Drug usage has increased significantly in the last two decades, and nearly every country has been impacted by this issue. After armaments, the illicit drug trade is now the world's second largest overseas trade. Domestic violence, child abuse, and family disintegration have all been associated with drug abuse. Many people have turned to drug dealing to pay for their habit, leaving their children hungry and without basics. Since then, illicit and fraudulent practices have entered into academia laboratory hazards and absence have also been linked to industrial opioid abuse Public streets are similarly in danger. because of illegal drugs and abuse, there has been an increase in total crime. This research is a doctrinal and analytical article and it has analysed in details the laws relating to drug trafficking and modus operandi of trafficking of drugs.

Key words- Drugs, trafficking, NDPS Act, Domestic Violence

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INTRODUCTION

Drug trafficking is not a relatively new occurrence. Since the dawn of time, man has used alcohol, morphine, and cannabis to cause euphoria, an imagined relief from feelings of depression, dejection, and fear. The topic of opioid misuse has previously attracted less coverage because it affected such a small segment of the population. Second, the chemicals in use were not as hazardous as they have been in recent years. The arrival on the scene of even more dangerous substances such as opium, LSD, amphetamines, and methaqualone, as well as the rising prevalence of substance addiction even among school-aged children and teenagers, has taken the crisis to the forefront around the world.[1] Apart from the physical and emotional harm that drugs have caused to millions of people, illicit drug trade has resulted in an increase in other anti-social practises such as organised crime, corruption, elected official coercion, illegal financial operations, and criminal breaches of import and export laws around the world. Increased drug supply, development of communication networks, displacement and urbanisation, improvements in perceptions and values, and changes in attitudes and values are some of the key causes that contributed to the spread of drug addiction in the early twentieth century. Especially over the last two decades, there has been an enormous spurt in the use of illicit drugs in the world, and almost every nation has been affected by this scourge. The illegal drug trade is now the second highest foreign trade in the world, after armaments.[2]

Drug misuse has resulted in domestic violence, child abandonment, divorces, and a general disruption to peaceful family life. Many addicts have been forced to sell their personal possessions in order to sustain their abuse, forcing their children to go without food and other necessities of life. Theft, prostitution, and illicit trafficking have also been introduced into educational establishments by drugs. Drug misuse in the workplace has resulted in reduced productivity, absenteeism, sickness, and workplace deaths. Similarly, it has put public road safety in jeopardy. As illicit drugs and violence feed on each other, substance addiction and trafficking have accelerated the overall crime rate.[3]

OBJECTIVES OF THE RESEARCH

The paper is to analyse the legal framework while dealing with drug and illegal trafficking, consumption and production of drug and the mode in which the criminals take up. The objectives of the research are;

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1 Drugs and Narcotics in India and their Illegal Consumption, 1–10 (2021).

2 Ajit Avasthi & Abhishek Ghosh, *Drug Misuse in India : Where do we Stand & Where to go From Here ? India : The Existing Three-pronged Strategies to Address the Drug Problem*, 149 689–692 (2021).

3 Drugs and Narcotics in India and their Illegal Consumption, *supra* note 173.

1. To analyse the mode the drug traffickers, use to commit the crime with regard to drugs.
2. To check the legal framework of the India to curb down the illegal trafficking of drugs internally as well as internationally.
3. To examine how far NDPS Act has helped in preventing the drugs related offences.

METHODOLOGY

The paper is a doctrinal-analytical paper which analyses the legal framework and mode of operandi of the offences inside and outside India. The paper analyses punishment awarded by the legislations in power in India. The primary sources are statutes and legislations enacted in India. The secondary sources are journals, articles, books, online web pages, newspaper article and reports etc.

DRUG CRIMES IN INDIA

The term 'drug' has four sets of definitions scientific, medical, sociological and legal. According to the basic scientific definition, this term refers to a substance, which by its chemical nature, affects the structure or functions of a living organism.

"The Golden Crescent" and "the Golden Triangle", the world's two main regions of "illegal opium cultivation", are sandwiched between India and the Golden Crescent. Since India is both a destination and a transit route for opiates manufactured in these areas, this proximity has long been seen as a source of vulnerability. This reality remains crucial in determining drug trade patterns in the Indian subcontinent. The degree to which heroin confiscated in the country can be traced back to the diversion of licit opium cultivated in the country, however, is still a point of contention.

The "National Survey on the Extent, Pattern, and Trends of Drug Abuse" in India, the first of its kind, was released in 2004 by "UNODC" and the "Ministry of Social Justice and Empowerment". It was discovered that there were 10 million people addicted to alcohol, "2.3 million to marijuana, and 0.5 million to heroin". The study not only points to the issue of India's population having double the global (and Asian) average incidence of illegal opiate use, but also indicates that the recovery facilities available are not commensurate with the 'burden of work' (number of addicted opioid users) seeking urgent treatment[4].

[4] By Nishka & Prajapati Views, *Drug Trafficking in India :* 2–4 (2021).

ILLICIT CULTIVATION

Opium has been grown for centuries in India's north-eastern states for both human and livestock medicinal purposes. It is also used in these regions, as well as Rajasthan, for festivals and celebrations. Although this practise has been outlawed in most locations, it persists in some rural areas, like as Arunachal Pradesh's east. Opium poppy cultivation is still illegal in India. It has been suggested that when the tribal people in the north east came into touch with wood merchants from the plains in the late 1980s, illicit opium poppy production became profitable. There is relatively little commercial activity in these places, and farming practises are still essentially subsistence. Opium is frequently the only marketable commodity produced, and it has the extra advantage of being sold at the farm gate by merchants or wholesalers, which is not an option for most other agricultural products. Despite the difficulty of estimating the extent of illicit cultivation, a UNODC-sponsored study in 2001 found that opium production was documented in Arunachal Pradesh (in the Upper Siang, Lohit, Changlang districts, and the Khonsa circle of Tirap district), Uttaranchal (Uttarkashi and Dheradun districts), and Uttar Pradesh (in the Upper Siang, Lohit, Changlang districts) (Kulu, Mandi and Kalpa districts). According to reports, certain quantities are also made in Jammu and Kashmir, Bihar, and West Bengal (NCB 2002). According to reports from 2004, Karnataka was doing experimental cultivation[5].

DRUG TRAFFICKING

Since India is both a destination and a transit route for opiates manufactured in these areas, this proximity has long been seen as a source of vulnerability. However, the exact proportion of heroin ingested in India due to opium diverted from licit cultivation is still a point of contention. Nepal is also a common source of cannabis, both medicinal (marijuana) and resinous (hashish) (hashish). As is customary in all nations, an assessment of law enforcement's work in capturing large amounts of narcotics and making similar arrests serves as the foundation for a study of drug trade trends.

Unscrupulous farmers are known to redirect a portion of illicitly processed opium, which is then turned into heroin. "South West Asia", "South East Asia", and indigenously developed heroin from diverted opium are the three major sources of heroin trafficked in India. In 1998, "South West Asia", which has historically been the main source, accounted for 37% of all heroin seizures. SW Asian heroin's share of total Indian seizures has been steadily decreasing, accounting for just 4% of total heroin seizures in 2003. South East Asian opium has always accounted for less than "1% of total seizures (NCB Annual

[5] Executive Summary, *Drug Trafficking and Laws* 27–74 (2004).

Reports, various years)". The lack of a heroin signature scheme in India makes it impossible to determine the provenance of most of the heroin confiscated with utter certainty. It is possible to determine provenance in situations where precise labels, logos, and numbers are still available. However, because of potential replacement and adulteration of the original confiscated drug, these distinguishing labels may be missing as the substance moves through many hands[6].

According to reports, terrorist organisations in India's Manipur and Meghalaya have formed a patronage relationship with drug smugglers in exchange for funding. Hashish is grown on the island, and both herbal cannabis and hashish are smuggled in by trucks and passenger vehicles from Nepal. According to studies, Nepalese hashish accounts for almost 40% of all seizures. Each year, Indian law enforcement collects between 80 and 100 metric tonnes of cannabis. In 2003, 79 metric tonnes of hashish (charas) and herbal cannabis (ganja) were produced, compared to 88 metric tonnes in 2002 and 87 metric tonnes in 2001. Therapeutic hemp makes up the majority of illegal drug seizures in India. In 2003, the whole north-east accounted for 34% of all cannabis confiscated across the country. The "Ministry of Social Justice and Empowerment" and "UNODC", contains a multi-modality approach whose main advantage is to ensure crosschecking, triangulation and multiple indicators in order to provide the most accurate picture of drug abuse trends[7]. The National Survey has four major components.

A) "National Household Survey of Drug and Alcohol Abuse (NHS)"

B) "Drug Abuse Monitoring System (DAMS)"

C) "Rapid Assessment Survey of Drug Abuse (RAS)", and

D) "Focused Thematic Studies"

These components deal with;

- "Drug Abuse among Women"
- "Burden on Women due to Drug Abuse by Family Members"
- "Drug Abuse among Rural Population"
- "Availability and Consumption of Drugs in Border Areas"
- "Drug Abuse among Prison Population"

[6] *Id.*
[7] *Id.*

MODE OPERANDI OF OFFENCE

There four routes which are usually taken by the trafficker[8];

a) "India-Pakistan border": Because of its proximity to the "Golden Crescent", the world's leading source of opium and cannabis, the India-Pakistan border is vulnerable to heroin and hashish monitoring[9].

b) "India-Nepal border": The two cannabis derivatives historically tracked from Nepal into India are hashish and marijuana/ganja. Increasing demand in India for Nepalese and Bhutanese hemp, as well as corresponding demand in Nepal and Bhutan for codeine-based pharmaceutical preparations and low-grade heroin, has resulted in two-way narcotics and drug smuggling through the India-Nepal and India-Bhutan borders[10].

c) "India-Myanmar border": The India-Myanmar border's proximity to the "Golden Triangle", rising drug demand among the local population in the North Eastern states, political instability and insecurity caused by several insurgencies in the region, and a porous and poorly guarded border provided a fertile ground for trackers to smuggle heroin and psychotropic substances.[11]

d) "India-Bangladesh border": The India-Bangladesh border has been prone to drug smuggling, including opium, marijuana/ganja, hashish, brown sugar, cough syrups, and other substances. Drug monitoring along the India-Bangladesh border is aided by a high demand for codeine-based cough syrups in Bangladesh, a porous border, dense settlement along the border, and close trans-border ethnic links.[12]

LAWS TO CURB DRUG CRIMES

The "NDPS Act of 1985" in India regulates drug misuse and trafficking. Except for medical and research purposes and as permitted by the legislature, this act prohibits the production, processing, transportation, export, and import of all narcotics medicines and psychotropic substances. The Act imposes severe penalties on someone who violates it, and if an individual is found peddling drugs for the second time, the offender can face the death penalty. The act also allows for the imprisonment of someone for longer than two years in locations designated as particularly endangered by the act[13].

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8 Drugs and Narcotics in India and their Illegal Consumption, *supra* note 173.

9 Idsa Occasional & Paper No, Drug Trafficking in India: A Case for Border Security.

10 *Id.*

11 *Id.*

12 *Id.*

13 Narcotic Drugs and Psychotic Substances Act, 1985.

The "NDPS Act" also allows for the forfeiture of property obtained through illegal drug trafficking. In addition, in 1988, the Indian government passed the "***Prevention of Illegal Trade of Narcotic Drugs and Psychotropic Substances Act"***, which provides for the arrest of people accused of drug trafficking. In addition, a few provisions of the "1962 Customs Act" remain in place to prevent the illegal sale of precursor chemicals[14].

India is a signatory to the "SAARC Convention on Narcotics Drugs and Psychotropic Substances, 1993", in terms of multilateral deals with neighbours. The convention calls for frequent meetings of member country home ministers and secretaries, as well as contacts among members of the "SAARC Conference on Police Cooperation". In 2009, India signed the "BIMSTEC Convention on Cooperation in Combating International Terrorism, Transnational Organized Crime, and Illicit Drug Trafficking", which establishes a legislative mechanism for all member countries to tackle drug trafficking and organised crime. India is also a member of the "Pentalateral Cooperation on Drug Control", which aims to deter the illegal exchange in precursor and other chemicals used in heroin production. In addition, India has signed "Memorandums of Understanding on Narcotics Drugs" with Bhutan, Indonesia, Iran, Oman, the United States, and Pakistan. India has also formed Joint Working Groups on Counter-Terrorism with 27 countries to address drug-related crimes. India also partners with the Drug Liaison Officers of many countries deployed in South Asia for sharing\intelligence, performing joint operations/investigations and for monitored deliveries. India has also taken part in a number of conferences, interactions, and meetings, including the "Commission on Narcotic Drugs", the "Asia-Pacific International Drug Enforcement Conference", the "Regional International Drug Enforcement Conference", the "Anti-Drug Liaison Officials' Meeting for International Cooperation", the "CPDAP National Drug Focal Points Meetings", and others, to discuss various drug trafficking-related issues[15].

The "NDPS Act", however does not hold back on its diligence and punishments relating to illicit trade and delivery of drugs through denial and criminalization of the manufacture, development, ownership, selling, usage, buy, import, export and the ingestion of narcotic drugs and psychotropic substances[16].

However, the Act permits leniency only where the medicines are to be used for medicinal uses or experimental testing that has been properly authorised by the appropriate authority. Additionally, the "NDPS Act" appeared to provide stringent penalties for drug trafficking, to extend enforcement authority and to

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[14] *Id.*

[15] Drugs and Narcotics in India and their Illegal Consumption, *supra* note 173.

[16] *Id.*

enact international treaties to which India is a party, as well as to direct psychotropic drugs and restrict their use. This is a largely reformatory law, since it mainly regulates drugs. Additionally, this statute allows for capital punishment, which can be imposed immediately under the Act. Additionally, the 2014 amendment stated that the court had the power to impose capital punishment and also provides for 30 years of detention as a replacement for capital punishment. The "***Prevention of Illicit Trafficking of Narcotic Drugs and Psychotropic Substances Act"*** was enacted in 1988 for the express purpose of supplementing the "NDPS Act". It includes provisions pertaining to the preventive detention of each and any person who is involved with or suspected of drug trafficking[17].

OFFENCES AND PENALTIES UNDER NDPS ACT-

Offenses	**Penalty**	**Sections of the Act**
"Cultivation of coca plants or opium, cannabis without license"	"Rigorous imprisonment up to 10 years + fine up to Rs.1 lakh"	Opium –18(c) Cannabis –20 Coca-16
"The embezzlement of opium by licensed farmer"	"Rigorous imprisonment of up to 10 to 20 years + fine Rs.1 to 2 lakhs (regardless of the quantity)"	19
"The manufacture, production, sale, possession, transport, purchase, import/export inter- state, or use of psychotropic substances and narcotic drugs"	"For a small quantity of drugs, the punishment is still a rigorous imprisonment for up to 6 months or a fine of Rs.10,000 or both. More than a little quantity but less than business quantity would result in rigorous imprisonment for up to 10 years + fine up to Rs.1 Lakhs. And commercial/ Business quantity would attract rigorous imprisonment of 10 to 20 years + a fine Rs.1 to 2 Lakhs"	Prepared opium-17 Opium – 18 Cannabis – 20 Manufactured drugs or their preparations- 21 Psychotropic substances-22
"The import or export or transhipment of psychotropic substances narcotic drugs."	Same as above	23

[17] *Id.*

Offenses	Penalty	Sections of the Act
"External dealings in NDPS-i.e. controlling and engaging in trade wherein drugs are supplied to an individual outside India and drugs are also obtained"	"Rigorous imprisonment 10 to 20 years + a fine of Rs. 1 to 2 lakhs (Regardless of the quantity)"	24
"Knowingly allowing one's premises to be used for committing an offense"	Same as above	25
"Violations pertaining to Controlled substances (precursors)"	"Rigorous imprisonment up to 10 years + fine Rs. 1 to 2 lakhs"	25A
"Financing traffic and harbouring offenders"	"Rigorous imprisonment 10 to 20 years + fine Rs. 1 to 2 lakhs"	27A
"Attempts, abetment and Criminal conspiracy"	Same as for the offense Attempts	28
"Consumption of Drugs Morphine, cocaine, heroin"	"Punishment is Rigorous imprisonment up to 1 year or fine up to Rs.20,000 or both. And for consumption of some other drugs- Imprisonment up to 6 months or fine up to Rs.10, 000 or both. And there is immunity from the legal proceedings provided to addicts if he/she volunteering for treatment"	27 Immunity– 64A
"Punishment for violations not elsewhere specified"	"Imprisonment for up to six months or fine or both."	32

For three years, India has been plagued by the menace of drug trade a long time. The proximity of the nation to two of the world's biggest drug markets various external and internal causes, as well as opium-growing areas. As a result, it has become a drug transportation, source, and destination. The country's drug trade trends and dynamics show a steady change away from traditional/natural drugs and toward illicit drugs that are trafficked and consumed in the country. In the 1980s, a significant amount of opium and hashish was imported into the world via different borders from the source countries. While these products are still being trafficked, but in smaller numbers, synthetic medicines such as ATS and codeine-based medicinal preparations have exploded in popularity. Persistence is a virtue.

CONCLUSION

Drug trafficking has been more prevalent over time, implying that the sanctity of boundaries is being violated and their protection is being jeopardised. According to several surveys and media interviews, opioid use and trafficking are on the rise. India has used a variety of strategies to combat drug trade and secure the country's borders from such incursions. On the one side, it has adopted strict anti-drug legislation, co-opted several charitable organisations, and tried to strengthen the physical protection of its borders by a variety of means; on the other hand, it has sought cooperation from its neighbours and other countries through a number of bilateral and multilateral agreements. These attempts have been only slightly effective in resolving the problem. A few proposals are made to increase the likelihood of success in combating drug trafficking:

1. Preventing drug trade must be given a higher priority- At the moment, it is included in the border protecting forces' broader mission to 'prevent piracy and all other criminal operation.' Special strategies must be developed to combat drug trafficking across borders. Coordination between various agencies must be enhanced. The collection of information/intelligence on drug distribution, as well as its research and dissemination capability, must be improved. Corruption within border guarding forces and other relevant entities must be dealt with pragmatically. Although officials convicted of drug trafficking should face harsh punishment, appropriate compensation programmes should be implemented to incentivize workers to work tirelessly to deter drug trafficking.
2. To determine the magnitude of the issue, a database on the manufacture, trade, and use of different drugs at the national level should be established. Various domestic legislation passed to combat opioid trafficking should be strictly enforced, and drug stockists should face harsh penalties. The government should provide farmers with suitable alternatives in order to wean them away from illicit poppy and cannabis cultivation. Renewal of agencies such as the SDOMD is necessary.
3. Strengthening the capacity of staff engaged in the prevention of drug trafficking in India and its neighbouring countries should be prioritised. Above all, greater coordination with neighbours on drug trafficking issues must be developed.

ROLE OF PRIVATE ENTITIES IN SPACE AND ITS EFFECT ON THE ENVIRONMENT

—Jinia Kundu*

ABSTRACT

The launch of a large number of satellite missions into space, ceasing operations of some satellites, and certain mishaps leading to the destruction of certain satellites have resulted in the formation of debris in outer space. This space debris has become a major concern in the international community primarily because of the imminent threat that they pose to future space programmes, the space environment, and its consequences on Earth. The problem is escalated by the fact that the various laws regarding outer space are ambiguous in several ways especially when it comes to attribution of responsibility and liability. This meant that laws needed to be framed to regulate the operations of private entities in outer space, a realm that is said to be the common heritage of mankind. This paper aims to showcase the impact of increasing space activities on the space environment, and the existing legislation that deals with operations in outer space, while at the same time, explaining the kind of role private entities will be playing in the space industries.

Keywords: Private entities, space debris, space environment.

INTRODUCTION

"As the awareness of the earth's environment and the exhaustibility of its resources increases around the globe, unavoidably also questions concerning the impact of space activities on that terrestrial environment and in a further

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step on the impact of our human activities on the outer space environment arise[1]".This has been accentuated by increasing private participation and competition among the various private stakeholders who have contributed to different space exploration activities. Inevitably this has raised questions about the ripple effects from space debris generated through remote sensing, space explorations by spacecraft, etc. Therefore, this generates challenges from a policy perspective regarding privatization and its consequences. Privatization can be a critical policy-making incentive whether it is in education, the military, or social security, thereby permitting citizens to be more compatible with the policy[2]. Space exploration through privatization is based on a cost-saving approach and the outsourcing of such activities reviewed by public scrutiny assumes lesser importance as a part of a democratic state[3]. For the Government, it is a necessity to look for private operators as ordinarily, it cannot explore without collaboration with private entities.

Globally in jurisdictions such as the United States of America, certain approaches like privatization through operations, contracts, franchising, and competitiveness through different business models are followed. Complete privatization refers to asset sales through government participation. Space-related privatization includes the transfer of management and functional aspects of public facilities to private enterprises. Another approach is franchising, where a contract is awarded to a private company by the public sector wherein the sole right exists to execute services within a particular territory. Moreover, there is an open competition where private participation influences telecommunication services through satellites[4]. In jurisdictions like India, the quest for the private sector's space exploration began in the 1970s when the Indian Space Research Organisation (hereinafter ISRO) entered into technology transfer agreements to encourage innovation through launch vehicles and satellites. Such agreements had the safe harbour options of buybacks to ensure the survival of the business.

Innovation-led space exploration activities have differences in the methodology followed by companies in developed countries and emerging economies. For instance, technological innovation happens with the combination of incumbent know-how and existing technology to solve local problems through new

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1 Dr. Ulkrike M. Bohlmann, *Connecting the Principles of International Environmental Law to Space Activities*, Proceedings of the Intl. Int. of Space L. 2021, 301 (2012).

2 Nestor Delgado, *The Policy Evolution and Privatization of Commercial Space Systems*, 1, 7 (2018) (Honors Theses 734) available at https://egrove.olemiss.edu/hon_thesis/734 (last visited on 19th August 2021).

3 Pawe³ Frankowski, 'Outer Space and Private Companies: Consequences for Global Security, 5 POLITEJA, 131, 135 (2017), *available at* https://ruj.uj.edu.pl/xmlui/bitstream/handle/item/51943/frankowski_outer_space_ and_ private_companies_2017.pdf?sequence=3&isAllowed=y (last visited on 17th August 2021).

4 *Supra* note 2, at 36.

business models. As a result, India becomes the perfect destination for international companies to use the jurisdiction for 'reverse innovation', which is primarily driven by the low cost of equipment even if with input from both local and foreign subsidiaries. A case in point is General Electric's low-cost equipment related to ultrasound and ECG machines were led by development teams in India[5]. Based on the aforementioned strategy, India can be a conduit for global companies to generate business expansion in the Space exploration sector by resorting to methods like the adoption of industry practices, improvement of service level access to new territories, and improving system redundancy. The research method followed to write this paper is doctrinal.

NEW SPACE INDUSTRY: AN INNOVATION PARADIGM

There is a paradigm shift in the role that private enterprises are playing in the space industry as they are opening new small industries within the larger space sectors. This has incentivized many such companies to pursue space exploration by combining commercial and technological acumen. Within the domain of the space industry, the proliferation of new technologies has created a competitive landscape for many companies such as "Space Exploration Technologies Corporation (hereinafter SpaceX), Virgin Galactic, Blue Origin, Planetary Resources, MarsOne, and Deep Space Industries, etc."[6] These companies are on the verge of constant innovation within their chosen areas of space exploration. This surge of private companies has been associated with an umbrella term known as the 'new space industry'.

Even though there is no universally accepted definition, the term refers to innovation in thinking and challenging the status quo in industry practices. In other words, the focus of this industry is not so much on conventional commercialization but on out-of-the-box thinking and its implementation. This is a paradigm shift from an era when there was a government monopoly in the space exploration industry and therefore there is a shift towards altering the conventional ways of space exploration. A case in point is the space mining industry which has witnessed unconventional ways of space exploration and innovation. Something like this is an unprecedented development in the space industry.

Technological developments will permit new sectors within the space industry to blossom. There have been several instances where this pattern can be

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[5] Narayan Prasad, *Traditional Space and New Space Industry in India: Current Outlook and Perspectives for the Future* in Rajeswari Pillai and Rajagopalan Narayan Prasad (eds.), Space India 2.0: Commerce, Policy, Security and Governance Perspectives 11, 20 (2017).

[6] Evarist Jonckheere, *The Privatization of Outer Space and the Consequences for Space Law*, 2 (May 2018) (LLM Dissertation, Faculty of Law and Criminology Ghent University Department of European, Public and International Law).

observed. For instance, technology enabling surface operations on the moon, mars, and asteroids will significantly influence the space exploration industry in the upcoming years. There has also been a reduction in cost incurred for space launches thereby encouraging business sustainability in the areas of tourism and mining in the space industry. As a result, this is an opportunity for many jurisdictions to experiment through private participation and break new frontiers in the space industry.[7]

Over the years, governments of various states and privately owned organizations, both have taken an interest in conducting operations dealing with outer space. Be it launching satellites or attempting to explore the moon, the interest has not wavered, on the contrary, it has only increased over time. In the past, most states, except for the Soviet Union, did not have the infrastructure necessary to launch space objects and usually partnered with the National Aeronautics and Space Administration (hereinafter NASA) to conduct operations. With time, however, private companies, especially manufacturers of launch began catering to the demand for space shuttles that could meet the requirements of various countries interested in space-based operations, and thus began the era of private operations in outer space, with companies like SpaceX, Moon Express, etc. looking to operate in the space industry. SpaceX has of late provided launch services for a variety of civil, and commercial national security space systems.[8] SpaceX's starship program is an example of fully reusable launch mechanisms for future moon and mars landings.[9] This has the potential for reduction of costs by a considerable limit thereby increasing the scope for more such missions at lesser expenses.

Though the starship program is not an exception to setbacks along the way, the company has been consistent in developing new prototypes for the program and testing them for challenges such as fuel issues, among others. Innovation and persistence are therefore at the forefront of such explorations and a testament to the 'New Space industry' movement which has ushered in a new era in private space exploration. Moon Express similarly has ensured that their commercial lunar landers and related launches add value to the space exploration industry. There has been increased private investment in the company owing to its impressive and viable economic model which has opened the doors for the company to add more feathers to its hat. This is in furtherance of the company's mission to create low-cost space missions to the moon through a sustainable business model. The aforesaid examples are a testament to the

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7 Executive Office of the President Council of Economic Advisers, Economic Report of the President (2021) available at https://www.govinfo.gov/content/pkg/ERP-2021/pdf/ERP-2021-chapter8.pdf (last visited on 18th August 2021).

8 *Id*.

9 STARSHIP SN 15 available at https://www.spacex.com/vehicles/starship/ (last visited on 17th August 2021).

companies' alignment with the idea of smart innovation through calculated risks.

IMPACT OF INCREASING SPACE ACTIVITIES ON THE SPACE ENVIRONMENT

Concerning Earth's observation and satellite internet, there is intensive mass production of satellites to serve the said purposes currently undertaken by private companies. Within the small satellite markets, there is deep segmentation concerning "catalog" parts required for manufacturing a satellite, such as instruments, thrusters, communications radios, and solar arrays[10]. As a result of the aforesaid, there is a significant investment into this industry thereby indicative of a paradigm shift in the space industry.

Space exploration has become an essential part of the world economy, scientific activities, and security systems. Because of the proliferation of multi-space exploration activities, there has emerged intense competition between private enterprises for space supremacy. While on one hand, this has led to increased innovation, there is a constant surge of space debris due to such exploration activities. Consequently, these exploration activities have created an unfavourable environment for further space exploration and effective enforcement of space laws.

Detrimental Effects of Space Launches

The launching of any space vehicle including rockets involves a procedure that can burn millions of pounds of propellant in a short period that leaves its impact on the environment in due course of time.

Varying levels of emissions are produced by the rocket engine propellants. Increased space exploration has led to greater carbon dioxide emissions on account of differences in the size of the rocket and the fuels which are used in them. The common emissions are water vapor and carbon dioxide from liquid and solid fuels, as well as hydrochloric acid from only solid fuels[11]. A case in point is "NASA's Space Launch System (SLS) which uses liquid oxygen and nitrogen whereas a private entity like SpaceX relies on kerosene based-fuel (RP-1), the combustion of which with oxygen leads to significant carbon

[10] Reason Foundation, *The Economics of Space: An Industry Ready to Launch*, (2019) available at https://reason.org/wp-content/uploads/economics-of-space.pdf (last visited on 19th August 2021).

[11] Martin N. Ross and Darin W. Toohey, *The Coming Surge of Rocket Emissions*, AGU NEWS (Sept. 24, 2019) available at https://eos.org/features/the-coming-surge-of-rocket-emissions (last visited on 22nd August 2021).

dioxide emissions"[12]. Increased gas emissions from rockets considering the significant launch rate do not affect the space environment or impact the global climate for the time being, and they are minimized by atmospheric inputs from different origins but this might be a matter of concern in the future. As a result, because of the differences in equipment and fuels, there is less control over emissions.

NASA's solid booster rockets comprise an aluminum powder and ammonium perchlorate. Because of their combination, aluminum oxide and the diverse nature of different products are created. Extensive research has shown that these aluminum oxide particles can lead to global warming due to the absorption of outgoing radiation. "The perchlorate oxidizers which can provide for combustion in booster rockets can produce increased quantities of hydrochloric acid"[13]. This acid being eroding and soluble in water can decrease the pH level of water thereby creating an environmental hazard for fish and other wildlife. Research by NASA shows that there can be a reduction of plants near the launch pad due to the significant environmental impact of such launches.

Beneficial Effects of Space Launches

While space launch programmes can have negative impacts on the environment, there is some silver lining in relation to alternative energy research and development and energy-efficient systems. NASA's innovative approach in the field of space technology has spurred commercialization used in the private sector and the same can be said for the programmes using sustainable systems. The difficult environmental conditions signify that astronauts must rely on technology while at the same frugality with resources can also survive in space. NASA research has been at the forefront of exploring sustainability-based research into efficient private sector participation in space. For instance, waste management systems and air revitalization, being a part of daily life, have also been NASA's focus areas in the quest for sustainable systems with regard to space exploration activities.

Space provides a very limited scope for power generation. Consequently, NASA has played a commendable role in developing different categories of sustainable energy systems. Today, in the areas such as "photovoltaics, fuel cells, solar power, geothermal energy, hydrogen-based fuels, and power management distribution"[14], NASA has played a significant role in developing alter-

[12] *Sustainability in Space Travel: How Does Space Exploration Impact the Environment?* THOMAS (Jan. 20, 2020) available at https://www.thomasnet.com/insights/sustainability-in-space-travel-how-does-space- exploration-impact-the-environment/ (last visited on 22nd August 2021)

[13] *Id*.

[14] National Aeronautics and Space Administration, *NASA Green Initiatives*, (2009) available at https://www.nasa.gov/pdf/327136main_NASA_Green_Initiatives.pdf (last visited on 25th

native energy sources and ensuring that instance competition among private players does not hamper research and development of alternative sources. Exploration activities to different planets like Mars will act as a compulsive factor to the growth of diverse sustainable energy systems.

EXISTING LEGISLATIONS THAT DEALS WITH OPERATIONS IN OUTER SPACE:

The Outer Space Treaty[15] (hereinafter OST) makes recognition for the benefit of mankind with the progress of space exploration for peaceful purposes. The preamble makes it clear that there must be international collaboration in space exploration and development. The treaty per se does not provide for space exploration opportunities by the private sector, even if there is extensive evidence to point out the valuable contribution made by different commercial entities which can meet the objectives of the OST. It is pertinent to note that the said Treaty talks about the usage of resources irrespective of the economic and scientific development of all countries.

There are specific articles that endorse the fundamental purposes of the OST. For instance, "The space exploration in the realm of outer space, moon and other celestial bodies is aimed to benefit mankind in general, thereby endorsing the objective stated in the preamble of the OST"[16]. Similarly, the explorations cannot be subjected to claims of sovereignty, through the use or occupation or any other methodology[17].

From the perspective of property rights Articles 6, 7, and 8[18] hold relevance on account of private ownership, sovereignty rights, and related issues. While it is clear that OST does not make private space exploration a priority, an important concern is in relation to the laws which the private investor has to follow if a space exploration project is to be pursued. Even if the OST talks about common ownership of resources, if there is private participation the opportunity exists for sovereign nations to exercise ownership of the resources through private entities. Therefore, in light of increasing private participation, the existing laws must take into account the practical difficulties that can arise in such scenarios for ownership of resources. There is also controversy over whether a private entity can remove resources or celestial bodies without claiming ownership over the land.

August 2021).

15 The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon And Other Celestial Bodies is commonly known as the Outer Space Treaty 1967.

16 The Outer Space Treaty, art. 1, Oct. 10, 1967, UN Resolution 2222 (XXI).

17 The Outer Space Treaty, art. 2, Oct. 10, 1967, UN Resolution 2222 (XXI).

18 The Outer Space Treaty, Oct. 10, 1967, UN Resolution 2222 (XXI).

The Moon Agreement[19] is in alignment with many of the provisions of the Outer Space Treaty as applied to the Moon and other celestial bodies, conditional on the fact that the Moon and other celestial bodies must be utilized for exclusively peaceful purposes, there is no large scale environmental impact and the United Nations must be informed about the purpose of the exploration[20]. The agreement also provides for consideration of the Moon and its natural resources as a common heritage for mankind and their feasible exploration opportunities in a peaceful manner.

CONCLUSION

The space industry is a niche industry where innovative products and services are offered through multiple channels comprising different vendors. Due to extensive research and development and high sunk cost, space research is characterized by increased expenditure on different facets of space exploration[21]. However, profit is not the only motive because some technology can be viable for social benefit on account of reduced profit margins due to under investment in technological development. Therefore societal benefit comes as a corollary to aspects of private space explorations.

The highly specialized space exploration industry got a boost since 2010 when private corporations impacted innovation through launches, satellites, and space infrastructure thereby bringing in capitalist and rent-seeking behaviour. The development of the industry since has largely been focused on the concept of reusability wherein used rocket boosters would add value for future space launches. This can be referred to as the 'SpaceX effect'[22]. It is therefore no surprise that this industry is yet to achieve a high level of saturation given the diverse nature of innovation brought about by private participation.

With the origin of the new space industry movement companies such as SpaceX, Blue Origin, Virgin Galactic, etc have launched space exploration missions utilizing their technological resources and innovative pursuits. This has therefore changed the face of the global space exploration industry. Apart from the aforementioned companies, there is immense potential for Chinese companies which are trying to compete in this niche industry, leading to global competitiveness.

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[19] The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (commonly known as Moon Agreement) was adopted by the General Assembly in 1979 in resolution 34/68.

[20] United Nations Office for Outer Space Affairs (UNOOSA), *Agreement Governing the Activities of States on the Moon and Other Celestial Bodies,* (1979) available at https://www.unoosa.org/pdf/gares/ARES_34_68E.pdf (last visited on 25th August 2021).

[21] *Supra* note 3 at 144.

[22] Victor L. Shammas & Tomas B. Holen, *One Giant Leap for Capitalistkind: Private Enterprise in Outer Space,* 5 Palgrave Communications 1, 2 (2019).

In essence, it can be safely concluded that the global space industry with its technological competencies and nuances ought to be harmonized with questions of commercial competitiveness and changing legal interpretations and narratives. Such kind of methodology will ensure that developments in different dimensions of the space industry will holistically take care of the interests of multiple stakeholders such as private corporations, regulators, and sovereign states. Further, the pace of technological development will ensure that all stakeholders are having adequate incentives to contribute significantly to the development of the space industry.

A CRITICAL ANALYSIS OF ANTI-MONEY LAUNDERING AND ANTI TERRORISM LAWS WITH SPECIFIC REFERENCE TO THE BANKING SECTOR

—Saptarshi Das*

ABSTRACT

"In the contemporary world, money laundering and terror financing are the financial crimes which have deep rooted socio-economic effects. Money laundering refers to the process in which proceeds from a cash generating, profit making illegal business like corruption, drug trafficking and market manipulation are channelized into the formal economy by an intricate network of illegal processes usually by a network of agents and corporations. In the modern age, this illegal money is used to finance terrorism and related activities. There has been a concerted fight by several multinational agencies like the IMF against money laundering and terror financing by cutting off the resources available to the terrorists and ensuring the stability of the system. A robust set of laws is extremely essential for the fight against the money laundering and terrorism financing. This paper explains the concept of money laundering and its relation with terror financing and critically analyzes the anti-money laundering laws, examines its loopholes and provides constructive suggestions for the strengthening of the legal framework to combat the financial crimes of money laundering."

Keywords: Money Laundering, Terror Financing, Palermo Convention, 'Hawala' Network

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INTRODUCTION

The globalization of the world markets have been a contributing factor in the growth of the world economy. The concepts of free trade, lower tariffs for imports, blurring of the geographical boundaries of the world, people-to-people exchanges and liberalized visa regulations etc. and opening up of the erstwhile closed economies to the World Trade have led to double digit economic growth in many of the erstwhile economically poorer countries of the world. However, on the flip side the criminal organizations and the mafia groups have taken an advantage of these free trade policies and in this process have used these regulations to their advantage by converting their illicit earnings into legitimate businesses.

The origin of the money laundering has a very interesting origin. The phrase "money laundering" originated from the term "Laundromats" in the United States which were used as a cover to conceal illicit gains. The reason behind this was Laundromats were cash businesses and this was an unquestionable advantage. It was a process in which the money which was received from the illicit sources were converted into legitimate sources of money by making it go through an ingenious process involving a lot of companies and complicated transactions involving a big channel of bogus companies and by carrying out multiple transactions. The arrest and conviction of Al Capone convicted in 1931 for tax evasion was the time when the concept of money laundering emerged in the world. Money laundering in the recent times is not a very closely guarded secret because the when an individual has money from illicit sources it is very important from him to make it look as if it had come from legitimate sources so as to divert the suspicion of the law enforcing authorities in the country.[1]

This can be explained through a simple example. Suppose a criminal group is engaged in trading in drugs and this drug smuggling earns the group millions of dollars. But as they could not legitimately account for this money therefore they have to channelize the money into some legitimate and legal businesses so that the income is perceived as legitimate. The routing of the ill-gotten wealth is mostly done through some companies which are nothing but shell companies designed only to funnel money from one jurisdiction to the other. Money per se has to be laundered for two reasons. Firstly the money trail itself can become evidence against the perpetrators of offence and secondly illicit money with criminals can be the target of investigation and action. However, there are a lot of divergences in the decisions of the money laundering definitions in various countries and what may be money laundering in one country may not be money laundering in the other country. This phenomenon thus becomes problematic when the investigation authorities are pursuing the

[1] Levi M. and Reuter P., 2006. Money laundering. Crime and Justice, 34(1), pp. 289-375.

criminals on the cases of money laundering. There are three primary stages in which the money is laundered in the system. In the first stage of laundering, money is pumped into the system, then he enters into several financial transactions to mask the ill-gotten wealth and in the final stage these ill-gotten proceeds re-enter the economy of the country.

It is in this context that the phenomenon of terrorism should be brought into our fold of discussion. Terrorism is a global phenomenon in the modern context and it is pertinent to mention that the terrorism has assumed alarming proportions in the contemporary world. Although terrorism is a global phenomenon, yet there is no universally accepted definition of terrorism and therefore different countries contextualize and define terrorism in their own terms. It could be said that terrorism could be defined as the "unlawful use of violence to create a general fear in the mind of the population to coerce the government to bring about a political objective" For carrying out the terror operations, the terrorist organizations require a good amount of financing. It is seen that often the sources of terror financing is through some legitimate businesses and charities as well as through the clandestine support of several governments which harbor terrorist outfits and supply them with money and arms to fulfill their political objectives. The other sources of funds include self-funding by the terrorist organizations through drug trafficking, financial frauds, extortion and several other types of criminal activities like kidnapping for a ransom.[2]

This paper endeavors to explore the niceties of the phenomenon of money laundering as well as its prevention by analyzing the anti-money laundering laws especially in India. It also attempts to make a study of the phenomenon of terror funding and study the facets of terror funding and the ways in which these funding could be stopped. At the end of the work, it also tries to give some suggestions to effectively deal with the money laundering and terror funding thereby putting an effective end to these activities.

MONEY LAUNDERING: CONCEPT, PROCESS AND PROBLEMS

In the language of a layman, money laundering is the process in which "dirty money" is converted into clean money by craftily manipulating the financial system through a cycle of transactions so that the ill-gotten wealth could be invested in legitimate businesses so as to appear as legitimate income. The historical backdrop of money laundering arises in the early 2000 B.C. when the Chinese merchants used to conceal their wealth by sending money earned through illegal means out of the country to avoid being detected and

[2] White J.R. and Clear T., 2002. Terrorism: An Introduction. Stanford, CA: Wadsworth Thomson Learning.

prosecuted by its rulers. The money which was funneled out of the country was used by these merchants to invest in movable and immovable properties in the territories outside the province of China. In the modern times, the term "money laundering" is coined from the continental United States in the 1920s by a notorious gangster "Al Capone" of the Chicago outfit who used to route his illegal income in his legitimate business of "Laundromats" and after his arrest the term "money laundering" was coined in the dictionary.

The term "money laundering" has now progressed beyond the national frontiers and has been a global phenomenon in the contemporary times. Just like in a laundry we put in dirty clothes which come out as clean ones, in the case of money laundering "the money is put through a cycle of transactions or washed so that it comes out of the other end as legal or clean money and thus the source of illegally obtained funds is obscured through a succession of transfers and deals so that it could be eventually be made to look like legitimate income."[3]

There are several international instruments which define the phenomenon of money laundering. The sub paragraph (b) of Paragraph 1 of Article 3 of the Vienna Convention 1988 as :

"i*) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph a) of this paragraph, or from an act of participation in such offence or offences for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequence of his actions;*

ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to or ownership of property knowing that such property is derived from an offence or offences established in accordance with subparagraph a) of this paragraph or from an act of participation in such an offence or offences"[4]

The Palermo Convention 2000 also defines money laundering under the title "Criminalization of the laundering proceeds of crime" as follows:

"*1. Each State party shall adopt in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally :*

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[3] Paul Allan Schott, Reference Guide to Anti-Money Laundering and Combating The Financing of Terrorism at I-2 (2nd Edition 2006).

[4] Article 3(1) of The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention), 1988.

(i) The conversion or transfer of property, knowing that such property is the proceeds of crime for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence evade the legal consequences of his/her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

Subject to the basic concepts of its legal system :

(i) The acquisition, possession or use of property, knowing at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this article"[5]

The above definition recognizes the money laundering process as an outcome of a criminal act rendering such money laundering process as an outcome of criminal act rendering such money as illicit income of that person.

The United Nation Model Legislation on money laundering and financing of terrorism also acknowledges the relations between money laundering and the financing of terrorism. This model law aims to provide a domestic framework while framing the anti-money laundering laws in a joint collaboration with the International Monetary Fund – which would combine the domestic and international efforts to curb the money launderers.[6]

PROCESS OF MONEY LAUNDERING:

The money laundering in a traditional set-up is divided into three processes: i) Placement, ii) Layering and iii) Integration. The first stage of the process is known as placement and it involves the placement of illicit funds into the regular financial system through the use of a financial institution. It is usually done by depositing the ill-gotten cash into the bank accounts by breaking it up into smaller parts. The process of exchange of one currency into the other may take place at this stage and in this process the dirty money could be converted into clean money. The illegal funds can be converted in the financial system like the money orders, checks and combined with legitimate funds in the system

[5] Article 6 of the United Nations Convention against Transnational Organized Crime (Palermo Convention), 2000.

[6] United Nations Office on Drugs and Crimes, Model Legislation, available at https:// www.unodc/en/money-laundering/Model-Legislation.html?ref=menuside (Last accessed 24th Dec. 2018).

by purchasing the securities in the markets or by buying foreign currency. In this way illicit money can be dispatched to various jurisdictions making it very much hard to track and trace.[7]

The stage is very much crucial because it plays a very key role as a gateway for illegal money to enter into the financial system and acquire a clean money status.

The second stage in the money laundering process is called layering and is followed to layer the illicit money by the purchase of securities contract or any other investment easily transferable at the market and such securities, insurance contracts or investments are easily transferable at the market and such securities are sold to some other institutions making a further leakage in the financial system. In this stage the funds could be transferred electronically to different accounts across the jurisdictions making it very complicated to trace. It is in this stage that certain shell companies are used to layer the money which could easily be transferred in the shell companies. This stage makes the transaction more complicated by adding a new layer to the illicit money in the form of dispatching it to different destinations.[8]

The final stage of the process as the name suggests integrates the funds into the legitimate economy and is the stage where the dirty money is all gone through the washing process and cleaned by placement and layering stages of money laundering. The integration is the culmination of the process of money laundering and is an objective factor for any money launderer whether the processes are objective or not. It integrates the illegitimate money in the formal economic system of the country and in this process gives the purchasing power to the holder of these funds.

The money laundering is very much detrimental to the economy of any country because of the reason that it affects the economic and the social structure of the countries. The money laundering leads to a parallel illegitimate economy at the national and the international level and as most of the money is funneled into legitimate businesses which act as a façade for these illicit activities, these businesses could sell their products or offer services at a much lower cost as compared to the other competitors and thereby gain an unfair edge over the others. It also harms the other taxpayers as most of the money is earned by evading legitimate taxes. The money laundering is a crime against the civil society since the sources of illegal money is drug trafficking, kidnapping, smuggling and other crimes also called organized crimes. It harms the youth by encouraging drug consumption, makes the society unsafe by the

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[7] Gilmour N., 2016, *Understanding the Practices Behind Money Laundering – A Rational Choice Interpretation*, International Journal of Law, Crime and Justice, 44, pp. 1-13.

[8] *Ibid.*

crimes like kidnapping and smuggling and makes the criminals decisive factors in controlling the markets.[9]

CONCEPT OF TERRORISM AND TERROR FINANCING: AN OVERVIEW

In the modern day world, terrorism has become a global phenomenon which has been the major bottleneck for the development and the growth of the countries. The September 2001 attack on the American World Trade Center and the November 26th terrorist attack in Mumbai show the ghastly nature of terrorism and the havoc it could wreck to the innocent people of the world at large. Although terrorism is quite often associated with religious indoctrination, yet the success of every activity of terrorism can be assessed by the response of the people to these terrorist organizations. Terrorism can be classified into State Terrorism, Cyber Terrorism, Eco-Terrorism, Nuclear Terrorism and Narcotic Terrorism. While the first one is sponsored and funded by one country against the other for realizing political objectives, the other ones are some of the very advanced form of terrorism design to cause economic and social sabotage.

The terrorist require regular channels to finance to sustain themselves and carry out their nefarious operations. The international conventions against terrorism[10] define the financing of terrorism as an offence in which it is punishable if any person provides or collects funds with the intention of funding any activity which falls within the definition of terrorism. There are many ways through which the terrorists raise funds which could be termed as legitimate sources of funds like charities from the sympathizers mostly through the shady NGOs who collect funds which are subsequently channelized into terrorism. The legitimate business activities are also the primary sources of business such as those which don't require much investment. Some other sources of fund raising are through drug trafficking, credit card fraud, extortion as well as multiple types of criminal activities.[11]

LINKAGE BETWEEN THE MONEY LAUNDERING AND TERRORIST FINANCING

While finding a way between money laundering and the terror financing is concerned, one of the efficient channels is through the Money or Value

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[9] Buchanan, B., 2004, *Money Laundering—A Global Obstacle*, Research in International Business and Finance, 18(1), pp. 115-127.

[10] Article 2(1) of the Suppression of the Financing of Terrorism, 1999.

[11] Financial Action Task Force, Terrorist Financing, Financial Action Task Force, February 2010 at p. 19.

Transfer Services.[12] It is basically a process provided by the established institutions through which something of value is transferred from one party to the other through a clearing network to which the service provider belongs. One of the primary forms of MVTS transactions is through a hawala network in which the money proceeds from one person to another through a network of agents or other entities which are tied to one another through ethnic communities which arrange the transfer and receipt of funds which is determined through cash or net settlements over an extended period of time. There are different classifications of the hawala network which include low value hawala network to a more complex and complicated system of hawala transactions.[13]

These networks have a complicated settlement system which varies according to the nature and the structure of the system of hawala. For instance, if a person wishes to go from country A to country B, and there is a requirement of a remittance to be paid from a person in country A to that in country B, then the agents of country A communicates such to his counterparts present in country B to make a payment to the respective person, in that case the request is communicated to make the payment to the person present in country B and upon such a kind of request the counterpart in country B will make a payment to the person in country B and upon such a request by using the local cash pool the counterpart in country B will make the release of the payment. The similar process is repeated for the transactions and the transfers and thereafter the hawala is settled by such transactions.[14]

As per the findings of the Financial Action Task Force it is reported that in majority of the countries of the world, the 'hawala' network is unregulated therefore in the absence of such regulations, it becomes very easy for the terrorist organizations to collect and manage funds without any kind of detection. It is due to this reason that it becomes very difficult to track and trace money laundering by the authorities. The terrorists use these networks as a trusted mode of transferring money at the doorstep of terrorist outfits. As there are no regulations to control them, the terrorist organizations seem to be at an ease to use these networks to their advantage and finance their activities.

The terror funding through some of these hawala channels and also through an intricate network of fake bank accounts, lax enforcement as well as several other factors have contributed in making the world an unsafe place to live in

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[12] Finance Action Task Force, Guidance for a risk based approach for money or value transfer services, Financial Action Task Force at page 7.

[13] Viritha B., Mariappan, V. & Haq I.U. (2015). *Suspicious Transaction Reporting: An Indian Experience*. Journal of Money Laundering Control, 18(1), 2- 16.

[14] Financial Action Task Force, The role of Hawala and other Similar Service Providers in Money Laundering and Terrorist Financing, FATF Report October 2013.

by financing terrorism in different parts of the globe.[15] The September 2001 attack on the World Trade Center by the terrorists is an example of how these networks have facilitated global terrorism and therefore the countries like the USA made it a top priority of the countries to carry out anti-terror funding operations. An international effort was coordinated by the UN to establish preventive measures to counter the growing threat of terrorism funding. The Financial Action Task Force established in the 1987 have been instrumental in being a transnational body to combat the activities of money laundering and its recommendations have been instrumental in neutralizing the terror funding operations.

LEGAL FRAMEWORK FOR ANTI MONEY LAUNDERING: AN INTERNATIONAL PERSPECTIVE

The gravity of money laundering and terror financing has given rise to an urgent requirement of having a transnational regulation of the phenomenon of money laundering. As it is not always possible to have a global regulator monitoring each and every activity of the numerous transactions which take place in the globe, therefore it is very important for the domestic regulators to incorporate the recommendations of the international committees to deals with the anti-money laundering and terror financing. In this regard, there are some of the recommendations of the Financial Action Task Force (FATF), Basel Norms and also the guidelines of the Reserve Bank of India for dealing with these activities.

The FATF recommendations call for international efforts to deals with the menace of terrorism financing. It recommends coordination between several stakeholders; criminalize money laundering based on international conventions, make mandatory norms for verifying and establishing the customer identity in the banks and making the observance of strict customer identification rules for the banks. It also lays down recommendations for the establishment of Financial Intelligence Units for the analysis of suspicious transactions and mutual cooperation among the nations for sharing information on money laundering and terrorism financing.

The Basel Committee report is also in line with the FATF recommendations for the banks for the effective management of the banks through the Know Your Customer Norms (KYC) comprising of elements such as Customer acceptance Policy[16] in which the banks should develop a policy to have a detailed perspective of the customer including his background and financial

[15] Ernesto Savona, (1997), Responding to Money Laundering: International Perspectives. Harwood Academic Publishers.

[16] Peter Reuter & Edwin. M. Truman., (2004). Chasing Dirty Money: The Fight Against Money Laundering. Washington. DC: Peterson Institute of International Economics. p. 9.

details including the nationality. Under the Customer Identification Procedure, the Basel Report specifies that the banks must conduct a full due-diligence of the documents provided by the prospective customers and provides that the banks must follow strict customer identification procedures at repeated regular intervals so that the sanctity of the customer identity is maintained[17]. Under the monitoring of high risk accounts, the Committee has recommended that the Banks must look for any kind of a deviation from the normal activities and if there is an unusual activity in the account then it must be subjected to close scrutiny and the transactions must be reported to the government. The risk management activities is recommended to be undertaken by the banks in which the Board of Directors of the Banks are to held liable for the implementation of the KYC norms and standards for maintaining the integrity of financial transactions.

The Reserve Bank of India in line with the international recommendations has made it compulsory for the banks to comply with the recommendations of the Basel Committee and the FATF through Section 35 A of the Banking Regulation Act. It also follows in accordance with the RBI guidelines on KYC norms and Anti Money Laundering Standards under the Rule 7 of the Prevention of Money Laundering Act 2005.

There have been international legislations to combat money laundering activities in several countries such as the US, UK and India. In the UK the Criminal Justice Act 1988 and the Drug Trafficking Act 1994, the Proceeds of Crime Act 2002 are the primary legislations dealing with money laundering. In the USA, the legislation about money laundering started with the Bank Secrecy Act of 1970 which preserves the integrity of the financial system. In addition, the Money Laundering Control Act of 1986, the US Patriot Act 2001 also deals with the money laundering. The PATRIOT Act contains the unique distinction of containing anti-terror funding provisions under the law.

In India, the Prevention of Money Laundering Act[18] is the legislation which deals with the menace of money laundering in India. The Act divided into ten chapters contains comprehensive provisions for dealing with money laundering in India including provisions for ensuring speedy trials for the offenders and lays down obligations on the banking companies to prevent money laundering. Although the legislation was enacted with the purpose of combating money laundering, yet the implementation of the provisions had been subject to a lot of criticism which would be explained in detail in the subsequent chapters.

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[17] Dr. Shima D. Keene, (2012). Threat Finance: Disconnecting the Lifeline of Organised Crime and Terrorism, Gower Publishing Ltd. p. 328.

[18] Jyoti Trehan, (2008), Crime and Money Laundering: The Indian Perspective. New Delhi: Oxford University Press.

CRITIQUE OF THE MONEY LAUNDERING LAWS WITH SPECIFIC FOCUS ON THE INDIA PREVENTION OF MONEY LAUNDERING ACT

If we look at the US jurisdiction, as discussed it started with the Bank Secrecy Act which was a key legislation in bank reporting requirements. However, the provisions of this Act did not have enough teeth so as to punish the offenders of the financial frauds and therefore the legislation was an outright failure in reigning in money laundering related offences. Moreover, the reporting requirement as specified under this Act was also thwarted by the launderers by resorting to unconventional financial practices like smuggling and making casinos the façade for carrying out the illegal transactions. But on the contrary the Money Laundering Prevention Act was a more successful legislation in the US because it made money laundering a criminal offence and it had provisions which specified forfeiture of property and the law also contained provisions for strict compliance for the financial institutions failing which they would face penal actions with criminal charges on their managers. The Act was successful in securing the conviction of several money launderers and also was able to plug the illegal unconventional tactics of using sham companies for money laundering. However, the US Patriot Act passed in 2001 has given wide ranging powers to the investigating authorities for enhancing the domestic security of the country. It included powers to conduct search, examine financial records and engage in collecting financial intelligence without any court authorization. The stringent record keeping provisions and anti-smuggling and counterfeiting provisions along with the wider powers to the US Treasury to regulate information sharing between the financial institutions have given much muscle to the officials to carry out effective enforcement. In my opinion this comprehensive legislation has gone a long way to curb the menace of money laundering in the USA.

In the Indian context, the Prevention of Money Laundering Act comprising ten chapters have been enacted by the Parliament to curb the offence of money laundering. Much like the American law, the act provides for prevention of money laundering and to achieve this object provides for the attachment of crime proceeds and imposing obligations on the banking authorities to give information to the authorities as and when required. The Act prescribes rigorous punishment for the offence of money laundering which shall not be less than three years or a fine up to five lakh rupees. The maximum punishment has been prescribed at rupees five lakh. The legislation also provides for the setting up of special courts and invests the powers of search and seizure on the authorities for searching any premises related to money laundering.

However in my research the act is riddled with several problems. In the definition of money laundering this law provides that the offences involving

property worth Rs. 3 million or more. Therefore, one can avoid the offences if the offences are less than this threshold. Then again if we look into the schedule of offences, the act does not take into account the serious offences like terrorism, organized crime etc. which are the primary reasons for which the offence of money laundering is carried out. In the sphere of procedural law the provisions regarding the search and seizure, the act does not reflect a good knowledge of the investigative processes and by specifying that the search and seizure be carried out after the charges have been filed in a court of law is a sheer ignorance of basic process of criminal law since search and seizure should be conducted before the charges are filed so as to gather crucial evidence. On the contrary following the procedure mentioned in this act would only amount in a weak case of the prosecution. The provisions of "adjudicatory authority and appellate authority" is an extension of the bureaucratic power which is not a feasible choice to make. Perhaps it would have been better if there had been Chartered Accountants in the Special Courts as they have the expertise to deal with the issue of attachment of the properties. Further the act is silent on which are the investigating agencies which are authorized to carry out the operations. In my opinion these loopholes need to be plugged in order to make the legislation a effective one.

CONCLUSION AND SUGGESTIONS

The money laundering and the financing of terrorism have been the major concerns in the globalized world which require a solution. Although we have laws for combating money laundering, yet different laws in different jurisdictions give rise to practical problems of enforcement and therefore in my opinion there must be organized set of laws to bring harmony in different statutes related to money laundering.

In my opinion money laundering can only be fought when the people in the society are aware of the ills of money laundering and an informed society will help in combating the crime of money laundering. In this literacy drives the governments should ensure that there are education and literacy camps dedicated to train people about anti-money laundering laws. There must be complete criminalization of money laundering and laws must be in conformity with the international conventions. And last but not the least the countries across the globe must cooperate with each other to prevent the offence of money laundering. This could be done through setting up a Coordination Bureau at the United Nations which would collect and coordinate Financial Intelligence among the various countries to monitor illegal transactions and alerting the countries to take preventive punitive measures. If these measures are followed, in my opinion we could help prevent the menace of money laundering and make the world a safe place to live.

REPRODUCTIVE AUTONOMY AND ABORTION LAWS: WHO OWNS THE WOMB? A WOMAN OR THE LEGISLATURE

Sagarika Pradhan[*], Swagatika Behera[**], Aparna Mallik[***], Dr. Kyvalya Garikapati[****]

ABSTRACT

Abortion is the most controversial issue discussed and debated around the world which started in 1970's, but this superfluity of arguments is generally weightless in the sphere of health and women rights. This paper mainly focuses to give extensive outlook on the abortion laws and policies that are existing and is in regulation highlighting imposed extent of restrictions on it. Since ages women has been struggling to get dominance over their reproductive and private rights but has only faced challenges due to political, cultural and societal bars. This paper also focuses on the morals, righteousness and well-being of women on the basis of abortion. It indicates the hardships and continuous tussle over the restrictive abortion laws and competency of the countries. There should absolute reliance and acceptance of the laws passed regarding induced abortion and also during the gestational period, including the establishment of complete health care system in pre and pro abortions to wipe out hurdles and obstacles faced while accessing to abortion. This paper also analyses the recent amendment of Medical Termination Act, 2021 where the Act increased the upper cap limit to opt for legal abortion and introduced punitive measure to protect the privacy of the women seeking for medical termination of their pregnancy.

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Keywords: Abortion, MTP Act, Right to Life, Right to privacy, Reproductive autonomy.

INTRODUCTION

> *"I am the woman who holds up the sky, the rainbow runs through my eyes, the sun makes a path to my womb, my thoughts are in the shape of clouds, but my words are yet to come."*[1]

The issue of abortion has become worldwide concern not only in the medical field but also in the political and social sphere. "There is no freedom, no equality, no full human dignity and person-hood possible for women until they assert and demand control over their own bodies and reproductive process. The right to have an abortion is a matter of individual conscience and conscious choice for the women concerned", said by Betty Friedan.[2] Taking this into account we can clearly relate the abortion right of women to Article 21 of Indian Constitution. Considering all these worldwide issues in the case of reproductive rights, the international community has adopted several laws in relation to women reproductive and sexual health rights and obliges Government of every States to recognize and implement those laws domestically.

"Convention on Elimination of Discrimination Against Women" (CEDAW) have a significant role towards global treaty of the United Nations which genuinely aims and constantly takes up the matters of women issues relating to termination of foetus, control over reproductive rights and tries to alleviate the miseries of woman group. Furthermore, inferring abortion rights from broader perspective of fundamental rights, it is significantly recognized that drafters of "United Nations instruments such as the International Covenant on Civil and Political Rights" (ICCPR) consciously desisted from using language that would have been incompatible with asserting abortion rights. Mistreatment of women on the basis of their pregnancies generally provokes to destroy their right over their own life and body. Further this affects the legal system which fails to guarantee freedom to women and in a way, that there is complete imbalance in according rights to both men and women where righteousness is totally teared down. According to the "Medical Termination of Pregnancy Act 1971", in case of failure of contraception, women can abort the baby. But this provision is against the principle of "Right to Life" of an awaited child as the foetus will be in a state of maturing to a living person. More over principle 1 of the UN

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1 Richa Mishra, *Section 498 IPC*, *Legal Service India*, http://www,legalserviceindia.com/article/1336-section-498-IPC.html.

2 Bhavish Gupta & Meenu Gupta, *The Socio-Cultural Aspect of Abortion in India: Law, Ethics and Practice*, JSTOR, http://www.jstpr.org/action/cookie.

Declaration of Rights of the Child 1959 declaration states that: "Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination."

In democratic India, the violation against women is misogynistic and rooted deeply to patriarchal dominance. A gender analysis took over in chapman 2010 which expresses the universal privileging men over women and also the equality in power and hierarchy of the societal norms. The concept misogyny is the hatred or dislike of females, gender discrimination, materialization and objectification of women, and sexual assault or threat of violence both mentally and physically. Physical, violence is exerted in the form of domestic violence, female genital mutilation, torture through system of dowry. The prime social stigma emerges from the abortion of unmarried girls. This is easily not accepted, the women have to curtail the non-acceptance, bullying, slander, and character assassination by the society. However certain lacuna of the MTP lies in the rural areas due to lack of legal and social awareness of the seeker of abortion and lack of surveillance by the legislative. The real problem emerges in the implications of laws and framework. The MTP Act should be done by qualified surgeons in medically approved clinics or hospitals. In India, in spite of liberalised legislature and administration, social controversies related to medical termination of pregnancy still prevails. Many people still term abortion as a sin and social immorality but it's a fundamental right of a woman.

CRIMINAL ASPECT: ABORTION UNDER IPC

India is one of the first countries to legalise abortion under some moderate circumstances, still abortion remains to be a forbidden talk in the society, to be discussed only behind cold doors. Before the enactment of the MTP act, under Section 312 of the Indian Penal Code termination of pregnancy was criminalised for causing miscarriage. Legally induced abortion means an untimely delivery which is voluntarily performed to cause the death of the foetus. The provisions from Section 312 to Section 316 deals with the abortion laws. The Indian Penal Code was legislated by the framers keeping in mindview the cultural, religious, moral, social diversity and historical background of the country. It is hereby noted carefully that the framers have diligently avoided the usage of the word "abortion" and instead has used the term "miscarriage". Technically abortion means voluntary miscarriage and is often used as spontaneous synonyms to each other. Both the term is subject to confusion as "abortion" and "miscarriage" is not specifically defined under the code. Section 312 of the act criminalises the of voluntarily causing miscarriage when a woman is "with child" and "quick with the child". The term "with child" means a woman who is pregnant with a child and the term "quick with the child" means an advanced stage of pregnancy where quickening is a medical term referred to the movement of embryo in foetal form. The explanation

clause of the Section 312 has clarified that the offender may be the woman who is pregnant with the baby herself or any other person. More over Section 312 has permitted abortion on therapeutic grounds. It states that causing miscarriage and induced abortion is legal when the sole motive in order save the life of the mother. The provision gives protection of law, if the act is done with a bone-fide intention; which is to protect the more precious life of the mother. According to the code any of the miscarriage which is caused without good faith, punishment has been prescribed keeping in mind the gravity of the crime in the instance. The act of causing miscarriage is a non-cognisable offence, which always result in lack of prosecution and unsuccessful conviction. More over there is always hindrance in obtaining adequate evidence to prove the pregnancy and its termination. It can only be proved by the process of medical examination prescribed under Section 53 of the Criminal Procedural Code, 1973.

ABORTION UNDER MEDICAL TERMINATION OF PREGNANCY ACT, 1971 & OTHER PROVISIONS

Shah committee headed by former Justice Shanti Lal Shah, appointed by the government of India recommended legalising abortion to promote better medical care to women's health. In 1971 the MTP act was enacted by the Indian parliament to liberalize the abortion laws. To avoid any sociocultural or religious conservative conflict, the official statement envisages that the act has only 3 objectives namely (1) Health grounds: presence of danger to the physical or mental health of the woman, (2) humane grounds where sexual assault or rape/incest results to pregnancy, (3) genetic grounds: there is possibility that the unborn child might suffer from any anomalies when born. The main objective of the act, was to decrease the rate of the illegal abortion around the country. The Section 3 of the said act modified the strict provision abortion under section 312 of the Indian Penal Code by permitting abortion under certain circumstances. India is a developing country and ideologies of its people has evolved and developed a lot. But religion of an individual somehow to plays a role in the decision related to abortion. India is a Hindu majority country. According to the verses of Garbha Upanishad an act of abortion is termed a crime rather as an act of chastity. According to Islam abortion is allowed if done before 120 days of pregnancy. The standpoint that has developed within us is that currently in India abortion was made legal under circumstances which are more effective and helpful for women seeking for abortion. Legalizing abortion means time for having safe and healthy abortion. There should be bona fide and genuine awareness among the people so that knowledge about current abortion laws should be flowing freely and efficiently.

On 26th March, 2021 the act turns to a revolutionary amendment. The new amendment increased the time period within which a legal abortion can be

opted. Beforehand according to section 2 (a) (b) of the act there was a requirement of consultation of one doctor if the abortion is conducted within the time frame of 12 weeks of pregnancy & consultation of 2 doctors if the same was done between 12-20 weeks. But now after the new amendment an abortion can be legally conducted within 20 weeks with one doctor's opinion and between 20-24 weeks on 2 doctors' advice for some categories of pregnant woman. More over the amendment has also instructed the States and Union territories to setup medical boards under the provisions of Section 2A to setup medical board to decide if pregnancy can be terminated after 24 weeks of gestation period if there is any possibility of foetal anomalies. The board shall consist of a gynaecologist, a paediatrician, a radiologist or sinologist and other such member ad notified by state government. The amendment also extended the provision of the section 3 of the act to unmarried women and introduced the usage of the term "woman and her partner" instead of "married woman and her husband". Under the new amendment also introduced an unmarried woman can also have benefited under the act. The amendment also introduced a new section 5A which penalized medical practitioner who fails to protect the confidentiality of women who are seeking to terminate their pregnancy under the act. Beside the legislation of abortion since half a century, the country is prone to unsafe abortion due to its lack of awareness and overlap with other legislative acts such as PCPNDT Act (Pre-Conception & Prenatal Diagnostic Technique Act), 1994 and POSCO act of 2012. The PCDNPT act was enacted to control sex-selective abortion which gave raise to increased no. of female genocide. The use of mifepristone, misoprostol and combo pack was approved in India to be used medical abortion for pregnancy up to 7 weeks. The usage of such drugs containing medicines increased in the retail market by 646%[3]. The government due to presence of adverse unequal sex-ratio due to high preference of male child, decided to restrict the usage and availability of such MA drugs in the Indian market.

POCSO (Protection of Children from Sexual Offenses Act), 2012 was enacted to prevent minor girl from sexual abuse. Under this act all the minor girls i.e. under 18 age bars re considered as victims or survivors even when the sexual intercourse was consensual[4]. If gone by the court's precedents termination of pregnancy allowed by the court of law. but of a victim's pregnancy has exceeded the required time span of 24week limit required under MTP act, courts are subjected to act under discretion.

[3] Lucia Vázquez, *Abortion Self-Care: A Forward-Looking Solution to Inequitable Access*, 46 91–95 (2020).

[4] Ipas Development Foundation, *The POCSO Act and the MTP Act: Key Information for Medical Providers* (2018).

In the path breaking case of *Suchita Srivastava* v. *Chandigarh Admn.*[5], the apex court of the country held that women's right to make decisions related to their reproductive choices are a part of right to life and personal liberty under Article 21 of the Constitution of India. This right also inscribed women's right to privacy, dignity and bodily integrity. In the case of *Swati Agarwal* v. *Union of India*[6], a PIL was filed by the petitioners challenging the constitutionality and validity of section 3(2), 3(4) and 5 of the MTP act as those were violation of Article 14 and 21 of the Constitution. In the case of *Mrs. X* v. *Union of India*[7], the court allowed medical termination of pregnancy of 22-week pregnant petitioners. The decision was based on prescription of the medical board who opined the pregnancy would be harmful for the physical well as medical health of Mrs. X. in *Murugan Nayakkar* v. *Union of India*[8], the hon'ble apex court permitted the medical abortion of a 32-week pregnant 13 years old minor rape survivor. The decision was taken by considering the opinion of medical board and keeping the trauma suffered by the victim in the mind. Thus, it is often concluded that the court's decision depends on the opinion and recommendation of the medical board; findings of the court become the determining factor rather than the women's reproductive right[9].

In India there is lack of sexual education and awareness. In some case male partners deny to use any protections more over the women have no control over the condition in which they have sex and in the case were contraceptive pills fails; abortion becomes the only form of birth control[10]. The primary choice to take the decision what happens to one own body should always primarily remain the right of a woman. But in this country be it through MTP act or PCPNDT act a woman's reproductive autonomy.

CONSTITUTIONALITY OF ABORTION LAWS

India is one of the first country to legalised abortion. Since its independence India has shown itself committed in safeguarding human rights. As stated in Article 21 of the Indian constitution "no person shall be deprived of his life & liberty except according to procedure as established by law"[11]. The said article is similar and in compliment to the due process clause in the USA enacted in

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5 Suchita Srivastava v. Chandigarh Admn., (2009) 9 SCC 1 (India).

6 Swati Agarwal v. Union of India, WP (C) 825 of 2019 SC (India).

7 Mrs. X v. Union of India W.P. (C) 81 of 2017.

8 Murugan Nayakkar v. Union of India, 2017 SCC OnLine SC 1906.

9 Shradha Thapliyal, *Abortion Jurisprudence in the Supreme Court of India: Is it the Woman's Choice at all?*, Centre for Law & Policy Research, https;//clpr.org.in/blog/abortion-jurisprudence-in-the-supreme-court-of-india-is-it-the-womans-choice-at-all.

10 Devika Nair, Shruti Singhi and Sumati Thusoo*, Why Amendments to Medical Termination of Pregnancy Bill Don't go Far Enough*, The Wire(2020)

11 Art. 21. Constitution of India

the 14th amendment[12]. In the case of *Kharak Singh* v. *State of U.P.*[13] the apex court re-interpreted the article 21 and included right to privacy in the article. In 2017, in the celebrated judgement of "Justice *K.S. Puttaswamy* v. *Union of India*"[14], the court re-examined the reproductive rights and autonomy. The bench held that privacy is a recognised inalienable right and is a part of fundamental right guaranteed under Article 21 of the Indian constitution. The apex court recapitulated its opinion about right to privacy in the judgement passed in "*Suchita Srivastava* v. *Chandigarh Admn.*"[15], the bench in this case held that reproductive rights included a woman's right to continue her pregnancy. More over these rights are included in women's right to privacy, dignity and bodily integrity[16]. It was stated that section 3& 5 was in contradiction with right to privacy prescribed under the Indian constitution. Later in the 2021 amendment in the MTP act of 1971 was passed under which section 5A was instructed that no registered medical practitioner is allowed to reveal any confidential details about the women seeking for medical termination under the said act.

The Medical Termination of Pregnancy act was passed about 50 years ago, still India has high rate of unsafe abortion. When in 1971, the act was passed it allowed abortion up to 20 weeks of gestation period and a second doctor's opinion is needed if the pregnancy has exceeded12 months. The unwanted pregnancy can be terminated in good faith under the grounds when the pregnancy cites grave danger to the physical or mental health of the pregnant woman, under pregnancy is an outcome of failure of contraceptive methods, pregnancy will result is foetal anomalies, rape or sexual assault resulted in pregnancy. Between late 1980-90 it showed a decreasing trend in the number of termination of pregnancy consulted in approved facilities and practitioners[17]. The MTP act was amended in the year 2002 keeping in view the long advisory process taking place in the government and non-government facilities. So as to achieve reduce the bureaucracy involved in seeking approval and consent of the facilities, the amendment decentralised regulation of abortion facilities from state to district level[18]. The MTP act's which was amended allowed medical abortion methods and facilitated medical practitioners to prescribe misepristone and misoprotal to opt for abortion up to 7 weeks. In 2021 a new amendment was introduced. The amendment facilitated that legal abortion can be opted within 20 weeks of gestation on one doctor's opinion and between

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12 Griswold v. Connecticut, 1965 SCC OnLine US SC 124 : 14 L Ed 2d 510 : 382 US 479 (1965).

13 Kharak Singh v. State of U.P., AIR 1963 SC 1295 (India).

14 K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

15 Suchita Srivastava v. Chandigarh Admn., (2009) 9 SCC 1 (India).

16 Arijeet Ghosh and Nikita Khaitan, *A Womb of One's Own: Privacy and Reproductive Rights*, EPW, (pp. 42-43).

17 The Medical Termination of Pregnancy Act (Act No. 34, 1971).1971; Ministry of Health and Family Planning: New Delhi.

18 Siddhivinayak S. Hirve, *Abortion Law, Policy and Services in India : A Critical Review Linked References* are Available on JSTOR for this Article : *Abortion Law, Policy and Services in India: A Critical Review*, 12 114–121 (2004).

20-24 weeks on 2 doctors 'consultation. It also amended section 3 of the act which used the termed "woman and her partner" instead of the old term "married women and her husband". An addition to section 5A was also introduced that will penalise any medical practitioner who infringes the right to privacy of any woman who wishes to terminate her pregnancy under this act.

Sanctioning of abortion laws also includes establishment of advanced medical and technological equipment for termination of pregnancy in a proper way to avoid botched abortions and bleeding. There should be less impose of strictness on the abortion laws because if the time period for abortion is increased then its price value would also increase, this would provide a huge gap and inconveniences for the marginal people to afford. Above all these necessities the prime thing is in case of minor pregnancies there should be parental consent which is very important as the question arises about their life and health. In the case of *Sundar Lal* v. *State of M.P.,* the Madhya Pradesh High Court held that if a minor rape survivor is pregnant then in such situation consent of the minor is not required to abort the fetus rather there should the consent of the guardian. Pregnancy for underage women is very critical and serious problem as its effects both the child and the parents too all spheres of life. It may often lead to maternal deaths especially during the time of giving birth. Children born out of such pregnancies suffer from underweight, malnutrition, ignorance, paucity of education and destitution. The moral values and right is attached to the woman in terminating the abortion. Maximum of the participant views that the religious, moral and legal values plays a vital role in the termination of pregnancy. Parenting is spheres of life where they get learn discipline and guide in every sphere. A father is also a part of a pregnancy of a woman there shall be sort of consent should be there in the termination of pregnancy. Moreover, Article 21 of the constitution the right to liberty is recognised which includes right to reproductive rights as well. Section 5A (1) states that no registered medical practitioner shall reveal the identity as the name and other particular of a woman whose pregnancy has to be terminated or has been terminated under this Act except to a person authorized by any law and time being in force.

RIGHT TO PRIVACY AND REPRODUCTIVE RIGHTS

Abortion is the most sensitive issue in most of the countries, which concern ethical and religious issue both. The abortion is the most controversial issue both nationally and internationally. Many governments try and struggle to balance between the rights of pregnant women and rights of an unborn foetus.

Article 21 of the Indian Constitution Right to privacy is guaranteed where there is a right available for the women right to abortion. It has been recognized under the "right of privacy" is a part of "right to personal liberty" which

further stems from the right to life. In the case of *K.S. Puttaswamy* v. *Union of India*[19] the Supreme Court held that the "right to privacy" is the intrinsic part of the "right to life" and "personal liberty" under the Article 21 COI. The right includes "at its core the preservation of personal intimacies"[20] which extended to "procreation" and "right to be left alone". The MTP decriminalizes abortion on certain circumstances, there is no legal right to abortion on demand. A constitutional right of privacy is looked upon underlying principles which are liberty, autonomy and dignity. The Supreme Court in the case of Puttaswamy agreed that "right to privacy is protected as an intrinsic part of right to life and personal liberty under Article 21". Justice Chandrachud referred to US's reproductive right case Griswold v Connecticut[21] where contraception possessions, sale and distribution to the married couples were prohibited. Then less than fourteen amendment privacy was recognised under the due process of law. More-over in India, the Right to autonomy is examined with the ability to exercise the autonomy within the society and restrictions it on women's rights. There is recognition of women access to higher and formal education is less. In the patriarchal social structure, there is a strong preference of male child and many of the women in India report force abortions if they are carrying female foetus.

Section 5A (1) states that "no registered medical practitioner shall reveal the identity as the name and other particular of the women whose pregnancy has to be terminated or has been terminated under this Act except to a person authorised by any law and time being in force". The person who contravenes this provision shall be imprisonment extend to one year, or with fine or both. In the case of *Suchita Srivastava* v. *Chandigarh Admn.*[22] the court recognises the consent by a woman for the termination in order to protect women's liberty to reproductive choice and her right to "privacy, dignity, and bodily injury." This case the women were an orphan with mental disorder, she was raped and the institution staff discovered of the pregnancy in nine weeks of gestation and appeal to the court for termination. The High Court granted for the termination. Hence, the women appeal to Supreme Court when she was 19 weeks into her pregnancy. Thereby, SC held that under section 3 of MTP Act, 1971 it indicates that "consent is an essential condition for performing an abortion on a woman who has attained the age of majority and mental illness". But this is distinct from mental retardation as she had the mental capacity of a nine-year old child. Under Article 21 of constitution of India determine the right to liberty which include reproductive rights as well. Hence, the court reasoned that forced termination of pregnancy would be high in risk in 19th week and there

[19] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

[20] Magill Severyna, *The Right to Privacy and Access to Abortion in a Post Puttaswamy World*, University of Oxford Human Rights Hub Journal, 3(2), 160-194 (2020).

[21] *Id*. at 12.

[22] *Id*. at 14.

shall be emotional stress for the appellant because she had not consented to the procedure.

The UN recognized that sexual preference is a symptom of unavoidable social, cultural, political and economic injustices against women in the infringement of women's human rights. US recognizes that facet of right to privacy is the right to abortion. The right to choice of conceiving a child is a complete decision of the women. The women can abort on her own will and discretion up to 12 weeks of pregnancy. The fundamental "right of life and liberty", the mother's health is prioritized over the unborn child life. Thereby the state can't interrupt in compelling women to take up her child. The prior and legitimate interest in protecting and preserving the health of pregnant woman is the lookout of the state. The courts in USA upheld that the women have her own rights over her body, so she can very well make her own decisions. In China abortion has been a primary means of birth control. There are no such restrictions or strict laws regarding abortion. China has forced abortion as a population control measure. In China Government only pays for women abortion and medication[23]. Abortion is a part of the politics of survival in china, as it is most aborting women in other countries of the world. There is no issue in addressing the fundamental freedom of women's lives.

REPRODUCTIVE AUTONOMY: NOTIONS OF BODILY INTEGRITY

Reproductive health strategies are built around with an insight of revolution of social, economic, and cultural condition of women own thinking of reproduction. So, it cannot be treated only as a biological event of conception and birth rather they are linked with the gender role in homes and society. In last 10 years many international organizations and influential actors have taken up for comprehensive reproductive strategies and have elaborated[24]. The basic principle of approaches to reproductive health is women centred approach to reproductive health. The women's autonomy is to enable to take control over own reproductive lives by entrusting to them both power to make choices about the reproductive capacity to settle on choices about reproductive ability. Reproductive rights are the legal categories where people are entitled to control their reproductive lives. Then the second approach is the understanding and tending to the reproductive health in the women encountering it. Such re-conceptualization helps to uncover health and illness. Once the reproductive health is understood to involve something other than biological health well-being there is a thought of men have the ability to shape the world where ladies

[23] Susan M. Rigdon, *Abortion Law and Practice in China: An Overview with Comparisons to the United States*, Social Science & Medicine, vol. 42, issue 4, 1996, pp. 543-560.

[24] L.P. Freedman & S.L. Isaacs, *Human Rights and Reproductive Choice*, 24 Stud. Fam. Plann. 18–30 (1993).

reside. The third approach would emphasize the need to connect the different level starting from community level to international level for the programs and policies development and implementation.

A women status, with the ability to safeguard her own health depends upon the children and the legal capacity in her community, free of any discrimination, gender biasness, race and class. In the first comprehensive statement of human rights it failed to address the reproductive rights. The International women's year conference held in Mexico City in 1975 where international women's movement began with the United Nation decade for the women that was to include reproductive autonomy in their declaration. Article 11 was the principle aims at "the social education for physical integrity and its rightful place in human life". Whereas, article 12 states that every couple has the right to decide freely to have children or not.

International protection of women's reproductive rights processes to application of broader means of furthering account ability of states parties to human treaties limited from judicial or quasi-judicial. To screen consistence with the women's convention The committee on elimination of discrimination against women (CEDAW) is established. States parties are required to make regular reports to the responsible supervisory committees on the obligations and difficulties they are experienced. The UN's International Conference on population and development (ICPD) defined reproductive health as a "state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity related to reproductive system and its functions and processes."

In the case of Puttuswamy the applicability relevance and of reproductive rights was vivid. The "right to access abortion, privacy and personal liberty" is included in the exercise a person's reproductive right. The future challenges that MTPA to face is the new constitutional "right to privacy" and the evolution of reproductive health needs. There are three basic challenges are to be faced in India. Those are access to abortion and availability of health infrastructures, 'sex preferences' or 'sex determination', access to abortion where of foetus is done with medical condition that is likely to affect the quality of living. In US's case of Griswold v. Connecticut[25] prohibition on the possession of sale and distribution of contraception to married couples was struck down. Further in Roe v Wade the legalisation of abortion and constitution guarantees a 'zones of privacy' within the matrimonial relations.

Moreover, the teachings of sexual and reproductive health in schools, colleges are not found out. In recent times due to the COVID the abortion access is a threat to reproductive autonomy. Coronavirus reaction is a danger to exhaustive fetus removal care in the conventional sense yet viable workarounds

[25] *Id*. at 21.

that individuals have created in legitimate limitations and other access difficulties. The women intensity of protection from laws and social changes can be placed control of women's bodies in reproductive rights, freedom of sexuality, laws that criminalize assault in marriages, relationships and so on.[26] Implications of political control over women and perpetuating gender role are denial of reproductive rights and homophobia. The physical assault of women is a reminder of territorial domination and another type of human rights abuse as sexual terrorism, rape, slavery and torture. Government should look to end the politically and culturally developed conflicts on women instead of sustaining it. The human rights should be beyond its male- characterized standards and to react to infringement of women worldwide.[27]

MARITAL STATUS IN ABORTION

The Apex court of India gave a historic overturning first legal recognition to marital rape under the Indian statute. The bench contested the fact that 60% of abortion carried out in our country are unsafe and is the third leading cause of maternal mortality. Married women are also included in the group of survivors resulting from rape or sexual assault. And if a woman is becoming pregnant out of non-consensual sexual relationship with her husband, she should be included under the Act. Hence for the interpretation of rape under the MTP Act will also include marital rape but solely restricted to the MTP Act and rules only[28]. The judicial bench comprising of Justices D.Y. Chandrachud, A.S. Bopanna and J.B. Pardiwala rightly held that the marital status of a women cannot deprive the said women from enjoying her right to abortion in case of unwanted pregnancy in a consensual relationship. Till the time period of 24 weeks of pregnancy a woman can proceed for pregnancy irrespective of her marital status[29]. The court contended that the law should adapt itself with the modern times. The core objective behind the legislation of section 3(2)(b) of the MTP Act as well as 3B is to provide for abortion in case of unwanted pregnancy, it cannot distinguish between the martial status under the veil of the patriarchal society[30].

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[26] Alison T. Slack, Female Circumcision: A Critical Appraisal, 10 437-486 (1988). Alison T. Slack, Female Circumcision: A Critical Appraisal, (1988).

[27] Charlotte Bunch, Women's Rights as Human Rights: Toward a Re-Vision of Human Rights, pp 486-498 (1990).

[28] Supreme Court Abortion Laws: *In a First, Supreme Court Recognises Concept of Marital Rape* | india news - Times of India, https://timesofindia.indiatimes.com/india/rape-under-abortion-law-includes-marital-rape-supreme-court/articleshow/94539535.cms.

[29] Supreme Court On Abortion, *Marital Rape: On Abortion and Marital Rape, Supreme Court's Massive Order*, https://www.ndtv.com/india-news/all-women-entitled-to-safe-legal-abortion-distinction-between-married-unmarried-women-unconstitutional-supreme-court-3387561.

[30] *Marital Rape Victims are Included in Abortion Law's Exception for Rape Survivors, says* SC, https://theprint.in/judiciary/marital-rape-victims-are-included-in-abortion-laws-exception-for-rape-survivors-says-sc/1147919/.

The Court interpreted and delivered an important aspect of law that in contemporary times law is just wiping off that marriage cannot be a prerequisite for holding of rights of the people. The Court stated that the situation of unmarried woman cannot be entirely neglected from the ambit of Section 3(2) of the MTP Act and the rule of 3B[31]. In the case of *X* v. *Health and Family Welfare Department, Govt. of NCT of Delhi*[32], the law has given firm recognition to single and unmarried woman in case of abortion, the right to have dignified life and privacy, and also the right to have supreme decision over its own reproductive autonomy and preservation of bodily well-being under the purview of Article 21, whether or not to carry a child on a par with the married woman. Therefore, single and unmarried woman can freely avail the rights of terminating pregnancy sanctioned by the Medical Termination of Pregnancy Act beyond 20 weeks and up to 24 weeks.

In addition to this the Supreme Court has increased its notion to the sector of minors effected from sexual assault, they can also seek abortion under the POSCO Act and the registered medical practitioner cannot reveal the identity of the minor. The same bench in the celebrated judgement over the reproductive autonomy of the women section diversified their opinion that the pregnancy laws should be applicable to every group of women as the mental agony and trauma goes same with both the married and unmarried and the law cannot confine itself only to the married ones. Thereby the MTP Act has been widened to a diversified arena and is not confined to age-old standards. The law has to get in fit to the progressing world so as to give rational aspiration to the societal-structured process. Thus, the recent implication has advanced jurisprudence theory of the reproductive rights of women including every section.

RIGHT OF AN UNBORN CHILD IN AN ABORTION

India has legalized abortion in the Medical Termination of Pregnancy act under certain circumstances. It has been made clear in the provincial act that the termination of pregnancy can only be done and agreed by a registered medical practitioner; despite the choice of a woman. In India there is no specific legislation or piece of statute that legally define the rights of an unborn child. The authority can only provide any right to the child only after it is born or attain the stage of viability. Article 21 of the Indian Constitution gives the right to life, but it does not apply to an unborn child. Many a time right to health of the mother surpasses life of a foetus. The MTP act has a salient feature where the state has a duty to protect the life of the child giving

[31] X versus The Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi & Anr, https://www.indianconstitution.in/2022/09/x-versus-principal-secretary-health-and.html.

[32] 2022 SCC OnLine SC 1321.

a reason for presence of only certain circumstances to legally abort a child. The same laws are applicable in UK. But in USA, the legislation ensures that the children who are unborn are protected from harm and injury by the law. the unborn victims of violence act, 2004 was enacted to ensure all the fundamental rights to a citizen who is not even born during the time of injury. The act defines unborn child as a child "in utero" which further means any foetus/ embryo in the womb. There are majority of International human rights convention which are accorded to protect the rights of an unborn child[33]. Article 14 of the American Convention on Human Rights envisaged the right to life of a foetus from the conception of the embryo. But this convention lacks inclusion of foetus as a person. But still rights of an unborn remains silent in a large margin of countries. The laws under common laws need to be revived and fundamental right to life should be protected for the unborn children. The usage of term "foetal rights" came after the revolutionary judgement of Roe vs. Wade[34], which legalized abortion in US. Recently in 2022 with 6:3 majority the Judgement in Roe v. Wade was overturned by the United States Supreme Court. It enforced a ban on abortions, depriving women of her rights to govern her body. The decision does not compel to ban abortion immediately throughout the country but it gives the power to regulate or prohibit abortion to a rational basis review by individual US states. The abortions law which is coercive in nature not only treacherous and violating women rights but also against universal rights such as right to equality, right to health, and independent choice of having progeny. Despite having negative repercussions for women's right and health, this altered scenario came with the far- reaching implications for American judiciary and democracy. The 14th Amendment of US constitution states that "No State shall not make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The US Supreme Court used this 14th amendment to justify other rights as well as to prevent the individuals' state from enforcing law which violate an individual's freedom or rights including right to privacy. The apex's court decision has received criticism from health researchers, politicians, and economists across the globe. And US being the most influential nation the judgement could be threaten the recent advancements that have been made towards the legislation of abortion in respective countries and spotting deficiencies in their democracies. Many religious texts around the world gives foetus the right to life. Many legislation around the world actively warn against the consumption of alcoholic beverages and tobacco for the pregnant women. The regulations regulate the maximum intake or directs to attain abstinence.

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[33] Philip Alston, *The Unborn Child and Abortion under the Draft Convention on the Rights of the Child*, 12 Hum. Rights Q. 156–178 (1990).

[34] Roe v. Wade, 1973 SCC OnLine US SC 20 : 35 L Ed 2d 147 : 410 US 113 (1973).

Many countries come with dietary guidelines, to be provided to the pregnant women.[35]

FATHER'S RIGHT IN ABORTION

Women always possessed the fundamental right to get abortion done at their discretion. They are not morally obligated to take their partner's opinion; they can make a unilateral decision. The father does not have a veto power over the unborn child[36]. In the landmark judgement of Roe v. Wade[37] the US apex Court held that the women's right to privacy is part of her decision related to termination of pregnancy and termed it as a fundamental right protected under 14th constitutional amendment. More over the court expressly refused to have its opinion on "father's right" in an abortion. After this case prior written consent of the spouse were frequently constitutionally challenged.

In 1976, the Supreme court of USA elaborately discussed on father's rights in case of *Planned Parenthood* v. *Danforth*[38]. The Missouri statute required prior written consent of the partner, in the case where women is seeking for the abortion. The court held that the consent provision is arbitrary. Then in the controversial case of Planned Parenthood vs. Casey[39], it was held by the American apex court that spousal notification requirement in putting undue burden on women who are in an abusive relationship. It is mostly considered that the father has a moral obligation to support and fulfil the financial duties towards the child. These double standards of family planning are often argued and cited that further must have right to financial abortions. Under financial abortion right a woman is required to notified the father during pregnancy, so then the man should have an option to refuse financial or legal responsibility for bearing the child. But currently there is no legislation related to right to financial abortion. In 2002, a well-publicized case in China a man filled a lawsuit to grant him equality in form of child bearing and termination decision[40]. In countries like Indonesia, Saudi Arabia, South Korea, Japan and Turkey a woman opting for medical termination of pregnancy requires consent from the father.

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[35] Howard L. Minkoff & Lynn M. Paltrow, *The Rights Unborn Children and the Value of Pregnant Women*, THE HASTINGS CENTER REPORT, pp. 26–28 (2006).

[36] John Hardwig, *Men and Abortion Decisions*, 45 HASTINGS CENT. REP. 41–45 (2015).

[37] *Id.* at 61.

[38] Planned Parenthood v. Danforth, 1976 SCC OnLine US SC 167 : 49 L Ed 2d 788 : 428 US 52 (1976).

[39] Planned Parenthood v. Casey, 1992 SCC OnLine US SC 102 : 120 L Ed 2d 674 : 505 US 833 (1992).

[40] Abortions: Father's Rights, BBC ETHICS, http;//bbc.co.uk/ethics/abortions/legal/fathers.html.

MORALITY AND LEGALITY OF ABORTION

The moral status of foetus removal can be characterized as the act the women perform to terminate her pregnancy and the legal status which is proper for this Act. It is impossible to defend that a women terminate a pregnancy that the foetus in morally relevant sense is not a human being. It would not be easy to conclude that the decision for abortion of a foetus not giving a life is human make it impossible to produce any satisfactory solution to the problem of moral status of abortion. It is feasible to show that based on organizations which we may expect even the adversaries of early termination to share a hatchling isn't an individual and consequently not such an element to which it is legitimate to credit full good rights Woman and their right to decide are considerations to have the approaches for foetus removal regarding their sexuality, parenting, fertility, and reproduction. The traditional beliefs across world find abortion illegal and immoral. The "right to life" of the foetus and a woman's "right to privacy" tend to be always in conflict. The "right to choose" of having a child or terminating it comes to the point of argument when it comes to protecting a woman's right.

We can describe women body as her property, as it seems natural to hold that a person is different from her property[41].So, it couldn't be held that the right to get an early termination is in any capacity gotten from the right to claim and control the property. The right to abortion considers as a type of homicide of presence of right except if we can create a reasonable and persuading the customary antiabortion contention. The indecency of termination is not any more exhibited by the mankind of foetus. A writer Judith Thomson considers that "if we grant the antiabortionist his claim that a foetus is a human being, with the same right to life as other we can still demonstrate a woman is under no obligation to complete an unwanted pregnancy".

The preamble of UDHR (Universal Declaration of Human Right) describes "a common standard of having for all people and nation" and people of UN (United Nations) have the trust in preserving the equal rights and the dignity of men and women as the fundamental human rights. Human rights include both right to life and right to personal choice. Article 1 of ICCPR, states "that every human being has inherent right to life irrespective of right to expression"[42]. The question of whether unborn child is included under the connotation of human being. In the landmark case of Roe v Wade[43] the foetus does get a life so privacy of women was the primarily consideration in the case. Also, the Article 21 of part III of the Constitution of India guarantees the citizens the right to life and personal liberty. So the decision of having a child or terminate

[41] Mary Anne Warren, *Women's Liberation: Ethical, Social and Political Issue*, 57 43-61.
[42] *Id.* at 2.
[43] *Id.* at 29.

it is completely on the woman own personal decision. This Article restrains the government to be a part of the sociocultural consciousness within the community in India. The MTP Act legalize the abortion under certain circumstances by medical practitioner. But the effect of the act ought to be decided over the social circumstances, attitude and value in the downtrodden area. The social implications of MTP Act are a real problem when it comes with the implications in unmarried girls. Abortion in case of unmarried girl is stigmatized and unacceptable in the society. The legalizing of MTP act have also positive stimulus as it reduces the events of suicide and helps in betterment of health and safety. The problem sort as there are not registered clinic or hospital to ensure MTP Act. The government should address the issue and initiatives programs must be conducted. Also, the doctors should counsel parties who are undergoing termination of pregnancy or about to terminate. Many people still believe that termination is immoral and there should not be any right by the women to do so.

The person terminating pregnancy goes through psychological distress as well. In most of the country's social isolation and physiological trauma are not looked up seriously. Notwithstanding, social states authorizing early termination of the patient's alleviation of disposing of bothersome pregnancy and the impression of culpability used to go with an unlawful and socially unsanctioned system. Every individual has the option to real sway and basic liberties. Also, to protect such rights there are international instruments exists.

CONCLUSION

Women's autonomous right over their reproductive health and pregnancy rights has been a constant controversy around the world even though it has been legalized under certain circumstances. Still the rights of women over their reproductive health continues to be perturb internationally. There should be schemes set by the government on family planning system and contraceptive methods to be used in their respective countries, so that every individual is under the knowledge of it. Next core thing to be done is that there should be upgraded and modern approachable health care services for abortion easily accessible by every woman in cases where contraceptive fails. The laws that penalize abortion needs amendment with the change in the society and evolution of other governed laws. Recent amendment to the abortion laws of India is at par with the POCSO Act to avoid encroachment and conflict of both the Acts which provided a ray of hope to all the women and gave them liberation to exercise the right over their reproductive health under the Article 21 of the Constitution of India guaranteeing the protection of the right to life. The constitutional as well as legislative provisions in USA, India and China must further liberalize their laws so that women's right to abort and privacy should prevail in higher interest than the right to life of the unborn. The recent

amendment in the MTP act of 2021 extended the period for medical termination of pregnancy to 24 weeks. But this extension is for some special category of women who are rape/incest survivors, physically disabled women and minors. More over the 24-week period cap on abortion is arbitrary in nature. The decision to abort a child is finally on the hand of the medical practitioner or the medical board as they will opine whether the woman is facing any danger to her mental/physical health or the child is anomaly.

The moral values and medical ethics play a pivotal role in termination of pregnancy. In most countries detrimental factors like price rise in abortion which is not affordable by the marginalised group and end up having a child effecting the mental and psychological state of a woman. While many adopt unsafe and traditional approach of aborting the foetus resulting in complications and risky to the life of both the mother and the child. Recently the judgement given by Supreme Court that the termination of pregnancy can be accessed more than 24 weeks where the foetus is in deformity state and until 24 weeks by a woman ignoring the status of married life in case of contraceptive failure. Lack of education awareness on reproductive health leads to ignorance towards the women health. The school curriculum must mandate the sex education and reproductive health of a woman. Thereby, awareness can be made with maximum precautions preventing people to opt self-induced method of abortion which is unsafe. This could be concluded that a mother's right has a limitation in terminating a pregnancy. It is on the legislature to protect the reproductive right of a woman and take care of the independence and freedom of an unborn child as well. Moreover, the medical community and the society need to offer support to woman with unplanned pregnancies and assist them in finding empathetic alternatives to abortion. It is on the legislature to protect the reproductive right of a woman and take care of the independence and freedom of an unborn child as well. Moreover, the medical community and the society need to offer support to woman with unplanned pregnancies and assist them in finding empathetic alternatives to abortion.

BREACHING OF PERSONAL DATA IS NOT A MYTH ANYMORE

Zaid Akram Khan[*] & Shreya Mehta[**]

ABSTRACT

The ongoing article discusses about the rise in cybercrime activities occurring in India, which calls for concern as in the past few years there has been increased use of cell phones, unlimited internet and computer etc. So, this brings us to acknowledge the fact that in this era of advancement of cyberspace, we need to advance our cyber law as well. This article also discusses about major cybercrime occurring in this country i.e. data breaching of citizens which has led to financial losses to many, loss of personal identification details etc. which are used by the scammers for their mala fide motives in recent times. Overall this article discusses about data breaching, phishing and the ways in which all these cybercrime activities takes place and also the way the scammers are using the technology to fool the users, why these cyber-criminal activities calls for concern and laws regarding Cyber Crime.

Keywords: Cybersecurity, breach, data, cyberspace, cybercrime

REVIEW OF LITERATURE

The immense increase in cyber-attacks at India has brought us to raise our concern over data breaching laws. Data breaches result in enormous problems like leakage of personal information like bank details, identification details which have been witnessed since 2022.[1] Even the annual report by Cisco gives increase of threats in cyber space i.e. phishing, ransomware, social engineering

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[1] Aaron Drapkin, "Data Breaches that have Happened in 2022 so Far" Tech.co, Dec.1, 2022 https://tech.co/news/data-breaches-2022-so-far.

and Trojans. Moreover, cybersecurity is important for business continuity and this practice should be taught to users who are availing any sort of services[2]. Meta has also identified various malicious application on Android operating system.[3]

The Mckinsey report have also quoted that year 2022 have been the worst year where enormous data breaches have occurred and had led to the sale of 30 million dollars customer records[4].

INTRODUCTION

Man has always been driven by the desire to advance and improve current technology, since the dawn of the civilisation, this has further resulted in significant growth and advancement, which will serve as a springboard for future advancement. The emergence of the internet perhaps the most significant of all the key breakthroughs achieved by humans from the beginning to the present. In this modern era, the world has found a new platform to interact and transact, for efficient worldly affairs i.e., the cyber space. And this virtual world is as crucial as one's own personal space in their respective lives. Criminals have found the convenience in committing crime online, thus this brings us to the point that enactment of proper laws related to various kinds of cybercrime is a serious concern.

Cybercrime is an activity which is forbidden by law that basically involves the usage of devices like computers and cell phones as a tool and target both, it is rapidly evolving because of the exponential growth of use of cell phones, internet and computer. Various kinds of cyber law issues have been involved at various stages, from registering our domain name, by subscribing to a particular website, by downloading application on devices, by carrying out various digital transaction, etc. The major causes of cybercrimes are poorly secured Wi-Fi spots, exploitation of unauthorised products as well as unlimited internet access etc.

So, in this post pandemic era people have been used to the digital marketing, digital transactions, digital interaction and what not and to make sure that

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[2] Vivek Parate, *Data Protection: An Essential Element of Any Digital Transformation Strategy,* DATAVERSITY, Dec. 6, 2022 https://www.dataversity.net/data-protection-an-essential-element-of-any-digital-transformation-strategy/.

[3] The Computer Center, *Metadata and Data Breaches* Mar. 26, 2021 https://www.computer-center.com/metadatadatabreaches/#:~:text=Metadata%20can%20contain%20a%20significant%20amount%20of%20confidential,research%20study%20on%20the%20causes%20of%20data%20breaches.

[4] Jim Boehm, Anatoly Brevnov, Lucy Shenton, and Daniel Wallance, *The Future of Data-loss Revention* Jul. 13, 2022 https://www.mckinsey.com/capabilities/mckinsey-digital/our-insights/tech-forward/the-future-of-data-loss-prevention.

the individual's daily course on the virtual platform is not obstructed by closure of offline services. Therefore, the application of cyber laws is relevant and can prevent unlawful activities in the cyber space, when these kinds of digital course is carried out.

Currently, India is not having any sort of expressly codified special law dedicated to data protection or privacy. Although, there are relevant laws in India that deals with data protection which is the Information Technology Act, 2000 and the Indian Contract Act 1872. But there is a need of codified law which should wholly dedicated to data protection and prevention, so that any reported data breach can be prevented and this increased in data breaching would come under control. For the time being, India's Ministry of Electronics and IT will be introducing data breach notification rule. This rule will apply to all the critical parts of India's network and IT infrastructure. Under this rule sectors including some data centres as well as cloud service providers and VPN operators will be instructed to register themselves and keep a track of information about their customers for at least five years.[5]

An individual's personal information should not be available to other individuals or any kinds of organisation without their consent, in an automated format as this is a matter of privacy and data protection. Those sorts of relevant and personal data should be subjected to be controlled by a certain limit for each individual i.e. according to their discretion and nothing should be binding upon. Any information or data which has been protected by various legislations so that misuse of the information can be prevented as well as violation of these laws by any organisation or individual would lead to respective punishment and fines. Thus to protect this sensitive data of any individual on any device, various administrative, technical, as well as physical measures need to be undertaken. Data protection and Privacy of an individual is closely linked to each other, so breaching any particular data of an individual would be violation of the privacy of an Individual. The Information Technology (Amendment) Act, 2008 clearly lays down the principle on privacy and data protection and also defines certain liabilities like civil and criminal offences resulting from violations of the laws mentioned.

BREACHING OF DATA OF AN INDIVIDUAL CALLS FOR CONCERN

Breach of data is a form of breach of privacy which is a violation of the fundamental right guaranteed to the citizens of India by the law of the land

[5] Stephan Pritchard, *India to Introduce Six-hour Data Breach Notification Rule* THE DAILY SWIG, May 5, 2022. https://portswigger.net/daily-swig/india-to-introduce-six-hour-data-breach-notification-rule.

i.e. the Indian Constitution. As right to privacy was considered a fundamental right under Article 21 in the landmark Judgement of *K.S. Puttaswamy* v. *Union of India*.[6] The personal data of an individual is breached on various levels, for instance when an individual installs a free application on their devices the app service provider in exchange of it shares the device's information i.e. that personal data with other companies to deliver customised products or advertisements. This doesn't stop here, further whenever we agree to accept the terms and conditions of a software, we are actually unknowingly agreeing to all their clauses of a binding contract which are made according to their benefits, so even if we try to file a particular case against them, they have this legal contract as a defence with them which have been consented by us unknowingly. There should be proper legal awareness, which should be brought upon regarding this unknown consensual contract as well as exchange of data of an individual. Although many developed countries are enacting legislations in this area but India is lagging behind in this arena in spite of knowing the fact that our country has immensely witnessed huge usage of mobile and internet connectivity in the past few years.

There has been a rise of commercial availability of various AI (Artificial Intelligence) enabled devices which has increased the rate of data breach occurring not only in India but world-wide and individual's data is constantly at threat. Data Breach can result in leak of various types of information about an individual such as financial data, this data can be leaked when we carry out digital transactions using our debit cards and credit card numbers, bank details, past invoices and many other data related to someone's personal finances. With reference to this loss of financial data, State bank of India in July 2021 released a public statement in which they called out a list of digitals apps which should not be used by their customers in order to be saved from the loss of their financial data[7], this statement clears the air that loss of financial data of an individual is not a myth anymore and this brings us to a national concern.

Further, loss of personally identifiable information such as that personal information which can be used to identify and locate an individual. In the year 2020 cybercrime was at peak to 37%, and moreover there were reports in Madhya Pradesh where people lost 51 crores rupees in five years which was further embezzled amid lockdown.[8] Not to be forgotten in the year 2018,

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[6] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1

[7] DNA Web team, *SBI Customers Alert: Stop Using these Apps or You will Lose Financial Data* July 16, 2021. https://www.dnaindia.com/personal-finance/report-sbi-customers-alert-stop-using-these-apps-or-you-will-lose-financial-data-state-bank-of-india-news-updates-july-15-sbi-alerts-2900684.

[8] Vivek Trivedi, *Online Fraud of More than Rs 51 Cr in Last 5 Years in MP, Cyber Cheats Embezzled Rs 38 Cr in Lockdown* News 18, Dec. 31, 2021 https://www.news18.com/news/india/online-fraud-of-more-than-rs-51-cr-in-last-5-years-in-mp-cyber-cheats-embezzled-rs-38-cr-in-lockdown-4613105.html.

a massive data breach occurred which scrapped the Indian government websites and breached the data of billions of people of India that included Aadhar information, PAN, bank account IFSC codes and other personal information regarding an individual's identity which is not supposed to be disclosed in public[9]. This data was further sold by the scammers at approximately rupees 500. This has been considered the largest data breach of personal information even by the World's Economic Forum (WEF's) Global Risks reports 2019.[10] All these incidents reveals the importance of stringent and effective cyber laws which can actually regulate the ongoing cyber-crime activities in India.

Information which are accumulated in any device whether mobile phones or computer systems may be extremely sensitive and sharing it is a personal matter of every individual, thus as a matter of right, privacy is necessary and is a fundamental right of every individual in this country. Under the Information Technology act of chapter 9 and 11[11], liabilities for the violation of confidential data is discussed and privacy which arises out of unauthorised access to various devices. The law of our land i.e. the Indian Constitution recognizes privacy as a right under article 21[12] but at the same time it also considers its growth and development which are entirely in the hand of the judiciary. No matter how much we try to curb cyber-crime, by using various repressive methods is not an option in today's world of Internet, where it's very difficult to prevent any sort of information to leaked out in the public domain. Thus keeping all these things in mind, The Information Technology Act 2008, has addressed data protection. But I would also like to state that IT Act possess various problems in terms of protecting data and a lack of proper statute concerned for data protection of an individual is the need of an hour so that there is a reasonable balance between personal liberty of an individual and privacy of any person.

There are various cases of Banking frauds which have saw a violent upsurge due to digital banking system where the users possess online services like saving money, online shopping and many more activities. These sorts of medium are breached by the cybercriminals through which they acquire and access the data of the user.

There are various methods through which data breaching can occur, one such thing is phishing. Phishing attacks are basically a fraudulent imitation of communications which seems like, it has come from a trustworthy source but

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[9] Yogesh Sapkale, *Aadhaar Data Breach Largest in the World, Says WEF's Global Risk Report and Avast* Money Life, Feb.19, 2019 https://www.moneylife.in/article/aadhaar-data-breach-largest-in-the-world-says-wefs-global-risk-report-and-avast/56384.html.

[10] World Economic Forum, Report: The Global Risks Report 2019 14th edn., 2019 https://www3.weforum.org/docs/WEF_Global_Risks_Report_2019.pdf.

[11] Information Technology Act, 2000 (Act 11 of 2000).

[12] Constitution of India, Art. 21.

it actually comprises of all types of malware data sources. Phishing attacks are one of the major cybercrime that is occurring in India due to the increase in use of the mobile phones, computer and free internet, which has further stimulated these sort of attacks. The users who become victims of phishing are mostly unaware about these sort of cybercrime and it becomes an easy method for the scammers to steal someone's information without hacking the device. And attacks like these can further facilitate access to an individual's social media accounts, their personal data including financial data and many other things. This process of Phishing starts with a fraudulent email, text or any other mode of communication which has been designed to tempt the victim. Moreover, the message on texts, email or in any form of communication is appeared in such a way that the victim presumes it to be received from a trusted sender. And it is the victim that falls prey to those fraudulent message, the victim ends up giving all sort of confidential, financial as well as identification information which happens to be a scam and ultimately resulting in their financial loss. India has been affected by phishing amidst pandemic as scammers ran various phishing campaigns in which they used to feed the users with fake news of Covid-19 vaccines. Scammers were immensely trying to take the advantage of anxiousness and fear of the people for their own mala fide profits. These scammers were trying to portray that they were selling Covid-19 vaccine and to avoid from being tracked by authorities, they were transacting in bitcoin.[13]

As the famous proverb goes, prevention is better than cure. Therefore, before India faces any further major cyber-attacks through which the personal data of the citizens of this country is breached, I would like to suggest that direct investigation into the conduct of cyber-attack prone areas should be kept in track, so that accordingly the users of those areas would be kept aware through notification.

CONCLUSION

The government agencies now need to be more proactive and accountable than before because it's high time that the security of the personal information of citizens needs consideration. An year before, a server was breached where a large number of financial records of people was mentioned, quite a number of police reports in which victims' data was mentioned and extremely sensitised government information was leaked.[14] Thus, more delay in accountability

[13] Tech desk, *Fake Covid-19 Vaccines, Remedies-Related Scams Increase Exponentially on Dark Net: Checkpoint Report* The Indian Express, Dec.14, 2020 https://indianexpress.com/article/technology/tech-news-technology/fake-covid-19-vaccine-scams-darknet-checkpoint-report-7104552/.

[14] John Xavier, *India's Cyber Defences Dreached and Reported; Govt. Yet to Fix it*" The Hindu, Feb. 20, 2021 https://www.thehindu.com/sci-tech/technology/indias-cyber-defenses-breached-and-reported-govt-yet-to-fix-it/article33888110.ece.

of data breaching incidents as well as delay in providing remedies for these cyber-attacks could further deepen the risk as many citizen's data is yet not secured properly. The citizen's breached information can be used by scammers on dark web and can also be further used in campaigns for social engineering attacks which will result in major financial loss.

We are aware of the fact that cyberattacks are on rise and many companies like Juspay, Big basket, Mobikwik, Airtel and Air India are among the recent ones who have been hunt down by the scammers where personal data of millions of customers have been stolen[15]. Thus, to avoid further data breach, businesses must ensure implementation of effective cyber security plans, the companies must utilise their funds in these cyber security policies. Nodal agencies now are required to upgrade their standards of plans so that the cyber security will be evolved in such a way that the count of data breaches will be low. And such plans related to cyber security must essentially include those policies which are related to management and handling of proprietary information, moreover training of employees dealing with sensitive and proprietary data etc.

Cyber security plans should be part of every institution, businesses, start-ups, government agencies and organisations so that vulnerable cyber-attacks could be prevented and any loss of financial data, personal identification data is prevented. There should also be policies, strategic plans and ways of tracing the scammers in case any sort of cyber breach occurrs due to any failure of cyber security plan. Although India is not having special legislation regarding data breaching activities, all the respective business companies, government institution, agencies and organisations should possess their own cyber security rules which would be subject to modification whenever the special legislations would come up. Till then it would be a smart decision amidst so much data breach occurring all over the country. There should be initiation of spreading the awareness about cyber security by all the respective public as well as private organisations so that the customers and users would be updated in sync.

Thus, countering cyber-attacks requires precautionary measures and to learn from the past incident is never a late step towards preventive action. Moreover, coordination among the public and private entities would also be an effective measure for regulating cyber security for users at large. Further we should create an effective robust system in various jurisdictions about the reporting of cyber-attacks to the specialised government agencies which are wholly responsible for alerting and taking affirmative action against the perpetrators.

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[15] Shivani Shinde & Neha Alawadhi, *India Becomes Favourite Destination for Cyber Criminals Amid Covid-19*, Business Standard, Apr. 6, 2021 https://www.business-standard.com/article/technology/india-becomes-favourite-destination-for-cyber-criminals-amid-covid-19-121040501218_1.html.

Last but not the least spreading awareness regarding cyber security at all levels in every jurisdiction should be the utmost priority in this evolving world of digitalisation so that maximum users of internet, cell phones etc. are having at least minimum knowledge of importance of cyber security. Since there has been constant advancement in technology, there should be advancement of cyber security laws so that technological advancement and legal advancement can go hand in hand for effective globalisation as well as overall evolution of mankind. The security of any sort of data of an individual should be the utmost priority of the state, so that the citizens can efficiently use the cyberspace.

All in all, it can be concluded by stating that technological and cyberspace evolution is indeed a boon for the present generation, yet it comes with the bane like cyber-attacks which must be prevented in order to utilise and experience the new era of technological evolution.

BOOK REVIEW

EMILIO HERNANDEZ(ED): INNOVATIVE RISK MANAGEMENT STRATEGIES IN RURAL AND AGRICULTURAL FINANCE- THE ASIAN EXPERIENCE, FAO PUBLISHING, 2017, ISBN 978-92-5-109684-0

—Bibhu Kaibalya Manik*

The author, in ***Innovative Risk Management Strategies in Rural and Agricultural Finance | the Asian Experience*** creates a noteworthy contribution by analyzing the issues and barriers in financial sectors of agricultural business in rural areas of Asian countries. In an attempt to find out the innovative and effective public policy to stabilize the socio-economic conditions of developing countries of Asia, the author made a comparative study of international, national and local agricultural market. In this study, the author explored the financial regime of Asian countries by various case studies.

The book is divided into seven chapters: the first two chapters focused on the statistical study of the financial mechanisms in relation to the growth of agricultural sector and the innovative global financial practices for replacing the socio-political blockades to make vibrant agro-finance mechanism to strengthen the capital formation of the marginal and small individual farmers as well as to ensure food security. The next four chapters analyzed the development of agricultural sector with the help of case studies and also explored the financial market structure and risk management strategies in rural networks of Vietnam, India, China and Philippines. The author has recommended the general policies and goals for the Asian Countries in the concluding chapter.

In the first chapter, the author discusses the sources of investment and its effectiveness along with the importance of financial services for socio-economic development with the consideration of the diversified economic conditions of rural agricultural field of Asian countries. Sometimes, the potential agricultural players of rural areas cannot access the financial products due

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to intervention of economic agents with various types of financial services because of the inefficiency of formal financial institutions. Such contribution is based on a comparative statistical analysis of global and Asian agricultural economies and regarding agricultural production and investment of different time-periods.

The second chapter demonstrates the new dimension of agricultural innovation to overcome the challenges in the field of agro-business such as, risk regarding climate change, lack of institutions, market performance, harvest results, territorial distance for agricultural functions. The incomplete institutional legal-frameworks, improper information system and lack of various services and opportunities for potential farmers along with that expensive awareness and learning, and exploitation of poor farmers, etc. have created diversified adverse effects upon the agricultural sector. A multi-dimensional solution mechanism like expansion of market and link up with national and international market mechanism, adoption of new technology for risk management is necessary for agricultural development.

The third chapter explores the government initiatives since economic reforms to develop the agricultural industry. The subsidies by the banks with low interest, loan mechanism of the companies and some other informal and semi-formal finance services are the main sources for the small-scale agricultural producers. For example, the economic reforms in Vietnam and making synergy with certain service providers to promote the agricultural production especially the ginger production in rural areas uplifted the growth of GDP and also the poor household are getting economic benefits from it. Such analysis has been exemplified by making some case studies in certain areas supplemented with statistical analysis regarding agricultural exports and shares of Vietnam in the global agricultural field.

The fourth chapter discusses about the innovative schemes for risk management and enactment of various laws for the development agriculture sector in India by the government and by the Reserve Bank of India. The pro-active initiatives by the government like expansion of agricultural credits, improvisation of loan portfolio and establishment of various official and non-official organizations and regulatory bodies considered to be contributory to Indian agro-economy. For addressing the challenges like climate change, challenges triggered due to globalization, low investment, etc. the institutional and non-institutional finance-providers are facilitated with modified frameworks and mechanism however, less scope for private sector participation in playing some significant roles to such quest for thriving. From the statistical analysis and case studies of agricultural issues it is concluded that the concept of digitization of trade and financial services are established to make the agricultural functioning and distribution mechanism more easy and workable to the marginal farmers as well.

In the fifth chapter, the author interestingly analyses about application of innovative digital technology to boost the agricultural business made by the Govt. of China. For the poor household various banks and informal financial institution are helping them to get the agricultural financial support through various schemes such as the tax exemption for agricultural loan. For instance, an innovative system known as Ant-Micro loan by Alibaba Group which works for the transparent and easy functioning of the agricultural sector by which the rural section of the society will be benefited. The group which have the risk management skills in both pre-loan and post-loan situations with such idea plays a vital role in socioeconomic development of China.

In the sixth chapter, the author aims to emphasize on the shortcomings in the agricultural sector of Philippines due to inefficiency of banks, traditional framework and natural calamities. Two major micro-financial institutions of the country are in collaboration with the banking sector to deal with issues like agricultural credit, inappropriate technology and risk management tools thus created the gap of required communication with small hold families regarding risk management. The author has categorically emphasized the connectivity is the major issue also in Philippines. Some non-profit organization like ASKI has taken certain initiatives like increase of production of main agricultural products like rice, cassava, onion, cacao for the development small hold families. The government need to take certain incentives for easy communication, access to facilities before or after harvest and reforms in agricultural business is needed for the issues like export of agricultural products and land acquisition.

In the concluding chapter, the author contributes some noteworthy suggestions dealing with all the analysis regarding the diversified knowledge and capacity of formal and informal financial service providers and framework for the mechanism of governments. It is not possible for a single formal or informal financial service provider to deal with the entire agricultural mechanism, where functioning of both is necessary. The small hold families of rural population need more attention and initiatives regarding climate-change, knowledge development, risk management, issues of natural calamities are to be taken up by the government. The consistent regulatory framework between finance and agriculture which should be based on rural clients needs and diversification of rural client base and financial services is necessary. Banks and financial institution need to be efficient to provide financial support so that the scope for new innovation in agricultural business can be made.

The present attempt on reviewing finds the Book to be one of its distinct kind and unveils a unique dimension of agricultural sector in Asian countries which can help in the socio-economic development of developing nations. It is an significant contribution by the author to give a new perception to the researchers visioned to uplift the agricultural sector. The exploration of

existing issues of agricultural sector in developing countries is helpful for the further research in this field to find out some new dimensions. The author has beautifully compared the scopes and conditions along with that the regulatory systems of different Asian countries with statistic of different times and with case studies. While exploring the unique dimensions of rural agro-finance and risk management it would have been more enriching if the author would have compared the Asian scenario with other continental countries of Europe or Africa or any other Commonwealth countries because that would have enlighten the readers the prospective areas of improvements to be incorporated for the upliftment of agro sectors in Asian countries. However the author has rightfully felt the need of critical analysis of rural agricultural sector and risk management mechanism of Asian nations is also praiseworthy for highlighting the areas of improvements in agro sector. Thus, appreciating this novel venture, the present work will remain a pioneer in the field of Agricultural Finance.

BOOK REVIEW

MARK PEARSON AND MARK POLDEN: JOURNALIST GUIDE TO MEDIA LAW, 6TH EDITION, ROUTLEDGE PUBLICATION, 2019, ISBN 9781760297848

—Rajmani Mohanty*

INTRODUCTION

The book review is designed to review the strength & weakness of "Journalist guide to media Law" authored by Mark Pearson and Mark Polden, 6th Edition, Routledge Publication,31 march 2021, ISBN-10: 0367719789,ISBN-13: 978-0367719784 which cost 765 INR. And to fill a notable gap in the market by creating a practical guide to media law from the point of view of the practicing journalist, not the lawyer. The Law of Journalism by Sally Walker and Media Law by Armstrong, Lindsay and Watterson are the other example, that the boundaries of acceptable conduct in contempt of court are changing authorities are becoming "softer" towards "technical" contempt and likewise it details "disciplined work rules" that help journalists avoid the threat of defamation laws.

ABOUT AUTHORS

Mark Pearson (BA, DipEd, MLitt, LLM, PhD) is Professor of Journalism and Social Media at Griffith University in Queensland, where he is a Fellow of the Griffith Center for Cultural and Social Research. He is the author of Blog and Tweet Without Sued (Allen & Unwin, 2012) and co-editor of Mindful and Ethical Journalism News in the Digital Age: A Buddhist Approach (with Shelton A. Gunaratne and Sugath Senarath, Routledge, 2015), Courts and Media: Challenges in the Digital and Social Media Era (with Patrick Keyzer and Jane Johnston, Halstead Press, 2012). He has worked as a journalist for several media.

* Rajmani Mohanty, Ph.D Scholar, School of Law, KIIT Deemed to be University.

Mark Polden is a lawyer from Sydney. After ten years on the media law practice team of a national law firm, then as an in-house consultant for Fairfax Media for more than two decades, he now advises and acts for print and television and online movies, Australian and international and television. manufacturers and for private customers.

BRIEF OUTLINE

The book consists of 5 chapters:-

CHAPTER 1 DIGITAL LEGAL LITERACY

Where it mentioned about the digital mode of communication in this ultra-modern world and how the law and the legal aspect has played a vital role in the society. Here the authors has mentioned about the role of media law and how to dealt with this advancement of science in this digital era. With the changing world there emerges the new concept of crimes and the side effect of various acts. Free speech expression as guaranteed by the constitution and the reasonable restrictions included in it. Different country have various laws in the aspect of media and also some rights are absolute in few countries where as some have reasonable restriction to it. The legal system how it has played a vital role in curbing the emerging abuse of the system as a benefit to the evil use.

CHAPTER 2 ISSUES IN JUSTICE AND TRANSPARENCY

Here the authors have mentioned few areas where the justice system have saved many from the abuse of media who have tried to manipulate according to their own wish. Open justice and freedom of information is the primary goals of media law. Contempt of Court is the punishment if any party do not obey the order and decision passed and do not act as per the court direction. Also the various court covering the media law aspects which include few tribunal which are the alternative to the court in order to ease down the pressure of the court.

CHAPTER 3 THE MEDIA AND REPUTATIONS

Here the authors have mentioned about the main aspect of the media law in fact the key element .i.e-Reputation which is irreplaceable with any form of compensation in this world. One can forgive for the loss of property but how the loss of reputation if loss it can't be brought back, here the authors have mentioned .The importance of reputation and more importantly defamation which hold 2 part slander and libel where as one is oral form and the other one

is written form and is more greavour form and punishment is more than the earlier. The elements of defamation, how to identify it? What are the ingredients of defamation? What are the relevant case under the defamation. What are the exception to the rule of defamation?

CHAPTER 4 TELEVISION RATING POINT (TRP)

Here Pearson have mentioned about the Television Rating Point or the TRP, how it has played a vital role in the ultra modern generation in this competitive world. Where everyone is hunger for competition and with the rise in various media channel there rise in demand of newer channel or declination of the older ones which used to hold much of the reputation earlier and also the monopoly. Further regarding the TRP Poldon has stated about the side effect on this on the viewers. What value the TRP hold on the general public And how the politics have dominated the media house slowly and gradually.

CHAPTER 5 KEY ISSUES FOR THE DIGITAL ERA

The key issues that are to be addressed in the digital era is Intellectual property right. Here the work of innovation, novelity is there. The utmost crime is the copying of idea of others and making it their own, claiming the benefit and deriving the profits for the idea and work of others saying it to be your work. Privacy the most concern things as the data are been stolen due to lack of security in this advanced cyber world. The law of freelancing alongside media entrepreneurship are the emerging area of media law.

CRITICAL ANALYSIS

In this ultramodern world with the click of a button, you can send words, sounds, and images to the various parts of the world. Whether you are a traditional journalist, blogger, PR expert, or social media editor, anything you post or broadcast is subject to the law. This issue used practice guide to media law is an essential read for anyone writing or broadcasting professionally whet her in journalism or strategic communications. It provides a conscious approach to media law risk assessment so that practitioners can overcome legal barrier. This sixth edition reflects the recent developments in proceedings and the impact of national security law as well as the fast-growing gig economy where graduates can work as news media, public relations, new media start-up. It covers the unique difficulty of defamation, contempt, confidentiality, intellectual property and commenting on criminal charges.

NOVELTY

Television Rating Point (TRP) is the key element that hold the point of attraction in this book. Where the comparative analysis been done with several countries. The regulator the mechanism of TRP been discussed in the chapters. Its been stated that the politics root cause of declining and rising TRP. There should be check and balance system to be there for the testing mechanism. The several media houses due to rise in competition in this fast world had impacted a lot in the TRP mechanism system.

CRITICISM

Unfortunately, the Journalist's Guide to Media Law does not provide an answer to the dilemma currently emerging in the field of disregard, especially how far the media can go without receiving any money, attract lawsuits. The chapters opens with a reminder of the enthusiasm with which the media covered raises the question "When does this jeopardize the right to a fair trial?" Authorities in threatened legal action over the cover-up but no action was taken since then liberties have been exercised in other cases particularly in the early stages of the sub-jurisdiction. The propensity to prosecute only when there is a "real danger" to the proceedings and that the delay between publication and trial is a matter.

But if this does mean that we are entering a new era, where the media need not be so careful about exposing crimes in the early stages of the sub-trial period. readers will struggle with themselves.

CONCLUSION

Among them is a list of sub-court "time zones" with step-by-step instructions on what can be published at each stage of a legal proceeding. Although taught in press law courses in this way for many years, it is not something that has previously appeared in mainstream texts when legal action was inevitable. The approach acknowledges the fact that very little defamation goes to court and that successful defense begins long before it is published. It also places defamation research in real-world context.

We found contempt for disobeying a court order not in contempt but in the larger "journalists and information" section with confidentiality and copyright. Meanwhile issues such as intrusion, nuisance, hearing devices, profanity, discrimination and profanity are grouped together as "moral and ethical issues considered important." to society to the extent that laws have been made to enforce them". They may not be all different, but have been effectively chosen to minimize the confusion that legal complications can cause for journalists

and students. For example, the case of David Ponting, who was found to have been unjustly jailed for murder, was cited in the wake of the judges deliberation. This book also cites examples from recent political history that are commendable but, in my opinion, could be better documented for today's college students.

BOOK REVIEW

DR. REKHA AHUJA: SURROGACY LAW, PRACTICES AND POLICY IN INDIA, 1ST EDITION, BLOOMSBURY PROFESSIONAL INDIA, 2021, ISBN: 9789390176168

—Sudatta Rath*

DESCRIPTION

This book is an effort to present the important concept of surrogacy and its various forms. It also emphasizes on to recently passed Acts- The Assisted Reproductive Technology (Regulation) Bill and the Surrogacy (Regulation) Bill 2021, both of which will have a strong impact on Indian women's Reproductive Rights and Health. The book focuses on legal and judicial approach towards surrogacy in various countries. The 228th Report of Law Commission of India, ART Regulation Bill, 2014 and the Surrogacy Regulation Bill, 2019, legal nature of surrogacy under Constitution and Indian Contract Act, 1872, Medical Visa Regulation have also been duly analyzed.

This book is centered on "Commercialization of Surrogacy in India". This book tries to clarify the meaning and concept of Surrogacy with its different types and processes. It also lay a light on surrogacy related problems and the rights of the Surrogate and the baby born from her.

In the case of surrogacy there may be a question about enforcing a contract with the Surrogate mother, whether such contracts may be valid in views of the provisions of public policy, particularly under section 23 of the Indian contract Act 1872, whether the child tube handed over can be considered a saleable commodity for consideration. Surrogacy contracts are the same as other contracts. It raises a very serious issue of morality and gives rise to question of adultery. In Oxford v. Oxford: a Canadian Court held that as the wife was a surrogate mother, it was a clear-cut case of adultery by the wife.

* Sudatta Rath, Ph.D Scholar, School of Law, KIIT Deemed to be University.

In Baby Manji Yamada v. Union of India & Another, an identified woman donated the egg, which after fertilization with the sperm of Mr. Yamada was introduced into the body of Surrogate mother. Thus, it was not a case of involvement of "couple". Mrs. Yamada had no contribution in the birth of the child . In Jan Balaz case, the legal issue was centered of whether the surrogate mother was the legal mother of the child.

BRIEF SUMMARY OF BOOK

The word surrogate has its origin in the Latin word "subrogares", meaning a substitution or replacement, i.e., a person appointed to act in the place of another. The term "surrogate mother" or "surrogate" is usually applied to the woman who carries and delivers a child on behalf of another couple. It is considered as a blessing and miracle of science" this concept dwells for its legality to Article 16(1) of Universal Declaration of Human Rights, 1948, which stipulates that men and women of foliage and without any limitation due to race, nationality or religion have the right to marry and to found a family. In Medical parlance surrogacy means, using of a substitute mother in the place of natural mother. Thus Surrogate Mother is a woman who bears a child on behalf of another woman either from her own egg or from the implantation in her womb of fertilized egg from another woman. Surrogacy is of three kinds. They are Genetic surrogacy/partial surrogacy, Total surrogacy and Gustatory/ Gestational surrogacy.

It is hard to imagine the child as commerce. Babies, after all are the product of love, not money, a conception that occurs far away from any commercial activity. Poor parents across time and place have viewed their children as potential economic assets, weighing their eventual economic contribution-in the rice field or factory or manor- against the costs of carrying them through childhood. Likewise, surrogacy has become a commercial business in countries like India, which has given rise to many questions leading to political debate. Feminists have argued over the alienability of woman's bodies; legal scholars have probed the contractual and jurisdictional issues. The market for surrogacy is large and is growing. There are thousands of potential parents across the world with both the desire and the wherewithal to hire another woman to bear their children.

Commercial surrogacy, or "wombs for rent," is a growing business in India.7 Critics have described the popularity of surrogacy arrangement in India as 'baby booming business', 'womb on hire', 'baby firm', 'parenthood by proxy'. Surrogacy has turned a normal biological function of a woman's body into a commercial contract. Surrogate services are advertised, surrogates are recruited and operating agencies make large profits. The commercialization of surrogacy raises fears of a black market and baby-selling, breeding farms,

turning impoverished women into baby producers and the possibility of selective breeding at a price. In India surrogacy is becoming a booming industry due to the fact that surrogate mothers are easily available and the entire cost of this method is very less as compared to other countries. A high demand of surrogates has been witnessed in India because of the comparative ease with which the foreigners can find surrogate mothers. Non-intervention of law had made surrogacy a knotty issue in India. At present surrogate motherhood in India involves a business of $445 billion, faces severe pressures from different social concerns. India is the only country in the world which has legalized commercial surrogacy. Legalized in India in 2002, it is now a half-a billion-dollar a year industry, with surrogacy services offered in at least 350 clinics.

On average, most Indian surrogate mothers are paid in installments over a period of 9 months. If they are unable to conceive they are often not paid at all and sometimes they must forfeit a portion of their fee if they miscarry. The amount of money given to a surrogate mother in India may appear very miniscule from any reasonable perspective, however, the amount may serve as the economic life blood for the families, and will be spent on the needs of the family (a house, education of the children, medical treatment). Indian clinics are at the same time becoming more competitive, not just in the pricing, but in the hiring and retention of Indian females as surrogates. Clinics charge patients between $10,000 and $28,000 for the complete package, including fertilization, the surrogate's fee, and delivery of the baby at a hospital. Including the costs of flight tickets, medical procedures and hotels, it comes to roughly a third of the price compared with going through the procedure in the UK. In India there has been rise of more than 150% of surrogacy cases in the past few years. The hot places to find surrogate mothers in India are Anand town in Gujarat State, Indore city in Madhya Pradesh, Pune, Mumbai in Maharashtra State, Delhi, Kolkata and Thiruvanantpuram. Private clinics in Indore, Pune, Surat and Anand have witnessed mushrooming growth. These clinics act as middlemen between the foreign couples and the willing surrogate mothers. Childless couples from all over the world are coming to India in search of surrogate mothers due to the availability of poor Indian surrogate mothers at a much lower costs. Several American, Russian and British women are duly registered with the Akankshya Clinic of Anand and the Bhopal Test Tube Baby Centre for the procedure. Generally surrogacy arrangements are drawn up in a random fashion and can be exploitative especially since surrogates are mostly from socio-economic weaker sections. The very act of commercial surrogacy in India is exploiting the poor and vulnerable surrogate mothers and exposing them to unnecessary and unwanted risks. They have no legal representation and no rights under the contract: they do not have a grace period following birth within which they can change their mind, and they are owed no compensation whatsoever should they fail to produce a child. The surrogacy market in

India is estimated to be between Rs 1,000 and 5,000 crore, considerably lower (about, a fourth of what they would cost in the United States). That has again increased the international confidence in going in for surrogacy in India. The status-conscious lower middle class is resorting to surrogacy for fulfilling its material and financial needs. According to data compiled by the National ART (artificial reproductive techniques) Registry of India (NARI), from 50-odd cases in 2004 there has been a near 300 per cent jump to 158 cases in 2005. Gujarat alone accounts for 75 of these cases, 16 were reported from Chennai, 15 from Hyderabad, and the rest from other major cities in India.

Surprisingly, surrogate hiring of wombs exist in India even though the Transplantation of Human Organs Act, 1994, bans the sale of human organs, loaning of organs and commercialization of trade of human organs. Moreover surrogates are nowhere available as in India to single parents, gay and unmarried partners, despite the fact that the same sex relationship are not permissible in India. The urge to have a biological child of one's own flesh, blood and DNA, aided with technology and purchasing power of money coupled with the Indian entrepreneurial spirit has generated this flourishing Indian reproductive tourism industry. An article titled "Moms on the Market," was published on 13 March, 2011 in a renowned Indian national newspaper The Hindustan Times, which is published simultaneously from a large number of major cities in India.

In the 228th report submitted by the Law Commission of India in August 2009 titled "Need for legislation to regulate assisted reproductive technology clinics as well as rights and obligations of parties to a surrogacy, "surrogate child should be recognized as the legitimate child of the commissioning parents and the birth certificate of the surrogated child should contain the names of the commissioning parents only. The Indian government has drafted a legislation earlier floated in 2008finally framed as ART (Assisted Reproductive Technology (Regulation) Bill 2010 is still pending with Government and has not been presented in the Parliament of various aspects including interests of intended parents and Surrogate mother11 . The light of this, the surrogacy (Regulation) Bill 2016 was introduced in Lok Sabha in November. The Cabinet approved bill, however has not been passed yet.

CONCLUSION

Developing nations that permit commercial surrogacy might nonetheless better protect the negative reproductive rights of their female citizens. Negative rights violation can and should be addressed by the state that permits commercial surrogacy through a strengthened commitment to women's empowerment, which it can demonstrate by improving the conditions of vulnerability that make such offers so difficult for female citizens to refuse.

Positive reproductive rights must be employed to the end of securing the social, material and potential tools by which all women will truly be able to make reproductive decisions free from coercion.

Further, for those countries that continue to prohibit commercial surrogacy within their borders, there is the option to introduce prohibitions that apply extraterritorially. That is, residents of those states would be committing a crime if they travelled elsewhere to engage in practices that are prohibited in their own territory. This is the position taken in three Australian states (New South Wales, the Australian Capital Territory and Queensland), Malaysia, and Turkey.

Domestic laws should not be changed to permit commercial surrogacy in those jurisdictions that currently prohibit the practice solely based upon dilemmas created by people who have engaged in global surrogacy arrangements (sometimes against the law of their own jurisdiction). Such cases should be dealt with by the courts, on a case-by-case basis; or the legislature should speak as to what should occur.

Israel model must be adopted by every nation proposing to legalize commercial surrogacy as it has successfully balanced the needs of the society and those of private individuals. Both the surrogate and the infertile couple should obtain legal counsel before agreeing to and signing a contract. Disclosure of the surrogate relationship should be limited so as to avoid unwarranted scrutiny and the criteria for being a surrogate should be laid down clearly. Establishing methods to control payment for surrogacy and making it altruistic act, instead of a business could help eliminate this unethical aspect. Laws should be framed and implemented to cover the grey areas to protect the rights of women and children.

There is an urgent need to have a specific legislation for the regulation and control of surrogacy in India. It should take into account issues like access to surrogacy, liability issues, interest of the child, parentage of child etc. The terms and conditions must be clearly laid down and proper balance should be maintained between the duties of surrogate mother and the protection of dignity of her rights. The relationship between the surrogate mother and the child and commissioning parents should be properly defined and made uniform in all surrogate practices.

Its high time for the Indian Parliament to study in detail the international perspectives on surrogacy in general and the position prevailed in India in particular to understand it the best and to provide a good deal of rules and regulations to our own country after carefully considering societal feelings and acceptance to this practice of surrogacy.

India must focus on legalizing altruistic surrogacy and prohibiting commercial surrogacy. Legislation being framed for regulation and monitoring of surrogacy in India should also consider the ethical, moral, social and religious standard of the society.

Typically, after the birth the surrogate mother is left without any medical support, it is recommended that there should be a provision of intensive care and medical check-ups of their reproductive organs during the 3 months after pregnancy. Legal recognition of termination and transfer of parenting rights. It is crucially important to maintain and monitor the anonymity of the surrogate mothers. The surrogate mother should not undergo more than 3 trials and it has to be monitored. The surrogate mother should be provided by the copy of the contract as she is a party in the agreement and her interests should be taken into account. It happens that very often decision is taken by the intended parents and clinic, while surrogate mother does not have any say in this matter.

Similarly, while we should accept and encourage different family formations, commercial surrogacy should not be 'sold' as the preferred option to people seeking to form a family.

BOOK REVIEW

PROF. STEPHEN ELIAS, LEGAL RESEARCH, 18TH EDITION, NOLO, 2018, ISBN 9780873379199

—Anas Mhanna*

In this book, the writer defines the meaning of law and determines the sources of law in addition to helping the reader to formulate legal questions and find logical answers to them.

The writer Stephen defined the law as a set of rules that govern the behavior of individuals and the behavior of the group.

And given that the book talks about legal research in the United States of America, the writer had to mention the sources of law in the United States of America, foremost of which is the Constitution as the highest official document in the state, followed by federal issues, thirdly federal laws, and fourthly federal administrative regulations.

Since the legal research must be carried out by law students, they must know that the law is in its nature flexible and this means that it is not static because in many cases the judge is required to rule on cases according to his personal conviction provided that his decision does not contradict the provisions of the law and this is what we call The essence of the law.

The writer Stephen also mentioned, during his book, the sources that the researcher can use in his research currency, such as law libraries, because they contain a large group of books and legal references, in addition to court libraries through which the researcher can identify the cases presented to the court that are related to the researcher's research. Among those sources, there is the Internet, given that the Internet has become accessible to everyone and has become an important source for any researcher through which he can obtain information related to his research.

* Anas Mhanna, Ph.D. Scholar, School of Law, KIIT Deemed to be University.

The beautiful thing about this book is that it alerts the researcher to a set of topics that he must warn about while doing his research. For example, the reader or researcher must pay attention to the fact that not every opinion we find on websites is considered a new law, because sometimes the courts of first instance issue decisions in certain cases but we cannot consider these decisions as laws, but rather as mere decisions issued in certain cases, but they do not violate the law.

It is also useful in this book that he mentioned a group of websites that serve the researcher in his legal research, such as: (Fastvase, Versuslaw, Nolo, Justia, Findlaw).

In addition, we can find in this book a distinctive approach to search operations, which is the approach (Statsky ''Cartwheel'') which is concerned with identifying different categories of words, in other words, defining the keyword in the search, which can be extracted from the table or index Then think about a number of formulations related to that word in addition to mentioning a large group of methods that the researcher can use in his research.

The writer presents to the reader the legal research scene through a clear tone and then moves to the actual process of conducting legal research by presenting laws and case law, down to secondary authorities and electronic research. Then each chapter concludes with two research assignments, one in print and one electronically, thus allowing the reader to apply the skills that any reader can identify during reading this book, with the analysis of some issues to serve as training the researcher to understand the structure of legal opinion and most importantly as an example of interaction of legal sources used in research and opinion formulation, permeate all the examples illustrative the text but not to the extent that they overwhelm the book and hide text, one of the strength of this title is the balance it strikes in providing enough detail to reveal the essence of the search tool without getting bogged down in minute details.

The writer also introduces readers to more advanced research topics (administrative law, legislative history, and international law) in a clear and easy-to-understand way for all readers, this is useful for the legal researcher because it familiarizes him with the tools and their basic uses, but it does not confuse them with the complexities of conducting legal research before they are ready to do so.

I must mention here (ethical cautions, practice advice and helplines), which in turn reinforce to the reader the importance of legal research by showing how important the successful practice of law is.

In short, I can say that this book gives the reader all the materials that are necessary to understand how to research, not only the main primary sources, but also many other sources that are considered to be the core of the law.

In addition, a group of researchers commented that this book could be a reference source, which indicates its great value, because the writer focused on the practical aspect of research and on presenting many exemplary facts and examples, and this is what makes this book an attractive source for law school students.

In my personal opinion, this book is very good and suitable as a law school research method, although it spoke in some of its sections about the research process in the United States of America, but it is in general that all the rules and thinking that I mentioned could be useful for any researcher who wants to conduct legal research.

(FORM IV)

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Sd/-

Prof. (Dr.) Bhavani Prasad Panda
Director
School of Law, KIIT University

Chief Editor
KIIT Journal of Law and Society

CALL FOR SUBMISSIONS: VOLUME 12 [2022]

The KIIT Journal of Law and Society (KJLS) is the flagship review (ISSN: 2231 – 5144) of the School of Law, KIIT University, Bhubaneswar, Odisha having a double blind peer review process of selection.

The School of Law, KIIT University, hereby announces a call for papers for the Volume 13 of its annual Journal (KJLS). We extend our invitation to law students (both postgraduates and undergraduates), professionals, lecturers, policy makers and others to send in their write-ups on contemporary issues of law.

The Journal, through its publications, seeks to generate interest for a better understanding of the major areas of law and also to provide a national and international forum for debate on the comparative, analytical aspects and issues.

The **Thirteenth** volume of the Journal would highlight the contemporary legal issues **from areas of private law such as Contract laws, Labour laws, Property laws, Commercial laws, Competition laws etc and other branches,** which are giving impetus to deliberation, not only amongst the student community but also within the entire legal fraternity.

Submission Categories:

Articles (5000-7000 words exclusive of footnotes) — Article should provide an in-depth study in the contemporary legal issue. We intend to incorporate critical analysis and original assertions on the said issue.

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Submissions to the **KIIT Journal of Law and Society [Volume XIII]** should adhere to the following guidelines:

- All articles and short articles must be accompanied by an **abstract** not exceeding 300 words.
- The submissions are to be made only in Microsoft Word Format (.docx or .doc files) by sending an email at **klsjournal@kls.ac.in.** Emails must mention the Subject: "KIIT-JLS Volume XIII Submission:" followed by title of the paper.
- The word limits are exclusive of footnotes and only footnotes are to be used and no end-notes or bibliography. **The Harvard Bluebook, 20th edition** is the style which is to be strictly adhered to for citations.
- **Sub-headings** will be formatted in Normal with case size 12 in Times New Roman & Bold. The **body** of the writing will be formatted in Normal with case size 12 in Times New Roman.
- **Co authorship** is permissible up to a maximum of two. The submissions will undergo a double blind peer-review process, therefore the author/s shall not disclose their identities anywhere in the body of the manuscript.
- The Author(s) shall have to send a **Declaration** [as a separate attachment] as to that the work has not been published anywhere else and has not been submitted for publication elsewhere. For any issues arising in contravention to such declaration, the KIIT Student Law Review,and Editorial Board shall not be liable. The author shall be personally liable for his or her actions or omissions. The declaration should be a scanned document in PDF or Image (.jpg or .jpeg) formats containing the above mentioned declaration.
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