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ABOUT US

"Journal of Unique Laws and Students" (JULS) which shall provide law students, young lawyers and legal professionals to deliberate and express their critical thinking on impressionistic realms of Law. The JULS aims to provide cost free, open access academic deliberations among law students and young lawyers. The ISSUE III of Volume I focuses on three themes i.e. (i) Arbitration Law (ii) Competition Law, and (iii) Criminal Law.

The journal strives to contribute to the community with quality papers on a vast number of legal issues and topics written by authors from various groups that have been reassessed and revised by our editorial team to reach the highest possible standard.

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PREFACE

On looking at todays scenario, there are numerous issues to know about. Our journal`s Issue III of Volume I has work on three crucial themes namely ***Criminal Law***, ***Arbitrational Law*** and ***Competition Law***. We would like to express our deep appreciation of the co-operation of the contributors, who so willingly devoted their time and enegies.

We have tried to cover these wide topics with the relevant research and landmark judgments. We have used standard of words for the explanation, evenly attempted to clear the concepts and presented captivating writing to the readers. The works also contains some suggestions in respective fields.

The views expressed in the articles are purely and solely of the authors and the entire team of the Journal has no association with the same. Although all attempts have been made to ensure the correctness of the information published in the articles, the Editorial team shall not be held responsible for any errors that might have been caused due to oversight or otherwise. It is up to the rest of us to help make the journal a success story in the next several years.

FOREWORD

As a member of the Advisory Board of Journal of Unique Laws and Students (JULS) which seeks to support student dynamism in action, I take pride in writing this very brief Preface to **Issue III of Volume I** of the Journal. Through this sturdy student-led initiative, the Journal provides young lawyers and law students of the opportunity to deliberate on legal issues of contemporary interest and to express their well-researched conclusions in the form of double-peer reviewed articles.

In this issue of the JULS I am happy to see a wide array of articles on *Alternate Dispute Resolution (ADR), Arbitrability, Competition Law, Juvenile Delinquency, Gender Crime, Cybercrime, Criminalisation of Politics, Sedition and Witness Protection*. Laws and legal systems are dynamic in nature and laws evolve or are enacted to suit the changing needs of society. Young lawyers and law students can contribute to this dynamic process and even recommend law reform or analyse existing laws including case law. Young lawyers can also contribute to society as civil society activists engaged in efforts to improve the quality of law and its administration. The inculcation of critical thinking, which is one of the main objectives of the JULS, can no-doubt stand in good stead to young lawyers in moulding their future careers.

While I am happy that the very first issue of the inaugural volume of JULS was a tremendous success and its wide array of articles on diverse topics were well received by the legal fraternity, I take this opportunity to thank the contributors of articles as well as the vigilant and hardworking Editorial Board and my colleagues in the Advisory Board for the high standards achieved. In this Foreword, I take the opportunity to thank the publisher for coming out with another issue of JULS almost in time despite the trying conditions in which lawyers work and law students are placed, and I am glad that JULS through its on-line presence, is able to contribute immensely to this process of dissipation of legal knowledge and skills.

Justice Saleem Marsoof PC

Judge of the Supreme Court of Fiji

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EDITOR'S NOTE

Unique Law was established in the month of April 2020 and cheerfully brings **Volume 1 Issue III** of **Journal of Unique Laws and Students (JULS)**. This journal has become a successful climb in reaching to our goal of gaining visibility in the academic front and becoming a great platform in education community.

The journal aims to present merit papers on the numerous legal issues and these topics are authored by various groups of individuals that have been reappraise and emended by our team of editors to attend the highest possible excellence. These research papers, case analysis and shortnotes are the result and we feel privileged to have been able to act as editors.

We thank to all our authors for their obedient submission to the third issue of the Journal by Unique Law and also for their productive cooperation with the editorial team to garnish their work with perfection. We would also like to express our gratitude to our diligent editorial board, whose restless support and commitment made this Journal's Issue III a success.

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ARBITRABILITY OF IPR DISPUTES

Author: *Aishani Navalkar*[*]

ABSTRACT

Intellectual Property Rights disputes are increasing at a gradual rate. Similarly, the means to use arbitration as a commercial dispute resolution mechanism is also increasing. Many liberalized and globalized countries in the world have adopted a pro-arbitration approach when it comes to arbitrability of IPR disputes. However, the judgments given by the Indian courts and their stance towards arbitration of IPR disputes have remained scattered. This paper navigates through the various judicial pronouncements set forth by the courts in India and identifies the dynamic nature of the same. It also recognizes lacuna present in the legislations and precedents regarding the scope of IPR arbitrability. Given the Indian judiciary's recent pro-arbitration stance, there is a strong probability that additional lawsuits originating from IPR agreements would be resolved through arbitration.

Keywords: *Arbitration, Intellectual property, Disputes, India*

INTRODUCTION

The Indian statues do not define Intellectual Property Rights (hereinafter referred to as IPR). In India, the following include the most widely used IPR: copyrights, trademarks, patents and industrial marks. However, the courts have referred to it as a 'negative right', which is the right of the registered owner to prevent others from utilizing the property, he or she has generated[1]. IPRs are intangible and incorporeal properties. India is a signatory to the TRIPS Agreement of the WTO.

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[1] Gurukrupa Mech Tech Pvt. Ltd. vs. State of Gujarat and Ors. (2018) 4 GLR 3324

In Institute of Chartered Accountants of India v. Shaunak H. Satya & Ors.[2], the Supreme Court of India referred to the definition of Intellectual Property from the Black Law's Dictionary[3], "the *term 'intellectual property' refers to a category of intangible rights protecting commercially valuable products of human intellect comprising primarily trade mark, copyright and patent right, as also trade secret rights, publicity rights, moral rights and rights against unfair competition*"

The High Court of Delhi in, McDonalds India Pvt. Ltd. and Ors. vs. Commissioner of Trade & Taxes, New Delhi and Ors.[4],described IPR as rights that are only genuine and effective if they allow the owner or transferee to "keep out" those who are not allowed to utilize them.

The importance of IPRs was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). The above two are administered by the World Intellectual Property Organization (WIPO).

Rights in rem refer to rights against the world whereas rights in personam refer to rights against an individual. Right in rem also refers to 'a legal action directed against a property' rather than an individual. According to the judiciary in India, IPRs are considered to be rights in rem, since it can be exercised against the world at large. Rights in personam can arise in contractual agreements. Thus the matter of arbitrability depends on the "right to rem v. right to personam."

The IPR regime is governed under The Copyright Act, 1957; The Patents Act, 1970; The Trade Marks Act, 1999; and The Designs Act, 2000.

Arbitration, in its most basic form, is a non-judicial method for resolving disputes in which a third person, known as an arbitrator, makes judgments on the subject matter which binds the parties. Arbitration is the process of an independent third party deciding a dispute in a private, judicial setting. A single arbitrator or a tribunal may be used in an arbitration proceeding.

[2] Institute of Chartered Accountants of India v. Shaunak H. Satya & Ors. 2011 (4) SCT 76 (SC)

[3] B. A. Garner, Black's law dictionary 813 (7th ed. 1999) 7th ed

[4] McDonalds India Pvt. Ltd. and Ors. vs. Commissioner of Trade & Taxes, New Delhi and Ors. *2017 VIIAD (Delhi) 350*

In India, the matter of arbitration is administered by the Arbitration and Conciliation Act, 1996. The act has been amended in order to keep up with the evolution of disputes. It shadows the UNCITRAL Model Law on International Commercial Arbitration.

Arbitration has been utilized as an Alternative Dispute Resolution (ADR) technique to help resolve commercial disputes in a timely manner. Even though there are numerous advantages to arbitration, certain disputes can only be resolved through litigation. None of the acts and legislation in India (relating to arbitration and IPRs) lay down the scope of the subject matters which can be considered to be arbitrable.

IP arbitrations are uncommon, for a variety of reasons, including the fact that most IP disputes do not include a pre-existing contractual arrangement. Arbitration, on the other hand, necessitates a written agreement to arbitrate. Using ADR to resolve IPR issues has been a long-standing practice. It is particularly the arbitration of disputes; institutional arbitration is becoming increasingly crucial for India's developing industries in the environment of liberalization and globalization. IPRs are only as powerful as the enforcement mechanisms available. In this context, arbitration is becoming more popular as a private and confidential method of resolving disputes over intellectual property rights, especially when parties are from different jurisdictions.

LITERATURE REVIEW

Kumar and Mishra (2015)[5] state that Intellectual property rights (IPR) have become a valuable weapon for gaining economic supremacy. For all those involved with research and academic communication, copyright has become a hot topic and a complex one. In the digital era, the nature and usage of copyright content differs from that in the print environment. The increased exploitation potential in the digital world has created new problems for copyright holders to safeguard their material from unlawful usage in the digital environment.

[5] Satish Kumar and Anil Kumar Mishra, IPR in India: Status, Strategies and Challenges for Digital Content. Transforming Dimension of IPR: Challenges for New Age Libraries, (2015), http://14.139.58.147:8080/jspui/bitstream/123456789/374/1/Original%20Transforming%20Dimension%20of%20IPR%20-%20Challenges%20for%20New%20Age%20Libraries.pdf#page=16 (Sept. 7, 2021, 9:20 pm)

Vaderu (2018)[6] explains that the following are the general principles of arbitration: The fundamental goal of establishing arbitration is to get a fair settlement through a third party without incurring excessive costs or delays. The parties are given the opportunity to determine how their issues should be handled through arbitration. Finally, the courts are not required to intervene in the arbitration procedure.

Using alternative dispute resolution to resolve Intellectual Property Rights issues has been a long-standing practice. It is particularly the arbitration of conflicts; institutional arbitration is becoming increasingly crucial for India's developing industries in the environment of liberalization and globalization. Intellectual property rights are only as powerful as the enforcement mechanisms available. Arbitration is increasingly being used to resolve disputes concerning intellectual property rights as a private and confidential method, particularly when parties are from different jurisdictions.

When it comes to international IPR issues, arbitration is still favored over litigation, despite the problems it poses. It eliminates several lawsuits and has inherent benefits in dealing with commercial conflicts, such as flexibility, secrecy, and finality.

Even while Indian law has not yet matured to the point where it expressly allows for the arbitration of IPR issues, it does not prohibit it either, as mentioned by Garg (2019)[7]. Arbitration of IPR issues is still in its infancy in India. Adopting the arbitration mechanism used in Switzerland or the United States is not a smart option since the nations' dynamics are not the same.

Despite the fact that arbitration has been the favoured method of resolving disputes, there is a severe lack of framework in the arbitrability of IPR issues. IPR has risen in importance as a result of technological advancements. India's intellectual property laws are extensive and are updated on a regular basis. Arbitration is a faster and less expensive alternative to litigation when it comes to IPR issues. The growing reliance of the global economy on intellectual property necessitates even stronger IP protection through strict implementation of IP laws.

The Indian IP Laws are not unified, and various legislations govern distinct types of IP Laws. The IP Law system in India is governed by many laws such as the Trademark Act, Copyright

[6] Nikita Vadrevu, *Arbitration and IPR*, LEGAL DESIRE, (Sept. 7, 2021, 9:29 pm), https://legaldesire.com/arbitration-and-ipr/

[7] Nidhisha Garg, Arguing for the Arbitrability of IPR Disputes, 10 INDIAN J. INTELL. PROP. L. [36] (2019)

Act, and others. Procedures for resolving disputes have been created under each Act in line with the Procedural Laws (CPC, Cr. PC). However, the length of time taken by the courts and the formality of the system add to the applicant's unhappiness, and such considerations favor arbitration over litigation.

Following a 2015 modification to the Arbitration Act of 1996, a discussion about arbitration vs. litigation has emerged. The Supreme Court has not issued any precedential case law on the arbitrability of IPR issues. Because India's IP regime lacks a particular authority, special arbitral courts might be established to settle disputes. Because of the ambiguity surrounding questions of right in rem and public policy, arbitral tribunals have a difficult time deciding on their jurisdiction.[8]

The Arbitration and Conciliation Act of 1996 should be construed in a way that aligns the ideas that underpin its interpretation with current methods in the common law world. In India, jurisprudence must change in order to improve the institutional efficacy of arbitration. Respect for a forum chosen by the parties as a comprehensive remedy for resolving all of their claims is only one example of this progression. The reduction of judicial interference is an acknowledgment of the same concept. With the aid of appropriate laws, India may also enhance and encourage arbitration in IP disputes while maintaining a balance between anonymity and public interest[9].

Rights–in–rem (rights one has in opposition to the entire universe) are unsuitable for private arbitration and hence fundamentally non-arbitrable, according to popular wisdom. The Booz-Allen decision defined six types of conflicts that were previously considered non-arbitrable. However, such courses did not specifically include conflicts over intellectual property rights. However, based on the criteria set out in the ruling, we can reasonably conclude that the question of arbitrability of issues involves.[10]

Arbitration is a conflict resolution procedure in which the parties in a disagreement have their issue decided by a third party called an arbitrator rather than going through the regular court of

[8] Aakash Laad & Mayank Gaurav, Arbitrating IPR and Competition Law Disputes in India: Issues, Scope and Challenges, 6 INDIAN J.L. & PUB. POL'y 26 (2019)

[9] Sankalp Udgata & Ayush Chaturvedi, Contours of Commercial Arbitration: A Disquisition into the Arbitrability of IP Disputes in India, 25 Annals FAC. L.U. ZENICA 127 (2020)

[10] Nikhil Bhatia, *Amenability of Intellectual Property Rights to Arbitration in India,* JGLR (Sept. 9, 2021, 10:01 am)

law process. Arbitration, as one of the techniques of dispute resolution, has lately gained a lot of traction and is now widely acknowledged as a tool for resolving conflicts on a global scale. One of the major goals of the Arbitration and Conciliation Act, 1996 was to reduce the courts' supervisory role in the arbitral procedure.

Arbitration and Conciliation (Amendment Ordinance) 2015: The most recent amendment to the Act of 1996 made substantial improvements, primarily by attempting to limit judicial interference in arbitration cases and to address other flaws that cause excessive delay in arbitration-related court procedures.[11]

IP issues have always been viewed as non-arbitrable. Arbitrability of any subject matter, including IP issues, is determined by a country's public policy to arbitrate, and whether or not an IP dispute should be arbitrated varies by jurisdiction. Various current domestic IPR laws in India have been modified from time to time to satisfy international responsibilities under the TRIPS. Arbitrability of IP disputes is a global concern. With the ongoing conflict between rights in rem and rights in personam in India, it is difficult to make a decision.

The owner's IP rights, by their very nature, stand in opposition to the rest of the world, i.e. right in rem. However, in today's commercial world, the IP landscape is writ big, with a web of other parties' rights entwined with the rights of the originator. India's National Intellectual Property Rights Policy of 2016 provides a road map for IP rights in the future. The policy's third objective is to strike a balance between the rights holders' interests and the greater public good.

When considering conflicts between states and corporate players, a wide interpretative approach will allow investment tribunals to include applicable concepts from other areas of international law, such as international intellectual property law. This public-interest strategy might result in long-term benefits in the public interest[12].

Intangible property, or that which is created by the mind, is protected under intellectual property law. The foundation for protecting such property has a direct bearing on the arbitrability of such property disputes. Arbitration is a confidential and private method of resolving disputes. First, there's no reason why arbitrability criteria for IP issues shouldn't be

[11]Sumit Kumar, *Historical Growth of Arbitration Law in Indi*a, 11 IJITKM 127, 118-135 (2017)

[12]Vikas Gandhi, *Intellectual Property Disputes and Resolutions*, 26 J. Intellect. Prop. Rights 16, 14-19 (2021)

comparable to those for real estate disputes. Second, the world is heading toward the liberalization of intellectual property dispute arbitrability.

Given the large amount of investment and the need for quick resolution of disputes emerging from it, India would be wise to explore liberalizing the arbitrability of IP issues in the near future. At the same time, arbitration should not be used to trample on the rights of stakeholders who aren't necessarily party to the arbitration agreement[13].

In the absence of any legislative insight or direct judgment by the Supreme Court of India on the arbitrability of intellectual property rights disputes, the overall Indian law on the subject is fragmented. There are significant variations in the laws that regulate patents, trademarks, and copyrights. With the complexities of arbitration law, the courts are confronted with the difficult task of harmonizing arbitration law with the various scenarios that intellectual property law might provide. "Arbitration, like consummated romance, is based on consent."[14]

The confidentiality of arbitration is one of the primary reasons for its use. If confidential information and corporate secrets protected by intellectual property rights were made public, they would lose their value. Court processes, as a result, offer a challenge in settling these conflicts[15].

OBJECTIVES

1. To understand the judicial pronouncements set forth by the High Courts and the Supreme Court of India with respect to the arbitrability of IPR disputes
2. To interpret the current position of the Indian judiciary in matters relating to arbitration of IPR disputes.
3. To find out the position of various other countries when it comes to the subject of IPR arbitration- whether they follow a pro or anti arbitration approach.
4. To provide recommendations to ensure that the courts have a precedent to follow.

[13]Badrinath Srinivasan, *Arbitrability of Intellectual Property Disputes in India: A Critique*, 2020 NLS Bus. L. REV. 29 (2020)

[14]Utkarsh Srivastava, *Putting the jigsaw pieces together: an analysis of the arbitrability of intellectual property right disputes in India,* 33 ARBITR 640, 631-646 (2017)

[15]Njegoslav Jović, *Benefits and Limitations of International Arbitration in Intellectual Property Law Disputes*, (Sept. 12, 2021, 5:23 pm)

RESEARCH METHODOLOGY

The research is purely based on secondary information collected from various articles published in the newspaper reports, books, journals, magazines and interviews.

The data collected herein is primarily concerned with, but not limited to the arbitrability of IPR disputes in India. The research also includes the judgments of various High Courts and the Supreme Court of India, along with the stand of other major countries with respect to the subject matter of arbitration of IPR disputes. The analysis obtained can be used to understand the stand of India along with other countries, at present.

FINDINGS AND DISCUSSIONS

Important Judicial Pronouncements in India

Before delving into the topic of whether arbitrability of IPR disputes must be conducted or not, it is essential to follow the judicial pronouncements set forth by the Courts.

In one of the first cases on IPR raised, Mundipharma AG v. Wockhardt Ltd.[16], an issue of copyright infringement had taken place. The Delhi High Court stated that civil remedies for the same under Chapter XII of the Copyright Act, 1957 would exempt Arbitration. Thus, such cases can be decided under the jurisdiction of a competent court, and not via an arbitrator. No set-in -stone precedent was cited in this case and neither did the court provide a detailed justification for its judgment.

However, in Ministry of Sound International Ltd. v. Indus Renaissance Partners Entertainment Pvt. Ltd.[17], the court held that it is possible for an IPR dispute to be decided by arbitration.

In the landmark case of, Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. and Ors.[18], wherein the courts have to decide whether it is possible for an arbitral tribunal to adjudicate on a lawsuit for mortgage enforcement by sale. The Hon'ble court ruled that conflicts involving rights in personam can be arbitrated, but that disputes involving rights in rem must be handled

[16] Mundipharma AG v. Wockhardt Ltd (1991) ILR 1 DELHI 606

[17] Ministry of Sound International Ltd v. M/S. Indus Renaissance Partners Entertainment Pvt. Ltd. 156 (2009) DLT 406

[18] Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. and Ors. AIR 2011 SC 2507

by courts and public tribunals. Despite the fact that this case involves a mortgage by sale, the courts also addressed the arbitrability of IPR disputes.

In Vini Verma v. Sanjay Verma & Ors.[19], the Hon'ble High Court of Delhi allowed for the arbitration of a trademark infringement since an arbitration clause was present in the MoU clause of the parties. The court kept in mind that since the settlement agreement expressly stated that arbitration proceedings could be followed, it allowed for the same.

The Bombay High Court in Eros International Media Limited v. Telemax Links India Pvt. Ltd. and Ors.[20], allowed the application under Section 8 of the Arbitration and Conciliation Act, 1996. The court interpreted the judgment laid down in Booz Allen and declared a pro-arbitration approach. The question to be decided upon was whether the disputes involving infringement of copyrights under Section 62 of the Copyright Act, 1957 in an agreement are arbitrable. The Court held that since the dispute arose from an IPR dispute in a commercial contract, the same would be arbitrable in nature. The action would be a right in personam. Hence, the court allowed for the copyright infringement to be settled through arbitration.

Further on, the Bombay High Court in Steel Authority of India Ltd. v. SKS Ispat and Power Ltd. & Ors.[21], dismissed the application under Section 8 of the Arbitration and Conciliation Act, not allowing the dispute to go ahead to arbitration since the dispute referred to right in rem, which is not amenable to arbitration.

The above ruling was upheld in the petition filed in The Indian Performing Right Society Ltd. v. Entertainment Network (India) Ltd.[22] which involved a copyright license dispute. Herein, an arbitrator had passed an award. It was held that the type of right in this case was a right in rem, and hence it was to be set aside. This judgment runs contrary to the judgment given by the Bombay High Court in the Eros case.

The Madras High Court in Lifestyle Equities v. Q.D. Seatoman Designs Pvt. Ltd.[23], talked about the issue of dealing with rights in rem and rights in personam and whether arbitrability

[19] Vini Verma v. Sanjay Verma & Ors 2013 SCC Online Del4194

[20] Eros International Media Limited v. Telemax Links India Pvt. Ltd. and Ors. 2016 (6) ARBLR 121 (BOM)

[21] Steel Authority of India Ltd. v. SKS Ispat and Power Ltd. & Ors Notice of Motion (L) No. 2097 of 2014 in Suit No. 673 of 2014

[22]Indian Performing Right Society Ltd. v. Entertainment Network (India) Ltd. 2016 SCC OnLine Bom 5893

[23] Lifestyle Equities v. Qd Seatoman Designs Pvt. 2018 (1) CTC 450

of IPR disputes is possible. Here, the dispute that had arisen was pertaining to a copyright infringement. The court held that a party which seeks a "permanent injunction against the use of a design by the opposite party" would relate to right in personam. Since the parties in question didn't seek relief for the copyright ownership, they had an action of right in personam and not right in rem. In another judgment by the Madras High Court in Sanjay Lalwani v. Jyostar Enterprises and Ors.[24], the court held the copyright infringement disputes to be non-arbitrable in nature stating that such actions are rights in rem.

In Centre for Development of Telematics v. Xalted Information Systems Pvt. Ltd.[25], the Delhi High Court allowed for arbitration in the matter pertaining to copyright infringement, since such an action would be a right in personam.

A. Ayyasamy v. A. Paramasivam & Ors.[26], was a case wherein the courts completely ignored the judgment set in the Booz Allen case. A dispute arose between the parties and they had a partnership deed which had an arbitration clause. The Supreme Court held that IPR disputes would be non-arbitrable in nature. Thai erroneous judgment is contested since the main subject matter of the dispute was the arbitration of fraud, and not IPR disputes.

Recently in Vidya Drolia v. Durga Trading Corporation[27], the Supreme Court made a conscious effort to adopt a pro-arbitration approach in matters relating to IPR disputes. They laid down the test to decide the arbitrability of a dispute. The Hon'ble Court tried to pass the judgment in such a way that it changed its position to a pro-arbitration stance.

Absence of a Supreme Court Precedent

The Hon'ble Supreme Court of India has not given a conclusive precedent to be followed in matters related to the arbitrability of IPR disputes in India. Even though the Ayyasami and Vidya Drolia case shed some light upon the evolution of the Supreme Court's stance with respect to arbitration, it still does not explain whether there is a blanked bar on the arbitrability of IPR disputes or whether the courts must adopt a pro- arbitration harmonious approach.

Analysing the Current Position of IPR disputes in India:

[24]Sanjay Lalwani v. Jyostar Enterprises and Ors., (2020) SCC Online Mad 2003
[25] Centre for Development of Telematics vs. Xalted Information Systems Pvt. Ltd., ARB. A. (COMM.) 6/2018

[26] A. Ayyasamy v. A. Paramasivam & Ors (2016) 10 SCC 386

[27] Vidya Drolia vs Durga Trading Corporation 2020 SCC OnLine SC 1018

From the above judicial pronouncements it's evident that the judiciary has not established a set-in-stone precedent to decide its position on the arbitrability of IPR disputes. Even though the courts haven't explicitly barred the IPR disputes from being arbitrated, they have not expressly approved and encouraged the same as well. In some cases (like the IRPS and Mundi pharma cases) the courts adopted a negative, anti-arbitration approach when it came to arbitrating IPR disputes and stated that such infringements of copyright would fall under the public law domain. However, recently in cases like Vidya Drolia and Eros, the courts are evolving their approach and attitude towards arbitrating IPR disputes. Now that there has been an increase in commercial transactions and contractual agreements w.r.t. IPR; the courts have recognized the same and are adopting a positive, pro-arbitration approach.

It is reasonable to conclude that India's current position on IPR arbitration is based on the nature of the claims asserted. There is no blanket prohibition on IPR matters being arbitrated. If the disputes are contractual in nature, then there shouldn't be an issue with them being arbitarble in nature. However, if the question for the validity or ownership of an IP dispute arises, then the same would be considered to be a right in rem and hence would fall under the jurisdiction of a competent court, since it touches upon the interest of the general public.

Position of Other Countries:

Even though India's stance at the moment is not completely pro- arbitration, several other countries are implementing and permitting IPR disputes to be resolved through arbitration or other Alternative Dispute Resolution methods.

➔ *United States of America*

The federal statutory laws here expressly allows parties to agree to arbitrate patent disputes, either by including an arbitration provision in a contract involving a patent (e.g., a license agreement, a joint development agreement, etc.) or by agreeing to arbitrate an existing patent dispute. This means that the parties can approach an arbitration tribunal as a means to settle patent disputes.

However, the courts have not provided a statute for copyright disputes. No statute in the US provides for the binding of trademark disputes. In Packeteer, Inc. v. Valencia Systems, Inc.[28], the courts held that copyright issues can be subjected to arbitration.

[28] Packeteer, Inc. v. Valencia Systems, Inc., 2007 WL 70750

➔ *United Kingdom*

England and Wales, Scotland and Northern Ireland, being one of the most progressive places in the world, do not have a statutory authority for arbitration in matters relating to IPR disputes, as per the Arbitration Act, 1950, 179 & 1996. The United Kingdom Patents Act, 1977 allows for the arbitrability of patent disputes only in certain cases.

However, arbitration of IPR disputes have been recognized by the judiciary, making trademarks and copyright disputes fully arbitrable.

➔ *Canada*

In Desputeaux v. Éditions Chouette (1987) Inc.[29], the Hon'ble Supreme Court of Canada adopted a pro-arbitration approach. They recognize the validity of using arbitration in order to resolve copyright and patent infringement disputes.

➔ *Australia*

The Australian statues do not expressly talk about the arbitrability of IPR disputes. The position of arbitrators in Australia is that they have the authority to make decisions about the parties' intellectual property rights.Arbitrators, on the other hand, cannot settle IPR disputes in a way that binds any third party or the general public.

➔ *Singapore*

The Intellectual Property (Dispute Resolution) Act, 2019, which amended the Arbitration Act in Singapore, allowed for the arbitration of IPR disputes. All aspects of IPR can now be arbitrated. This amendment was observed to be not going against the public policy.

➔ *Hong Kong*

Hong Kong issued the Arbitration (Amendment) Ordinance 2017 (the 'Arbitration Ordinance'), which paved the way for IPR disputes to be resolved through arbitration. Even if Hong Kong law grants any entity the authority to determine IPR disputes, and even if the legislation does not specifically specify the possibility of resolving IPR disputes through arbitration, resort to arbitration would be available.

[29] Desputeaux v. Éditions Chouette (1987) inc., 2003 SCC 17 (Can. 2003) at 198

The above feature makes Hong Kong an extremely popular arbitration hub for IPR disputes.

➔ *Switzerland*

When it comes to the arbitrability of IPR disputes, Switzerland, one of the world's most liberalized countries, has taken a very pro-arbitration stance. IPR conflicts are not subject to any legal limits, and they are also deemed arbitrable. Patent arbitrations are supported by the majority of courts.

RECOMMENDATIONS

- ➔ Even though the interpretation of courts are constantly evolving, it is important that the judiciary establishes a precedent on the matter of arbitrability of IPR disputes. The High Courts, as well as the Supreme Court, do not have a precedent in place to be followed in order to decide whether IPR disputes can be arbitarble or not.
- ➔ Taking into consideration the speed at which India disposes its cases due to the overburdened courts, the sanctity of IPR disputes to be resolved by arbitration must be upheld. A pro-arbitration approach adopted by the judiciary may cater to the aspirations of the country.
- ➔ While there might be certain challenges to arbitration, putting a blanket ban on the arbitrability of IPR disputes would do a lot of harm, affecting the commercial world of mergers and acquisitions, joint ventures, etc.
- ➔ Amendment to the Arbitration and Conciliation Act, 1996 must be made in order to clear the doubts of whether arbitrability of IPR disputes is possible or not.
- ➔ A flexible and liberal approach should be adopted by the courts in order to resolve IPR disputes efficiently; the same is possible through arbitration.
- ➔ To really measure the efficiency of arbitration in IP disputes, we must think through the boundaries of arbitrability. Increased IP conflicts, on both a national and international level, represent a challenge to the existing legal framework's ability to deal with them, and arbitration, with all of its potential successes thus far, may be the response to these problems.

CONCLUSION

IPR dispute arbitrability has been questioned and will continue to be questioned until all nations take a strong pro-arbitration attitude. The grounds for challenging the arbitrability of IP matters cannot be completely eliminated; however, prohibiting arbitration of all IPR-related matters would be counterproductive; especially in today's globalized and commercialized world, where even general business events such as mergers and acquisitions, joint ventures, and so on involve dealing with IPR and include an arbitration clause as a means of resolving disputes.

The Supreme Court stated its stance on the arbitrability of IPR issues in the Booz Allen case, although the law on the subject is still fragmented, as seen by the rulings of several high courts. As a result, there is a need for codification or for the Supreme Court to consider it in order to establish the law pertaining to the arbitrable parts of IPR. The United States and Hong Kong, for example, have already made moves in this direction.

Given the Indian judiciary's recent pro-arbitration stance, there is a strong probability that additional lawsuits originating from IPR agreements would be resolved through arbitration. It goes without saying that the legislation on the arbitrability of IPR issues is still evolving, and we may expect further litigation in this area.

The courts can strike a tight balance between the rights of the inventor/owner and the public interest by permitting arbitration in disputes arising out of purely commercial concerns while maintaining disputes over the validity or registration of IP non-arbitrable. As a result, it remains to be seen which way the Supreme Court and other High Courts will steer the Indian arbitration-friendly environment.

A STUDY ON JUVENILE DELINQUENCY

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ABSTRACT

Children are the hope for the future of our nation. Individuals are responsible for making their homes and communities safe and welcoming. It has been proven with data that the rate of adolescent delinquency has increased dramatically in emerging nations such as India during the previous decade. The fundamental question that arises as a result of this is how did the concept of juvenile delinquency come about? Despite the fact that delinquency may be found in many countries, it is more prevalent in highly industrialized countries with significant urban populations. The phrase was coined in order to protect juvenile lawbreakers from the embarrassment of being labelled as criminals in court records. The primary goal of juvenile legislation is to deal with delinquents. However, since the number of crimes committed by juveniles continues to rise in the current environment, the phrase "juvenile crime" has become a source of embarrassment. Delinquents are more likely to come from households that are tense and have a lot of difficulties in their relationships. As the rate of juvenile criminality continues to rise, it is imperative that the appropriate actions be taken and that an amendment should be included into the current legislation so that it may be implemented and enforced in a rigorous manner.

Keywords: *Juvenile, Delinquency, Prevention, Judicial Justice System.*

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INTRODUCTION

Juvenile delinquency is defined as criminal conduct committed by a person under the age of eighteen. These illegal acts have increased in recent years as a result of a variety of factors and circumstances. In the majority of cases, minors charged with severe criminal offences such as robbery or murder are transferred to criminal courts and tried as adults. Occasionally, prosecutors make this determination, or sometimes allow transfers which requires a court hearing to examine the juvenile's age and record, as well as the type of crime, and the probability that the youth can be aided by juvenile court. As a result of a 'get tough' attitude when it comes to juvenile crime, numerous countries have a strong stance on youth criminality and have updated its juvenile codes to make them more accessible to ensure that it is easier to transfer a juvenile criminal to adult court.

To put it simply, juvenile delinquency is the minors' involvement in criminal acts. A child or a delinquent is a person who is generally younger than 18 years old and undertakes an act that otherwise would've been treated as a crime by an adult and the person would've been charged and tried. Thus, it is pretty obvious that juvenile delinquency is included in all of those shifts and changes in a person's behavior during his or her life when navigating through the storm of adolescence, however not every teenager has this trait. The severity of delinquency varies from person to person and it will stay undiscovered until and unless a particular conduct becomes a matter of social concern. Because adolescence is a period of transformation in life, we can witness a fast dramatic improvement in one's physical, mental, and emotional well-being, spiritual, sexual, and societal outlook. This is a time of anxiety, concerns, disagreements, and difficulties. As a result, during this time span, they engage in particular activities in order to please one or more of their needs, which in turn, leads to their development into a delinquent.

Children that are delinquent fall into that category of exceptional youngsters who demonstrate a great deal of deviation in terms of their social adjustment. As a result, they are also classified as socially aberrant, socially deviant or socially handicapped. They exhibit criminal behaviour and are punished by law.

Infraction of societal norms and values endanger the society's peace and are thus deemed criminal offences. The nature and characteristics of the offence may be minor or serious. They are, however, always antisocial, and hence are subjected to judicially sanctioned criminal acts. In this regard, they are extremely similar to criminals and antisocial elements. However, in legal parlance, they are delinquents, not criminals. On the whole, juvenile delinquency is a

legal phrase that refers to acts with various degrees of societal repercussions ranging from little mischief to grave assault that is punishable under the law.

DEFINITION OF JUVENILE

Prior to the passage of The Children Act, 1960, there was no consensus in India on the minimum age of a juvenile criminal, and each state had its own definition of what constitutes a "Child." For instance, in Haryana and Bombay, a juvenile was defined as a male under the age of 16 or a female under the age of 18[30]. In Andhra Pradesh, the term "Kid" refers to "a person under the age of 14 years and, when used in conjunction with being sent to a recognized school, includes that child for the period of detention, regardless of whether the child attains the age of 14 before the period expires."[31]. The Children Act of the UP defined "Child" as any individual under the age of 16.[32] In West Bengal, a "kid" was defined as anybody under the age of fourteen.[33]

The Juvenile Justice Act of 1986, which defined "Child" as a person who has not reached the age of 16 in the case of a male and 18 in the case of a girl. To comply with its international obligations, India repealed this Act and replaced it with The Juvenile Justice (Care and Protection of Children) Act, 2000, which abolished the distinction between boy and girl ages and established an age limit of not more than 18 years for juveniles whose actions are alleged to be in violation of the law of the land.

However, the Juvenile Justice (Care and Protection of Children) Act, 2015 made significant amendments to the earlier Act, and under this Act, when a child's actions are alleged to be in violation of the law of the land, he is treated as an adult if his actions fall within the category of heinous offences, which are those offences that are punishable by death.

[30] The Haryana Children Act, Section 2 (d); The Bombay Children Act, 1948, Section 4
[31] The Andhra Pradesh Children Act, 1951, Section 2(d) 5
[32] U.P Children Act, 1951, Section 2(4)
[33] The Bengal Children Act, 1922, Section 3(1)

DEFINITION AND NATURE OF DELINQUENCY

Delinquency is defined as an excessive act or omission by a youngster. In addition to deviant conduct because it is socially unexpected, it is also believed to be behaviour in which the youngster habitually behaves or pretends to be a grown-up or an adult. The behaviours of the child may appear to be dumb and silly, but in reality, they cause consternation and concern among the people of the community in which he lives.

Frederick B. Sussmann in his book 'Law of juvenile delinquency'[34]listed the following acts as delinquent[35]:

- infringement of any law or ordinance,
- habitual absence, alliance with thieves,
- brutal or immoral persons,
- beastly beyond the control and authority of parents or guardians.

REVIEW OF LITERATURE

Phogat[36] **stated that** in majority of cases of juvenile delinquency, substance abuse is found. Two increasing trends with respect to substance abuse in minors has been identified. First, the age at which juveniles start consuming drugs is younger than before and second, they are using more drugs today than was the case 10 years before.

R.Roshini[37] concluded in her paper that recently, both, the government and the society have been paying attention to children and their problems but it seems like the problems are enormous and never ending. This results in lack of everything that's been done so far till today. And if these problems are not dealt with and curbed soon then the growth of the future generation will be hampered giving a dark future to our country.

[34] Book Reviews: Frederick B. Sussman, Law of Juvenile Delinquency (The Laws of the Forty- Eight States), Legal Almanac Series No. 22, Oceana Publications, New York; 1950, 96 pages, journals.sagepub.com visited on 12-09-21

[35] Challenges to Juvenile Justice Laws in India www.blog.ipleaders.in

[36] Phogat, K. (2017). Juvenile Delinquency in India Causes and Prevention. *Journal of Advances and Scholarly Researches in Allied Education Vol. 13, Issue No. 1.*

[37] Roshini, R. (2018). Juvenile Delinquency in India. *International Journal of Pure and Applied Mathematics.* Volume 120 No. 5, (1729-1738)

Dr. Saleem[38], while tracing the loopholes in the Juvenile Justice (Care and Protection) Act 2015, criticised the Act by stating that treating a Juvenile as an adult is violative of their right to equal opportunity and deprives them of the right to have a fresh start.

Dr. Acharya[39] mentioned It is widely believed that the public's perception of insecurity has been greatly impacted by the media, which is now free to report on an increasing number of criminal "dramas" on a daily basis. Indeed, there is evidence that the media exaggerates the level of crime in the country, and particularly adolescent misbehaviour, in order to generate more attention. As a result, to the degree that the media has an impact on public opinions, those beliefs are likely to be based on stereotypes and incorrect data derived from unrepresentative reporting. In the field of public views regarding juvenile delinquency, there has been relatively little study done. Previous research has been confined to assessing adolescents' dread of criminal activity and public opinion on the death sentence, among other things.

Pillai and Upadhyay[40]asserted that children's psychological development is fundamentally different from that of adults, according to neuroscience research, and as a result, they are held to be less responsible as well. The fact that children have a higher degree of mental and emotional development than adults also indicates that they have a better capacity for rehabilitation and are thus more likely to respond favourably to rehabilitation treatments. Recognizing this critical distinction, juvenile justice programmes all around the globe focus the greatest emphasis possible on rehabilitation and reintegration.

Juby and Farrington[41] used three hypotheses that explain the link between warped families and delinquency and made their case. According to his initial idea, the trauma theory, the death of a parent has a negative impact on a kid's development because of the relationship that the youngster has to their parents. His second theory, Life course Theory (which points to separation as a long drawn-out process rather than a discrete event), and on the effects of multiple stressors typically associated with separation, and his third theory, selection Theory (which contended that distorted families are the primary reason behind delinquency because of the pre-existing difference in the income of the family and the method of child rearing.

[38] Dr. Saleem, M. (2020). Juvenile Delinquency in India: Problems and Remedies. *Law Audience Journal.* Volume 2 & Issue 4, (3-18)

[39] Dr. Acharya, S. (2017). The Study of Juvenile Delinquency with Reference to Psychological Perspectives in The Juvenile Homes of Delhi. *International Journal of Advanced Research in Management and Social Sciences*

[40] Pillai, G., & Upadhyay, S. (2017). Juvenile maturity and heinous crimes: re-look At Juvenile Justice Policy In India. NUJS Law Review, 10(1), 49-82

[41] Juby., Farrington., (2001). Disentangling the Link between Disrupted Families and Delinquency. *British Journal of Criminology*

Belwal and Belwal[42]**,** while discussing the causes of juvenile crimes mentioned that if we look at India, poverty is a significant factor in the lives of children. This is one of the most significant reasons why youngsters are more likely to engage in criminal behaviour as they grow older. A child's involvement in criminal activity is compelled by poverty. In both arrests and convictions, the great majority of people involved are from low-income families. The police, as well as other law enforcement agencies, are harsh on them because they lack the necessary resources. People who are in better financial circumstances are perceived to be more favourable in administrative processes involving law enforcement. In a variety of ways, poverty encourages antisocial behaviour. Unsatisfactory interpersonal relationships have been shown to commonly arise as a result of destitution and poverty, according to research. As a result of malnutrition and poor physical condition, impoverished individuals have poorer mental resilience than wealthy ones. They live in a slum, and the neighbourhood and surrounding environment are insufficient since they have no other option when it comes to choosing a residential neighbourhood.

RESEARCH METHODOLOGY

For the purposes of this study, only secondary sources have been consulted. Interviews with individuals were not included in the main sources because it was not feasible to interview people during these unprecedented times of pandemic. Books on juvenile delinquency and research articles on the juvenile justice system are examples of secondary sources. In addition, law websites and blogs have been recommended for the study.

OBJECTIVES

Following are the objectives of this research paper:

- To understand the types and causes of Juvenile Delinquency.
- To trace down the Judicial Response in India to Juvenile Delinquency.
- To analyse and compare the Juvenile Justice System of countries other than India.
- To understand the preventive measures necessary.

[42]Belwal, A., Belwal, A. (2016). Juvenile delinquency in India. *Bharati law Review* (307-317)

FINDINGS AND DISCUSSIONS

TYPES OF JUVENILE DELINQUENCY:

Delinquency manifests itself in a number of ways, whether via different types of behaviour or different kinds of conduct. Each pattern is associated with a certain sort of social environment. Howard Becker defined four forms of juvenile delinquency in 1966: individual, group-supported, organised, and situational delinquency. Individual delinquency is the most common type of juvenile delinquency.

Individual delinquency is defined as any and all of the delinquent activities performed by the adolescent on his or her own. The source of the problem is found inside the criminal himself. According to the psychiatrists, these are brought on by psychological issues that have arisen. These psychological issues are largely caused by dysfunctional and unhealthy patterns of family contact, which are discussed below. It was discovered that the most prevalent reason for delinquent siblings committing such crimes was because they were unhappy and dissatisfied with their current living conditions by the psychiatrists who attempted to compare them to their non-delinquent siblings. In the first place, they engage in delinquent behaviour in order to attract attention from their family or classmates. Others engage in delinquent behaviour in order to alleviate their guilt emotions. They also discovered that delinquent children varied from non-delinquent children in terms of their connection with their dads, rather than their relationship with their mothers. In addition, their discipline was stricter and more severe than before.

Group-supported delinquencies, on the other hand, are those that are committed in the company of other people. In addition to the delinquent's personality and family, there are cultural factors at play in the delinquent's home and neighbourhood that contribute to his or her behaviour. The primary motivation for such delinquent behaviour is the desire to be in the company of people who are already delinquents. The psychological check that underpins this is focused on what was learned and from whom it was learned, rather than the difficulties that may have led the individual to engage in such delinquent behaviour.

The commission of organised delinquencies is the responsibility of formalised organisations. This entails a certain set of values and norms that influence the behaviour of young people when they are involved in delinquent acts of violence.

All of the categories of delinquencies described above have one thing in common: the delinquency is regarded as having deep roots in the community. For example, the root cause of

individual delinquency is found deep inside the individual. In organised and group-supported delinquencies, on the other hand, the underlying reason is found in the social structure. Situational delinquency is characterised by the absence of deep-seated fundamental causes. As a result, regulating such delinquent behaviours is rather straightforward when compared to other forms of delinquencies.

Criminal delinquency can be classified into three types of crimes: violent crimes that result in bodily injury (such as assault, murder, and rape), property crimes that occur when a juvenile employs or threatens to use force to obtain the property of others, and drug-related crimes that involve the possession or sale of illegal narcotics.

Trojannovicz classified juvenile delinquents into five groups in his book, "Juvenile Delinquency: Concept and Control"[43]. They are gang organised and collective delinquency, unsocialized aggressive youths, accidental offender, occasional delinquency, and professional delinquency, among other characteristics. Minor violations, which include minor traffic violations and property violations; major traffic violations, which include automobile theft; human addiction, which includes alcohol and drug addiction; and bodily harm, which includes homicide offences, as defined by Eaton and Polk in their book "Measuring Delinquency"[44].

CAUSES OF JUVENILE DELINQUENCY

Understanding the causes of juvenile delinquency is essential to avoiding a young child from being involved in inappropriate, harmful, and criminal behaviour. Individual, family, mental health, and drug addiction are the four major risk variables that may be used to identify young individuals who are at risk for delinquent behaviour. Frequently, a juvenile is exposed to risk factors that fall into more than one of the categories listed above.

a) Individual Factors:

A number of risk variables have been discovered in the context of juvenile delinquency. Those minors who are of lesser intelligence and who do not acquire a decent education are more likely to become involved in delinquent behaviour. Among the other risk factors include impulsive behaviour, uncontrolled aggressiveness, and an inability to put off gratification for an extended period of time. In many cases, numerous individual risk factors may be recognised as

[43] Trojannovicz, RC. Juvenile Delinquency: Concept and Control, Prentice Hall, New Jersey, 1973.
[44] Eaton JW, Polk K. Measuring Delinquency, Pittsburg Press, Pittsburg University, 1961.

contributing to a juvenile's engagement in harmful, destructive, and criminal behaviours as well as involvement in these activities.

b) Factors related to the family:

The development of delinquent behaviour in young individuals is connected with a continuous pattern of family risk factors, according to research. Neglect and abuse are among the family risk factors, as is a lack of adequate parental monitoring as well as persistent parental dispute (emotional, psychological or physical). It is likely that parents who exhibit a lack of regard for the law and social standards will produce children who think in a similar fashion. The last point to mention is that children who have the lowest relationship to their parents and families are also the same youngsters that participate in improper activities, including criminal behaviour.

c) Factors Influencing Mental Health:

A number of variables related to mental health are also thought to play a role in adolescent delinquency. The fact that a diagnosis of some types of mental health issues, mainly personality disorders, cannot be established in the context of a kid must be kept in mind, however. However, there are antecedents to these circumstances that might manifest themselves in childhood and that are more likely to manifest themselves as delinquent behaviour later in life. Conduct disorder is one of the most frequent. As described by the American Psychological Association, conduct disorder is characterized by "a lack of empathy and disrespect for social standards"[45].

d) Substance Abuse factors:

When it comes to juvenile delinquency, drug addiction is seen in the majority of instances. Two patterns have been discovered in terms of substance abuse and children. One of the most significant differences between now and ten years ago is that youngsters are taking more potent narcotics. Second, the average age at which certain adolescents begin taking drugs is younger than the national average. It has been discovered that children in primary schools are abusing strong illicit substances. The use of these illicit substances, as well as the use of legal substances in an unlawful manner, drives young people to conduct crimes in order to earn money to purchase illegal narcotics. Additionally, when under the influence of drugs or alcohol, minors are considerably more prone to participate in disruptive, dangerous, and criminal actions.

[45]Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, American Psychiatric Association, (2004)

JUVENILE DELINQUENCY PROTECTION: JUDICIAL TRENDS

The role of the court is critical in protecting the rights of all people, including children. Children are the nation's most valuable asset, and it is the court's primary responsibility to ensure that all citizens have access to the rights and facilities that are necessary for the welfare and development of the society.

The Supreme Court has done a fantastic job in the area of child welfare and child welfare protection laws. Some of the most notable examples of the judiciary's position on the welfare of children. During a hearing in the case of *Bachpan Bachao Andolan v. Union of India*[46], the Supreme Court, via Justices J.M.B Lokur and Deepak Gupta, marked that particular consideration should be given in crisis situations. During a recent hearing, the Supreme Court ordered the National Disaster Management Authority to take prompt action to protect children, particularly in the event of a disaster. According to the Supreme Court's decision in the case of *Re-Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India*[47], laws on child care and protection should benefit all types of children, regardless of their age. "Child in need of care and protection," asdefined under the Juvenile Justice Act of 2015, shouldberead as broadly as possible, according to the court's ruling. Guidelines are also established by the court to ensure that children's rights are protected.

The Supreme Court of India, in the case of *Gaurav Jain v. Union of India*[48], ruled that children have the right to equal opportunity, care and dignity, rehabilitation and protection by the community with both hands, among other things. *Lakshmikant Pandey v. State*[49], the Supreme Court of India held that a kid has the right to be loved. He also has the right to be secure in his moral and material well-being.

In the case of *Kakoo v. State of Andhra Pradesh*[50], a 13-year-old male was found guilty of raping a 2-year-old girl and was sentenced to prison. Taking the phrase out of context Justice Sarkaria remarked that long-term imprisonment is certain to transform a juvenile delinquent into a criminal, and he emphasized that, in the case of minor offenders, the current penological trends need a more humane response to the situation.

[46] Writ Petition (civil number) 75/2012, date of order September, 2017.
[47] (2017) 2 SCC 629.
[48] AIR 1993 SC 2178.
[49] (1984) 2 SCC 244.
[50] AIR 1977 SC 1991.

According to the Supreme Court in *Raisul v. State of UP*[51], the death sentence should not be inflicted on anyone who is under the age of eighteen (18 years). In the case of *Rahul Mishra v. State of Madhya Pradesh*[52], it was determined that although the juvenile delinquent seems to be guilty on the surface, he is entitled to special protection under the act, namely section 12 of the act, because of his age. This protection must be provided. In the case of *Subramanian Swamy v. Raju Through Member, Juvenile Justice Board*[53], Delhi Gang Rape Case, which was heard in December 2012, the court ruled that the defendant was not guilty of the crime.

One of the defendants in this case was a juvenile, and he has not been handled as an adult despite having committed such a horrific act. He was brought before the Juvenile Justice Board, which sentenced him to three years in a special home before releasing him to roam freely throughout society. He was found guilty and sentenced to three years in a special facility. The irony of our legal system is as follows:

In ***MohammadFerozBholav. State***[54], the court remarked that bailing out a juvenile is not an act of mercy, but rather a command to that individual, who is seeming to be a juvenile.The court went on to say that Section 12 of the act is required unless there are compelling reasons to do otherwise. The case studies presented here illustrate a pattern of court activities in the field of juvenile justice in India.

It demonstrates that the Indian judiciary has begun to position itself as an ally of the individual citizen. The Indian judiciary is establishing itself as a partner and facilitator in the country's efforts to improve juvenile justice systems. The Judiciary is making efforts to safeguard the well-being of children in the country within the framework of the Constitution and the legislation pertaining to juvenile justice. This is being done through proactive methods. The goal is not to torment delinquents with the dread of punishment, but rather to assist and lead them through the process of getting out of juvenile delinquency as fast as possible and gradually transforming into responsible people in the future.

[51] AIR 1977 SC 1822.
[52] 2001 Cr. LJ 214 (MP).
[53] (2014) 8 SCC 390.
[54] (2005) 3 JCC 313.

JUVENILE DELIQUENCY ACROSS THE GLOBE: A COMPARATIVE STUDY

For a long time in New Zealand, child and youth legislation did not discriminate between offenders and needy children. [55]Before the Children, Juvenile Persons and Families Act (CYPFA) was established in 1989, New Zealand had no specific laws for young offenders. This Act now regulates procedures against young offenders before the Youth Court and has different legal implications for dealing with young people who have broken the law. As a result, the new law codified 'a comprehensive set of basic principles that regulate both state engagement in children's and young people's lives and the management of the youth justice system. It also provides accessible services and processes that try to address cultural needs and assist families in caring for their young people and assist families when the relationship between family members is disrupted.

The Crimes Act 1961 regulates the age of criminal responsibility. According to section 21(1) of the Crimes Act, no one under the age of ten can be convicted of a crime. This does not alter the culpability of any other accused accomplice.

The date of the alleged offence is used to establish the juvenile offender's age. A child offender is someone who was 10, 11, 12 or 13 years old when the offence was committed. To be tried for any offence other than murder or manslaughter, a child aged 10 to 14 must have knowledgeof the moral or legal wrongdoing of the act or omission. The prosecution must establish that the accused knew the conduct or omission was improper or illegal. As a result, prosecutions of minors are unusual. A kid accused with murder or manslaughter must first appear in a Youth Court. In such circumstances, the CYPFA applies as if the kid were a young person, with some exceptions.

Diversionary proceedings are an essential part of New Zealand's youth justice system. The CYPFA's new approach prioritises diversion from courts and detention while holding young people accountable and providing for their rehabilitation and reintegration, family assistance, and victim needs. On the other hand, serious or recidivist young offenders must appear before a Youth Court Judge. Police warnings (either frontline or Youth Aid personnel) are believed to

[55]Gupta, N. Comparative Study of juvenile Delinquency. Retrieved from: https://www.academia.edu/27293306/Research_Paper_on_Comparitive_Study_Of_Juvenile_Delinquency

be used to deal with around 44% of juvenile offenders in New Zealand, while youth court charges followed by FGCs account for approximately 16%.

Due to the historical evolution of German juvenile laws, there is now a clear distinction between laws dealing with young offenders and those dealing with children and young people in need of care and protection. Thus, the German Juvenile Justice Act deals only with juvenile offenders (JJA). Juvenile Justice Act (JJA) of August 4, 1953, as modified on December 11, 1974, and substantially reformed in 1990. Like New Zealand's juvenile offender legislation, the JJA does not include a separate criminal law statute for juvenile offenders. Instead, the other act defines criminal offences (whether committed by juveniles or adults), while the JJA provides substantive law and unique procedural requirements for the Jugendgerich and its jurisdiction.

The German juvenile justice system is a modified adult system. No dedicated decision-making forum (like JJBs). So, in Germany, prosecutors and courts decide how to respond to criminal activity. The countrywide extension of diversionary provisions is predicated on the premise that diversionary solutions to juvenileoffending prevent or lessen stigmatization since the young offender is handled ‘educationally' rather than criminally. There are certain informal steps that can be taken before a judicial case against the young person is filed. The extensive use of diversionary measures is supported by the fact that small offences committed by young people during their adolescence are ‘normal' and ‘ubiquitous' and are typically ceased when they mature. A formal conviction causes more harm than good and is often disproportionate, considering that the goal of punishment in adolescent justice is individual prevention, including rehabilitation.

Since England governed America for many years, the rules of America are heavily influenced by English Common law. Americans embrace phrase “adult crime adult time”. In 38 states, the minimum age for minors is seventeen, whereas in three states it is fifteen. Except in Vermont, Indiana, and South Dakota, where a kid of 10 years can be prosecuted as an adult, virtually all US states agree that juveniles beyond the age of fourteen can be tried as adults. In terms of punishment, minors face a variety of sanctions. The maximum sentence for severe offences is life imprisonment for children under the age of twelve. Juveniles who have the potential to commit major offences are detained and put through a rehabilitation programme. This is all to manage juveniles. In addition to harsh punishments for drug and gang related offences, harsh treatment such as boot camps and mixed sentences have been established. In terms of

jurisdiction, if a minor (typically 13 or 15) commits a serious offence, their case is immediately transferred to adult court. In such instances, the juvenile courts' jurisdiction is waived.

PREVENTION

Preventing juvenile delinquency at an early stage is largely considered to be the most effective strategy available today.[56] Delinquency can only be controlled via the efficient execution of the Juvenile Justice Act of 2015, which includes widespread public awareness, adequate orientation and training for professionals, as well as law enforcement organisations. The government should place greater focus on effective and appealing long-term programmes for juveniles in order to encourage them to become productive members of society. As a result, individuals restore their self-confidence, which has been eroded as a result of society's harsh attitude toward them. The attitude taken by authorities such as the police that are participating in the system may be more reformative in nature rather than strictly punitive. If the goal is to reform delinquents rather than punish them, this may be the best approach.

Individuals, as well as groups and organisations, have a role in the preventive process, which aims to keep teenagers from violating the law in the first place. Due to the fact that juvenile delinquency is a social disease, the child or adolescent must be treated as such in order for him/her to be able to adapt with the rest of the society. It is necessary to correctthe individual's misalignment with society. The primary cause of adolescent delinquency is a lack offundamental necessities, which they attempt to compensate for by engaging in anti-social behaviour and other illegal activities. As a result, efforts should be taken in order to satisfy the fundamental requirements or demands of every kid in a socially acceptable way, regardless of whether the child is a delinquent or not. Children that are delinquent should be given special attention.

Each juvenile delinquent must be considered on his or her own merits. The satisfaction of his or her desires for power, status, and recognition should be the primary focus of attention. Each each case should be read on its own merits, taking into consideration the unique issues and reasons that led to the commission of such criminal conduct. Once this is accomplished, rehabilitation, readjustment, and reconditioning of the individual in society will be feasible.

[56]Belwal, A., Belwal, A. (2016). Juvenile delinquency in India. *Bharati law Review* (307-317)

The other recommendations for preventing juvenile delinquency include: keeping an eye out for signs of maladjustment, providing the child with a variety of experiences that can serve a purpose, attempting to build a stable system of moral and social values, rejecting delinquent behaviour without rejecting the delinquent, encouraging the child to talk about and admit the existence of anti-social tendencies, and changing the environment around the child.

DELINQUENCY PREVENTION PROGRAMS:

There are two types of juvenile delinquency prevention programmes.[57]

1. Individual Programme: Individual programme includes delinquency prevention via counselling, psychotherapy, and education.
2. Environmental Programme: An environmental programme employs strategies to change the socio-economic setting that encourages criminality.

The following techniques employed in crime prevention programmes represent these two types of preventative approaches.

I. Individual Programme:

a) Clinical Programme

This clinic's goal is to assist juvenile offenders address their personality issues through Psychiatrists, Clinical Psychologists, and Psychiatric Social Workers. Taft and England listed clinics' functions as follows:

- ✓ To help find pre-delinquents.
- ✓ Examine instances chosen for research and therapy.
- ✓ Treat cases or send them to other agencies.
- ✓ To raise awareness of psychiatric approaches to treating children's behavioural issues.
- ✓ To expose unmet kid community needs.
- ✓ Assisting students wishing to specialise on behavioural difficulties

[57] Phogat, K. (2017). Juvenile Delinquency in India Causes and Prevention. *Journal of Advances and Scholarly Researches in Allied Education Vol. 13, Issue No. 1.*

b) Education Programme

In nations where virtually every child attends school, schools can effectively begin preventative programmes. Teachers should not discriminate amongst pupils; they should be treated equally and given moral instruction that will benefit them in their lives. Moral education is an important aspect in students' lives. They should be able to distinguish between good and bad ideas that benefit them.

c) Mental Hygiene

This approach can also be used to address juvenile delinquency. The importance of mental treatment in treating a mental disorder cannot be overstated. The great mission of life must be decided and energy directed towards its accomplishment. A child's elevated sentiments and values help avoid juvenile delinquency. In October 1944, Dr. K.R. Masani, then Director of the Indian Institute 72 of Psychiatry and Mental Hygiene, stated that mental hygiene was used widely in education, law, medicine, public health, and industry to avoid delinquency and crime.

d) Educating Parents

Every community should provide chances for parental education to promote family relationships, child education, and child care. Some educational programmes educate parents about child health.

e) Leisure activities Programme

The recreational programmes help delinquency. Recreation activities allow youngsters to socialise with other adults and children in the neighbourhood. Positive friendships may help youngsters later in life. A variety of activities are available to meet the interests and abilities of various youngsters. Sports and other healthful activities are thought to be highly effective in reducing delinquency among young people. Sports, playgrounds, community centres, concerts, theatre, and puppet shows are highly important for avoiding delinquency and fostering social group work and youth organisations. Rural recreation organisations should provide open-air gathering spaces and sports and cultural playgrounds. Youth organisations and groups/agencies should organise these programmes to keep Juveniles away from delinquency.

f) Inferiority complex removal

Inferiority complex, dread, and apprehension can occasionally cause a kid to commit crime to prove himself. Children deserve support to grow up confident and kind. Discouragement drags them down. In addition, their shortcomings should not be ridiculed. To overcome inferiority complex, praise, sympathy, and love should be bestowed.

II. Environmental Programme:

a) Community Programmes

The goal of a community programme is to reach those in need rather than employees and agencies. This program's relevance is that it emphasizes community involvement above professional leadership. Marshal B. Clinard summarised these programmes' essential assumptions as follows:

- ✓ Locals will help alter the area.
- ✓ Neither do they embrace adversity as normal or enviable.
- ✓ For the inhabitant, self-imposed modifications in the local environment will have a greater impact.

b) Publicity

This approach can help avoid juvenile delinquency. Newspapers, periodicals, radio, television, and movies should accurately portray juvenile misbehaviour, accurately report on the juveniles' misdeeds, and safeguard the juvenile from incorrect andmisleading reporting. The societyshould be informed about their delinquent behaviour so they may be appropriately assessed.

c) Parental love

Child’s mother and father must unconditionally love, care for and protect him. Deprived of such affection and attention, a kid may become frustrated and dissatisfied, leading to criminality. So parental love, care, and protection is required to keep a kid from committing or performing a crime. So parental love, care, and protection is required to keep a kid from committing or performing a crime.

SUGGESTIONS AND CONCLUSION

As a result of the foregoing study, it is obvious that the appropriate implementation and modifications of the Juvenile Justice Act will not be sufficient to minimize juvenile delinquent behaviour. It is critical to raise awareness among civil society members about the illness that exists in our society today. Juveniles engaging in illegal activity are not only the perpetrators of crime, but they are also the victims of a sick society. The onset of juvenile delinquency can be prevented at an early age if proper precautions are taken at home and in the school setting. Parents and instructors have a critical influence in the development and shaping of a child's intellect and personality. Instead of putting a tag or labelling the juvenile delinquents, essential efforts should be made to provide them with a chance to make up for their wrongdoing. It is important that they are made aware of any mistakes they have made, whether social or psychological, as soon as they are discovered. This social evil, unlike any other crime, is associated with the maladjustment and flaws of our society, as opposed to any other type of crime. There is no evidence to suggest that tougher legislation would result in fewer crimes. The concept that juvenile delinquents require more than simply the harsh hand of the law is rapidly gaining greater recognition, with more people realising that they require the sympathy and understanding of our community.

COMPETITION LAW: PRECURSORS, PRACTICE AND PROBLEMS

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ABSTRACT

Law brings structure and order in the society. Rightly so, it is imperative to have a strong competition law regime in place to guide the activities of the marketplace, the backbone of the economy. India has had a very eventful journey in finding out, formulating and fixing a proper competition legislation in place. The Competition Act regulates the domestic market activities of India by supporting activities that promote healthy competition. As India completes almost two decades after the enactment of the Competition Act of 2002, the author tries to elucidate on the journey of Indian Competition law by discussing its precursor, the MRTP Act, the present legislation, and also enumerates the challenges that are faced by the competition and anti-trust laws in the country.

Keywords: *Competition Law, Competition Act, MRTP Act, Anti-competitive practices, Monopoly, Cartels, Competition Advocacy.*

INTRODUCTION

Healthy competition is a prerequisite for the growth of an economy. It makes an enterprise strive towards making better progress which in turn benefits the economy. Fairness is always expected and appreciated between competing firms. There are situations where the competition between enterprises go out of hand and it becomes necessary to put certain limits to the amount of power that an enterprise has. The importance of competition law arises here. "Competition law is a law that promotes or seeks to maintain market competition by regulating anti-competitive conduct by companies".[58] It seeks to prevent practices that have an adverse effect on competition. In India, the anti-competitive practices are restricted under the Competition Act, 2002. Before this Act was enacted, there existed the Monopolies and Restrictive Trade

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[58] Rita Yi Man Li; Yi Lut Li, *The Role of Competition Law: An Asian Perspective*, Vol 9, ASIAN SOCIAL SCIENCE, pp. 47-53, 2014

Practices Act, 1969 (hereinafter mentioned as MRTP Act) which put a stop to all activities that restricted freedom of trade to firms and led to concentration of economic powers to a few large firms in the market. After it was found that the MRTP Act was incapable of handling certain situations that arose with the development of technology and industry, the Competition Act was enacted to replace the MRTP Act.

This paper traces the evolution of the development of competition law in India along with highlighting the problems that are on the horizon in the competition law scenario. It is divided into the following sections- Evolution of competition law in India, the Competition Act, Competition Law practice and Challenges to Competition law.

EVOLUTION OF COMPETITION LAW IN INDIA

Prior to independence, there existed no rules or regulations regarding the conduct of activities of markets except for policies and resolutions made by the government to ensure equitable distribution of resources[59]. With the increase in market players and the advancement of trade and industry came abuse of market power. To curb such a misuse of power, the MRTP Act was enacted. The Act was passed by the Indian Parliament on 18 December, 1969 but came into force from June 1, 1970.

The MRTP Act finds its constitutional validity in Articles 38 and 39 which falls under the Directive Principles of State Policy.[60] Articles 38 and 39 of the Constitution of India mandate that the State shall strive towards promotion of welfare of the people through securing and protecting as effectively as possible and establishing a social order in which social, economic and political justice is accessible to all person. It envisages that ownership and control of material resources of the community are equitably distributed to secure common good, and to operate the economic system in such a way that there is no concentration of wealth in the hands of a few.[61]

This Act was the first of its kind in enabling provisions that puts a limit on the power of firms in the market. The MRTP Act was passed as a check on the concentration of economic power

[59] Amit Kapoor, Competition Regulation-history, *Insights and Issues for the Way Forward*, 2009 Manupatra (2009)
[60] Shreyaa Chaturvedi, *Monopolies and Restrictive Trade Practices Act, 1970*, iPleaders, (August 30, 2018) https://blog.ipleaders.in/mrtp/#_ftn29
[61] 13th ed., V.N. Shukla, Constitution of India, pg 376-378, EBC, 2017

in the hands of a few rich in the market. It enabled authorities to prevent monopolistic and restrictive trade practices. The main objectives of the Act included[62]-

- Prevention of concentration of economic power to the detriment of common people;
- Control of monopolies in the market;
- Prohibition of monopolistic trade practices in the market;
- Prohibition of restrictive trade practices in the market and,
- Prohibition of unfair trade practices.

This Act extended to whole of India except for Jammu and Kashmir[63] and was not applicable to certain establishments unless expressly directed by the Central Government. These establishments included[64]-

- Undertakings owned or controlled by the Government, Government Company, statutory corporation, or co-operative societies,
- Trade unions, and other related workmen or employee unions,
- Undertakings engaged in industry, whose control is with any person working for the central government,
- Financial institutions.

The MRTP Act made it compulsory for all enterprises that had assets of total value Rs. 20 crores or more to obtain approval from the Central government before they underwent any form of corporate restructuring or any proposed takeover. The MRTP Act brought under its ambit monopolistic, restrictive and unfair trade practices. Chapter IV of the Act covered monopolistic trade practices that were used by big enterprises to exploit their market position. The Act sought to curb all those activities that were ant-consumer which hampered or eliminated healthy competition in the market. Some big corporate houses restrict the flow of profits or capital back into the markets by restricting production or by controlling delivery channels. These acts when found to be committed by any enterprise was punished under the MRTP Act. Unfair trade practices arise when a firm indulges in providing misleading or false information about goods or services. All these practices were disallowed by the Act.

[62] Communication from India, Working Group on the Interaction between Trade and Competition Policy, WT/WGTCP/W/79 24 July 1998
[63] Monopolies and Restrictive Trade Practices Act, S.1, 1969
[64] Monopolies and Restrictive Trade Practices Act, S.3, 1969

The MRTP Act provided for the establishment of Commission of the MRTP, a regulatory body that dealt with the offences mentioned under the MRTP Act. It heard and decided cases that were in violation of the healthy competitive practices and committed offences mentioned in the Act.

In ***Tata Engineering and Locomotive Co. Ltd v. Registrar of Restrictive Trade Practices Agreement*** [65] **(TELCO case),** the territorial restriction imposed by TELCO to its dealers with regard to sales of Tata's vehicles was claimed as a restrictive trade practice. This called for the application of the Rule of Reason in this case and it was also the first time this rule was to be applied in an Indian case. The apex court decided that the said restriction could not be claimed a restrictive trade practice as its aim was to ensure equality in distributing goods in the country.

In ***Truck Operators Union v. Mr SC Gupta & Mr Sardar***[66] **(Sirmur Truck Operator's case),**the union in question fixed high freight rates for all non-member truck operators while members had only to pay lower rates. The court held that such a practice was restrictive as per the Act. The court issued cease and desist orders as it was unable to issue fines or penalty with its given jurisdiction.

The MRTP Act efficiently handled the issues that arose in the Indian markets until 1984. The Act was first amended in 1984 and Section 36A was added to the Act in tune with the recommendation of the Sachar committee. This amendment was set in place to protect consumers from deceptive and false advertisements.[67]The Act was amended for the second time in 1991 with the objective of extending the applicability of the Act to public sector undertakings and government companies as well. This amendment made it easy for private sector companies to venture into corporate restructuring without seeking the prior approval of the government. This move was welcomed as it facilitated easy transition towards adopting the New Economic Policy of 1991. The Amendment to the Act in 1991 was a strong step towards abolishing the License Raj in our country.[68]

With the opening up of the economy and influx of many new foreign companies to the Indian market, the MRTP Act was proving incapable to cater to the changing economic scenario in the country. The lacunae in the MRTP Act made it easy for market players to manipulate the

[65] 1977 AIR 973, 1977 SCR (2) 685
[66] 1995 3 CTJ 332 (MRTPC) 74
[67] Narayana Rao Rampilla, *Developing Judicial Perspective to India's Monopolies and Restrictive Trade Practices Act of 1969*, A, 34 Antitrust Bull. 655 (1989)
[68] Sarbapriya Ray; Ishita Aditya Ray, Emergence and Applicability of Competition Act, 2002 in *India's New Competitive Regime: An Overview*, 1 J.L. Pol'y & Globalization 15 (2011)

market and indulge in unfair competition rampantly. The amendments to the Act were not enough to tackle these issues. Various impediments finally led to the repeal of the MRTP Act.

Up until the 1991 amendment, it was very difficult for all businesses to expand their market due to the restrictions imposed by the Act. The mandatory permission to be obtained from the government prior to expansion was a clear show of the excessive power government had over the market. This hindered progress and resulted in uneasy business.[69] As mentioned above in the Sirmur Truck Operator's case[70], the MRTP Commission was ineffective in its operations. Even though it had administrative and judicial functions, the appointment of the members of the commission was done by the government and this resulted in bias and shone a negative light on its independent functioning. Moreover, their powers although seemingly pervasive, was very limited. Many a times, the decisions regarding disputes were made by the government, unaided and without waiting to seek an approval form the commission. There were unwanted delays in processes. This led to the commission becoming irrelevant and inessential.[71]

Another important reason for the repeal of MRTP Act was its superfluous and obsolete nature. The manifold growth in the Indian industrial sector and trade called for far more liberalistic and advanced provisions of law. The MRTP Act failed to deliver in that aspect and it subsequently led to its toppling.[72] The 1984 amendment placed concurrent jurisdiction on the Consumer Protection Act and the MRTP Act to deal with consumer complaints on account of deceiving advertisements by companies. This led to a side-track of the actual aim of the MRTP Commission and it was over burdened with consumer redressal cases.[73]

In ***DG v. Hindustan Lever Ltd (HLL)*[74],** a complaint was initiated on the disproportionate hike in prices of the products of the company. It was argued that this was done that profits would shoot up and their market share would in turn become higher. They claimed that it was a monopolistic trade practice, but the MRTP Commission overruled these contentions and held that mere high prices was not sufficient to prove that the company indulged in monopolistic

[69] Sahil Parikh, Background and Basics of Competition Law, S.H. Bathiya & Associates, Sept. 21, 2012
[70] Truck Operators Union v. Mr SC Gupta & Mr Sardar 1995 3 CTJ 332 (MRTPC) 74
[71] S. Chakravarthy, India's New Competition Act 2002 – *A Work Still in Progress*, 5 Bus. L. Int'l 240 (2004)
[72] Dorothy Shapiro, A Competition Act by India, for India: *The First Three Years of Enforcement under the New Competition Act*, 5 Indian J. Int'l Econ. L. 59 (2012)
[73] UK Essays, MRTP Act: Rise Fall and Need for Change: Eco Legal Analysis, November 2013.
[74] 2002 CTJ 61 (MRTP)

trade practices. Many other unfair judgements like these proved that the government's upper hand in the matters of the commission was detrimental to its proper functioning. [75]

One other disadvantage of the MRTP Act was that it had not explored the area of cartels. In ***DG (IR) v. Modi Alkali and Chemicals Ltd***[76]**,**an anonymous complaint was received stating that certain enterprises had joined together to form a cartel in order to create a clear and discreet scarcity of certain chemicals and to simultaneously raise prices by over 200% in the preceding 4 months. The DG reported that there was no cartel present in the said industry and the case was taken over by the MRTP Commission for further enquiry. The term cartel had not been defined by the Act, but the Commission defined it as "an association of producers who by an agreement among themselves attempt to control production, sale and prices of the product to obtain a monopoly in any particular industry or commodity". In this case, lack of sufficient evidence prohibited the commission from holding anyone liable and it was subsequently dismissed. The study of cartels remained a grey area under the MRTP Act.

This downfall of the MRTP Act led to its repeal and replacement by the Competition Act in 2002. The MRTP Act proved incapable of fulfilling its true objective for which it was initially promulgated. It lacked in certain areas including that it was unclear about the international economic developments relating to competition law. There was a paradigm shift of focus of competition laws from curbing monopolistic practices to promoting healthy competition around the world. The political bias in the commission and its ineffective functioning called for a stronger law that restricted anti-competitive practices.[77]

COMPETITION ACT, 2002

With the gradual decline of the applicability of the MRTP Act, there was an urgent need to lay down new advanced legislations to cater to the growing needs of the market and the economy. Many committees were assigned with the task of making recommendations as to what can be done in this direction. The most prominent among these was the high level committee headed by Mr. S.V.S Raghavan, called the Raghavan Committee. The Raghavan Committee submitted

[75] Ajay Singh; Kiran Singh & Shashi Singh, Competition Policy & Anti-Trust Law in India: A Review, Vol. 3, ROM, 29-36, pg 31, 2013, http://mdrf.org.in/wp-content/uploads/2016/04/Review-of-Management-Vol.-3-No.-1-2-June-2013.pdf#page=29
[76] 2002, CTJ 459 (MRTP)
[77] Shreyaa Chaturvedi, Monopolies and Restrictive Trade Practices Act, 1970, iPleaders, (August 30, 2018) https://blog.ipleaders.in/mrtp/#_ftn29

its report in 1999 where the main points raised were centred on the setting up of the Competition Commission of India (hereinafter CCI) and the need for a uniform Competition law in India.

Following this report, a proposal for a new competition law was announced by the then Finance Minister of India, Mr Yashwant Sinha, in his budgetary speech in the Parliament. The Competition Act, 2002 was enacted by the Parliament of India and it replaced the Monopolies and Restrictive Trade Practices Act, 1969. The Act came into force in January 2003. The major loopholes present in the MRTP Act was to be covered under the various provisions of the Competition Act, 2002.

The key differences between the MRTP Act and the Competition Act can be highlighted thus[78]-

BASIS OF COMPARISON	**MRTP ACT**	**COMPETITION ACT**
Meaning	First competition law in India governing market rules and practices	Enacted to upkeep competition and fair practices
Nature	Reformatory in nature	Punitive in nature
Dominance	Determined by firm size.	Determined by firm structure.
Main focus	Consumer interest (generally)	Public (generally)
Offenses against principle of natural justice	14 offenses	4 offenses
Penalty	No penalty for offense committed	Offenses, if committed, are penalized
Objective	To control monopolies in the market	To promote competition in the market

[78] Surbhi S, Difference between MRTP Act and Competition Act, Key Differences, March 2017, https://keydifferences.com/difference-between-mrtp-act-and-competition-act.html

Agreement	Requirement to be registered	No specific provision for registration of agreement
Appointment of Chairman	By the Central Government	By the Committee

The Competition Act of 2002 was passed with the aim of ensuring sustainable competition in the market and to also consider the larger interests of the consumers. It also seeks to allow participants to trade with freedom. This Act is in effect now in deciding matters related to Indian Competition law. The Act was amended by the Competition Amendment Act, 2007 and became fully operational from June 1, 2011. The provisions regarding competition advocacy was notified in the Act in 2003, those regulating anti-competitive agreements and abuse of dominance were added in 2009 and those provisions regulating mergers and acquisitions were added to the Act in 2011.

The main objectives of the Act includes[79]-

- To prevent practices that have an adverse effect on competition;
- To promote and sustain healthy competition in markets between firms;
- To protect the interests of consumers in general;
- To ensure freedom of trade among firms;
- To provide framework for the establishment of the Competition Commission of India[80] and,
- To prevent monopolies and promote competition in the markets.

The broad framework of the Competition Act consists of four compartments-

- Anti-competition Agreements (Section 3)
- Abuse of Dominance (Section 4)
- Combination Regulation (Sections 5 & 6)
- Competition Advocacy (Section 49)

[79] Karney, Competition law in India, Legal Service India, https://www.legalserviceindia.com/legal/article-1814-competition-law-in-india.html
[80] Cleartax, https://cleartax.in/s/competition-act-2002, (last visited Aug 17, 2021)

Anti- Competition Agreements: Anti-Competition Agreements are agreements that are entered into by two or more companies competing in the same market area to fix prices, reduce stocks etc., to manipulate the market conditions to their favour. Any agreement that has an appreciable adverse effect on competition in India is prohibited under the Act. According to S. 3 of the Act,

> *"No enterprise or association of enterprises or individuals or association of individuals may enter into an agreement regarding production, supply, distribution, storage, acquisition or control of goods or provision of services which may adversely affect the competition in the Indian market."*

Anti-competition agreements are also called Appreciable Adverse Effect on Competition agreements (AAEC agreement). These agreements are expressly void as per the provisions of the Act. The Act lays down provisions regarding both horizontal and vertical agreements. Horizontal agreements are those that are entered between parties in the same line of production. Vertical agreements are those which are entered into between non-competing undertakings operating in different levels of the manufacturing and distribution process[81]. Any agreement that results in the following are termed as AAEC agreements[82]-

- Directly affects purchase or sales prices;
- Indirectly affects purchase or sales prices;
- Limits production;
- Limits supply of commodities or services in the market;
- Limits provision of service in the market;
- Limits technical development in the processes used;
- Leads to collusive bidding or
- Leads to rigging of bids.

The MRTP Act was silent with regard to treatment of cartels but the Competition Act strictly prohibits the functioning and existence of cartels. The Competition Act discusses cartels and holds them invalid under the Act. In a particular case[83], the Builder's Association of India brought an information to the CCI that the Cement Manufacturer's Association and eleven

[81] Ajay R Kamath, *Notes on Competition Act*, https://www.srcc.edu/sites/default/files/B.com%20H_sem%20vi_Consumer%20affairs%20and%20Customer%20Care_Ms.%20Kavita%20Kamboj.pdf (last visited Aug 17, 2021)
[82] Cleartax, https://cleartax.in/s/competition-act-2002 , (last visited Aug 17, 2021)
[83] Case No 29/2010, CCI Order Date 20th June, 2012

cement manufacturing companies were found to have joined together to form a cartel for fixing prices and for limiting the production and supply of cement in the market. Here, the CCI imposed a penalty of Rs. 6,714 crores on the companies and held that cartels are a form of AAEC agreements.

Abuse of Dominant Position: Abuse of dominant position is prohibited by S. 4 of the Competition Act. According to the section,

> *"(2) There shall be an abuse of dominant position [under sub-section (1), if an enterprise or a group].—-*
>
> *(a) directly or indirectly, imposes unfair or discriminatory—*
>
> *(i) condition in purchase or sale of goods or service; or*
>
> *(ii) price in purchase or sale (including predatory price) of goods or service*
>
> *(b) limits or restricts—*
>
> *(i) production of goods or provision of services or market therefor; or*
>
> *(ii) technical or scientific development relating to goods or services to the prejudice of consumers; or*
>
> *(c) indulges in practice or practices resulting in denial of market access [in any manner]; or*
>
> *(d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or*
>
> *(e) uses its dominant position in one relevant market to enter into, or protect, other relevant market."*[84]

Dominant position is a position of strength and power that is enjoyed by an enterprise in its relevant market in India. As per the provisionsof the Act, when an enterprise enjoys a dominant position, it operates independently of the various competitive forces in the market and thus affects or influences the competition, consumer or the relevant market to its favour.[85] Relevant market in this context can either be a relevant product market or a relevant geographical market.

[84] Competition Act, S. 2, 2002
[85] Cleartax, https://cleartax.in/s/competition-act-2002, (last visited Aug 17, 2021)

The ***NSE-MCX case,*** or popularly known as the ***'stock exchange case'***[86] was the first case decided by the CCI in which a penalty of Rs. 55.5 crores was imposed on the National Stock Exchange (NSE) for actively abusing its dominant position in the stock exchange market. The NSE had indulged in the practice of predatory pricing by which goods or provisions of services were sold at a price which was below the actual cost to reduce competition in the market. The NSE had also abused its dominant position to protect its interests in other relevant markets.

Anti-competitive agreements and abuse of dominant position are different from each other. In anti-competitive agreements, it is necessary to have two or more parties to the agreement. It can be between any enterprises of firms and there is no compulsion that the dominant firm must also be a party to the agreement. In the case of abuse of dominant position, it can be done by a single party alone and it is necessary that the said party has a dominant position in the relevant market. In cases involving the question of abuse of dominant position, the duty of the CCI is to establish that the enterprise is in a dominant position and that it has done any of the acts mentioned in S. 4 (2) of the Act in the relevant market.[87]

Combination Regulation: Under the Competition Act, the term combination has a broad definition. It encumbers acquiring of one or more enterprises by another through mergers or amalgamation or through control over those enterprises. For a combination to be valid, certain prescribed monetary thresholds have to be met and must also involve-

- any acquisition or takeover of shares;
- acquisition of voting rights;
- control of assets and
- being a party to the merger or amalgamation of the enterprises.

Any person or enterprise shall not venture into any combination that is likely to have an adverse effect on competition and even if entered into, it shall be void. There are certain monetary thresholds that are mentioned in the Act with respect to which combinations can be made. If any person or any enterprise proposes to enter into a combination with another enterprise(s), it has to intimate the same to the Competition Commission of India within 30 days of seeking approval for the said merger or amalgamation from the Board of Directors of the enterprises involved and execution of any agreement pertaining to acquire control. Enterprises whose total

[86] Case No. 13/2010, decided on 25.05.2011
[87] Vijay Kumar Singh, Competition Law and Policy in India: *The Journey in a Decade*, NUJS L. Rev. 523, MANUPATRA, (Dec. 2011), http://docs.manupatra.in/newsline/articles/Upload/79028C30-E976-4144-B717-D63B881BE589.pdf

value and having turnover less than Rs. 750 crores and enterprises having assets less than Rs. 250 crores in India are exempted from the application of Section 5 of the Act for a period of five years.[88]

Section 6 of the Act regulates combinations and it clearly states that enterprises shall not enter into combinations that will have an adverse effect on competition. The CCI is empowered to look into such transactions that it finds to be AAEC. Time is of essence in mergers and acquisitions. The Act provides for a 210 days period for finalizing a merger case. In case the time lapses, the merger is deemed to be approved. The Commission is looking towards reducing this period to 180 days so as to rule out apprehensions about delay.[89]

Competition Advocacy: Competition advocacy is an important part of the present Competition Act as it lays down solutions as to how to adapt to the undergoing market changes. It has two dimensions- first being the role of the CCI as a consultant to government and related machinery on the implications of competition machinery and second being the need for increased public understanding and acceptance of competition principles. One of the unique features of the Competition Act is that it formally provides for the promotion of competition advocacy, for creating awareness and for imparting training about competition issues.[90] There is a growing need to make the general public understand the basics of competition law in our country and this was the central aim of the CCI since its inception for up to 7 years of its existence. It undertakes various programmes for public awareness of the CCI and its functions and to also understand the various provisions of law relating to competition policy.

The Competition Act of 2002 has undergone amendments twice, once in 2007 and again in 2009. After these amendments, the Act became fully functional from June 1, 2011. This Act is not applicable to rights that are protected as intellectual property rights and to agreements that are exclusively designed for experts.[91] Competition (Amendment) Bill of 2020 has been drafted based on the recommendations of the Competition Law Review Committee, keeping in view the need for a robust framework to adapt to the growth of newer and disruptive business

[88] S.O. 482(E) dated 04.03.2011
[89] Competition Act, S. 5, Regulation 28(6), 2002
[90] Competition Act, 2002, S. 49(3)
[91] Ajay R Kamath, Notes on Competition Act, https://www.srcc.edu/sites/default/files/B.com%20H_sem%20vi_Consumer%20affairs%20and%20Customer%20Care_Ms.%20Kavita%20Kamboj.pdf (last visited Aug 18, 2021)

models.[92] The Bill aims towards bringing prominent changes in the various spheres of operation of the Competition Act.

COMPETITION LAW PRACTICE

The Competition Commission of India was established under the Competition Act, 2002. It is a statutory body that governs and enforces the Competition Act and has the power to impose penalty on commission of offences under the Act. The CCIinitially did not depart from the structure of the MRTP Commission, the only difference being that the CCI had various branches. There have been discussions as to whether the CCI is a judicial, quasi-judicial, administrative tribunal or expert body. It is settle now that the CCI is a judicial body which has the same powers as that of a civil court in competition law affairs.[93] The CCI is an affiliated office of the Ministry of Corporate Affairs under the Government of India.

The CCI is composed of a Chairman and a minimum of two Board members and a maximum of six Board members including industry or trade specialists. The members are required to have a minimum of fifteen years of experience in their respective fields and are appointed by the Central Government. Post the 2007 Amendment, separate offices of the Director General (DG) and other such officers was created to assist in the proper functioning of the CCI. The powers and duties of the CCI are enumerated in the Competition Act, 2002. The Competition Act also provided for the Competition Appellate Tribunal (CompAT) with a Chairperson who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court and two members with professional expertise. The Act has been amended since and the Appellate Tribunal has ceased to exist. Its functions are now carried on by the National Company Law Appellate Tribunal (NCLAT).[94] The main functions of the CCI are-

- regulating the market scenario and ensuring healthy competition takes place between competing enterprises;
- regulating and prohibiting anti-competitive agreements;

[92] Devika Sharma, Introduction of Competition (Amendment) Bill, 2020: *A step towards revamping Indian Market*, SCC Online, May 6, 2020, https://www.scconline.com/blog/post/2020/05/06/introduction-of-competition-amendment-bill-2020-a-step-towards-revamping-indian-market/ (last visited Aug 18, 2021)
[93] Competition Act, 2002, S. 36
[94] Susmit Pushkar, Sakshi Agarwal, Aman Singh Baroka, Megna Sundar, *Compat No More: NCLAT Marches* On, mondaq, June 2017, https://www.mondaq.com/india/antitrust-eu-competition-/599508/compat-no-more-nclat-marches-on (last visited Aug 18, 2021)

- regulating and prohibiting any abuse of dominant position by firms or enterpirses;
- regulating combinations;
- promoting competition advocacy and,
- act as an advisor to the government and other stakeholders of the economy.

In ***Brahm Dutt v. UoI***[95], the constitutional validity of the appointments of the various Committee membersunder the new Competition Act was challenged. The Supreme Court while upholding the appointment of experts held that it was a common practice in other jurisdictions as well to do so. Moreover, if the decision of the CCI was unsatisfactory, there was a provision for appeal where the Chairperson was retired Judge. Thus, the appointments were held constitutionally valid.

CHALLENGES TO COMPETITION LAW

Although the Competition Act, 2002 has played a major role in regulating Indian markets by filling in the lacunae of the MRTP Act, there are still some bottlenecks in the path of its precision of action[96]-

- *Pending cases from MRTP*- There was a hiatus when the MRTPC was dissolved and a majority of the pending cases were transferred to the CCI. This was a very difficult time for the Commission as it had to decide all these cases.
- *Retrospective application of the Act*- There have been several debates over the retrospective application of the Competition Act. It was held in a few cases like the ***CCI v. SAIL***[97]etc.that all matters since the inception of the Act will fall under its ambit and no other cases would be eligible to be looked into under the provision of the Competition Act, 2002.
- *Procedural Challenges*- Although the CCI had the power to evolve its own procedure to discharge its functions, there were a lot of problems that were raised with regard to its procedures. The power of the CCI in appointing the DG to investigate the SAIL case[98] was challenged before the CompAT. The CCI's power to determine questions of

[95] (2005) 2 SCC 431; MANU/SC/0054/2005
[96] Vijay Kumar Singh, *Competition Law and Policy in India: The Journey in a Decade*, , NUJS L. Rev. 523, MANUPATRA, (Dec. 2011), http://docs.manupatra.in/newsline/articles/Upload/79028C30-E976-4144-B717-D63B881BE589.pdf (last visited Aug 18, 2021)
[97] (2010) 10 SCC 744
[98] CCI v. SAIL, (2010) 10 SCC 744

jurisdiction was also under constant scrutiny. Despite the power of the CCI to pass interim orders and impose penalties, it was a tedious task to fix suitable penalties in numerous cases with the presupposing condition that the power to pass interim orders were to be used "sparingly and under exceptional circumstances"[99].

- *Confidentiality*- The CCI constantly attempts to keep a balance between confidentiality and disclosure of information of parties for the benefit of others. The CCI is bound to maintain such balance as per Section 57 of the Competition Act.
- *Protecting the Interests of the Consumer indirectly*- The CCI plays a major role along with Consumer Protection Forums to protect the interest of the consumers by prohibiting anti-competitive conduct and abuse of dominance, regulating mergers and forestalling market failures, ultimately protecting the interest of consumers.
- *Private Enforcement Issues*- The primary objective of private enforcement is to make good the loss of the injured party through compensation secured from the infringing party for injuries suffered due to anti-competitive practices. One major challenge to the CCI in this issue is fixing the amount of compensation.
- *Law Enforcement Issues*- Various cases before the CCI have brought several law enforcement issues. There have been debates over the 'per se' and 'rule of reason' tests under the Act. The scope of the term AAEC has also been dealt with in particular. Similarly, there have been several issues in relation to the abuse of dominant position by various business houses in the relevant market.
- *Harmonising Sectoral Overlaps*- There are various other legislations in India that regulate the functioning of various other market and industrial activities, like the Reserve Bank of India (RBI), Telecom and Regulatory Authority of India (TRAI), Insurance Regulatory and Development Authority (IRDA) etc. There is a high possibility for conflict of jurisdictions of these legislations with the Competition legislation.
- *Extraterritorial Application of the Act*- There have been no reported cases that will bring about the necessity of applicability of the Competition Act in other international jurisdictions as of now, but with the increasing number of multinational or transnational companies operating in India, and cross-border mergers taking place, the need for its extra territorial jurisdiction will come to the limelight.

[99] Supra

- *Keeping at parwith the developing Competition law jurisprudence across various jurisdictions.*
- *Incorporation of "competition culture" in the economy*-This is possible through training and equipping lawyers, judges, officers etc. with the essence of competition law and its policies and by creating awareness among market players about the existence and implications of various provisions of competition law.

CONCLUSION

After nearly two decades of its enactment, the Competition Act is still in the developmental stage. But tracing the course of the evolution of competition law in our country, it can be confidently said that India has shown tremendous improvement. There are still various aspects that has to be looked into in the competition regime by the CCI and other affiliated authorities. Competition advocacy and proper implementation of competition law is necessary to realise the true objects of the Act. Indian competition regime still has to undergo several developments to keep at par with the evolving international competition jurisprudence and to realise the motto of the Act, "FAIR COMPETITION".

CRIMINALIZATION OF POLITICS CHALLENGE TO INDIAN DEMOCRACY

Author: Abhisena Dey*

ABSTRACT

The political system of "Parliamentary Democracy" which the Constituent Assembly adopted was built on the ideals of democratic republic, popular sovereignty and secularism. In India, because of its heterogeneous political-socio-economic structure, it was decided to implement this concept owing to the notion that a political representative would act as a catalyst to integrate the country. The politicians were seen as personifications of social service, leadership, and sacrifice by the people of the Country. People were expecting Gandhian ideology in politics. But today, India's growing criminalization of politics is an important element of the political life of the country. The emerging scandals and occurrences in government are an indication of loot and malfeasance in governance.

From the viewpoint of the law and order, one can notice a clear decline over the decades, and the situation now is such that getting convictions for significant offences has become a lot more difficult. This is because politicians turn to criminals during the time of elections. When criminals and antisocial elements are under pressure from law enforcement agencies, they also go to politicians to seek support. As a result, the process of obtaining incriminating evidence in criminal investigations is greatly hindered by the politicians. Now things have only gotten worse. As criminals realize that politicians can be elected through the use of muscle power, more and more of them try to run for office themselves. A good number of them have contested for the elections and been elected as well. In fact, there are several of them who now hold ministerial positions. Recent experience has shown that if someone is elected to a legislative or ministerial position- all criminal charges against him go into drawers where they are forgotten about forever. The fall-out in other sectors has been no less devastating, since political criminalization has devastated the health and clean functioning of our democratic political system.

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INTRODUCTION

One of the biggest problems facing the Indian democracy is the criminalization of politics. At times, it has been said that this obnoxious cancerous growth is killing the country's electoral politics. Purity and sanctity of the election process seems to have been cast aside as a result of the unprecedented infiltration of criminals into the country's supreme legislative bodies at the state and national levels. Election Commissioner Sri G.V.C Krishnamurthy (as he was then) said that as many as forty members who were facing criminal charges were members of the Eleventh Lok Sabha and seven hundred with similar backgrounds were in state legislatures.[100]

Even the political parties that have fallen from the glamour of political power and the advantages that go with it do not object to using criminals in elections, because they are all dependent on votes. To avoid the politicization of criminals, all available methods must be used.

A political culture is being built in which it is acceptable to be elected to a state legislature and the Parliament for the sole purpose of generating money. These aspects are also found in the Council of Ministers, as well as a Prime Minister or a Chief Minister serving in a coalition era. Such decisive action may result in the breakdown of the government; thus a strong leader will not be able to take action in this situation. Simple life and selfless devotion to public causes are quickly disappearing in India as Gandhi's principles are losing ground.

The question which needs to be addressed is how to prevent criminals from entering the path of democratic elections. To maintain public confidence in electoral procedures, the Indian Parliament has enacted legislation mandating candidates for Parliament and state assemblies to declare whether they are facing any ongoing criminal investigation for any offence for which punishment is two years or more and charges have been filed. Further, as part of the application process, candidates must reveal if they have been convicted for any offence for which a sentence of an year or more was handed down, in order to assist voters to choose their future leaders. Everything that has happened has allowed for the reduction of politics being criminalized. However, it is very important to exclude criminals from running for office.

[100] A mere reference to the Vohra Committee Report is all that is required in this instance.

RESEARCH OBJECTIVES

- To analyze the roots of criminalization in politics
- To understand the reasons and effects of criminalization in politics
- To point out the important judicial decisions meted out regarding criminalization in politics
- To discern the efforts made by the government of India to curb criminalization in politics
- To suggest measures to curb criminalization in politics

RESEARCH METHODOLOGY

This paper incorporates secondary source of research. This form of research, done by those who have not observed the incident for themselves, is known as secondary sources of research. It includes taking the opinion of other writers, analyzing and comparing them and then concluding and putting forward the amalgamation of all sources.

ROOTS OF CRIMINALIZATION IN POLITICS

Criminalization of politics emerged during the period of Emergency declared by Indira Gandhi. The emergence of money and power took place throughout this time. The peak of the nexus between politics and criminals came out in the open with the assassination of Indira Gandhi.[101]

The politics of criminalization has started a unique type of nexus between politicians, bureaucrats and criminals. This has led to the formation of organized crime syndicates. The current political regimes are essentially governed by mafia organizations, who then exploit and plunder our current economic system. They have also become a major source of gun smuggling, being a major supplier of human resources for terrorism, and drugs supply. Owing to the prevalence of criminal political alliances, the state has become “weakened” and "soft." This issue was given a lot of attention by the electoral commission, and their suggestions were made public. These suggestions are unfulfilled till date due to the law makers themselves being

[101]Dr. Shubhakacharya, *Criminalization of Politics A Challenge to Indian Democracy*, IJRCT Volume 4, Issue 3

criminals. The chicken and egg theory used in politics and criminal nexus is leading to the breakup of the state.

Generally, the first crime a criminal gets involved in is a small one. In big cities, it starts with country liquor, gambling, betting, and prostitution. The politicians utilize criminals to further their own personal interests, while criminals and their syndicates rely on politicians to provide them with political cover to maintain their criminal and anti-national operations running without any hindrances being caused. According to the Vohra Committee, in India, criminal syndicates now rule even in rural regions and small towns, and muscle men are commonplace. The report finds that there is a connection between media and antinational elements and bureaucrats and politicians.[102]

The politicians are helped by criminals in many ways: They are victorious in the elections; other devices, such intimidation of voters, using proxies, and booth capture, are all utilized by them. To begin with, things were different, but over time, they have progressively altered to the point that they are now endangering the premise of the democratic political system in the nation.[103]This was also highlighted in the Presidential speech to the country on August 14, 1989 which emphasized that using money or muscle force, voter intimidation, and booth capture violates the core principles of our socio-economic order.[104]

REASONS AND EFFECTS OF CRIMINALIZATION OF POLITICS:

Reasons[105]-

1. Lack of law enforcement: Many laws and judgments have done nothing to help owing to lack of enforcement. For example, elections are clear violations of the model code of conduct, as may be observed by just glancing at the polls.
2. Narrow self-interest: The publication of the criminality of all the candidates fielded by political parties may not be particularly successful, as most voters use their own personal views such caste or religion to make their choices.
3. Use of muscle and money power: Despite their grim public image, a well-financed candidate who also brings substantial resources to his or her party does well in the

[102]Ibid
[103] S.N. Sharma, *Booth Capturing: Judicial Response*, 41 JILI (1999), 44 at 45-46
[104] R.Y.S. Peri Shastry, *Elections: A Code of Conduct for Contestants*, XXXVII *JPI*, 153 at 157
[105]Supra Note 2

electoral process. When all candidates have criminal histories, the voters are left with no choice.

Effects[106]-

1. Against the principle of free and fair elections: Using money and muscle power in an election restricts the choice of voters who may vote for a good candidate, and is contrary to the principles of free and fair election, which is the foundation of a democracy.
2. Affecting good governance:One of the biggest issues is that offenders go on to create new laws. This undermines the democratic process's capability to address the needs of the people. Due to the unhealthy aspects of India's state, institution, and elected representatives, there are several instances of unhealthy political behavior in the democratic system.
3. Affecting integrity of public servants:It is also linked to the circulation of black money before and after an election, which leads to more corruption in the society and negatively affects the ability of public officials to do their jobs.
4. It causes social disharmony:By propagating violence in the community, it develops a culture of violent behavior and teaches younger people to do the same. This discourages people from trusting in democracy as a form of governance.
5. Strengthening of Election Commission: The Election Commission is empowered to register a political party, but is unable to unregister one. To ensure cleaner elections, controlling the activities of a political party is important. The issue being critical, we should give the electoral commission a wider range of power.
6. Behavioral change:Until citizens understand that the voters who put them to power cannot be trusted, it will lead to only a limited influence in curbing criminalization of politics. This means voters also need to watch out for corruption in campaign financing, gifts, and other enticements. By recognizing an increase in behavioral voting, political parties will be compelled to recruit candidates with clean records.

[106]Supra Note 2

EFFORTS TO CONTROL CRIMINALIZATION OF POLITICS

The Dinesh Goswami Committee (1990) stated that legislative measures must implement further regulations to restrict booth-capturing, rigging, and intimidation of voters. The Law Commission in its 170th report recommended in its 170th report from the Law Commission of India in which the Commission suggested that anyone convicted of electoral or other serious offences, should face disqualification along with the conviction.[107]

The Commission further noted that numerous individuals convicted of serious crimes, such as murder, rape, banditry, and the like, have contested elections pending their trials, and some of them have even been elected. This development causes an embarrassing and unpleasant scenario in which lawbreakers end up being the law makers themselves and get to roam around freely under police protection.[108]

The Ethics Committee of the Rajya Sabha in its first report adopted on 1st December, 1998 stated that the relevant laws and statutes are in place, but they have not had the desired impact. At times, it seemed that the difficulties caused by criminalizing politics and the reasons and effects of such a measure could not be dealt with legislation alone. Furthermore, it stated that the process of disqualifying individuals with criminal records or those who are deemed "dubious distinction" is very difficult, and effort should be taken to reduce the number of those with criminal records from seeking office.[109]

On March 27, 2003, the Election Commission issued an order which required candidates to file an additional affidavit with the statement that Section 125A of the R.P act, which prescribes penalties for misrepresentation or withholding of information on Form 26, this amounts to a maximum of six months imprisonment, or fine, or both.

Vohra Committee:

The Vohra Committee was set up with the goal of investigating to the extent of the political-criminal connection and to offer potential solutions for ending political criminality. According to the agencies in the study, the criminal network has effectively functioned as a parallel government. The Vohra Committee also looked into how criminal gangs were getting

[107] 170th Report on the Reform of the Electoral Laws, 1999
[108] Proposed electoral Reforms, http://www.eci.gov.in/proposed_electoral_reforms.pdt
[109] Larrdis, *the First Report of the Ethics Committee of Rajya Sabha*, XLV, *JCPS*, 21-27, 23-24

government backing and being shielded from law enforcement officials. According to the research, political leaders have become gang leaders. In the history of democracies, politicians who were once criminals have served in Parliament, state assemblies, and municipal bodies.[110]

As the study pointed out, money power is actually developing the political muscle power that politicians deploy during elections. The Vohra Committee finished off with the notion that in order to deal with the issue of the criminalization of politics, it is absolutely necessary to establish intelligence agencies.[111]

The Supreme Court ruled in the case of ***Shri Dinesh Trivedi, M.P. & Others v. Union of India & Others***[112] that it was mandatory to appoint a high-level committee for ensuring an in-depth investigation of the findings of the Vohra Committee, as well as to secure the prosecution of those involved.

Central Vigilance Commission:

In 1999, the Central Vigilance Commission issued a directive to all organizations. While being subject to surveillance to reveal areas where corruption can occur, initiatives were also undertaken to make tender notices more accessible, publish discretionary grants, and out of tours favors in order to introduce transparency and inhibit illegal operations. While on the other hand, a highly anticipated effect of e-governance is that e-governance will lead to outcomes that administrators depend on files and maintenance of strict privacy, which can then further reduce transaction time and root out manipulations possible in manual operations.[113]

[110]Diganth Raj Sehgal, *The Criminalization of Politics and How to Prevent It*
[111]Ibid
[112] Civil Appeal Nos. 2106-2109 of 1995
[113]B.P.C. Bose, *Criminalization of Politics: Need for Fundamental Reform*, The Indian Journal of Political Science, Vol. LXVI, No. 4, Oct-Dec, 2005

Report on Proposed Election Reforms, 2004:

The Election Commission of India made the following recommendations in its report on the Proposed Election Reforms, 2004:

1. Section 125A of the R.P. Act should be amended to provide for the more stringent punishment for the disguise or misrepresentation of information in Form 26 under The Conduct of Election Rules, 1961 to a minimum period of two years of imprisonment and to remove the alternative punishment of deciding the fine on the candidate.
2. Also, it was recommended to amend Form 26 to incorporate all of the data required by the Election Commission's additional affidavit, including a line in which the candidates list their annual income for tax purposes.
3. The most significant recommendation was to include a new section in the R.P. Act, 1951, declaring a candidate's assets and the current criminal proceedings against them, as a condition of eligibility for membership Lok Sabha.

In order to deter those who have committed heinous crimes, the R.P. Act 1951 must be broadened. Candidates having criminal charges pending against them under Section 8 should be barred from holding elected office for a period of six years.

On the other hand, under any circumstances, merely excluding someone for a specific amount of time will not be sufficient. It is only possible to set aside the lacuna if politics is de-criminalized. All parties that knew of the antecedents of the candidates who violated this clause shall be derecognized and deregistered. On this subject, several committees proposed that anybody who has been convicted of such heinous crimes as murder, rape, banditry, or drug smuggling should be permanently debarred from running for public office.[114]

There is an inherent necessity to replace the present judicial hierarchy and establish fast-track courts. It incorporates a quick six-month trial, which must end within six months from the moment charges are filed, to see if a candidate is capable of holding public office.

[114]Supra Note 14

JUDICIAL PRONOUNCMENTS

The Supreme Court delivered a landmark judgement on criminalization of politics in ***Ram Babu Singh Thakur v. Sunil Arora and Others***[115]that requires political parties to publish the criminal background of their candidates for election and the reason for putting forward such suspected criminals. Some of the points decided by the court are as follows:

1. Instructions to disclose the assets and criminal records of the candidates
2. A 'None of the above' option has been added to the voting machine.
3. Invalidating the provision that enabled sitting Legislators to be shielded from instant disqualification following conviction
4. Establishment of Special Courts in all states so that matters against elected representatives can be disposed of rapidly

This is the first time in history that a political party and its leadership would publicly acknowledge criminality of politics, something they had consistently denied for so long, and have long term results in reducing criminalization of politics.

The Supreme Court of India in ***Sasangouda V SB Amarbhed***[116] addressed the concern of booth capturing by concluding that it is completely detrimental to the electoral process and runs against to the core features of our constitution. Parliamentary elections have entrenched democratic polity in this country and this cannot be allowed to be destroyed by being inactive in this matter.

In ***Vidyacharan Shukla V Purushottam Lal***[117], V.C. Shukla was convicted and sentenced to two years in imprisonment by the Sessions Court on the date of filing his nomination. However, the returning officer accepted his nomination papers without permission. Conviction and punishment were effective, yet he still won in the election. In this instance, the candidate who lost in the election filed an electoral petition, and the criminal appeal of Shukla was granted by the time it made it to the High Court, resulting in the defendant's sentence being overturned. While deciding the election petition in favor of the returned candidate, the court referred to ***Mannilal v. Parmailal***[118], and held that the acquittal retrospectively removed out the disqualification.

[115] Contempt Petition. (C) No. 2192 OF 2018
[116] AIR 1992 SC 1163
[117] (1981) 2 SCC 84
[118] 1971 AIR 330

The Supreme Court in ***K. Prabhabaran V P. Jayarajan***[119]observed that the aim of enacting disqualification under section 8(3) of the R.P Act is to stop criminalization of politics. Chief Justice R.C. Lohati speaking for the majority stated that criminals should not be allowed to make laws. It was stated that the objective of enacting disqualification on conviction for specific offences is to keep politicians and elected officials from people with criminal backgrounds out of the government. It was further observed that that people with criminal backgrounds contaminate the electoral process since they have no about committing crimes to succeed in an election.

SUGGESTIONS TO CURB CRIMINALIZATION OF POLITICS

The overall state of our election system is precarious, and we need to fix it systemically and strategically. The nearly unanimous consensus of many committees on politics and electoral reform pertains to the criminalization of our political system.

1. Political parties should reject tickets to the candidates whom they know are tainted.
2. The RP Act should include an amendment that debars someone from running for political office if a criminal case of heinous nature is pending against them.
3. Fast-track courts should handle the situations of those with criminal histories who are also politicians. In order to expedite the legal proceedings, it is important to employ fast-track courts. People with criminal histories are unable to run for public office if there is a fast trial of politicians with criminal records.
4. Persons who have served a prison sentence of seven years or more should not be allowed to contest elections until and unless the High Court allows it.
5. The Constitution should promote intra-party democracy and accountability.
6. Preventing criminals from winning elections should be made widely known, along with other options, such as NOTA (none of the above).
7. Greater disclosure is required when it comes to campaign finance. It will discourage politicians with criminal backgrounds from taking part in political campaigns.

[119]AIR 2005 SC 688

CONCLUSION

Corruption and political criminality have deep and far-reaching implications for democracy. Candidates with criminal histories who are competing in an election should have widespread exposure, and the political parties that support them should be well known as well. The publishing must be freely available to voters, so that no voter will go through the profile of each candidate looking for their positions. Also, some voters will not even have access to or knowledge about technological means for finding this information. To help put an end to criminalization of politics, this is essential.

It is true that neither changes in the quality of candidates nor changes in campaigns will lead to any big change in money power and muscle power in politics. But, however minor they may appear, all these are essential. The dozens of Supreme Court rulings regarding electoral changes since 2002 have drew responses from citizens and initiatives have come from the political system. Until now, the plan has been to break down the massive wall of corruption by breaking down one brick at a time. Once the dam breaks, the nation will be flooded with new and pure water that will flow over a new India.

CRITICAL ANALYSIS OF RECLUSIVE CUSTODY

Author: *Akanksha Kumari*[*]

ABSTRACT

Crime has always been a puzzling problem, knocking the human community from immemorial time. Thereby it becomes a myth of forming crimeless society. There are various punishments in crime like compensation, life imprisonment, death sentence, reclusive custody and many more. Punishment depends on the gravity of offence. Reclusive custody is detention in which a prisoner is detached from all human contact and isolated in a single cell. This punishment requires high gravity of offence. Confinement can`t be implemented mannerly without prisons as it were established with the motive, to restrain criminal activities of an evil doer. In modern time, prisoner`s rights concept has been changed by the criminal justice system by utterly shifting from retaliatory to corrective approach. The long list of prisoner`s right has also owned by the judiciary, are bound on all authorities to follow. Still today, Indian jails are overcrowded. The NCRB record says that the occupancy ratio is 14% more than the actual capacity of jails. By this paper, the author attempted to investigate and acknowledge the wider concept of reclusive custody by knowing its origin, background, development and limitations. Paper traces, how this confinement has an impact on the mental and physical health of prisoner and also aimed to talk about prisoners right and contrasting effect of isolative restrain. There is a discussion on the destruction of reclusive custody as punishment. The author concludes the paper, considering all key words of the research.

Keywords: *Psychological disorders, Circadian rhythm, Inhuman condition, Speedy trial, Undertrial prisoners*

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RESEARCH OBJECTIVE

The paper has a motive to emphasize the attention of readers on one of the ignored areas of the jail, that is reclusive custody. This study wants to make everyone aware about the prisoner's condition in such custody and also make us known to the prisoner`s rights. Tried to emphasize the lacking of a judicial system and the suffering of prisoners because of that.

RESEARCH QUESTION

These are the questions which I will bid to answer through my research ---

- How the post-isolation effect, impacts the body of the prisoner?
- How this custody affects the prisoner`s mental and physical health?
- How does lack of speedy trial amounts to double jeopardy to the prisoners?
- How the destruction of reclusive custody is the need of society?

LITERATURE REVIEW

1. J.Sneha, K.Roja, "*A STUDY ON SOLITARY CONFINEMENT AS A PUNISHMENT*", International Journal of Pure and Applied Mathematics, 2018, Vol. 120 No. 5, PP. 863-878.

The author of the research paper focuses on the punishment of solitary confinement. He emphasizes the stressful condition of the prison and it`s physiological and mental impact on inmates. Via paper author want to aware us about the prisoner`s rights and attempted to explain the flaws of such a harsher punishment. He also supported his arguments with some landmark judgements of reclusive custody. Along with arguments some research results had been presented to conceptualize the facts that why solitary confinement should be abolished as punishment.

2. Cyrus Ahalt, Craig Haney, Sarah Rios, Matthew P. Fox, David Farabee, "*Reducing the use and impact of so confinement in corrections*", International Journal of Prisoner Health, march 2017, vol 13 no. 1, pp. 41-48.

Researchers have made a evidential approach in this research paper. They have given the background of reclusive custody. And argued to limit these confinements in only

those cases which is violent, destructive and threatening in nature. They believe this functioning will improve the safety and helps in achieving the motive o isolation, i.e. away from social contact. The paper overviews and evidently supports the policies of USA for solitary confinement. they placed there keywords as criminal justice system, health or prisoners, public health and correctional health care. They placed research internationally and taken the references of many other countries like Finland, Sweden, Norway and Netherlands. They continues with human rights and talked about the confinement reforms.

3. Sharon Shalev and Monica Lloyd, "*Detention : Solitary Confinement*", ResearchGate.net, December 2016.

The article inspects about a recent study which was done over a year on the prisoners of Colorado State Penitentiary to know the psychological effects during reclusive custody. In the study they attempted to answer the generalized questions like isolative custody is harmful or not? How harmful? On which they are more harmful? etc. They also place other researches for strengthening their arguments. The paper is focused on the methodological criticisms Colorado study. Authors had given thematic review on prison service policy and also about the practice for HM Inspectorate of prisons. Supermax prison is one of the keywords of this research, it has been pointed in the reference of segregation from the *Sourcebook on solitary confinement.* whole writing believe that solitary confinement is not a natural state for any social creature who are meant for contact of humans. They wanted, system should come over the drawbacks and emphasize on increasing sympathetic contact with prisoners.

4. Sarah R. Zyvoloski, B.S., "*Impact of and Alternatives to Solitary Confinement in Adult Correctional Facilities*", Mater of Social Work Clinical Research Papers, May 2018.

The work scrutinized the use of reclusive custody as adult correction facility and places the impact that comes from its use. It is a qualitative research, through the lens of professionals who are working with offenders. There is the working definition of isolative custody. Prominent theme of discussion in the paper was the alternatives to use solitary confinement. And alternatives consists of training & coordination of staff specialty units and programming for culprits. They have also discussed the positive

aspect of solitary confinement but not successful in providing strong arguments. The paper is about the opinion of four participants.

5. Jayne Leonard, "*What are the effects of Solitary Confinement on health?*", MEDICAL NEWS TODAY, June 2020.

   The article identified reclusive custody as a common practice in jails across the worldwide. It presented the report of the Bureau of Justice Statistics (BJS), almost 20% of accused people of U.S. had experienced solitary confinement from 2011-2012. Effects of confinement are discussed along with criticism. Criticism was on 'Mandela Rules' which prohibits the use of such confinement for prolonged period. And also prohibits the segregation of disabled prisoners. the research also said such punishment as not cost effective and argued that the prisoners are developing more violent nature and becoming unpredictable.

INTRODUCTION

Humans are social butterflies and can`t live alone because of this norm, placing any person isolated in a room is being used as a method of punishment. Reclusive custody "is a sort of detainment inside which a detainee is disengaged from any human contact, more often than not except for individuals from imprisoning specialists, for 22–24 hours day by day, with a sentence beginning from days to decades."[120]Since from pre-independence era, the Indian criminal justice used to practice sermonize restrain. Most of the time restrain of prisoners had the intention to bar them from the struggle for independence. Currently, these confinements are done not only in response too dangerous behavior, but also for the violation of prison rule and the safety of other jailbird or the staffs. In ***Kishore Singh Dev V. State of Rajasthan***[121]supreme court defined the reclusive custody in it`s basic meaning using segregation and isolation as keywords.

[120]J.Sneha, K.Roja, "*A STUDY ON SOLITARY CONFINEMENT AS A PUNISHMENT*", International Journal of Pure and Applied Mathematics, 2018, Vol. 120 No. 5, PP. 863-878,https://acadpubl.eu/hub/index.html, last visited (Sep. 1, 2021, 4:12 PM).

[121]Kishore Singh Dev v. State of Rajeshthan, AIR 1981 SC 625

Visualize yourself locked in a room that is not much longer than a walk in that place. Even there was no way out and the time when you will come out is also not in your hand. You have to eat sleep and toilet within that small cell. Envision your body`s reaction in such a condition. You must feel despairing, disquieted, miserable, sleepless, or caged under such confinement. To most, this custody is seen as 'inhuman' and 'embarrassing'. But still there are many illuminations for the implementation of reclusive custody. Impacting individual`s minds is the physiological effect of these orders and this impact made the punishment a most heinous one. Even after the man survives, he became abnormal and unfit in the society.

ORIGIN AND EVOLUTION

Reclusive custody finds its origin in the United States in 1800. It was started as an experiment. They assume that prisoners will use such isolation to regret on there misdeed. Whatever they hoped for and the results were opposite or negative. There was the development of mental illness in the prisoner`s physiology. In 1890, the supreme court of the US cognize the harm of reclusive custody on the prisoner`s health. Afterward, it gradually moved away.

Section 73 under Indian Penal Code, 1860 deals with reclusive custody and states

"Whenever any person is convicted of an offence for which under this Code the Court has the power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say— a time not exceeding one month if the term of imprisonment shall not exceed six months; a time not exceeding two months if the term of imprisonment shall exceed six months and 1[shall not exceed one] year; a time not exceeding three months if the term of imprisonment shall exceed one year."

Indian Penal Code (IPC)1860, has categorized imprisonment into the way-

- Rigorous imprisonment
- Simple imprisonment

Hard labour punishment in which hard work was given to the sentenced person in the jailhouse , and they were provided low wages for such work, that is called Rigorous imprisonment. But simple imprisonment is opposite from rigorous one. It is the lighter version of imprisonment.

Now, it is clear from the statement of Section 73 that, only those offenders are kept in solitary confinement who had committed a crime and court had awarded the rigorous punishment.

RECLUSIVE CUSTODY LIMITS

Limits of reclusive custody are given under *Section 74* of IPC, it states as

"Limit of solitary confinement.—In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods."

As reclusive custody causes a serious effect on the body and mind of the prisoner who goes through the protract span of segregation, that`s why legislators have made the provision that no prisoner will be kept in reclusive custody for more than 14 days at a time.

Prisoners cannot be put in reclusive custody for more than three months and in the odd cases the imprisonment does exceed three months period then they shall not be put in reclusive custody for more than 7 days in a month. These are also the limitations stated in the same section.

EFFECTS OR IMPACTS ON PRISONERS

Many of us believe that loneliness and aloneness are the same but it`s not. There is a difference between both the term. As loneliness is the effect of perceived isolation or of imposing social isolation but the aloneness is choice of yourself to be alone. And in the conditions brain reacts differently. Aloneness won`t affect more as it is your choice but loneliness causes the more serious effect on inmates such as depression, and other mental disorders.

Inmates suffer from serious neurological health consequences as reclusive custody is a torturous punishment. In confinement, there is the experience of multiple psychological effects, that includes cognitive, emotional and psychosis-related symptoms. It restrains from social contact, which is a necessity of human beings to be healthy and functioning.

These custodies have a considerable impact on the perceptual isolation of prisoners. Perceptual isolation importantly contributes to the health damages, biological cycle functioning and circadian rhythm. The term *circadian rhythm*[122]is the natural cycle considering mental, physical, and behavioral change of the body. The body cycle which is of 24 hours means a whole day. Light and darkness mostly affect this as in reclusive custody this body`s clock was devastated. The research says that the prisoner became oversensitive to normal stimuli, like opening or closing door sounds, the sound of walking and others. Even these stimuli create difficulties in sleeping too. An increase of such thoughts in prisoners makes their return more difficult in the simple imprisonment. And these effects evolve with time and develop new psychological disorders.

The trauma that a prisoner suffers when they go through these all conditions have a numerous effect too beside the mental one, like shuddering, sweaty palms, severe wooziness and heart trembling. For the first three months of the reclusive custody, they face troubles in eating, digesting and sleeping. The silence of whole isolation corrupts the mind of the prisoner and cause chronic fatigue syndrome. Depression, visual and hearing defects, feeling of fear or rage, insomnia, risk of suicide and oversensitivity of noise and touch are adverse effects. They even suffer from anxiety and panic attacks too. This leads to more suicide or self-harm cases in confined inmates than the simple prisoners.

In many of the researches, a confined prisoner reported more memory loss, and several prisoners reported being confused or not have a mental state to make a certain decision or loss of cogent thoughts. These people are suffering from illusions or are not conscious. And all the effects don`t rest the prisoner normal for his future life. They even suffer from post isolation effect. They faces difficulty in socializing, sleeping and for every daily chore.

INMATES RIGHT`S

Inmates have certain basic or essential rights. The Indian constitution has some articles that render the privileges, that includes the rights and other disciplinary subjects. Some specific rights have been given to the prisoners. Such rights have given in, THE PRISONS ACT, 1894.

[122] Saurav Vinod and Preema Safi, Solitary Confinement, All India Legal Forum, https://allindialegalforum.in/?s=solitary, last visited (sep. 8,2021, 8:30 AM)

THE PRISONS ACT, 1894:

It is the first Indian legislation on the regulation of prison. It mainly focuses on the rehabilitation of prisoners. *Section 29* of the Act talks about solitary confinement, and said: "No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison, and every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited at least once a day by the Medical officer or Medical Subordinate."

RIGHT TO LEGAL AID :

An arrested person has the right to legal aid under *Article 22(1)*of the Indian constitution. This states that any arrested person shall not be denied from consulting the legal professional of his choice. Under *Section 303* of the **Code of Criminal Procedure, 1973** every person either the offender or the defender has the right to approach any counsellor of his choice. ***M.H. Hayawadanrao Hoskot V. Territory of Maharashtra 1978[123],*** the ruling of the court was, right to legal aid is one of the important components of a rational system.

RIGHT FOR SPEEDLY RESOLUTION OF TRIAL :

Every person has their liberty. And speedy trial comes under such liberty. Speedy trial is one of the essential of the justice system. It gives justice and reduces the burden of cases too. *Article 21* of the Indian constitution emphasizes the idea of the right to life and the principle of liberty and said, one person can be denied his life and individual freedom following the law. A system that could not provide the quick trial then it can not be regarded as fair, absolute and rational, because of this it comes under the scope of Article 21. This concept came from a case of the year 1961, ***Kartar Singh V. State of Punjab[124],*** hon`ble Supreme court had made the speedy trial as the element of personal liberty in its judgment.

Another landmark judgement in this is ***Hussainara Khatoon And Ors. V. Home Secretary, State of Bihar, 1979[125]***court held that if the trial will not be conducted speedy then the procedural law becomes void. Court realized, "what faith can these lost souls have in the judicial system which denies them a bare trial for so many years and keep them behind bars, not because they are guilty, but because they are too poor to afford bail and the courts have no

[123]M.H. Havawadanrao Hoskot V. Territory of Maharashtra, AIR 1978 SCC 1548, (1978) 3 SCC 544
[124] Kartar Singh V. State of Punjab, 1994 SCCC (3) 569
[125]Hussainara Khatoon V. Home Secretary, State of Bihar, 1979 SCR (3) 552

time to try them". [126]The court held that speedy trial is a constitutional right and cannot be denied by the state. After this judgement almost 40,000 under trial inmates were set free. In ***Raj Dev Sharma Ii v. State of Bihar 1999[127],*** the court held that if the offense judged is punishable by a prison sentence of more than 7 years, whether the defendant is in prison or not, the court stops the evidence against him after three years from the date of the date of recording of the accused`s plea on the charge formulated. Whether or not the prosecution has heard all the witnesses within the said time limit and the court can proceed to the next stage provided by law for the trial of the case, except for every exceptional reason to be recorded and in the interest of justice the court considers it necessary to allow additional time for the prosecution to produce evidence beyond the aforementioned time limit. In another case of ***Rudul Sah V. State of Bihar 1983[128],*** under this case Rudul Sah was detained for 14 years after his acquittal. The court found all the facts are false and unjustified on which basis the appellant was detained. It said the confinement was illegal. The court set him free and also grant him power to get ancillary relief.

India believes in a phrase "innocent until proven guilty" and an innocent was confined for 14 years in prison only because not having a proper trial at a time means lack of speedy trial. An innocent was placed between criminals for such a long period can also develop him into a criminal. Social contact for normal people is different from a prisoner then the confinement of such innocent people can also be related to solitary confinement as they were kept far from his social contact and let him suffer in the jail house. They have jailhouse food, water and toilets too. They even had faced mental and physical stress after being innocent only because of not having a speedy trial of their cases.

The convicts are kept in reclusive custody for numerous years even after getting death sentences only due to lack of speedy trial. This causes an extra burden on the Indian economy. There is no gain in keeping such hardcore criminals in isolative confinement, their cases should be resolved faster in course of justice. In the case of ***Union of India V. Dharam Pal 2019***[129], the supreme court observed that, being a death convict the respondent had experienced confinement for 25 years and out these 18 years in reclusive custody during the deciding time

[126]Rajeswari Rajesh, Case Analysis: *Hussainara Khatoon and Ors. V. Home Secretary*, State of Bihar (1979), Legal Bites Law and Beyond,https://www.legalbites.in/case-analysis-hussainara-khatoon-1979/ , last visited (Sep. 3,2021, 9:45AM)
[127]Raj Dev Sharma li V. State of Bihar, 1999 Criminal Miscellaneous Petition no. 2326 of 1999 in Criminal Appeal no. 1045 of 1998
[128] Rudul Sah V. State of Bihar, 1983 AIR 1086, 4SCC 141
[129] Union of India V. Dharam Pal, criminal appeal no. 000804-000804/2019

of mercy petition by the hon`ble president. In these years he was kept in various isolated jails, which is like an additional unlawful punishment that is not sanctioned by the law. In another case of ***State of Uttrakhand V. Mehtab, Sushil, and Bhura 2018***[130]**,** The High Court ruled that the practice of keeping the convict in solitary confinement / reclusive custody before the weariness of his constitutional, legal and basic rights is unconstitutional. He subsequently overturned keeping death row inmates in solitary immediately after sentencing, and the High Court declared solitary confinement as a "lawless and ruthless practice that can cause enormous torment, agony and anxiety" to the prisoners. The High Court ruled that solitary confinement violates article 21 of the constitution which guarantees the protection of life and personal liberty.

This custody amounts to the extra punishment charged for the same offence or the punishment for an offence awarded more than once which is the violation of Article 20(2) of the Indian constitution. Under Article 20(2) every person has protection against double jeopardy that is no one can be prosecuted twice for the same offence. Authorities keep the sentenced prisoners segregated in the reclusive custody which restrains them from all type of contacts from other prisoners. The system should try to keep the prisoners in isolation for the shortest possible time. The inhuman treatment causes extensive harm and violates the right of prisoners. These cases are not so old they the recent one and it shows what is the condition of our judicial system in the 21st century. We stop the practice of keeping death convicted in reclusive custody after the sentence was pronounced.

RECLUSIVE`S CONTRASTING EFFECTS

In contrast to the impacts of solitary confinement as described by researchers, which is normally provided as there is the existence of psychological and mental disorders. *In 2014, Samantha San also discovered in her study of prisoners that they suffer from a variety of effects in such isolative custody*.[131]The study was the comparison between the prisoners of reclusive custody and of simple imprisonment to know about the health impacts on them. Across the worldwide survey, the study was examining the suffering of segregated inmates.

[130] State of Uttarakhand V. Mehtab, Sushil and Bhura, Criminal Reference no.. 1 of 2014 on April 27, 2018.
[131] Diganth raj Sehgal, *Right against solitary confinement: a detailed study***, ipleaders** intelligent legal solution, December 16, 2020, https://blog.ipleaders.in/right-solitary-confinement-detailed-study/, (last visited oct. 7.2021, 1:14 pm)

Another research was conducted by *Zinger and Wichmann in 2001*[132]. This research also has the same motive but the results were contrasting from other reclusive custody researches. According to this, there was no major difference in the health of either of the prisoner, the isolated one, or of simple imprisonment. There was only one trouble, the confidentiality of the participants was not fully shared only limited information was revealed. This causes suspicion, might the prisoners be at risk or not that much safe in this.

DESTRUCTION OF RECLUSIVE CUSTODY AS PUNISHMENT

Earlier there was no any concept of punishment. society use to ignore the wrongful acts. Afterward they start punishing the wrongdoer by stone-pelting, etc. In the 10th century the concept of bot came for punishment. What was the motive of bringing punishment into the system? The answer will be - to make the wrong doer realise it`s fault and deter them from doing it again. The wrong doer should learn from their wrong. Now it is the 21st century and the motive of punishment remains the same but the only difference is that the moral punishment is changed into a stressful punishment. Prisoners were mentally and psychologically affected and the impact is at par level that they suffer for their rest of the life even after the isolative confinement. People request the judiciary to revoke such punishment. We have many type of research against reclusive custody for its destruction.

Brodsley and Scogin (1988, p 279) had identified negative mental impact is the major effect of social segregation or the confinement in a single cell. An experiment was conducted by Brodsley on 69 inmates who are asked to be in isolation completely. The motive was to study their mental conditions. He found a variety of illnesses like 45% of inmates are suffering from anxiety, chronic psychosis affected 36% of them and two-third were with a psychiatric disorder.

Another name that comes in this was Danold O.Hebb (1951). He had shown the impact of isolative confinement on the sensory and proved it also. The suggestion of all the researchers was to abolish such confinements.

[132] J.Sneha, K.Roja, "A STUDY ON SOLITARY CONFINEMENT AS A PUNISHMENT", International Journal of Pure and Applied Mathematics, 2018, Vol. 120 No. 5, PP. 863-878,https://acadpubl.eu/hub/index.html, last visited (Sep. 1, 2021, 4:12 PM)

CONCLUSION

India, a nation with huge population has the requirements of effective and proper functional judicial system to fruitfully run the country. Reforms are needed specially the reforms for the prisoners. Measures should be taken to initiate or bring the upgradation in Indian management of jails with time to time, so that the law and justice would be able to work perfectly. There are a number of problems which require urgent consciousness of the authorities which incorporates prison`s physical structure, prisoners care and condition, prion personnel training and re-orientation and speedy trial.

Overcrowding of inmates is an important issue and should be resolved faster. Prisons contain the population of both convicted and undertrial inmates. Speedy trials by special fast track courts, special courts, and by video conferencing too. But justice should not be forgotten, no one should be pleaded guilty forcefully.

After a certain period, the hon`ble supreme court needs to address the undertrial cases and also to supervise the lower courts for the speedy redressal of cases. NHRC recommended the restructuring of the criminal justice system in its the yearly report. The system of Indian jails needs more manpower for better management and the securities of jails. We need trained officers to work effectively. Management should improve prisons condition to make it a better place to live, also attached to the cause of reforms and rehabilitation of deviant part of the society.

Reclusive custody is a damaged system and impacting our system severely. However, in 1800 it was considered to be ineffective and harmful then after why it is still in use!

CYBERCRIME: A MULTIFACETED ONE

Author: Mitali Aryan*

ABSTRACT

Cybercrime has caused widespread damage to personalities, companies, including the city council. Computers have unleashed an era of greater efficiency and creativity. Communication and connectivity have reached new heights in the last twenty years. The Internet started a new revolution, the online revolution. As the masses are accustomed and inclined to their daily activities online, most are looking for easy money and information. This criterion represents modern criminals who, in addition to the availability of extensive equipment to access almost all systems, enjoy the anonymity of boundless cyberspace and therefore take human error and system vulnerabilities for granted. The batch consists of these cyber criminals, malicious hackers, malicious hackers, and spammers. This paper attempts to understand cybercrime on a long continuum, starting with the doctrinal research method part. Research and analysis of the world's leading cybersecurity companies were integrated. Without delving into the actual instruments of manipulation, an attempt was made to visualize all progress as a series of activities.

Keywords: *Cybercrime, Hackers, Crackers, Cyberstalking, Child Solicitation and Abuse, Cyberterrorism, Sim Swap, Spammers, Combat, Mechanism, Cyber laws.*

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INTRODUCTION

Cyber crime refers to any illegal act that uses a computer, network device, or network. While most cybercrimes are typically used to make cybercriminals profitable, some of these activities are carried out to degrade performance, or directly disable the device or other computers, or to spread malware using other devices to obtain access to infect information, images or other materials illegally through targeted attacks on computers with the virus, which spreads to other devices and spreads through the network.

Information security is not an issue as cybersecurity specialists are on the lookout. With organizations that depend on IT, board members are more concerned with information security, as this potential threat can affect business and financial goals. The leaders of public institutions, including society as a whole, share the same concern. Information technology affects people, companies, public institutions and society, and we must adapt. Society as a whole is vulnerable to security incidents Institutions that are vulnerable to attack, such as military units, security agencies, nuclear reactors, etc. In a digital global society there are no borders, so cyberattacks can target any target, no matter what target is where you are. The global economy is made up of commercial networks that connect different companies to each other and, in many cases, make companies dependent. A cyber attack on one of the several companies in this chain could affect the entire economic group.

Cyberattacks are becoming more widespread and therefore have a huge impact. Cybercriminals are constantly developing new and ingenious ways to get onto networks. To this end, IT security professionals must be proactive and preventive in increasing the security of their systems. As cybersecurity attacks become more sophisticated, companies respond by strengthening their defenses. The recurrence and seriousness of digital assaults is expanding. Cybercriminals invest in Internet security solutions through a prioritization system and cost-benefit analysis. Proactive consideration by security experts, as well as ever-increasing financial investments in security solutions, appear to be the driving force behind success.

STATEMENT OF PROBLEM

From above, it is obvious that there are loopholes in cyberspaces, making it the obvious cause of most cybercrime. Thus, the following raises the issue:

1) The approach in which technology is exploited by individuals and the masses known as cybercriminals has intensified the impact of cybercrime on global security. These people have mastered the ability to use computer networks to their advantage. They commit crimes such as data breaches, hacking, spying, and spreading viruses while hiding behind computer screens. Almost most nations have well-developed Internet networks. The industry has advanced lately as large telecommunications companies struggle to roll out 5G networks around the world.

2) However, there is concern that criminals may use this network to gain access to the information systems of victims' organizations, which could lead to destruction and loss on all continents. Criminals in the 21st century employ a variety of methods to attack sensitive data, resulting in the highest cases of fraudulent activity on record to date. Victims lose confidential information, money, and even their identities to cybercriminals. This research aims to examine the different types of cybercrime that have shaken the world in the new millennium. The study also aims to examine the impact of such activities on international security and, consequently, the measures necessary to solve the problem.Research Questions:

The following questions are the concern of this research:

1. What are the various sorts of cybercrime that cybercriminals have utilized over the most recent twenty years?
2. What influence does cybercrime have on the globe and international security?
3. What are the reasons that are letting cybercrime grow rapidly?
4. What steps can the world community take to bring the situation under control?
5. How is the PDP Bill effective in combating the cybercrime?

RESEARCH OBJECTIVES

1. This research aims to identify the different types of cybercrime that have been used by criminals in recent years.

2. The objective is to examine how cybercrime has affected the world and international security.

3. The purpose of this document is to examine the main reasons that have supported the rapid growth of cybercrime.

4. Try to equalize the world community and take all necessary measures to alleviate the situation.

5. The document also analyzes how the Personal Data Protection Law is effective in regulating cyber crime.

TYPE OF STUDY

The researcher has chosen a descriptive and explanatory study form that corresponds to the topic, an adequate description was elaborated through an analytical approach with the help of laws, statutes, cases.

LITERATURE REVIEW

1. Mohammed I. Alghamdi, 2020, A descriptive study on the impact of cybercrime and possible measures to stop its worldwide spread, INTERNATIONAL JOURNAL OF RESEARCH AND TECHNOLOGY IN ENGINEERING (IJERT) ISSN: 2278-0181 Volume 09, Number 06 (June 2020);

Recently, a great deal of scientific work has been done to try to define cybercrime at different stages of history and in different situations. Cybercrime is defined as a harmful activity carried out by or against a system or network as established by the International Journal for Information Science and Security. Bernik (2014) characterizes cybercrime as "criminal operations completed by electronic activities determined to assault PC frameworks and information handled by the gadgets".

The 21st century was marked by important technological advances that have influenced human interaction. A digital age that has spread throughout the world has improved the social, political and economic facets of human life. The use of computers and electronic devices has increased dramatically around the world. These changes have led to a significant increase in crime, especially in virtual worlds. Cybercrime has evolved over time, and attackers invent increasingly sophisticated methods every day. Despite the international nation's efforts to combat evil and limit its effects, cybercrime has increased at an alarming rate around the world. There are differences in the definition of cybercrime at the international level. While their definitions are not widely accepted, organizations such as the Council of Europe Convention on Cybercrime, the Convention of the League of Arab States, and draft conventions of the African Union have attempted to define cybercrime (Alazab & Broadhurst, 2015). Computer information is a word used in the Commonwealth of Independent States to characterize cybercrime. On the other hand, according to the agreement of the Shanghai Cooperation Organization, information crime is defined as the illicit use of the property of information. This article looks at the different forms and causes of cybercrime.

Different political groups and countries around the world understand the word cybercrime or cybercrime differently. As a result, not all cybercrime is treated or criminalized equally in all states. This means that cybercrime can be considered a crime in one country but not a crime in another. The terms cybercrime and cybercrime are used interchangeably in this investigative report to refer to any crime that uses computer data and systems or is aimed at committing an illegal act.

2. UNITEDNATIONS: OFFICE ON DRUGANDCRIME-COMPREHENSIVES TUDY ON CYBERCRIME

In accordance with paragraph 42 of the Salvadoran Declaration on Comprehensive Strategies for Global Threats, the General Assembly proposed that the Crime Prevention and Criminal Justice Commission maintain: An open panel of experts on governments, crime prevention and criminal justice systems and Its advancement in a digital world, becomes a comprehensive study of the mystery of cybercrime and responses to it by member countries, global organizations and the business sector, including the exchange of information on national laws, methods, technical assistance and global cooperation with the objective of analyzing decisions to improve the suspension of a judicial system.

Cybercrime, authoritative reactions to cybercrime, wrongdoing counteraction and criminal equity limit and different reactions to cybercrime, global associations, and specialized help were a portion of the points considered for a complete investigation of cybercrime. Twelve subtopics were created from these main topics. 3 These topics are covered in eight chapters of this study: (1) cybercrime and connectivity; (2) The bigger picture; (3) regulations and framework conditions; (4) criminalization; (5) law enforcement and inspections; (6) digital evidence and the justice system; (7) International Coalition; and (8) prevention. The information was provided by 40 companies in the business sector, 16 academic institutions and 11 intergovernmental organizations. The secretariat also evaluated around 500 open source materials. Appendix 5 of this study provides more methodological information.

The United Nations Office on Drugs and Crime was commissioned to develop the study methodology, which included the creation of a data collection questionnaire, data collection and analysis, and the writing of the study text. From February to July 2012, UNODC carried out data collection according to the methodology, including the distribution of a questionnaire to Member States, intergovernmental organizations, representatives of the business sector and academic institutions. Information was provided by 69 Member States, broken down by region as follows: Africa (11), America (13), Asia (19), Europe (24) and Oceania (25) are the top five continents.

The study provides an overview of crime prevention and criminal justice initiatives aimed at preventing and combating cybercrime at a specific time.

Provides a complete picture by highlighting lessons from current and past efforts and outlining possible solutions for the future. Although the study is titled "Cybercrime," it is universally applicable to all crimes. It is difficult to unravel a "cyber crime" or even a crime that does not have electronic evidence of Internet connectivity as the world evolves into a hyper-connected society with universal Internet access.

SCOPE OF STUDY

Cybercrime can take several forms. The most common are described below:

1. **HACKING[133]:**This is a type of criminal act that involves breaking into someone's computer to gain access to personal or confidential information. This is different from ethical hacking, which many companies use to test their Internet security protection. In the hacking system, the criminal uses an assortment of programming to enter an individual's PC and the individual may not understand that their PC is being gotten to from a distant area.

2. **THEFT:**Crime occurs when someone violates copyrights and downloads music, movies, games, and software. There are even peertope websites that promote software piracy, and the FBI is currently investigating several of these websites. Today, the court system fights cybercrime and there are rules that prohibit unauthorized downloading.

3. **CYBERSTALKING[134]:** This is a type of online stalking in which the victim is bombarded with messages and emails online. These stalkers often know their victims and use the Internet to do so rather than personally following them. If they find out that online bullying is not having the desired effect, in addition to cyber bullying, they will start doing it offline to make the victims' lives even more pathetic.

4. **MALICIOUS SOFTWARE:** Refers to Internet-based software or programs that are designed to cause network disruptions. The software is used to access a system for the purpose of stealing confidential information or data or damaging the software of the system.

5. **IDENTITY THEFT:** As more and more people use the Internet for monetary transactions and banking services, it has become a serious problem. In this cyber crime, a criminal obtains information about a person's bank account, credit cards, social security number, debit card, and other confidential information to extract money or buy

[133] Arindam Sarkar: A Seminar Report on Cybercrime; Available at: https://www.slideshare.net/ArindamSarkar9/cybercrime-a; (Last visited on 9th October,2021 at 11:54 AM IST)

[134]Ibid

items in line with the identity of the victim. It can result in significant financial loss for the victim and potentially corrupt the victim's credit history.

6. **CHILD SOLICITATION AND ABUSE:** This is another type of cybercrime where criminals track teens through chat rooms looking for child pornography. The FBI has monitored chat rooms frequented by teens to help contain and prevent child abuse and advertising.

7. **CYBER-TERRORISM:** The severity of cyber terrorism distinguishes it from other types of white collar crime or hacker attacks. According to the testimony of Professor Dorothy Denning of Georgetown University, cyber-terrorist attacks on computer networks or the information stored on them must "result in violence against people or property, or at least cause enough damage to create fear." "Strikes that affect non-essential services or that are primarily a costly nuisance" are not classified as cyberattacks by definition

THE PERPS – HACKERS AND THE CRACKERS

HACKERS:

A hacker is defined as "a technician who intends to gain unauthorized access to the system system." Under Section 66 of the IT Act 2000, a hacker is any person who destroys, deletes or alters the information contained in a computing resource, or reduces its value or usefulness, or is adversely affected in any way, with the intention to cause it or knowing that it is capable of doing so. to cause unlawful loss or damage to the public or any person.

CRACKERS:A "cracker" is a hacker who has the intent to commit a crime. According to Search security techtarget.com[135], this term is used to distinguish "benign" hackers from

[135] Techtarget Network Search security; Available at: https://searchsecurity.techtarget.com/definition/cracker#:~:text=hacker&text=The%20Glossary%20defined%20a%20computer,for%20breaking%20into%20a%20system.%22; (Last visited on 5th October,2021 at 13:08 PM IST)

malicious hackers who damage target machines. Hackers deliberately destroy computers, steal information from secure networks, and disrupt connections for personal or political gain.

WHY DO PEOPLE HACK?

Cybercrime is defined as a "new way of tackling" new types of crime, much higher levels of crime and victimization, the need to react much more quickly, and enormous technological and legal complexity. As a result, hackers may be motivated by personal, political, or professional reasons.

EMPLOYEES: According to one study[136], disgruntled employees are the number one threat to computer security. In exchange for financial gain, employees steal confidential information and trade secrets. Angry insiders are one of the leading causes of cybercrime, according to CBI (Cybercrime Cell). Insiders don't need a deep understanding of their target systems, as their inside knowledge gives them unfettered access to damaging or stealing data from the user's system.

RECREATIONAL HACKERS[137]: For the thrill of defiance or self-aggrandizement in the hacking community, "recreational hackers" disrupt computer networks. With little experience with the attacked systems, the recreational hacker downloads the attack script and logs from the Internet before launching them on the victim's website.

WEBSITE ADMINISTRATORS AND THE WEB PAGES: Websites also have access to a variety of hidden background information from the user. The remote website can access the following critical visitor information:

1. The user's IP address;
2. birth number and dates of previous visits to the website;
3. The URL of the page that contained the link that led the user to the website;
4. The type of browser and the operating system and version of the user;

[136] Neelesh Jain and Vibhash Srivastava's "CYBER CRIME CHANGING EVERYTHING – AN EMPIRICAL STUDY"; Available at: https://www.researchgate.net/profile/Neelesh-Jain-3/publication/275709598 (Last visited on 5th October,2021 at 12:20 PM IST)

[137]IBID; Last visited at 12:21 PM IST

5. The user's screen resolution;

6. If JavaScript and VBScript are enabled on the user's computer; grams How many web pages the user has visited; hours the local date and time;

7. FTP username and password.

CYBERCRIME-CASE STUDIES

Following are the list of famous cases that happened around the world:

1) **PERIL TO CYBERBANKING IN SOUTH[138]:**

Most banks in South Africa process their customer data with mainframes. Using a mainframe relies on the computer's ability to perform a large amount of data processing autonomously, rather than having many computers processing small amounts of data.

Virtualization, which makes it easy to develop many logical computers within a single mainframe to work together, is another advantage of mainframes. Due to robust design and components, mainframes are typically larger than servers, allowing for multiple availability zones and versatility. Many mainframe components, such as interface adapters and drives, can be changed or upgraded without shutting down the server. When it comes to cybersecurity, banks face the following challenges:

1. System downtime
2. Customer data protection
3. Industry call
4. Critical infrastructure protection

[138] P. N. V. Kumar, "*Growing cyber crimes in India: A survey*," 2016 International Conference on Data Mining and Advanced Computing (SAPIENCE), 2016, pp. 246-251, doi: 10.1109/SAPIENCE.2016.7684146. Available at: https://ieeexplore.org/document/7684146 last visited 4th October,2021(Last visited on 5th October,2021 at 1:20 AM IST)

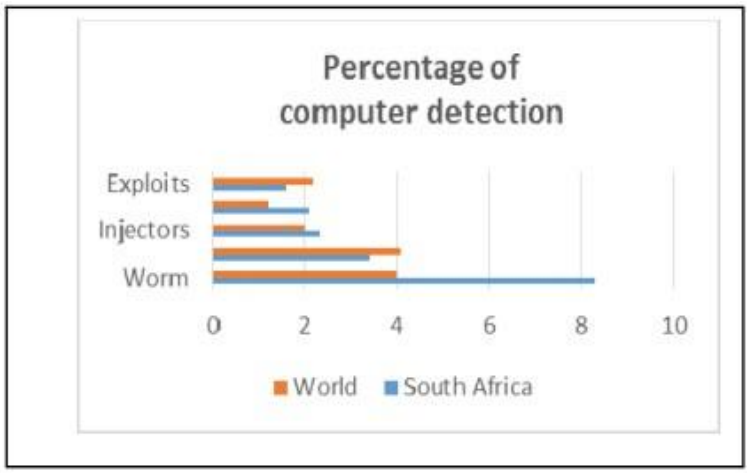

Fig 2: The Microsoft Security Intelligence of 2014 – South Africa

Due to inadequate security measures, cyber crooks often target less developed countries and then use this exploitation to attack more developed countries in order to gain access to large multinational corporations. Cybersecurity across the country could be at risk if cyber banking security is breached. As a result, there have been some serious violations [6]. In January 2016, Check Point, a security organization, identified South Africa as one of the most vulnerable countries for cyber thieves. In January 2016, South Africa went from 67th to 22nd on the threat cloud map of the countries most targeted by cyber thieves. According to Check Point, 4,444 cyber fraud attempts targeting video-on-demand customers escalated, misleading consumers into providing private credentials that they believed their accounts needed to be updated. Spam emails with attachments containing malware on users' systems are widely used for phishing attacks. Viruses, worms, and other exploit software are examples of malware. To gain access to secure information or resources, today's malware tries to copy data from one area to another. 4,444 According to Symantec's February 2014 Intelligence Report, South Africa had the highest rate of phishing attacks in February 2014, with one in 668 emails identified as suspected of phishing fraud. Furthermore, spam was detected in one out of every two emails in South Africa. South Africa ranked seventh among the top ten phishing sources and first among the top five phishing destinations geographically. Between January and June 2012, the RSA AntiPhishing Service in South Africa recorded a total of 1,942 new phishing attacks with a potential net loss of approximately $ 6,828,072. 4,444 worms were the most common type of malware, according to Microsoft's Security Intelligence Report, and 8.3 percent of PCs in South Africa were infected in the fourth quarter of 2014. Since the third quarter of 2014 there was a decrease 10.2 percent [6]. Trojans and obfuscators and injectors were the second and

third most common malware in South Africa. From 4.9 to 3.4 percent and from 2.7 to 2.3 percent. The most common category was Potentially Unwanted Software, which came in second. About 30% of all computers cleaned belonged to this group. Adware ranked third on the list and affects nearly 19 percent of systems handled in South Africa. To combat the rise in cybercrime, the South African government has enacted laws, guidelines, and regulations.

1. **MECHANISMOFPREVENTION**[139] – Proposition of a structure that utilizes a validation/approval technique just as a firewall to give line security to the financial area. The firewall would be arranged to channel network traffic dependent on the data in the parcel header. The arrangement head is liable for characterizing and dealing with this information.

2. **INFORMATION ABOUT CREDIT AND DEBIT CARDS ARE STOLEN[140]:**

In 2007, three men were charged with hacking cash registers and collecting data from thousands of credit and debit cards at Dave & Buster restaurants in the United States. That information was later sold, resulting in a loss of more than $ 600,000. One from Ukraine and the other from Estonia hacked into payment machines at 11 Dave & Buster locations and installed "trackers" to steal payment information sent from point-of-sale terminals to company headquarters. Later, at TJMax, the same men were charged with a similar crime. Some analysts forecast TJ Max's losses of more than $ 1 billion. One of the three men was accused by a US Postal Inspection Service inspector of being a major reseller of stolen ID cards. The three children were arrested while visiting two countries that are actively working with law enforcement agencies in the United States, Turkey and Germany, and not at their homes in Eastern Europe.

[139] P. N. V. Kumar, "Growing cyber crimes in India: A survey," 2016 International Conference on Data Mining and Advanced Computing (SAPIENCE), 2016, pp. 246-251, doi: 10.1109/SAPIENCE.2016.7684146. Available at: https://ieeexplore.org/document/7684146 last visited 4th October,2021 at Last Visited: 5th October 2021, 1:46 AM IST

[140] Lingaraj, Haldurai. (2014). *A Study on Cyber Crime*. Available at: https://www.researchgate.net/publication/274713543_A_Study_on_Cyber_Crime (last visited: 5th October,2021 at 01:59 AM IST)

3. DDOS ATTACKS BY BLUE SECURITY[141]:

Blue Security, an anti-spam company based in Israel and California, was founded in 2006. It has developed a novel way to combat spam. They would send requests to spammers asking them to stop spamming their consumers. This caused a lot of headaches for spammers when they discovered that Blue Security was sending these messages on behalf of more than 500,000 customers, creating significant scalability issues. Although this vigilante virtual justice system was divisive by spammers, it appears to have been legal. The spammers returned the favor with a DDoS attack. Initially, Blue Security responded quickly and efficiently, but the scope and complexity of the attack escalated over time. Blue Security had no choice but to seek help from others. When Blue Security implemented Prolexic DDoS protection, which cleaned up their traffic, the spammers simply directed their DDoS attacks against Prolexis DNS and disabled them and many of their customers.

As a result, Blue Security was forced to go alone. As a result, the CEO eventually decided to close the company.

4. DDOS ATTACK ON NATIONAL AUSTRALIA BANK AND WESTPAC BANK[142]:

While Blue Security's DDoS attacks appear to have little to do with Australia, DDoS has been used as a retaliation technique on several occasions in Australia. The National Australia Bank (NAB) was hit by a DDoS attack in October 2006. According to law enforcement agencies, strikes have started in Russia. Then in September 2007, shortly after its new cybercrime response team was formed to tackle phishing attempts, Westpac Bank was hit by an attack with similar traffic patterns.

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[141] T. M. Mbelli and B. Dwolatzky, "*Cyber Security, a Threat to Cyber Banking in South Africa: An Approach to Network and Application Security*," 2016 IEEE 3rd International Conference on Cyber Security and Cloud Computing (CSCloud), 2016, pp. 1-6, doi: 10.1109/CSCloud.2016.18. Available at https://ieeexplore.ieee.org/document/7545887 ; (Last visited: 4th October,2021 at 14:02 PM IST)

[142] Lakshmanan, Annamalai. (2019). Literature review on Cyber Crimes and its Prevention Mechanisms. 10.13140/RG.2.2.16573.51684. Available at: https://www.researchgate.net/publication/331010726_Literature_review_on_Cyber_Crimes_and_its_Prevention_Mechanisms. (Last visited on 4th October,2021 at 20:15 PM IST)

5. **SIM SWAP FRAUD[143]:**

Two people from Mumbai were arrested for cybercrime in August 2018. They have been involved in fraudulent money transfers from various people's bank accounts after illegally stealing their SIM card information. These scammers obtained people's personal information and then used fake documents to block their SIM cards and subsequently made transactions through online banking. They were accused of illegally transferring Rs 4 million from many accounts. They even tried to hack the accounts of some companies. In this case, scammers access consumer information such as phone number, name, proof of identity, and other details of an organization or a public area. After that, they acquired a 4G SIM card by providing the telecommunications company with the required data of customers who had previously used a 3G SIM card, as well as their phone numbers, and then they called the consumer and acted as customer service agents. . They provide the consumer with a 20-digit code that is written on the back of the 4G SIM card and ask them to quickly enter and activate the 4G SIM card. People who do this have their 3G SIM card removed and their 4G SIM card activated. However, scammers continue to use 4G SIM cards to bank and obtain OTP.

MECHANISM OF PREVENTION[144]-

Sharing personal information with unfamiliar applications and domains can reduce the chance of one`s personal information being accessed by those who are malevolent. In a variety of scams, fraudsters use the victim`s information to dupe them into participating in fraudulent activity. As a result, it is recommended that the site where an individual enters his or her banking or other personal information be checked for legitimacy, as scammers utilize bogus sites to obtain information directly from potential victims. Customers are also needed to activate the sim card if it is physically present with them.

[143]Ibid

[144]Supra note of 12

CYBER ATTACK ON COSMOS BANK[145]-

In August 2018, a daring cyberattack on Cosmos Bank`s Pune branch resulted in the theft of over 94 crore rupees. By compromising Cosmos Bank`s server, hackers were able to wipe out money and move it to a bank in Hong Kong. Cosmos bank has filed a cyberattack case with the Pune cyber cell. Hackers gained access to the bank`s ATM server and stole the personal information of numerous Visa and Rupay debit cardholders. The hack did not target Cosmos Bank`s centralized banking solution. Balances and total account information were unchanged, holders' bank accounts were not affected. The goal was to create a switching system that serves as a communication link between the payment gateways and the bank's centralized banking solution. The malware attack on the switching system resulted in a series of false signals verifying various Visa and Rupay debit card payment requests from around the world. The total number of transactions was 14,000, with more than 450 cards used in 28 countries. 400 cards were used with a total of 2,800 transactions nationwide. This was India's first malware attack on the switching system that caused the payment gateway and the bank to go offline.

MECHANISM OF PREVENTION[146]-

The way forward could be to strengthen security systems by limiting their functions and performance to only authorized users. Any illegal access to the network must be reported immediately and all access to the bank's network must be blocked. Enabling two-factor authentication can also help reduce risk. Possible weaknesses can be discovered through tests, whereby the security of the entire digital banking system is ensured.

[145]Cosmos Bank malware attack: Interpol issues red corner notice against prime suspect traced in foreign country, published in Indian Express.com; Available at: https://indianexpress.com/article/cities/pune/cosmos-bank-malware-attack-interpol-issues-red-corner-notice-against-prime-suspect-traced-in-foreign-country-6574097/; Last visited on 5th October,2021 at 10:27 AM IST.

[146] Testbytes.net. (2018). Major Cyber Attacks on India (2018) - Testbytes. Retrieved August 23, 2018; Available at: https://www.testbytes.net/blog/cyber-attacks-on-india/ ; Last visited on 5th October,2021 at 11:20 AM IST.

CHALLENGES AHEAD

The challenges of the digital age and the investigation of electronic crime, cybercrime or cybercrime are diverse and include:

1. Crossing multiple jurisdictions;
2. Preserve and preserve evidence;
3. Obtaining appropriate powers;
4. Decoding encryption
5. Proof of identity;
6. Know where to look for evidence;
7. Rethink costs and research priorities;
8. Crime response in real time;
9. Coordination of research activities;
10. Improve training at all levels of the organization;
11. Development of alliances and strategic alliances;
12. Improvement of electronic crime reporting;
13. Improvement of the exchange of information and messages;
14. Acquisition and develop and retain specialized personnel and avoid "technological lag" (or obtain access to cutting-edge technology).

Forensic challenges in particular are too great. The US Department of Justice Identified Four Major Challenges in Gathering and Analyzing Forensic Evidence in a Report (2001, p.23)[147];

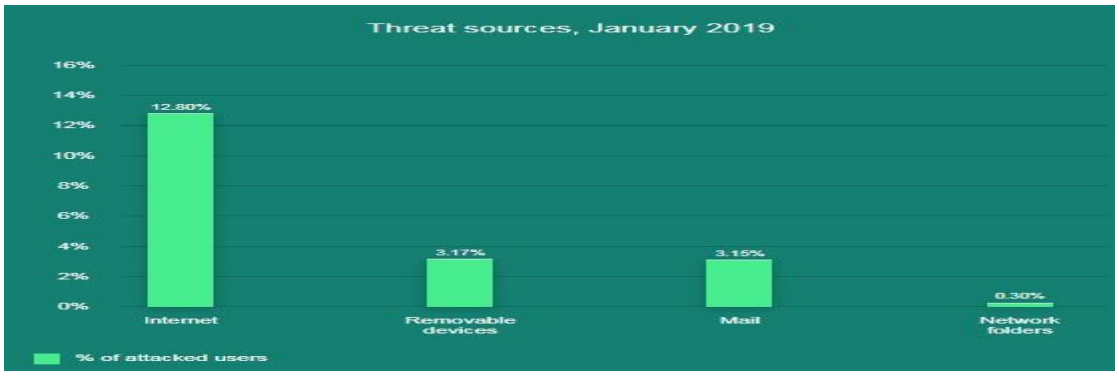

Figure: 2 Threat sources vs % of attacked users

[147] Neelesh Jain and Vibhash Srivastava's "CYBER CRIME CHANGING EVERYTHING – AN EMPIRICAL STUDY";Available at: https://www.researchgate.net/profile/Neelesh-Jain-3/publication/275709598_CYBER_CRIME_CHANGING_EVERYTHING_-_AN_EMPIRICAL_STUDY/links/554493760cf23ff7168546c5/CYBER-CRIME-CHANGING-EVERYTHING-AN-EMPIRICAL-STUDY.pdf; (Last visited on 5th October,2021 at 13:40 PM IST)

Algeria, Morocco, Egypt, Vietnam and Indonesia are the five countries with the highest proportion of attacks in January 2019. In January 2019, the total proportion of infected industrial computers was around 22.3 percent. The sources of threat and the proportion of industrial computers attacked in January 2019 are shown in the graph.

• Finding relevant evidence in the "Information Ocean": It can be difficult to find relevant evidence in the "Information Ocean". Separating valuable xz1 1232 data from irrelevant data also requires considerable technical effort. Finding where to save your evidence can also be tricky.

• Anonymity: People can easily remain anonymous on computer networks, and most web servers have a fictitious "identifier", name or identity.

• Traceability: anonymity refers to traceability, which indicates how difficult it is to determine the origin and destination of messages on computers and communication networks such as the Internet. The development and easy availability of various communication providers make traceability even more demanding. For example, on the Internet, a message can easily be passed to ten different Internet Service Providers (ISPs), each of which must provide information to track it.

• Encryption - Most data and communications will be encrypted shortly. Due to the difficulty of cracking encryption, it can hamper police investigations and increase spending.

CYBER LAWS IN INDIA

One of the most important laws governing the administration of the Internet is the Information Technology Act of 2000 ("IT Act"), which interprets Internet security and protects against access, use, disclosure, interference, alteration or illegal destruction of information, devices and devices Computers, computing resources, communication devices and information contained in them. In addition to the legal recognition and protection of electronic data transactions and other forms of electronic communication, IT law and its regulations focus on digital security, defining adequate security standards for companies, redefining the role of intermediaries and recognizing the Computer Emergency Teams of India ("CERTIn"), among others. The IT Act also revised the scope of the IPC, the India Evidence Act of 1872, the Bankers Book Evidence Act of 1891 and the Reserve Bank of

India Act of 1934, and related matters. or complementary.[148], that we focus on extremely sensitive legislation in the banking and financial services sector. Although there is currently no general legislation for the governance of the data country, there are sectoral regulations, guidelines and legal recommendations that require specific compliance for the target sector.

The Information Technology Act applies not only to India as a whole, but also to any violation or violation committed by a person outside of India. Furthermore, the legal sanctions under the TI Act extend to incarceration, penalties and also provide a framework for the payment of damages to plaintiffs. The legal sanctions of the IT Law also include imprisonment, fines, and the creation of a compensation or redress structure for plaintiffs. When a company that owns, regulates or operates a computer resource that contains, processes or manipulates private information or sensitive information or details, it is negligent in implementing adequate security procedures and therefore causes an individual an illegal loss or gain, as the company is subject to compensation and remuneration.

CERTAIN SIGNIFICANT REGULATIONS ENCOMPASSED PINNED IN THE INFORMATION AND TECHONOLOGY

The Indian Computer Emergency Response Team and Art of Performing Duties and Duties Rules 2013 ("CERT Rules") govern information technology.

CERTIn was established as the central body in charge of collecting, analyzing and disseminating information on cyber threats and of taking emergency measures to control such incidents in accordance with CERT standards. In addition, these rules require reporting to CERT in the following situations:

(i) intentional invasion or violation of critical networks or systems;

(ii) unapproved admittance to IT frameworks or information;

(iii) Website tampering, malicious software attacks, denial of service and distributed denial of service (DDoS) attacks, and attacks on domain systems of the website and related services are examples of crimes cybernetic; and

[148] Shubhangi Agarwal Lexology Cyber security in India TMT Law Practice; Available at:https://www.lexology.com/library/detail.aspx?g=d7b0a465-cc55-48e9-9534-b05bf0c036bd; (Last visited on 6th October,2021 at 22:07 PM IST)

(iv) electronic administration and electronic commerce are two examples of applications that have been addressed. Individuals and businesses can also report additional cyber incidents or breaches to CERTIn and receive the necessary professional support and assistance to help them recover. Unfortunately, the information requirements of the law are insufficient and therefore need to be reviewed as they are voluntary rather than necessary. This eliminates the need for companies to maintain the transparency they need.

Data Technology Rules (Appropriate Security Practices and Procedures and Sensitive Personal Data or Information) 2011 (the "SPDI Rules").

These SPDI rules strictly regulate companies collecting and processing sensitive personal data in India. The rules (i) require consent to collect information; (ii) insist that it is only for a legal purpose; (iii) require organizations to have a privacy policy; (iv) give instructions on data retention; (v) grant people the right to correct their information, and (vi) impose restrictions on the disclosure, data transfer and security measures. In addition, certain sectors such as banking, insurance, telecommunications, health, etc. They have data protection provisions in their respective sectoral regulations. In the absence of more extensive or stricter legislation, the existing framework at least complies with basic data protection principles and offers companies more leeway to adopt current standards and best practices for the respective industry.

THE PERSONAL DATA PROTECTION BILL 2019

The Personal Data Protection Bill 2019[149] ("PDP Bill"), a fresh version of data privacy and protection legislation, was introduced in December 2019. Section 24 of the PDP Bill requires data fiduciaries (also known as "data controllers") to put in place safeguards for a variety of reasons, including preventing misuse, unauthorized access to, modification, disclosure, or destruction of personal data. Section 25 also addresses data breaches. According to the clause, if a data breach poses a risk of harm to the data principal, the data fiduciary shall notify the proposed Data Protection Authority.

[149] Angelina Talukdar's "Article on INDIA: Key Features of the Personal Data Protection Bill, 2019; Available at: https://www.mondaq.com/india/data-protection/904330/key-features-of-the-personal-data-protection-bill-2019; (Last visited on 8th October, 2021 at 09:45 AM IST)

In response to growing concerns about privacy and cybersecurity, the government is evaluating dangers (including political opportunities), and restrictions on vulnerable populations (children) and highrisk apps (including ecommerce platforms) have been implemented.

INTERCONNECTED WORLD: CYBERCRIME PREVENTION

The oppressive reliance of the corporate world on Zoom, which resulted in a large number of people rushing into 'office meetings/ Zoom parties,' disturbing the flow of a particular session, is one of the most pertinent references of these times that can be made in the current circumstances. Individuals and businesses are increasingly moving away from the platform and toward [supposedly] tougher platforms for work-related calls. In the aftermath of this cyber-threat, even intergovernmental entities like the European Commission have turned away from Zoom for work-related calls[150].

Obligations of Data Fiduciary[151]:

The processing of personal data is subject to specific purposes, collection and storage restrictions, such as:

1. For a specific, clear and lawful purpose.
2. The collection of personal data is limited to the data that is necessary for the purposes of the processing.
3. The collection or processing of personal data must be communicated to the person / data controller.
4. Personal data is only stored for the purpose for which it was processed and is deleted once the processing is completed.
5. At the beginning of the data processing, the consent of the person responsible for the treatment must be obtained.

[150] Shubhangi Agarwal Lexology Cyber security in India TMT Law Practice; Available at:https://www.lexology.com/library/detail.aspx?g=d7b0a465-cc55-48e9-9534-b05bf0c036bd; (Last visited on 7th October,2021 at 15:00 PM IST)

[151]*Section13 defines "Data Fiduciary" as any person, including the State, a company, any juristic entity or any individual who alone or in conjunction with others determines the purpose and means of processing of personal data.*

6. The data administrator must verify age and obtain parental consent when processing sensitive personal data of children.

In addition, data trustees must comply with certain transparency and accountability obligations, such as: (i) preparing a data protection policy, (ii) taking the necessary measures to maintain transparency in the processing of personal data, (iii) take security precautions (for example, data encryption and prevention) misuse of data), (iv) report to the authority notifying any breach of any personal information (v) review their policies and implementation of policies each year, (vi) conduct a data impact assessment if a key data manager performs data processing involving new technology or sensitive personal information (vi) important data The manager appoints a protection officer of data to advise and supervise the activities of the data administrator , and (vii) establish complaint procedures to resolve er complaints from individuals to edit.

Data Protection Authority: The bill proposes that an Indian data protection agency take steps to protect people's interests, prevent misuse of personal data, and ensure compliance with the bill and promote privacy awareness. The authority's decisions can be appealed to the appellate court. The court's decision can be appealed to the Supreme Court.

Restrictions on Transfer of data outside India: Sensitive personal data may be transferred outside of India for processing if the person has given their express consent and under certain additional conditions. However, this sensitive personal data must be stored in India. Certain personal data reported by the government as Critical Personal Data can only be processed in India.

Exemptions[152]: The central government has the power to exempt any government agency from the applicability of the law if this is necessary to:

i. Interest in the sovereignty and integrity of India, the security of the state and friendly relations with foreign states,

[152] Angelina Talukdar's "Article on INDIA: Key Features of the Personal Data Protection Bill, 2019; Available at: https://www.mondaq.com/india/data-protection/904330/key-features-of-the-personal-data-protection-bill-2019; (Last visited on 09th October, 2021 at 12:44 PM IST)

ii. prevent the incitement to the commission of a crime typified in the penal code in relation to the aforementioned matters.

The processing of personal data is also exempt from the provisions of the bill for other purposes, such as: (i) prevention, investigation or prosecution of criminal offenses, or (ii) personal, domestic or (iii) journalistic purposes, (iv.)) For statistical or research archiving purposes.

Risk of non-compliance with PDPB[153]: There are two penalties and compensations:

i. Failure to comply with the data protection obligations of the data administrator can result in a fine of up to Rs 5 billion or 2% of your total worldwide sales for the previous financial year, whichever is greater.

ii. Processing of data in violation of the provisions of the PDPB will result in a fine of 15 million rupees or 4% of the annual turnover of the data administrator, whichever is greater.

The recognition and processing of anonymized personal data without consent is punishable by imprisonment of up to three years or a fine or both.

[153]Supra note of 22

CONCLUSION

Cyberspace violation is a fight we fight on a daily basis. India needs strict laws and guidelines to combat these problems. The existing legal framework does not adequately address the concerns of the sector and there is an immediate need for comprehensive legislation to address these concerns.

A proactive approach must be developed by CIOs and senior management to increase information security. IT risks are no longer just a technical risk in the CIO area; it is also a business risk that must be addressed along with all other material risks.

As we decide to stay in touch, we will discuss expanding and acquiring large data sets that are integrated (data warehousing, deep learning, AI, Internet of things); This exposes the entire ecosystem to greater threats from social deviants. Individuals and corporate bodies are responsible for maintaining the security and integrity of data while ensuring that access to data is not compromised in any way. Healthcare, banking and financial services companies rely on their own technology and organizational security protocols to ensure that data is not corrupted or prone to inappropriate and unauthorized access despite upcoming legislation. The insurance business supports the lack of an effective legal system by encouraging preventive care for businesses and individuals. Cybersecurity insurance has gained enormous popularity, compounding the lack of an effective legal system.

Following the enactment of the PDPB, companies that process personal data must meet a number of requirements to protect the privacy of individuals in relation to their personal data.

Individual consent would be required for the processing of personal data. Organizations should review and update privacy policies and codes based on the type of personal data being processed to ensure they are in line with the revised principles.

GENDER CRIME IN INDIA: AN ANALYSIS UNDER INDIAN CRIMINAL LAWS

Author: *Rounit Deep*[*]

ABSTRACT

Gender crime has become a major worry in India. The rates of gender rime are steadily rising. Rape, dowry threats, and gender violence are examples of gender crimes. In this study, we will discuss about gender crime, how it impacts different genders, the violence against women, their past struggles, and how they are still fighting for justice in the contemporary society. This paper will also discuss about the women's gender crime rate and the legal provisions enshrined in Indian statutes to protect them against such crimes.

Earlier there was a period when gender crime solely affected women, but in the twenty-first century, gender crime affects both men and women. It has now become the country's most serious issue. Every day, a case of gender crime is filed in India, whether it is committed by men or women. The pace of increase, according to analysis, is increasing every year. Thus this paper addresses the burning issue of gender crime in the country, the need for gender neutral laws in India, its analysis based on available statistics and measures to curb these crimes.

Keywords: *women, crime, gender, India*

INTRODUCTION

"A gender crime is a wrong committed against a specific gender". Gender crime may be rape, genital mutilation, forced prostitution, forced pregnancy or any sort of violence against any specific gender. Gender crime in India is increasing day by day. In the 21st century, gender crimes are against not only women, even men are victimized. Concerning the provision of the penal code that protects both men and women from gender-based crimes. Despite what one would think, gender is a social development that underpins the relationship between men and women in society.

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It is undeniable that crime is viewed with the utmost hatred by all sections of society. However, it is also clear that studying and researching criminal law has always been one of the most appealing aspects of jurisprudence, dating back to the dawn of civilization. As in any organised sector, where one person injures another person, the injury should be compensated in monetary value, and the person who did the wrong must pay the damages to the aggrieved. However, in some cases, in addition to liabilities to pay compensation, the state imposes penalties on the person who committed the crime. The state's primary goal is to promote peace and good behaviour toward one another in the society, and the problem or question that arises here is what acts should be prohibited and what acts should be decided by the state. To put it another way, what act should be classified as a crime? As we all know, crime is defined as a violation of the criminal law by society. Crime is determined by public opinion. As crime and law are intertwined, if a person commits a crime, a legal framework is in place to punish the perpetrator.

As a rule of thumb, a law is enacted for each crime in order to punish the perpetrator. It is beneficial to examine the social foundation of women in the general public since it is an obvious feeling of socio-legitimate perspective to consider the wrongdoing against women. Essentially, this article discusses the perspective of gender crime, parts, analysis, case law, and how it is increasing in India. We should discuss the challenges that women confront in this paper. The central focus of this topic is to investigate the numerous ways in which gender-based issues occur at various stages within the criminal justice system.

STRUGGLE OF WOMEN FROM ANCIENT PERIOD

As, in old Vedic period the rank of women was in dignity and magnificence. They enjoyed both freedom and equality. In this period women participated in all the spheres of life. In this period women studied at gurukul and enjoyed every part of life. Women like Apala, Garge, Visvara, and Yamini shone brightly during that time and rose to prominence among the general public. They found viability in their profession, music, and even government assistance. As a result of their chance and independence, women's standing during this age was rather remarkable. During that time, they had no problems. In the ancient Vedic period, women had a social rank. In the Aitereya Upanishad, the woman is referred to be the husband's companion. The woman is said to dwell like a queen at her partner's residence in the Rig Veda. The term 'Dampati' describes the women and men of that time. As stated in the Mahabharat, the woman is the source of prospering, happiness, and dharma. Men did not participate in religious events

without their wives during that time period, as wives played a vital role in religious activities.[154]The provision of the Dowry system was exclusively available to the upper or governing classes. There was no provision for widows to remarry. They were treated equally whether they are girls or boys. Women's standing throughout this time was founded on equality, liberty, and cooperation. As a result, women's standing was good and they were treated equally during this time period. They held a significant position during the time period.

However, this was not the case in the post-Vedic period. Women suffered greatly throughout the post-vedic period, as their positions were not the same as they were during the previous vedic period. Women have been subjected to significant hardships and restrictions, as outlined in Manu. It is because this was a male-dominant phase, where the birth of a girl child was not a source of concern for her father, but rather a source of burden. During that time, girls were not permitted to attend school. They had no right to choose their life companions, as they did in the ancient Vedic period, and they were also not permitted to marry through Upanyan Sanskar. During this time, only child marriages were common, and the average age of a girl child bride was between 9 and 10 years old. To some extent, only the daughters of the ruling class were permitted to pursue education, military science, administration, and the fine arts. Manu's renowned command was that women should not be left alone, as it said that in her childhood her father takes care, her husband protects in youth, and sons look after her in old age.).[155]As it is taught, women should be enjoyed cautiously at this point. Surprisingly, the right to property was recognised during this time, and the Feminine notion was dominant (wealth and the other belonging of women which she brought from her father, mother, brother and husband).

As we can see, the post-Vedic period was harsh for women, but the medieval period was even more challenging. It is the most difficult period for women, and it is tougher than the post-vedic period. As a result, many outsiders (from outside India), particularly Muslims, vanished during this period. Muslim women were viewed as property in their culture at that time. As a result of this, Hindu families began to treat their women in the same way. They also introduced the pardah system, to protect them from strangers.[156]As was customary among Muslims at the

[154]MacDonnell, A.A. and Keith A.B. Vedic Index, 2 vol. 1912, https://drive.google.com/file/d/1rIp1NBXrtv6J1HRDtViLnsIFioOEUGF5/view (Last visited on 7th Sept ,2021 at 15:00 PM IST)

[155]A.S. Alteker; The position of women in Hindu civilization , 1962

[156]Medieval Indian women, Maps of India, (Nov. 29,2012) , https://www.mapsofindia.com/culture/indian-women.html (Last visited on 7th Sept ,2021 at 15:20 PM IST)

time, men married multiple women and kept the women as they pleased. By this, Indian culture believes that girls are a burden to them and should be guarded, whilst the boy, on the other hand, is treated differently since Indian society believes that he will assist his family in making a living and so does not receive much care. It was one of the most dreadful periods for women.[157]As only Hindus are affected, other castes such as Jainism, Christianity, and Buddhism got benefit from the restrictions; their wives had the freedom to do anything they choose.

In the nineteenth century, the subject of revising the old Vedic period as one of the most important periods for women arose. Swami Vivekananda and Dayanand Saraswati also mentioned the importance of returning to the old Vedic age for the advancement of women because it was a good time for them. Mahatma Gandhi also opposed the practises of child marriage, female remarriage, and sati. He was a strong supporter of women, and he believed that women's education could help men achieve equality. They also get moral support with education. He always said that both men and women are equal. As a result of the Britisher's efforts to raise awareness of societal ills, women's education was improved, and participation in political organisations boosted women's abilities. So, in general, we can see that gender crime against women has been practised in the past and continues to be a major concern in the present.

CONSTITUTIONAL PROVISIONS AND PRIVILEGES CONCERNING WOMEN IN INDIA

As the preamble of India's constitution mentions gender equality, what are the fundamental rights, duties, and directive principles? Certain provisions for women are included in the Indian constitution. It also includes unique facilities for women's growth in India. As we all know, the preamble is the most important part of the Indian constitution. Gender equality is enshrined into the Indian constitution, which respects men and women equally. But, women in India still suffer a lot ofproblems; they have had problems not only today, but for a long time, as evidenced by women's struggles dating back to ancient times. However, it decreases since, as stated in the preamble, men and women are treated equally as citizens of India.

[157]*Ibid*

In one of the cases, Madhu Kishwar vs. State of Bihar[158], Justice K. Ramaswaray stated that women have always been discriminated against and live in a discriminatory environment without speaking up. Because they live in a state of selflessness and denial, their mobility is limited, and they are susceptible to inequality and discrimination. As stated in clause (3) of Article 15, the state should make provisions for women as of point it provides for the goal of protection, but not in comparison to equality. The Indian constitution guarantees equality, equal opportunity, and equal position for males. However, some women are unaware of the rights and equality afforded to them under the Indian constitution, which is a major issue.

THE RIGHTS OF CITIZENS AGAINST DISCRIMINATION

Part III, which contains Articles 12 to 35 pertaining to fundamental rights, is the most important part of the constitution. Fundamental rights are extremely crucial in one's existence. As a fundamental right, it protects and promotes each person's dignity as an individual, as well as the development of the people's personalities. As stated in Article 15 and 16 of the Constitution, discrimination against women is prohibited, as it is mixed up with other forms of discrimination such as discrimination based on race, caste, religion, or birthplace. Fundamental rights are equal for both men and women because they pertain to Indian citizens.

STATISTICAL ANALYSIS

The crime against the women in J&K and Arunachal Pradesh has the tendency to assault the woman with the intent of modesty (54%and 38.1% respectively). The state of Andhra Pradesh, Assam, Bihar, Chandigarh, Chhattisgarh, Gujarat, Haryana, Maharashtra, Madhya Pradesh, Punjab, U.P., Uttarakhand, and West Bengal, all had the tendency to crime of “cruelty by husband and /or his family members.” Andhra Pradesh has 54.1%, Assam had 44.0% and so on. The most of the Percentage of crime of cruelty by husband and his family member was found in Maharashtra and Gujarat that is 66.7% and 83.4% respectively. Goa has the highest percentage rate of crime of immortal traffic. In Manipur half of the offenders were arrested for kidnapping and abduction. Bihar has 19.8% of its offenders being caught for Dowry Death

[158]Madhu Kishwar vs. State of Bihar, (1996)SCC 125(5)

which resulted in 3994 arrests. These are only few states but they give us the glimpse that how the crime rate against the woman in India is high.

According to National Crime Records (NCRB) that number of cases reported as crime against the women in 2017 was total 3,59,849 as compared from the crime in 2016 and 2015 was 3.38 lakhs and 3.2 lakhs respectively. Thus, in 2017 increased the number of case reported. In state wise, Uttar Pradesh has topped rank of crime against the women as its statistics are 56, 0121, Maharashtra at 31,979 and West Bengal 30,002.

Some of the crimes against women include murder, rape, dowry death, acid attack, cruelty against the women and kidnapping. Cruelty by her husband or his family members accounts about 27.9% of crime. Majority of cases filed under IPC relates to domestic violence in the country. The rate of assault on women with intent of outraging her modesty is 21.7%, the kidnapping and abduction of women is 20.5% and the rape 7.0% respectively.

The total number of rape cases is about 32,559. The state like Madhya Pradesh has recorded highest number of rape cases i.e., 5,562 and second was Uttar Pradesh.

Delhi has witnessed a decline in the cases reported for rape. As, in 2017, 13,076 cases were reported which is the lowest as compared to last three years. Rape by known person is high as 32,559 cases are there and in about 93.1% cases accused was known to the victim, usually the relatives, family friends, employer, neighbours or some other person whom she knows.

5562 cases in Madhya Pradesh, in which 97.5 per cent were known persons. Rajasthan with 3,305 cases, in which 87.9 percent of the known to the victim. In Maharashtra, 98.1 percent rape cases were against friends, associates or relatives. Based on state-wise data, Arunachal Pradesh, Goa, Himachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura can be seen as safer than other states as they recorded the lowest number of cases.[159] According to NCRB's report, Crimes against women has increased by 20% from 2016 to 2019

In India, the uniform civil code is enforced by Article 44 of the Directive Principle. "The state shall endeavour to ensure for all citizens a uniform civil code throughout the territory of India," it adds. However, as this article points out, women in India also face inequalities. Gender crime is a crime committed against women. Our late Prime Minister, Smt. Indira Gandhi, stated that

[159] Nirandhi Gowthaman,NCRB Crime in India 2017 report reveals most unsafe places for women, Your Story, (Oct. 31,2019), https://yourstory.com/herstory/2019/10/most-unsafe-places-women-india-ncrb-report (Last visited on 8th Sept ,2021 at 15:00 PM IST)

our women have more rights than women in other nations, but that women in India still face many disadvantages, Whether they are aware about it or not. As a result, many women in India are unaware of their rights. Article 39(a) says that both men and women are equal and have adequate means of livelihood. Article 39(d) says that the state needs to secure equal pay for equal work for both men and women in India.

As, in one of the cases, Neera Mathur vs. LIC[160], the supreme court was shocked that the LIC asked about information about the menstrual period and post-pregnancy and terminated her because she didn't answer that question, so the supreme court held that the question asked was wrong as it violated someone's privacy and that there was no reason to pry into that information. The right to privacy is protected in Article 21 of the constitution, and it is a violation of that right. Article 16(2) says that no citizen shall be discriminated against or be ineligible for any employment under state on the ground of sex.

IPC (1860) also contain provisions to protect Indian woman from dowry deaths, rape kidnapping, cruelty and other crimes.

The CRPC (1973) provides various protections for women, such as the obligation of a man to support his wife, the arrest of women by female police officers, and so on. As a result, crimes against women have become increasingly widespread in recent years. Pre-natal abortion is also practised in India. Although the government of India has launched several initiatives such as “Beti-Bachao, Beti Pahao” and other schemes, many people in India still perform pre-natal abortions and regard the girl child as a burden to the family. Abortion is commonly performed without the consent of women. As a result, legal resources are ineffective in combating crimes against women and girls. Every day, crime rates rise in the current world of economy, where we talk about a civilised society.

[160]Neera Mathur vs. LIC, AIR 1992 SC 392

PROVISIONS TO PROTECT WOMEN UNDER CRIMINAL LAWS

As stated in the Indian Penal Code, 1860, the arraignment is used to punish those who commit heinous crimes against women. Different sections of the IPC deal with specific violations, such as:

1. Rape:

As defined under Section 375 of the IPC, rape is defined as sexual intercourse with women without consent or by force.

When a man is accused of rape; he must meet the six criteria listed below.

1. against her will

2. without her consent

3. with her consent

- By putting her in fear of death or of hurt)
- On account of unsoundness of mind or inebriation or unwholesome substance, where she can't comprehend the nature and outcomes what she is giving her assent.
- When the man knows that he is not the husband and she gives consent as she believes that he is another man or she believes to be lawfully married.

4. with or without consent (When she is below 16^{th} year old or 18^{th} year old)

Explanation- Sexual intercourse by any man with his wife, where the wife is not under fifteen year of age, is not rape.

Section 376 deals with the punishment of rape

(1) Whoever , except in the case provided for sub section(2) commits rape shall be punished to be imprisoned for not less than 7 years, but which may imprisonment more than 7 years or life imprisonment, and the person who commits rape shall also be liable to pay fine.[161]

(2) Whoever (a) being a police officer, commits rape, Within the limit of the state in which he is appointed or in the premises of any station house or a woman who in the custody of the police officer or in the custody of his sub ordinate to him.

[161]Inserted by Section 9 of 'The Criminal Law (Amendment) Act, 2013

(b) Being a public servant, commits the rape as he takes advantage of his official rank and when the woman is in his custody or in the custody of his public servant to him.

(c) Being a management or on the staff of the jail , remained home or other place of custody established by or under any law for the time being in force or of a women' or kids organization, submits assault on any detainee of such prison, remand home, spot or establishment.

(d)Being an armed forced member into the position of that area appointed by the central and state government commits rape.

(e) Being a management or a hospital staff commits rape of a woman in that hospital.

(f) If a man knows that she is pregnant but commits the rape.

(g) If a girl is below the age of 16 years.

(h) If a group of persons commits gang rape on her.

(i) If a women is incapable of giving her consent.

They shall be punishable for not less than 10 years extendable upto life imprisonment and also liable to fine.[162]

Case laws:

Case of Haryana gang rape of Nepal women-:

Seven men were sentenced to death by a fast track court in Rohtak, Haryana, for raping and murdering a 21-year-old Nepal woman. While announcing her decision, Additional District and Sessions Judge Seema Singhal stated that the case is "rarest of rare."Because of the cruelty and involvement of minors, this case has made international headlines, prompting comparisons to the Nirbhaya case in Delhi. As a result of her treatment, a mentally challenged woman was raped and murdered in Rohtak. When she went missing on February 1, 2015, her body was discovered. Blade, condoms, stones, and shards of a stick were found in her private areas when she went missing on February 1, 2015. “I can hear the cries of women falling victim to crime,” the judge stated. As she stated, it is a male-dominated society in which women are believed to be able to be forced to put an end to. Men who commit the crime should be ashamed of his acts.

[162] Indian Penal Code, 1860, § 376, no. 45, Acts of parliament, 1860

Case that changed the country-

Case of Mathura[163]in the late 1970s was one of the most important cases for the Indian movement campaigns to fight against the rape cases in India. A young tribal girl lived with her brothers. Her age was between 14 to 16 years at that time. Mathura used to work with her friend and she met her friend's nephew named Ashok. Ashok wanted to marry Mathura but her brothers opposed it. One day they went to the local police station to file a complaint that his sister was kidnapped by Ashok and his family member. After receiving the complaint police called Ashok and his family members and investigated them.

Mathura's brothers, Ashok and his family were allowed to go back. But police men stopped Mathura and rest were told to wait outside and then she was raped by two policemen and the two policemen were threatened by the public and her relatives that they will burn down the station. Due to the threat, the two cops were unwilling and hesitant to agree on the panchnama file. The police officers were spared because the judge determined that because Mathura had sexual relations with her boyfriend, she could not have been raped. On appeal, the Bombay High Court's Nagpur bench overturned the session court's decision, stating that they were sentenced to five years in prison and that passive submission owing to fear produced by strong threats could not be equated with consent.

In September 1979, the Supreme Court ruled that the High Court's ruling in the case of Mathura should be changed. They were once again exempt from criminal charges because the accused cops were found not guilty. The court decided that because Mathura did not raise her voice in opposition to the proceedings and there were no visible wounds on her body, there was no rape. According to the Supreme Court, because Mathura was used to sex, she may have incited the two police officers (who were intoxicated on duty) to have sex with her. However, after a while, some protesters submitted an open letter to the Supreme Court, expressing their displeasure with the court's decision. It is also claimed that there is such a strong taboo against premarital sex that it allows police officers to rape a young girl. Women's organisations led the protests, claiming that they wanted to review the ruling and that they were garnering media attention. The case ultimately went in favour of Mathura, prompting the Indian government to modify the rape statute.

[163] Satvir Singh vs State of Punjab, (2002 S.C.C.(Crl.) 48

2. Kidnapping and Abduction

Sections (363–373) deal with kidnapping and abduction. The punishment for kidnapping is dealt with in Section 363. Section 366, 366-A, and 366-B of the Indian Penal Code deal with kidnapping and abduction, procreation of minor girls, and the importation of foreign girls are all of which are crimes against women. Sections 366-A and 366-B only apply to girls aged 18 to 20 years old. Section 366 applies to people of all ages. Section 370 deals with the buying and selling of any person, which is essentially human trafficking.

Sections 372 and 373 prohibit the purchase and sale of anyone under the age of 18 for the purpose of prostitution. Basically, this section deals with both male and female prostitute cases, however it focuses primarily on female prostitution in India. It aids in the punishment of those who commit the crime.

3. Dowry Deaths

In India, the subject of dowry death is a hot topic. As we observe in India, the majority of cases of crime against women are tied to dowry.

So, essentially, section 304B is concerned with the issue of Dowry Death. If a woman dies through burns, injury, or any other cause within the first seven years of marriage, it is stated that her husband is responsible. It must be demonstrated that the woman has been subjected to cruelty by her husband or a member of her husband's family in relation to the demand for dowry. The penalty is a minimum of 7 years imprisonment or a maximum of life imprisonment, depending on the circumstances. Many women have been harassed by their husband's family and relatives, and this section can help on that.

In Satvir Singh vs State of Punjab, the Supreme Court of India held that the offence under section 304B of the Indian Penal Code cannot escape the burden of proof that the harassment was committed for dowry and that the complaint was brought before her death.Dowry is associated with three occasions: one is before marriage, the second is after ma rriage, and the third is the period of seven years after marriage. The dowry has no bearing on the birth of a child or any other rite involving female harassment.The Dowry Death is also linked by section 113 B of the Evidence Act,1872, as does section 304-B.

4. Cruelty against the woman

The cruelty against her husband or her husband's family members is dealt with in Section 498A. This provision states that anyone who commits cruelty towards a woman, whether he is her husband or a member of her family, will be sentenced to three years in jail, with the possibility of an extension, as well as a fine.

5. Acid Attack

As Acid Attack crime deals with section (326 A-B) of Indian Penal Code.

326 A[164] deals with the cause of permanent or partial injured , burned and damage any part of the body by throwing acid shall be punished by the imprisonment of 10 years or may extend to life imprisonment and with fine. As, charging of fine will meet the expenses of victim's treatment.

326 B[165] Deals with the attempt to throw acid on any person with the intention to cause damage or grievous hurt or disability to the person, shall be punished with imprisonment for a term not less than 5 years and extend to 7 years and also liable to fine.

As a result of this section's existence in India, women are more protected against gender-based violence. For many reasons, girls who come into contact with the criminal justice system are an especially powerless category. While the specifics vary by society, separation and sexual and sex-based brutality have "inescapable and shattering" effects on women and young women all around the world (United Nations SRSG on Violence Against Children, 2015, p. 1). However, this part assists girls and women in protecting themselves from any crime that occurs in India. As a result, this component is very crucial in the criminal justice system in India in order to secure justice for women and girls.

CRPC Sections:

1. Right to Privacy while recording statement-

When the case is under preliminary investigation and no one else is available, a woman who has been assaulted can record her announcement before the District Magistrate under section 164 of the CRPC. Alternatively, she can videotape the announcement with just one cop and a

[164]Inserted by Section 5 of 'The Criminal Law (Amendment) Act,2013
[165]*Ibid*

lady constable in a convenient location that is not overcrowded and eliminates the possibility of the announcement being overheard by a third person.

2. Protection of identity-

As there is no provision for revealing the rape victim's identify. Women's identities should not be disclosed, according to Section 228 of the IPC.

3. No arrest after sunset-

In order to protect women's rights, section 46(4) of the CRPC forbids the arrest of women after nightfall and before sunrise, with the exception of exceptional circumstances. If this occurs, the arrest must be done by a female police officer after filing an appropriate report and obtaining court clearance.

GENDER-CRIMES AGAINST MEN IN INDIA

We examine the difficulty that women confront as a result of gender crime. However, in recent years, we have seen that men in India are also victims of gender-based crimes committed by women. There was a time when only women were victims of gender crime, but times have changed, and male members of society are also victims of abuse now. As a result, there are provisions in the Indian Penal Code that are one-sided and do not reflect the current state of society. If women have experienced 50% of the violence in recent times, the male members of society have likewise experienced 50% of the violence in recent times. We can see that a massive part of the Indian Penal Code focuses on protecting women from gender crime. However, because the Indian Penal Code is a national law, it must apply equally to everyone in the twenty-first century. In India, majority of cases of gender crimes are documented, with males perpetrating most of the destructive and immortal acts and females serving as victims.

According to the NCBI report, Gender crime against men increased by 52.4 percent. As a result, 51.5 percent of men's violence is experienced by his wife and intimate partner once in a lifetime, and 10.5 percent in a year. As evidenced by this report, not only women but also men are victims of gender-based violence and, there are no laws in place to protect them.

MISUSE OF SECTION 498A

As this part aids women in obtaining justice for the brutality they have suffered at the hands of their husbands or their husband's relatives. The most serious flaw in this part is that it fails to provide protection to men. According to NCRB statistics from 2012, approximately 200,000 persons, including 47,951 women, were arrested on the basis of a false Dowry report. In section 498A, if a man faces a similar difficulty, such as cruelty by his wife, no provision is offered to assist him. This section concentrates solely on the protection of women and offers no assistance to men who are victims of domestic abuse.

As we all know that domestic violence against women is a serious problem but domestic violence against the men is also increasing.

This section is mostly meant to assist genuine women in obtaining protection. However, for their husbands, this part has become a source of blackmail and harassment. Once the FIR is filed under section 498A/406 of the IPC, the police have the authority to arrest or threaten to arrest the spouse. The majority of women use this as a weapon against their husbands.

SHIELD AND WEAPON: THE TWO FACTOR

Domestic violence laws, like those in the Western world, are equal for men and women, as they give protection to both. However, in India, only women are protected against violence, whereas men are not protected. The Protection of Women from Domestic Abuse Act of 2005 was enacted to safeguard women from domestic violence by acting as a "shield" or "gift" to them.

However, the other side of this is that women use it as a weapon, filing bogus FIRs against their husbands. As a result, PWDVA should enact a legislation to punish those who misuse or file bogus FIRs. As a result, women will be unable to file a bogus FIR against her husband.

Cases:

As we can see in one of the Tedx videos, Deepika Bhardwaj has portrayed one of the cases in which the husband, Syed Ahmed Makdoons, commits suicide as a result of his wife's assault. Before committing suicide, he filmed a video in which he claimed that his wife falsely filed a Dowry case against him and also separated his son from him, causing him to become sick of it and eventually commit suicide as a result.

In another instance, Swadesh Yadav's wife falsely filed a Dowry case against him, and she also filed a molestation charge against his father and sibling. As a result, he becomes frustrated and exhausted, and commits suicide, writing a letter stating "Please save my family." Investigate if we were really wrong"

There are numerous cases where a woman's husband has grown tired of his wife, and as a result, either commits suicide or divorces her. As a consequence, women are increasingly using the law as a weapon against men rather than a shield.

MISUSE OF RAPE LAWS

The rape law part of the IPC is designed to safeguard women and girls by ensuring that they receive justice. However, some ladies employ this region as a protective shield. As an example, there has been a situation where women have abused this part. In one case, two boys, Milind and Prashant, are victims of women abusing the legal system. A Woman informed Milind that if he does not marry her, he will be charged with rape, but Milind refuses. As a result, she filed a bogus police report against him and his companion. They were imprisoned for 14 months. The women wanted money to withdraw the fake complaint against them.The two Amity University young boys were acquitted by a preliminary court three years later. The two boys' careers and reputations were wrecked by the fraudulent lawsuit. Also, the court regrets that they were confronted with a crime that they did not commit at such a young age.

There have been numerous instances of men committing acts of violence. It is self-evident that a few provisions of the Indian Penal Code are unfriendly to women activists. Wrongdoing should be judged on its own merits, regardless of gender. Article 14 of India's Constitution, which outlines the core Right to Equality, is carefully harmed by these arrangements .The sex-based division is infringing on a man's fundamental rights. These rules are one-sided in that they place a man in a dominant position and consider women to be inept members of society, which may explain why laws for women were created in the first place.

As a result, we can observe that men, like women, are victims of gender crime in today's world. Women have been using their protection as a weapon against males, the criminal justice system in India has played a critical role in obtaining justice for women and girls, and in my opinion, and the criminal justice system should establish a law for the protection of men too in the society. False accusations against males disturb the public's balance, pulverise marital homes,

and add to the weight of the legal structure to deal with such foolish and non-existent concerns. False objections should be met with strong regulations to protect the blameless victims from unquantifiable torments.

CONCLUSION

It can be concluded that, legally we should apply the gender-neutral language in our law. Both the Genders should be treated equally according to the laws. We can see that gender crime is committed equally by men and women. Laws that respect both genders equally should be implemented. For example, section 498A and 304B of the IPC were formed because crime against women was on the rise at the time, therefore these sections of the IPC were enacted to protect women. However, we have recently seen women utilising these sections as a weapon against males. Not just this portion of the IPC, but practically every section of the IPC that only protects women. It is not acceptable since the area should be made gender-neutral for all members of society. As far as this topic is concerned, a robust law should be enacted that treats both men and women equally. It is also necessary to consider what is permissible under the Indian constitution for penalising and protecting all persons, whether male or female.

As a result, in order to stop gender crime, we should not discriminate against gender and should not harm any gender. We should treat all genders equally, including transgender people. If we want to establish gender equality where there is no crime of gender then we should recognize LGBT rights also which helps to ensure both legal justice and societal inclusion of all the communities. As the moment has come, the banner of justice should be a gesture toward equality rather than gender discrimination. Finally, I believe that everyone should understand that crime knows no gender, and that everyone in society should be afraid of committing it. It has resulted in far too many hardships for the victim, who, whether male or female, should be entitled to justice. “If we truly need equity to win, if we truly need trust in the law, if we truly need balance, we must need gender impartiality as a plan”.

INTERNATIONAL COMPETITION IN AVIATION: AN ANALYSIS

Author: Vandana*

ABSTRACT

The role of aviation sector and its significance is highlighted in this research paper. The impact of competition on the aviation sector is examined. In India, no such specific legal framework is there that is concerned with the competition in aviation sector. However, certain rules and regulations as provided in the Aircraft Rules of 1937 and the Competition Act, 2002 that are dealing with the competition in the aviation sector are described. Certain factors that are resulting in the competition in aviation sector like globalization, increase in domestic property, deregulations and "open skies" policy, mergers and acquisitions and liberalization policy are discussed. The Convention on International Civil Aviation and its impact on aviation sector, formulation of regulations in the aviation field, International Civil Aviation Organization, relation between different nations is analysed. Some International Organizations that are associated with aviation sector are described. The objectives of these organizations are also highlighted. Analysis of Indian Civil Aviation and the case study of Air India is performed and the reasons behind the occurrence of losses in Air India are also explained.

Keywords: *Competition, mergers, aviation, regulation, Air India*

INTRODUCTION

The present era is ruled by competition. There exists no field with no competition. The aviation sector also struggle with the competition even when most of these are government owned. The aviation sector has gone through evolution since past few years. It is a very significant sector as it helps in provision of many services including passenger services, cargo services. It plays an important role in facilitating job opportunities, education, trade by providing mobility services. With the increase in companies offering airline transportation services, the

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competition in this sector has risen tremendously. No single company enjoys a dominant position in aviation sector which is the reason why there exists tough competition in this sector. A no. of airports is available globally to facilitate the provisions of air transport services. India has around 137 airports currently (as of 2021) the most of which are regulated by the Airport Authority of India.[166] There are no set international competition rules. Moreover, there is less state interference in this sector due to which the competition between the companies rise as sometimes they even adopt unfair practices. At the same time, airlines also face certain issues like a no. of airlines get involved in conflicts with each other, they face a shortage of funds and even go bankrupt.[167] The consumers are benefitting from the competition among the airline companies as they are receiving the services at cheaper prices. But they are also facing losses as the companies holding good market share often end up having price collusion leading to rising in the prices.[168] Sometimes, the companies enjoying good positions merge up to avoid competition and to keep holding their positions in the future. India holds a good position in the world aviation and has set good targets for further improvements in the aviation sector. Competition in this sector often hurts the profit prospects of the airline companies leading to overpricing of the services becoming a bane for the consumers. But liberalization norms restrict the countries from setting up rules to save the domestic airline companies from facing losses.

Air Transport services continue to be a huge and flourishing industry. It plays a significant role in globalization. Air travel grew by around 7% per annum in the past decade. The growth in the economic development of countries has made its citizens more civilized and the risen their living standards and they become international tourists which lead to hike in the demand of airline services. With the increase in demand for airline services, the supply also increasesand with an urge to provide better services to the consumers, the market players end up competing with each other to reap more profits and acquire a good market share.

[166] KNOW INDIA, http://www.knowindia.net/aviation3.html (last visited on 1 October, 2021)
[167]Dario Klasic, *Flying on the Edge of Legalities - Safeguarding Fair Competition in European and International Aviation*, 66 (2016)
[168] Mukesh Kacker, *Competition and Regulatory Deficit in Civil Aviation Sector in India*

RELEVANCE OF INDIAN COMPETITION ACT, 2002

There have been no laws framed for preventing competition in the aviation sector in India. But the Aircraft Rules of 1937 lays down restrictions on the anticompetitive practices in the aviation sector.[169] The provisions of the Indian Competition Act, 2002 provide some provisions restricting the anticompetitive agreements, abuse of holding a dominant position, and regulates the mergers. A no. of cases has been decided on the basis of these provisions by the Competition Commission of India. In *International Airport Association (IATA) v. Air Cargo Agents Association of India (ACAAI) and others*[170], IATA sued ACAAI under article 19 (1)(a) of the Competition Act for violating the provisions of anticompetitive agreements. The petitioners claimed that ACAAI boycotted the business with airlines who were in favour of implementing the cargo account settlement system in India, affecting the supply of air cargo transport services which is indirectly violating the anticompetitive agreements laying impact on the consumers. It was decided by the Competition Commission that it depends on the enterprise to choose and offer services as per their will. There exists no circumstance or agreement for not providing services for specific conditions for raising such concerns. The matter was decided in the favour of the Air Cargo Agents Association of India (ACAAI) due to lack of evidence.

In *Express Industry Council of India v. Jet Airways (India) Ltd and others*,[171] the Express Industry Council of India claimed that Jet Airways, IndiGo Airlines, Spicejet, Air India, and Go Airlines have infringed the provision against anti-competition. It was decided by the Competition Commission of India that the rise in the FSCs is the consequence of collusion among them. Such conduct indirectly helps in determining the rats of air cargo services leading to violation of section 3 (3a) of the Competition Act of India, 2002.

The anticompetitive agreements by travel agents have been dismissed by the court many a times and acquisitions have been approved by it. 24 percent acquisition of Jet Airways by Etihad have been approved by the Competition Commission of India in 2013. Such approvals can be granted by the CCI if it does not impact the competition adversely.[172] Further, in a caselaw decided in February 2021, the Competition Commission of India dismissed the case of

[169]LEXOLOGY, https://www.lexology.com/library/detail.aspx?g=9d40295c-9b3c-4178-b4de-51d7aa87a8fa (last visited 03 October, 2021)
[170] International Airport Association (IATA) v. Air Cargo Agents Association of India (ACAAI) and others, AIR 2012 SC 79
[171] Express Industry Council of India v. Jet Airways (India) Ltd and others, AIR 2013 SC 30
[172]*Supra* note 4

cartelization. It was held by the CCI that an action against price parallelism can be taken only when it is done collusively and is not an independent decision. The present case involved anindependent decision due to which it was dismissed.[173]

In *MP Mehrotra v Jet Airways (India) Ltd and Kingfisher Airlines Ltd*, it was claimed by the petitioner that the defendant companies holding dominant positions in the aviation industry entered into an alliance and with respect to the different areas of passenger services which is against the provisions of anti-competition under section 3 of the Competition Act of India, 2002. The CCI held that the activities conducted by the defendants are covered under the definition of enterprise under section 2 (h) of the Competition Act and there have been no abuse of power and the agreements were instead very beneficial for the consumers. It was held that no provision under sections 3 and 4 has been violated and the matter was dismissed.

FACTORS FOR COMPETITION IN THE AVIATION SECTOR

- **Globalization**: Globalization has led to increase in interaction among the countries, increasing the trade, tourism and the need for travel using the air transportation services. This has led to increase in demand of air transport services. The urge to satisfy consumers with best services induces the airlines companies in the market. This has tremendously increased the competition among the airline entrepreneurs at global levels.[174]
- **Rising Domestic Prosperity:** The growth in economies especially in the Asia/ Pacific region is leading to increase in the trade, investment which consequently leads to 'Domestic Prosperity.' The rise in air travel has led to increase in the demand and supply in these services leading to the emergence of more market players attracted by profits and market share and immense competition among the market players.[175]
- **Deregulation "Open Skies":** Deregulation and adoption of 'Open Skies' regulations have been playing a significant role in increasing competition in the aviation sector among the countries. Most countries have uplifted the restriction on the operation of airlines in foreign countries and have adopted "Open Skies" to promote intercountry airlines transport services.[176]

[173] *Id*
[174] LEGALSERVICES, http://www.legalservicesindia.com/article/918/Competition-Law-&-Its-Impact-on-Airline-Industry.html (last visited on 03 October, 2021)
[175] *Id*
[176] *Id*

- **Mergers and Acquisition:** The airlines companies often acquire others and merge with others which rises the competition among other market players in the economy. It helps inefficiency in work and achieve economies of scale. Sometimes these mergers are more ego-driven than having economic ambitions. This adversely impacts competition. Provisions for regulation of competition including acquisition and amalgamation have been listed in the Indian Competition Act, 2002. It has to be approved by the Competition Commission of India.[177]
- **Liberalization Policy:** The liberalization policy has proven to be very beneficial for the airline industry. Reforms in the trade policies have led to the increased role of market forces in the economy. This has increased the domestic competition. Further, the restrictions of industrial policy, including licenses, quotas, locational preferences have been lifted by most countries, which has given a tough competition to the domestic players in a country.[178]

The aforementioned factors are majorly responsible for the increase in competition among the airline companies. The competition not only affects the airlines sector, but the economy and society as a whole. The increased competition has led to fall in prices which has helped the dream of a common man to air travel come true. The aviation sector has also generated a lot of job opportunities which has positively impacted the society. Competition has positively impacted the growth of society by suppressing inflation, raising the living standards of citizens, and enhancing the manufacturing productivity of the nation. Therefore, the competition in the airline industry benefits the consumers and society as a whole.[179]

CONVENTION ON INTERNATIONAL CIVIL AVIATION

The convention on international civil aviation, also called the Chicago Convention came into existence in 1944 when it was signed by 52 states.[180] Later it was signed by all states in 1947. The Convention states the objectives of the International Civil Aviation Organisation.[181] The preamble of the convention states that: The future development of the international civil aviation can help in developing friendly relationships among the economies and its people and at the same time, its abuse can pose danger to the security of the nation.[182]

[177] *Id*
[178] *Id*
[179] *Supra* note 9
[180] ICAO, https://www.icao.int/publications/pages/doc7300.aspx (last visited 03 October, 2021)
[181] *Id*
[182] ICAO, https://www.icao.int/publications/pages/doc7300.aspx (last visited 03 October, 2021)

The nations need to cooperate and avoid friction and hence develop peace among themselves.[183]

The governments who have ratified the convention have to follow the principles and arrangements so that the airline industry is developed to its best, peace is promoted among the nations, and equality of opportunity is provided to all.[184] Equality of opportunity is identified as the basic principle of the convention.

In the Sixth Worldwide Air Transport Conference (ATC) held in 2013, it was proposed that ICAO should develop certain competition-related policies.[185] The online compendium of competition rules and policies, cooperation in the field of competition has been formulated by the International Civil Aviation Organisation on the basis of the information collected by it from the member states through a competition survey conducted by it in June 2015. The compilation is divided into two parts where the first part talks about the overview of competition policies applicable to the air transport in the regions globally.[186] It further includes the anti-competitive behaviours including cooperation agreements, abuse of dominance and monopoly; merger and control; and state control. While the second part talks about the practices used by the states and regional entities. This part includes provisions for the prevention of anti-competitive behaviour and provides certain regulatory approaches for the same. It is divided into the following three: Bilateral cooperation; (ii) Multilateral cooperation; (iii) Role of international organizations.[187] The compendium has been framed with an objective to provide easy access to the information and rules and regulations framed by the ICAO. Part one of the compendium describes how the airlines have aligned with the other airline companies of the foreign or domestic territories which may include agreements related to ticketing, joint fare agreements, wet leases, e-commerce joint ventures, prices, and scheduling etc. 1.2 explains the impact of such agreements leading to unfair competition practices on the users and warns that if such agreements are not regulated, they can have adverse impacts on the overall economy. Therefore, effective competition rules and procedures have to be framed in order to preserve the consumer welfare and ensure consumer welfare. [188] The part 2 of the compendium explains

[183] *Supra* note 12
[184] *Id*
[185] ICAO, https://www.icao.int/sustainability/Compendium/Pages/0-default.aspx (last visited 03 September, 2021)
[186] ICAO, https://www.icao.int/sustainability/Documents/Compendium_FairCompetition/Compendium.pdf (last visited 03 September, 2021)
[187] *Id*
[188] *Supra* note 16

the practices and mechanisms to prevent unlawful and anti-competitive behaviours. Bilateral co-operation has been developed in order to prevent competition. Since the past few decades of following the Convention, the economic regulatory framework for the international airlines was decided by the states themselves and the competition was limited this way. But with the liberalization and deregulation, the competition has been significantly rising as the entrepreneurs have been provided with the opportunities to carry their operations at global levels. This induces more entrepreneurs to participate in the market and reap more profits by providing better services to them. This gives rise to competition at global levels which can prove to be dangerous for economies. So, it is important for the states to apply the competition laws in the aviation sector and regulate competition.[189]

SOME INTERNATIONAL ORGANIZATIONS FOR AVIATION

- *International Civil Aviation Organization (ICAO):* It is an international organization formed in 1944 and is funded by 193 signatory states. Its basic function includes maintaining administrative bureaucracy and research new air transport policies and develop new innovations in the aviation sector through the ICAO Assembly and ICAO Council elected by the assembly. With the new priorities being identified by the stakeholders, ICAO has been working to research the panels, task forces, seminars, and some other aspects. It provides results to the government and which will help to collectively establish new international standards and recommend policy changes in the aviation sector.[190]

- *International Air Transport Association (IATA):* It is an international aviation organization founded in 1945 in Cuba and headquartered in Montreal, Quebec. It consists of 117 countries and 290 airlines globally. Its functions include providing support to the airline activity and framing industry policies and standards. It also provides consultation and training services. It treats safety as its first priority and its main branch for safety is IOSO i.e., IATA Operational Safety Audit. It has been made compulsory by a no. of countries at their own levels.[191]

[189] *Id*
[190] ICAO, https://www.icao.int/about-icao/Council/Pages/Strategic-Objectives.aspx (last visited on 03 October, 2021)
[191] *Id*

- *Airports Council International:* Airport Council International is a representative of the overall airport authorities in the world. It formulates and recommends the policies to the airports. It also provides trainings to the airports which helps them to raise their standards which helps in innovation and adopting innovative techniques helps in the overall development. It is headquartered in Quebec, Canada, and is governed by the ACI governing board.[192]

The other international aviation organizations include the Federal Aviation Administration, International Federation of Air Line Pilots' Associations, among some others.

Objectives of the international organizations:

The international organizations aim at supporting the aviation sector performing its best to formulate policies and provide necessary support to the airlines and enhance the air transport network. They aim at enhancing the air transportation capacity by 2030 without compromising the system safety, efficiency and environmental performance.[193] The international organisations aim at common objectives which are discussed under:

1. *Safety*: Safety in aviation is the topmost priority the international aviation organizations have. They aim at ensuring and enhancing the civil aviation safety at global levels. The central focus is on the regulatory capacities of the states and the Global Aviation Safety Plan is prepared to maintain safety. The policies framed by these organizations aim at providing and enhancing safety in the aviation sector.[194]

2. *Air Navigation Capacity and Efficiency*: Enhancing the air navigation capacity and efficiency is another objective the organizations focus to achieve. This objective focuses on improvising the air navigation and aerodrome infrastructure, developing new innovative techniques to upgrade the optimize aviation system performance. The air navigation capacity and efficiency plan outlines the objectives to be achieved for improvising in this sector. The policies framed

[192] *Supra* note 20
[193] ICAO, https://www.icao.int/about-icao/Council/Pages/Strategic-Objectives.aspx (last visited 03 October, 2021)
[194] Nationsencyclopedia, https://www.nationsencyclopedia.com/United-Nations-Related-Agencies/The-International-Civil-Aviation-Organization-ICAO-PURPOSES.html (last visited 03 October, 2021)

by the international aviation organizations focus on adopting the latest techniques to enhance the capacity and efficiency in the aviation sector.[195]

3. *Security and Facilitation*: Security is the necessity of any sector. The international aviation organizations aim at enhancing security and facilitation. The strategic objective of the international aviation organizations includes maintaining aviation security, facilitation, and other security-related matters. The policies framed by the international aviation organizations focus on improving security by formulating such policies and programs which ensures security and facilitation in aviation.[196]

4. *Economic Development of Air Transport*: The economic Development of Air Transport helps in enhancing the development of a viable civil aviation system. The organizations focus on harmonizing the air transport and formulate required policies to provide support to the airline activities.[197]

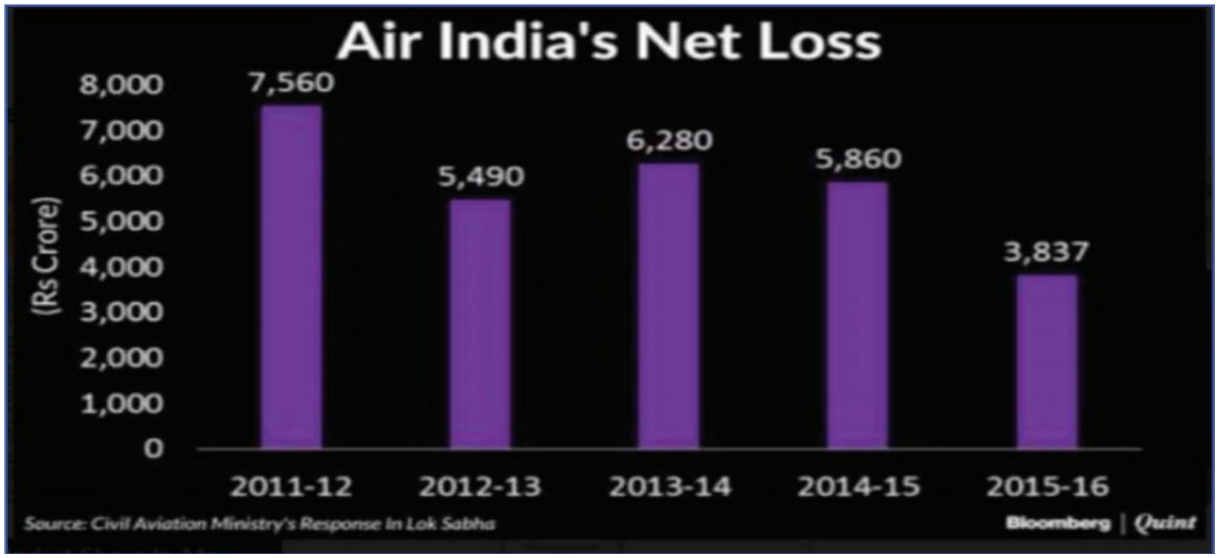
5. *Environmental Protection*: Another main objective of the environment includes environmental protection. The international aviation organizations aim at minimizing the adverse environmental impacts of civil aviation activities. These organizations formulate environmental-related policies and practices in order to sustainably develop the aviation sector. The policies framed are such that the targets are achieved without compromising the environmental prospects in the country.

6. *Economic Development*: The international aviation organizations formulate such policies which focus on overall economic development. They aim at improving the cost efficiency and other operational costs with an aim to focus on providing the returns in order to invest.[198]

[195] *Id*
[196] *Id*
[197] *Supra* note 24
[198] *Supra* note 24

AIR INDIA: CASE STUDY ANALYSIS

Indian Civil Aviation has been ranked as the 11th largest in the world. Air India, formerly known as National Aviation Company of India Limited struggled a lot due to the competition among the various airlines. Air India has been providing great aviation services at around 94 international and national airport destinations. It reaped good amounts of profit during its good times till 2007. It was 2007 when the airlines were merged with Indian Airlines. The directors of the company reported in 2007 that it was necessary to merge both Air India and Indian Airlines as both of them faced a lot of competition from the other airlines companies and the condition of their market shares was not at all good.[199] Air India faced a huge loss of 22,262 million in only 2007-2008 and decline in passengers; rise in depreciation, maintenance costs, fuel costs among some others were identified as the factors responsible for such losses.[200] So, it was decided by the NITI Aayog to merge Air India and Indian Airlines. The market share of Air India did not improve, instead, the losses faced by it multiplied eventually. In 2018, the government decided to disinvest in Air India due to huge losses. The invitation of Expression of Interest by the government left the whole aviation industry in shock.[201]



[202]

The figures of losses faced by the company till 2015-2016 have been represented by the above-given graph. It clearly shows the values of net loss did not improve much. The company ran

[199] NACIL, https://www.airindia.in/writereaddata/Portal/FinancialReport/1_114_1_Directors_report_0708.pdf (last visited 03 October, 2021)
[200] *Id*
[201] *Id*
[202] Arjuni Jain Agarwal1 and Irala Lokanandha Reddy, Air India on Sale, SAGEPUB, 1, https://journals.sagepub.com/doi/pdf/10.1177/2516604220942971 (last visited on 03 October, 2021)

on the bailout funds of Rs. 300 billion. So, the disinvestment plan was announced by the government.

Causes for Losses suffered by Air India

- The actual reason for losses faced by the company was Competition. There has been arise in competition due to an increase in the competitive players on the domestic and international levels.[203] This made Air India suffer huge losses and it lost its significant position of share in the market.[204]
- Fall in the passengers eventually affected the income of the airlines company which further added to the losses of the company leaving low or no chances of survival.[205]
- Liberalization in granting bail agreements also added up to the sufferings of Air India. It was identified as a cause for losses of Air India as more than required bilateral seats were provided to the foreign countries which directly adversely impacted the prospects of Air India.[206]
- The losses further lead to the incapacity of the company to cover up its maintenance costs and the company went into more debts since then. This was followed by anexcessive intervention by theMinistry of Aviation and other officials.[207]

So, the government decided to give up its 100 percent share in Air India. Indigo and Jet Airways were the companies who expressed their interests to buy stakes in the company.[208] This investment would raise their position in the market and will help them grow. Tata Group was also among the participants in the bid. Recently, bids were invited for the stakes of Air India till 15 September, and rumours were spread in the country that the Tata Group won the bid.[209] But the Commerce and Industry minister Piyush Goyal clarified that the final winner of bid is yet to be announced after proper assessing the required parameters.[210] The turnaround of Air India has to be carried out carefully as if the process is completed successfully, it would lead to the growth and development of the aviation sector.

[203] *Supra* note 37
[204] *Id*
[205] *Id*
[206] *Id*
[207] *Id*
[208] THE INDIAN EXPRESS, https://indianexpress.com/article/business/govt-reports-tata-group-winning-air-india-bid-incorrect-7545896/ (last visited on 03 October, 2021)
[209] *Id*
[210] *Id*

CONCLUSION

The aviation sector is developing at its best and it will achieve good outcomes in the nearest future. Amidst the ups and downs the world economies go through, the aviation sector has continuously grown. The aviation business is flourishing since the past decades. While there is anoticeable growth in the aviation sector, the competition in this sector is also increasing which has both positive and negative impacts. The competition helps the consumers as the airline entrepreneurs try their best to provide them with good services. So, this improves the quality of services provided to the consumers. But at the same time, the competition proves to be a threat to the airline entrepreneurs operating in the market as their market share is determined by their profits earned which often lower down due to the competition. Many airline companies have gone into losses and eventually come under the burden of debt. The competition has increased due to the liberalization policies adopted by the countries. The rules formulated by the International Competition Convention related to the competition and agreements should be followed by the countries to ensure fair competition at global levels. This will eventually add to the growth of the aviation sector.

MOB LYNCHING DUE TO MISTAKEN IDENTITIES

Author: *Juhi Handique*[*]

ABSTRACT

Mob lynching has been prevalent in recent years in many parts of states throughout India where false rumors are spread using social media instigating a mob into killing or severely injuring an individual. They believe that the victim has done something wrong and anger drives them blind to think irrationally and therefore they take upon their own hands to bring justice.

It is the act of targeted violence by a mob acting as vigilantes to punish an alleged accused by beating the individual fiercely to the extent of killing or inflicting serious bodily injuries. Often these attacks are against innocent people as the source is mostly based on assumptions of some rumor, misinformation, or suspicion. It is essential to bring this to the utmost attention as a guiltless person doesn't deserve to be beaten so violently for a crime the person didn't commit. It is indignified and injustice towards the victim. Even the presence of police cannot do anything in these types of situations against a horde of people.

The paper will solely focus on mob lynchings due to mistaken identities of claiming them as child abductors, thieves, etc taking current cases committed in India and also in the USA against black people, and a critical analysis of the provisions to hold these people responsible for committing such vigilant acts.

A mob of people excites individuals and thus they go along with the crowd into thinking that whatever they are doing is just and fair. This makes them fearless of not being caught as they believe in escaping with the help of the group because during the commission of crime it becomes difficult to catch hold of every offender by the police. The current laws lack in holding these criminals liable so amendment of present laws or new laws is required for acting as a deterrent effect.

Keywords: *Mob lynching, violence, mistaken identities, vigilant, deterrence*

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INTRODUCTION

Mob lynching is the act done by an angry mob of killing or inflicting serious injuries to another person under the pretext of administering justice without trial thinking that individual to be the real perpetrator thus taking it under their own hands. This is called vigilantism which means when law enforcement is undertaken by a self-appointed group of people without legal authority that they go to the extent of harming or even murdering innocent individuals accusing them of a witch, child abductors, thieves or smugglers, etc. These are merely based on false rumors, misinformation spread through social media which are further instigated by few people who believe that they will be protected under the shadow of the mob. The presence of police also seems futile in these situations due to their inactions or complicities. These acts thus show a complete non-reliance and lack of fear towards the law.

Though a person is guilty or not, lynching someone is not a way to seek justice. It is utterly inhuman because it violates one's right to life, right to a fair trial, etc. Nobody has the right to be the judge of another to punish him or her according to whatever they think is appropriate. Taking matters into their own hands is unacceptable because it is an affront to the rule of law and the principles of natural justice.

In cases of mob lynching, there are no specific laws for prosecuting the criminals however these are tried under the provisions of IPC and CrPC but even then it doesn't specifically deal with this heinous act as an offense as most of the sections are contradictory to each other or there are existences of loopholes. As a result, punishments are limited which is ironic to the violence committed by them. They should be punished in the highest order. Thus, it is a matter of great concern to prevent this crime from escalating even more as in few situations innocents are also brutally murdered due to the spread of some false information.

Therefore there is the urgency of amending these current laws or a new law should be implemented to hold these individuals responsible for the crimes. But only changing or introducing laws is not sufficient. It should also be kept in mind that they are accountable. These laws need to be enforced effectively so that people believe in them and come forward to report whenever they face any injustice. The Supreme Court has also played a key role in recent judgments of mob lynching.

CAUSES OF MOB LYNCHING

Since there are no laws on mob lynching in India, it becomes difficult to prosecute the culprit appropriately however they are tried under the provisions of CrPC and IPC. But they are not efficient. Therefore, the first and foremost thing to do is introduce and pass a separate law that primarily deals with mob lynching with strict enforcement or amend the existing laws. Either of both ways could beneficial to an extent.

Lack of accountability and conviction

A mob is a large horde of people so it is advantageous for the perpetrators to escape thus free from being punished. This impunity makes the mob fearless and they don't hold back from committing these crimes. However, it could lessen if the society and state cooperate and work simultaneously along with each other by participating actively against such crimes and also helping law enforcement officials to nab these criminals.

Police failure

The ignorant attitude of the Police encourages people to commit lynching an individual falsely accused of child abductor, witch, etc. The police also delay investigations and their inability to catch the criminals incites the commission of more such incidents. The state should take action against these crimes as soon as possible by implementing more police reforms. Strict actions should be taken against any police officials who don't keep track of these incidents in criminal records.

Spread through social media

The rise in the usage of social media in spreading rumors and hatred is also the cause of such incidents. Adequate actions against cyber criminals are a must for the prevention of fake news and rumours. People in rural areas with low education easily believe whatever news they read on social media platforms and thus acts in anger and frustration without thinking about it. Therefore, the need to restrain the spread of such fake news is necessary by working along with social media companies.[211]

[211] Navjot Buttar, *9 Facts About Lynching In India, The Borgen Project*, (Jun. 27, 2021, 5:20 PM), https://borgenproject.org/9-facts-about-lynching-in-india/

High unemployment rates and poor economic conditions

High unemployment leaves millions of youth unengaged as a result they are often misguided and brainwashed through various ideologies and agendas.[212] Participation in such unlawful acts is determined by the person's socioeconomic and education. People living in poverty with low educational status are more prone to both participating in lynching and becoming a victim of such incidents as they have little knowledge or none at all. State action is important to provide more employment opportunities to youth with a focus on the economic development of the region.[213] Therefore, creating more jobs for the unemployed young of the country focusing on skill development, and further improving their financial circumstances will divert their attention as well as protecting them from being a victim or a perpetrator.[214]

CONSEQUENCES

It disrupts the balance of law and order in a country which further inflicts conflicts and chaos. People lose their faith in the criminal justice system instilling a mindset within them that it's no use reporting as they will be laughed at or nobody would believe anything they say. Additionally, they are also feared to be judged.

These crimes raise feelings of insecurity amongst people developing into negative thoughts which could make them hold grudges against each other. The whole society has the impact as it creates differences in various religions damaging the solidarity among them. This results in aggravating caste, class, and communal hatred. Therefore, it would threaten the unity and integrity of the nation.[215]

The victims who survive these events are at risk of health problems caused due to lynching as it affects their whole body either internally or externally which later results in succumbing to these injuries or permanent health issues. It also has an emotional toll on them as they keep thinking about the traumatic events making it hard to move forward in their lives. The criminals

[212] Discuss various reasons for rising incidents of mob lynching in india. Give some solutions to prevent such incidents., ForumIAS, (Jul. 13, 2021, 9:03 PM), https://blog.forumias.com/answered-discuss-various-reasons-for-rising-incidents-of-mob-lynching-in-india-give-some-solutions-to-prevent-such-incidents/
[213] Ibid
[214] supra 1
[215] Parth Verma, Mob violence is emerging as a serious challenge for the internal security of India. By giving suitable examples, analyse the causes and consequences of such violence. Give way forwards., Civilsdaily UPSC IAS Preparation, (Jul. 15, 2021, 12:23 AM), https://www.civilsdaily.com/mains/mob-violence-is-emerging-as-a-serious-challenge-for-the-internal-security-in-india-by-giving-suitable-examples-analyze-the-causes-and-consequences-of-such-violence-give-way-forwards-15-marks/

should be punished according to the sufferings victims went through but they are hardly caught. Thus everyone including the citizens, government, law enforcement needs to work together in stopping the increase of such crime.

RECENT INCIDENTS OF MOB LYNCHING

It is heartbreaking when an innocent is killed for the foolishness of some people who believe in a mere rumor. With the convenience of social media platforms which are WhatsApp, Facebook, Instagram, etc are spread like wildfire including the poor people. The information also looks cogent with the usage of photos or videos, therefore, confirming their suspicions but without any truth or proof which results in the thrashing of innocent persons.[216]

On 8th June 2018, two young men from Guwahati, Abhijit Nath, and Nilotpal Das were driving up National Highway-36, which connected Assam's Nagaon with Nagaland's commercial hub of Dimapur. At 6.30 pm, going by the mobile phone tower signal intercepted by the police, the duo took a different route from the highway at Dengaon. They were on their way towards the Kangthilangso waterfall in the village. It is located at the foot of the Mikir Hills, which separates Eastern Karbi Anglong from Kaziranga National Park. The villagers were on the lookout for Phangkodongs-the Karbi term for child-lifters as they heard the news of five child-lifters from Bihar who were on the loose. Since Das and Nath were suspiciously dressed having dreadlocks and also inside the car there were needles and knives as mentioned by a woman of the village, which resulted in suspecting the two men of being child-lifters. They were lynched over the next hour and a half by an angry mob. Das also kept repeating his parents' names saying he is Assamese and to not beat him. Both of them died on the spot. On June 11th when the police arrived the village was eerily quiet where these two men were lynched. In a fear of police most men excluding children and old men fled the 25-odd villages in the area from the highway to the hills. The Assam police, amid a manhunt involving 230 personnel to track down the individuals of the mob, had arrested 18 men as of the afternoon of 11th June. The women, barely educated and with little access to the world outside their villages, were struggling to make sense of the incident. A police official also mentioned that an almost five-foot-long hollow pipe and an ATC-[*air traffic control*] shaped drum with flashy colors was also present in the vehicle. These were completely foreign to the villagers. Additionally, they were also

[216] Saloni Sharma & Aditya Singh Rana, Law on lynching in India, IPleaders Intelligent Legal Solutions, (Jul. 15, 2021, 4:47 PM), https://blog.ipleaders.in/lynching-laws-in-india/

riding a black Scorpio at night. With these circumstances on that evening, everything was against Das and Nath. In the interior villages around the area where the people have irregular electricity and hardly any access to newspapers, there are few chances of getting credible information. Due to this many villagers still believe that there was some truth to their claims that they could have been child-lifters.[217]

On the 1st of July 2018, five people were lynched after they were mistaken to be child-lifters who belonged to one of the nomadic tribes of Maharashtra. Messages regarding these gangs have been active in Maharashtra spreading through various social media channels for the past few months. Upon the first impression, these villagers assumed that these five people, who spoke a different language, must be members of a child-lifter gang. According to media reports, few people saw one of the men trying to communicate with a young girl in the market. After seeing this, the mob cornered the group and instead of handing them over to the police, they started beating them in the confinement of the local Panchayat office. The Dhule police have arrested 23 people in this case and further to identify the rest of the individuals took the help of a video clip that went viral on social media, which could increase the number of detained persons. During this time, 22 people of the Nath Gosavi, a nomadic community had visited the village Pimpalner. They report to the nearest police station whenever they visit a village about their stay. These people had reached Pimpalner on the night of 30th June and had planned to go to the police station the next day. On the 1st of July, they were informed that five members from their community had been lynched by an angry mob in a village Raain Pada which was at a distance of 30 km from their temporary huts. Inda Bhosale who was 45 with her husband, Raju, and three children had come along with this troop. Sadly he was one of the five persons lynched. Inda was inconsolable as she was worried for her 3 children as Raju was the sole breadwinner of the family. Later it was seen that in Raain Pada where the lynching occurred, there was no one except a few policemen who were patrolling the area. Most of the houses were locked and there was no one to be seen. In the Panchayat office bloodstains were still noticeable on the walls and floor. Few policemen who were patrolling concluded that people must have left the village late at night as they feared police might pick them up for investigation. SDM Ganesh Misal Alps visited the spot along with his team and said that it was a case of mistaken identity but the messages which were spread on social media pave the way for suspicion and further investigations were done in this matter. District administration and

[217] Arunabh Saikia, 'Everything that could go wrong went wrong': Days of rumours led to the lynchings in Assam village, Scroll.in, (Jul. 4, 2021, 10:07 PM), https://scroll.in/article/882265/everything-that-could-go-wrong-went-wrong-days-of-rumours-led-to-the-lynchings-in-assam-village

police took possible measures to maintain harmony and peace in the village. Five teams were formed by the police to look for the people who were responsible for this lynching. These teams have been also sent to the neighboring districts with specific information which they found from their investigation.[218]

On 16th April 2020, three Mumbai residents lynched in Palghar who were traveling to Silvassa in a Ford Ecosport. The incident took place near Gadakchinchale village which was under the Kasa jurisdiction. It was said by the SP of Palghar Gaurav Singh that the three occupants of the SUV hailed from Kandivali, Mumbai, and were on their way to a funeral in Silvassa. They surrounded and attacked the vehicle with sticks, irons rods, etc, dragged them out of the car, and started beating. An officer also mentioned that a patrolling vehicle tried to investigate when they spotted the trio severely injured lying on the road but their car was pelted with stones, as a result, they fled unable to save the victims. An alert was sent out to all police stations and units in the area and a thorough operation was undertaken. It was added by an officer that on first based information it indicated that three people were mistaken to be thieves. Due to the ongoing lockdown and unavailability of necessary supplies, the villagers were on edge. Rumors began spreading on social media about thieves and dacoits picked out villages on the highway resulting in villagers being on the lookout and stopping any late-night travelers. The victims were believed to be religious leaders who first tried taking the National Highway to Silvassa but were stopped by police officials. So they took the long route through Vikramgadh in Palghar. As stated by Mr. Singh within the late evening of 17th April, that many people were detained, and registering of FIRs had begun while the police also urged people to not believe in the rumors going around by providing several advisories including voices notes in various local languages in WhatsApp.[219]

In a few of the above cases, it has been seen that the mob randomly selects an individual falsely accuses them of committing a crime according to rumors spread through social media as there was no one else around. Surprisingly a single person is enough to incite a mob with the help of the rumor as a reference who also exaggerates it even more by adding further false information.

[218] Mayuresh Ganapatye, Mistaken identity main cause of Dhule lynching, IndiaToday, (Jul. 6, 2021, 10:09 PM), https://www.indiatoday.in/india/story/mistaken-identity-main-cause-of-dhule-lynching-1275724-2018-07-02

[219] Gautam S. Mengle, 3 lynched in Palghar after rumours over mistaken identity, The Hindu, (Jun. 27, 2021, 5:58 PM), https://www.thehindu.com/news/cities/mumbai/3-lynched-in-palghar-after-rumours-over-mistaken-identity/article31371237.ece

The victims are judged and suspected based on their looks, unusual appearances, being in the wrong place at the wrong time, etc. since according to some people especially in rural areas are unfamiliar with these trends as a majority are confined in their areas and don't try mixing up with other people while in urban areas these are quite common.

These incidents affect the families of the victims a lot like those who are the only breadwinners and their sudden death makes the whole family go into a state of turmoil and gradually they go into poverty as it becomes hard to provide for every member of the family including a place to live, food, clothes, daily essentials, etc.

INTERNATIONAL PERSPECTIVE ON MOB LYNCHING

Mob lynchings have occurred globally but were mostly used in the United States of America in the 19th and early 20th centuries by the white people to terrorize and control black people in various ways like hanging them from trees, also involving other extreme brutalities such as torture, mutilation, decapitation, desecration, and victims were also burnt alive. These were public spectacles for the white community to show their supremacy.

According to records of the NAACP (National Association for the Advancement of Colored People) from 1882 to 1968, around 4,743 lynchings occurred in the U.S, where 72% of the people lynched were black. However, this is just an estimated percentage as it is not known regarding the true count of these lynchings. Although only black people were not lynched, along with them some white people were also lynched who aided them or for being anti-lynching.

Black men were lynched on accusations of rape stereotyping them as violent, hypersexual aggressors. They were also accused of murder, arson, robbery, etc. Due to these claims, they were labeled as always the wrongdoers and as a result, they had to face many hardships and atrocities year after year. Even innocents were killed on violations of social customs or racial expectations, such as speaking with white people in an undignified manner.

Lynching is a disgraceful and barbaric practice that has been going on since the past and also continues to this day. In Texas in 1998, James Byrd was chained to a car by three white persons and was dragged throughout the streets until he died. Further in the year 2020, in Georgia, Ahmaud Arbery was fatally shot by three white men who accused him of trespassing but in actuality, he was only jogging. The videotaped death of George Floyd was a modern-day

lynching. He was killed in broad daylight by police officer Derek Chauvin, who held him down with a knee on his neck for more than nine minutes on the allegation that he may have used a counterfeit $20 bill from a suspicion of a store clerk in Minneapolis.[220]

PUNISHMENT FOR LYNCHING

There are no laws specifically dealing with mob lynching but the wrongdoers could be held under the following provisions-

Section 302 of IPC- This section deals with punishment for murder i.e. death or imprisonment for life along with liable to fine.

Section 304- This section states the punishment for culpable homicide not amounting to murder which are-

- Life imprisonment
- Imprisonment which may extend to ten years and also liable to fine if the act was done to cause death, or causing such bodily injury which likely causes death, or imprisonment either for a term which extends to ten years, or with fine, or with both, if the act is done knowingly that likely causes death, but without any intention to cause death, or cause such bodily injury that likely causes death.

Section 307- This section deals with punishing any person who attempts to murder by doing an act with intention or knowledge which caused death would be guilty of murder, shall be punished with imprisonment of either a term extending to ten years and also liable to fine; and if that act resulted in any person getting hurt, the offender is either liable to imprisonment for life or such punishment as mentioned before in this section.

Section 323- This section deals with the punishment for voluntarily causing hurt where any person, except in the case under section 334, voluntarily causes hurt, will be punished with imprisonment extending to one year, or with a one thousand rupees fine, or with both.[221]

Section 324- This section mentions the punishment for voluntarily causing hurt by dangerous weapons or methods where any person, except in the case given under section 334, voluntarily

[220] History of lynching in America, NAACP, (Aug. 15, 2021, 10:24 AM), https://naacp.org/find-resources/history-explained/history-lynching-america
[221] supra 6

causes hurt by methods of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offense, is likely to cause death, or by the ways of fire or any heated substance, or by methods of any poison or any corrosive substance, or by methods of any explosive substance or by methods of any substance which is harmful to the human body if it gets into the blood through inhaling, swallowing, or receiving, or by methods of any animal, shall be punished with imprisonment of either term extending to three years, or rather with fine, or with both.[222]

Section 325- This section deals with punishment for voluntarily causing grievous hurt. If a person except in the case under the section of 335 voluntarily causes grievous hurt, will be imprisoned for a term which might extend to seven years and shall also be liable to pay a fine.[223]

Section 326- This section deals with punishment for voluntarily causing grievous hurt by dangerous weapons or methods where any person, excluding in the case given under section 335, causes voluntarily grievous hurt, with the usage of any instrument for shooting, stabbing or cutting or any instrument used as a weapon of offense, which likely causes death or using fire or any heated substance, or through any poison or any corrosive substance, or any explosive substance, or through any substance which is harmful to the human body to inhale, swallow, or receive into the blood system, or using any animal, will be punished with imprisonment for life, or with either a period extending to ten years and also be liable to fine.[224]

Section 34- This section deals with a criminal act that is done by many people for the advancement of the common intention of all and each person is liable for that act in the way as if it were done by him alone.

Section 120 B- This section states the punishment for criminal conspiracy where any person-

i) is a party to a criminal conspiracy for committing an offense which is punishable with death, imprisonment for life, or rigorous imprisonment for a term of two years or more, where no express provision is made for the punishment of such a conspiracy in this Code, be punished in the same manner as if he had assisted in such offense.

[222]Rasheed Kidwai, Why we need a special law to curb mob lynching, Observer Research Foundation Ideas, Forums, Leadership, Impact, (Jul. 3, 2021, 9:49 PM), https://www.orfonline.org/expert-speak/42867-why-need-special-law-curb-mob-lynching/
[223] Sparsh Agrawal, Need of the hour : reforms in mob lynching laws, IPleaders Intelligent Legal Solutions, (Jul. 3, 2021, 9:50 PM), https://blog.ipleaders.in/need-hour-reforms-mob-lynching-laws/
[224] Mob lynching under the aegis of law, Deccan Chronicle, (Jul. 3, 2021, 9:51 PM), https://www.deccanchronicle.com/360-degree/190918/mob-lynching-under-the-aegis-of-law.html

ii) is a party to a criminal conspiracy apart from a criminal conspiracy to commit an offense punishable as above stated will be punished with imprisonment of either a period which does not exceed six months or with fine or with both.

Section 141- This section defines unlawful assembly where an assembly of five or more persons is designated as an "unlawful assembly" if the common objects are to intimidate or show by criminal force, resisting the execution of any law or any legal process, committing any mischief or criminal trespass or any other offense, using or showing of criminal force towards any person for taking or obtaining possession of any property or depriving any person to enjoy a right of way, or of using water or other incorporeal rights of which he is in possession or enjoyment, or enforcing any right or supposed right, using or showing of criminal force for compelling any person to do which he is not legally bound to do or omitting anything which he is legally entitled to do by the persons consisting of that assembly.

Section 143- This section deals with punishment for an unlawful assembly where any person who is a member of such an assembly will be punished for either a term extending to six months or rather with a fine or with both.

Section 146- This section defines rioting which mentions that whenever an unlawful assembly or any member uses force or violence, for the prosecution of the common object of such assembly, every member of that assembly is guilty of the offense of rioting.

Section 147- This section provides the punishment for rioting where any person who is guilty of rioting, will be punished with imprisonment of either a period extending to two years, or otherwise with fine, or with both.

Section 149- This section mentions that if an offense is committed by any member of an unlawful assembly for prosecuting the common object of that assembly, or as the members of that assembly likely knew to be committed in prosecution of that object, all the persons who, at the time of carrying out that offense, is a member of the same assembly as well as guilty of that offense.[225]

[225] supra 6

Section 339- Any person who voluntarily obstructs any other person from preventing that person to proceed in any direction in which that person has a right to proceed, is said to wrongfully restrain that person.[226]

Section 129 of the CrPC- This section deals with the dispersal of assembly by use of civil force. Any executive Magistrate or officer in command of a police station or, in the absence of such officer in command, any police officer not below the rank of a sub-inspector, may command any unlawful assembly, or any assembly of five or more persons who likely causes a disturbance of peace to the general public, to disperse which will be the duty of the members of the assembly to immediately disperse accordingly.

If even after being commanded, any such assembly doesn't disperse, or if, without being commanded, it conducts in such a way showing a determination of not dispersing, any Executive Magistrate or police officer mentioned to in sub-section (1), may proceed to disperse such assembly by the use of force, and might require the help of any male person, not being an officer or member of the armed forces and acting as such, to disperse such assembly, and, if required, arresting and confining the persons who are involved in it, to disperse such assembly or that they might be punished according to law.

Section 32- This section states the words referring to acts that include illegal omissions where every part of this Code, other than where a contrary intention appears from that of the context, words which mention the acts done extend also to illegal omissions.

Section 299- This section defines culpable homicide where any person who causes death by doing an act to cause death or intending to cause such bodily injury as it is likely to cause death, or with the knowledge that he is likely to cause death by such act, commits the offense of culpable homicide.[227]

[226] States' views sought on need for mob lynching law, The Economic Times, (Jul. 3, 2021, 9:50 PM), https://economictimes.indiatimes.com/news/politics-and-nation/states-views-sought-on-need-for-mob-lynching-law/articleshow/72374556.cms?from=mdr

[227] Vageshwari Deswal, Mob lynching- A desecration of the 'Rule of Law', The Times Of India, (Jun. 27, 2021, 2:11 PM), https://timesofindia.indiatimes.com/blogs/legally-speaking/mob-lynching-a-desecration-of-the-rule-of-law/

CRITIQUE AND SUGGESTIONS

In situations where the accused is charged under Section 302 read along with 149 of the Indian Penal Code, the first thing the court needs to prove is that if it was an unlawful assembly according to section 141 where an unlawful assembly is an assembly consisting of five or more persons. As a result, in cases where the total number of accused is less than five, charges under Section 149 will be removed due to non-fulfillment of the criteria of unlawful assembly.

It also needs to be proved before convicting any person under Section 149, that the accused were a part of the unlawful assembly at the time of the incident by showing either from his active participation or otherwise, that he shared the common object of the assembly. The common object could be developed at the beginning of the assembly or during the incident.

Section 149 could also include an innocent man based on the assumption that he was an associate and a part of the assembly which later became unlawful and committed the offense. It needs to be kept in mind that whether the accused was a part of the assembly and that the individual was present when the assembly became unlawful. It becomes difficult to recognize every single person in the mob and hold them responsible as the case relies on video recordings resulting in a lack of evidence.

It is credible that some persons may have joined the assembly as curious spectators on the other hand it is also possible that the assembly may consist of some miscreants who might go beyond the common objective and commit crimes that are graver than the mob's objective. As a result, this makes it a long process as however many people are involved in the assembly it is essential to investigate every individual.

Section 34 of the Indian Penal Code deals with an offense committed by several persons in the advancement of common intention where individuals are charged, accused of having a pre-designed intention for committing an act, in this case, is lynching.

In section 34 for charging individuals, the act must be a criminal act which is done by more than one person and the same is done in the advancement of the common intention of all, which involves pre-arranged plan and prior meeting of mind and physical presence of the offenders at the time of the commission of a crime.

The offense which the mob will be charged in the usual scenario is under Section 302 read with Section 34 which is to kill someone with intention and knowledge is murder so the criminal will be punished under section 302, but because there are so many criminals section 34 or

section 149 needs to be applied read with sec 302 to hold them responsible for the crime they committed.

But unfortunately, some difficulties arise during the practical applications of this provision.

The meaning of 'common intention', as defined by the court in the case of Mahbub Shah v. Emperor[228] it was observed that 'common intention' implies the pre-arranged plan or earlier meeting of minds or earlier consultation between all the persons which constitutes the group.

There has been a common understanding of the court that the offender must be physically present and should participate in the commission of the offense in some way or other when the crime is being committed. The culprits who are physically in mob lynching causing injuries to the victim or victims are not the only ones whereas many sit at the comfort of their homes forwarding messages on social media platforms and mobilizing crowds at the crime scene. They also have the same intention as those who are present at the crime scene.

Apart from bystanders not showing any reactions or intervening to help others, mute spectators of the crime scene, the inactivity of the law enforcing machinery to prevent such crimes, and grandstanding of the incident by the perpetrators of the crimes aggravates the entire problem.[229]

The court described lynchings and mob violence as "creeping threats", and warned that the rising wave of frantic mobs who are fed with fake news, self-professed morality, and false stories would consume the country like a "typhoon-like monster."

The court said the primary obligation of the government is for the protection of all individuals regardless of race, caste, class, or religion. The court stated that crime knows no religion and neither the victim nor the perpetrator can be considered through the lens of race, caste, class, or religion.

It administered several preventive, remedial, and punitive measures for dealing with mob violence and lynching. It ordered the Centre and States to implement the measures and file

[228]Mahbub Shah v. Emperor., (1945) 47 BOMLR 941

[229] Anubhav Vashishtha & Abhay Pachauri, Mob Lynching: *A Crime That Exonerates The Offenders In India?*, Outlook The Fully Loaded Magazine, (Jun. 25, 2021, 12:42 PM) https://www.outlookindia.com/website/story/opinion-mob-lynching-a-crime-that-exonerates-the-offenders-in-india/358031

compliance reports within the next four weeks. The court expressed its concern that lynchings cannot become the order of the day.[230]

The three-judge bench of the apex court comprising of the CJI Dipak Misra and Justices DY Chandrachud and AM Khanwilkar delivered a judgment condemning the spate of lynchings across the nation, instead of a petition filed by Tehseen Poonawalla. Authored by CJI Misra, the judgment laid down directions for the Central and State Governments in addition to issuing a recommendation to Parliament to enact a separate law for lynching with adequate punitive provisions.

Recognizing "targeted violence and commission of offenses affecting the human body and against the private and public property by mobs under the garb of self-assumed and self-appointed protectors of law" as the pivotal issue, they stated that no individual or group who are empowered by the principles set out in law to take its enforcement into their own hands and gradually become law themselves and punish the violator on their assumption and in the manner in which they deem fit."

The judgment further stressed the necessity of adherence to the procedure established by law as it is inherent to a civilized society.

On the streets, there cannot be an investigation, trial, and punishment of any nature. The Court reminded the State of its "burdensome duty to see that no individual or any central group take law into their own hands". The judgment further reminds the governments, both central and state, about their "positive obligation to protect the fundamental rights and freedoms of all individuals regardless of their race, caste, class or religion".

The Court also highlighted the threat posed by "frantic mobs across the country instigated by intolerance and misinformed by the circulation of fake news and false stories", while punishing aggravating phenomena such as "bystander apathy, numbness of the mute spectators of the crime scene, inactivity of the law enforcing machinery to prevent such crimes and grandstanding of the incident by the perpetrators including the social media".

He also propounded the notion of "unity in diversity" as "the most potent weapon in India's armory which binds different and varied kinds of people in the solemn thread of humanity.

[230] Krishnadas Rajagopal, *Make lynching a separate offence, SC tells Parliament*, The Hindu, (Jul. 17, 2021, 7:39 PM), https://www.thehindu.com/news/national/make-lynching-a-separate-offence-sc-tells-parliament/article24446071.ece

This diversity is the strength of our nation and for realizing this strength, it is an essential condition that is required to be sustained and avoid separatist propensities."

The Court also stressed the fact that society's role is limited to simply reporting the offense, and then let the necessary authorities and law operate according to their course. It held that any non-State actor assuming the role of State functionaries will be associated with criminality and reminded them that "they are below the law and can't be guided by notions or emotions or sentiments or, faith".

The Court then proceeded to lay down the guidelines for the State. As preventive measures, it asked State governments to identify districts where instances of violence in line with the aforementioned were reported over the past five years within three weeks of this judgment being delivered. It also asked for the appointment of Nodal officers by State Governments who apart from preventing such instances, shall also patrol sensitive areas. It directed the State to take steps to "restrain and stop the spreading of irresponsible and explosive messages, videos and other material on various social media platforms" and information sharing between the Centre and State governments.

As remedial measures are concerned, it directed State governments to prepare a lynching or mob violence victim compensation scheme within a month of the delivery of this judgment and set up fast track courts for new and unresolved cases of lynching or mob violence. These fast-track courts are also directed to ordinarily decide the maximum sentence as a deterrent.

As punitive measures, the Court issued directions to sanction State functionaries who fail to comply with the above-mentioned directions.[231]

On 26th July 2019 the supreme court asked for the response of the Central government, the NHRC, and State governments to a request seeking the execution of its judgment of July 2018 laying down several measures of methods like preventive, remedial, and punitive to fight the crime of mob lynching.

A Bench led by CJI Ranjan Gogoi issued notice to the Centre and several states, which included Haryana, Rajasthan, Gujarat, Bihar, Assam, Madhya Pradesh, Jammu and Kashmir on a plea by the NGO Anti-Corruption Council of India. The NGO also asked for a law to be passed by

[231] Enact separate law for lynching: *Supreme Court recommends to Parliament*, *The Leaflet Constitution First*, (Jul. 17, 2021, 7:36 PM), https://www.theleaflet.in/enact-separate-law-for-lynching-supreme-court-recommends-to-parliament/

the Parliament to make lynching a cognizable, non-bailable, and non-compoundable offense, which needs to be tried by a court of law in a time-bound manner.

The judgment of July 2018 had declared all over the country in regards to the increasing number of mob lynching incidents as "horrendous acts of mobocracy". The court even then asked Parliament to make lynching a separate offense.[232]

The Centre will look into the issue of whether there is a need for making amendments to the Indian Penal Code and Criminal Procedure Code to deal with cases of mob lynchings across the country. The government enlightened the Rajya Sabha that letters have been written by the Home Ministry to all state governments and union territories inviting their recommendations on this issue which came up during Question Hour in the Upper House with DMK member Tiruchi Siva asking the government why the President of India has not yet given acceptance to the Bills regarding mob lynching that have been already passed by Manipur and Rajasthan and if there is a time frame within which this inclination to the legislation will be given.

In the House, Amit Shah, the Home Minister has stated that in his letter to the states and union territories he has asked them for gathering feedbacks from public prosecutors and also the officials who have dealt with mob lynching cases and investigated them.

"A committee under BPRD has also been formed to look into the feasibility of amendments to IPC and CrPC. We will act built on their recommendation and while doing so we will keep the Supreme Court guidelines in mind," Shah said.

The Supreme Court had taken serious note of cases of mob lynching and also said Parliament should enact a law to deal with such cases. It had laid down an 11-point guideline for dealing with the issue. The Minister of State for Home Affairs, Nityanand Rai said discussions are on with various union ministries concerned on the Bills passed by Manipur and Rajasthan and as soon as consultations are over, action will be taken.[233]

Supreme courts 11-guideline for mob lynching

- In each district, the state governments shall appoint a senior police officer for taking measures to prevent incidents of mob violence and lynching.

[232] Lynchings: Supreme Court seeks response from Centre, NHRC, States, The Hindu, (Jul. 17, 2021, 12:55 PM), https://www.thehindu.com/news/national/mob-lynchings-supreme-court-seeks-response-from-centre-nhrc-states/article28723014.ecehttps://www.thehindu.com/news/national/mob-lynchings-supreme-court-seeks-response-from-centre-nhrc-states/article28723014.ece
[233] supra 18

- The districts, sub-divisions, and villages where situations of lynching and mob violence have been reported in the recent past shall be immediately identified by the state governments.
- It shall be brought to the notice of the DGP about any inter-district coordination issues by the nodal officers for devising a strategy to tackle lynching and mob violence-related issues.
- In the opinion of police, a mob tends to cause violence in the disguise of vigilantism or otherwise but it shall be the duty of the police officer to disperse the mob.
- It should be broadcasted on radio, television, and other media platforms including the official websites that lynching and mob violence shall invite serious consequences by the Central and the state governments.
- Restrain and stop the spreading of reckless and explosive messages, videos, and other material on various social media platforms. Register FIR under relevant provisions of law against persons who circulate such messages.
- It needs to be ensured that the family members of the victims do not face further harassment.
- A lynching or mob violence victim compensation scheme shall be prepared by the state governments.
- A designated court or fast track court shall specifically try cases of lynching and mob violence set aside for that purpose in each district. Within six months, the trial shall be preferably concluded.
- The trial court must ordinarily award the maximum sentence upon conviction of the accused person, to set a stern example in cases of mob violence and lynching.
- It will be considered an act of deliberate negligence if it is found that a police officer or an officer of the district administration has failed to fulfill his duty.[234]

[234] Ashok Bagriya, *To end mob lynching, Supreme Court gives an 11-point prescription*, Hindustan Times, (Jul. 20, 2021, 1:45 AM), https://www.hindustantimes.com/india-news/to-end-mob-lynching-supreme-court-gives-an-11-point-prescription/story-pdknxkMYd3Caz3R27nSniP.html

CONCLUSION

Mob lynchings are done on impulse due to instigations through social media platforms as a result the perpetrators see nothing except to kill that individual. These acts create a lack of fear of the mob and they think of themselves as superior.

The main causes of mob lynchings are there are no laws to restrain these crimes on the other hand the current laws have flaws as if there are any one of the ingredients absent in the sections the culprits are not held liable. The inaction and complicities of the police encourage the culprits to continue the commission of these crimes. The false information in social media plays a key role in installing negative thoughts in the minds of individuals, unemployment along with poor knowledge about the outside world makes them commit this inhuman crime which ultimately results in putting a deep impact on society.

In all the incidents mentioned In this paper, innocent individuals have been killed with just the spread of false rumors due to these it becomes a great concern to hold these perpetrators under the provisions of IPC and CrPC.

Lynchings of black people should not be part of American society today as well as they should not have been 100 years ago because they consist of a diverse population as a result it becomes ironic that they are giving citizenships to different origins of people but on the other hand they are also terrorizing them. Though laws have improved compared to earlier days there still needs to be a lot done to fight back against white supremacy and violence, and demand that people responsible, including law enforcement officers, be held accountable.

Though amending the provisions of the Indian Penal Code and Criminal Procedure Code are tough but it needs to be thought about because perpetrators should not be given the leverage to do whatever they want as these crimes might be more so there shouldn't be any chances. Just introducing a separate law for lynching is not enough. They need to be accountable as well as equally effective. Effective policing and prosecution are required. There needs to be a political will to ensure that the investigation is free, fair, and impartial.

JUVENILE DELINQUENCY AND CRIME PREVENTION

Author: *Simran Karamchandani*[*]

ABSTRACT

Delinquent children are extraordinary children who display significant deviation in their social adjustment and are therefore labeled as socially deviant or socially impaired. They have been discovered to have criminal tendencies and to engage in antisocial behavior. In this regard, they are similar to criminals and antisocial elements. However, in legal parlance, they are referred to as delinquents rather than criminals.

The enormous increase in juvenile violence, notably killings, which began in the mid-1980s and peaked in the early 1990s, sparked widespread fear and concern among the public, prompting federal, state, and municipal governments to implement policy adjustments. For example, in response to the rise in juvenile violence and predictions of a new wave of increasingly violent youth, most states tightened their juvenile justice laws, including measures that allow, or in many cases require, children to be transferred to the adult system at younger ages and for a wider range of offences. A considerable body of research has begun to identify characteristics that may raise the risk of adolescent crime. The research has also resulted in the development and evaluation of prevention interventions.

Keywords: *delinquent, juvenile, crime, behavior*

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INTRODUCTION

Juvenile delinquency is defined as criminal conduct committed by a person under the age of 18. These criminal acts have been on the rise in recent years for a variety of reasons and circumstances. Juveniles charged with major offences, such as robbery or murder, are usually transferred to criminal courts and tried as adults. Prosecutors occasionally make this choice, and sometimes transfers require a hearing to evaluate the juvenile's age and record, the sort of offence, and the possibility that the minor can be rehabilitated by the juvenile court. As a result of a tough-on-crime mentality, many counties have amended their juvenile rules to make it simpler to transfer juvenile offenders to adult court.

In a nutshell, juvenile delinquency is the participation of juveniles in criminal actions. A juvenile delinquent is someone who is under the age of 18 who performs an act that would normally be charged and tried as an adult. So it is evident that juvenile delinquency is a component of all the behavioral changes that occur in a person's life while going through the stormy age of adolescence, however, it is not prevalent in every adolescent.

Unless and until the particular behavior becomes a worry of the society, the level of delinquency fluctuates and will stay unnoticeable. During this era, one goes through quick revolutionary changes in their physical, mental, moral, spiritual, sexual, and social perspectives, as the teenage years are the transitional period. They are emotionally unstable and there are frequent changes in mood. It is a time of anxiety, conflict, and complexity. Therefore people do various things during this period to satisfy one urge or the other that often lead to crime.

Government policy on youth crime should often battle with a balanced approach to the good development of children and youths who violate the law and the desire of the public to punish criminals. This contrast between reconstruction and punishment for children and teenagers committing crimes gives juvenile offenders an ambivalent approach. It is necessary to suppress, condemn and punish criminal conduct. However, children and young people engaged in crime must be educated and encouraged in an expansion process that should be the goal of government policy for all youth, including youth criminals.

Delinquent children belong to that unusual category of youngsters with major socially adjusted differences, which are therefore also marked as socially deviant or socially disabled. They show criminal conduct and are punishable by judicial proceedings. Breaches of societal standards

and ideals endanger society's peace and are thus are regarded as crimes. The nature of the crime may vary from very mild to severe, but they are always anti-social and hence legally criminal. However, in legal parlance, they are referred to as delinquents rather than criminals. Overall, juvenile delinquency is a legal word that refers to acts with varying degrees of social consequences, ranging from little misbehavior to significant assault punishable by law.

WHO IS A JUVENILE?

A juvenile is someone under the age of 18. The law should specify the age limit below which it is not permissible to deprive a child of his or her liberty[235]. A juvenile is a youngster who has not reached the legal age at which he, like an adult, can be held accountable for his illegal conduct. The juvenile is the youngster who is accused of committing some act or omission on the part of the child that has been labeled a criminal. In the legal world, the phrases juvenile and minor are used in distinct contexts. The term juvenile refers to youthful criminal offenders, whereas the term minor refers to the legal ability or majority. To clarify the meaning, a referral to another source can be beneficial. For the sake of convenience, the concept of the juvenile varies from state to state[236].

JUVENILE DELINQUENCY IN INDIA

In accordance with international standards and under the Indian youth justice system, a kid or child cannot be tried as an adult. A juvenile is treated as doli incapax and is unable to comprehend the repercussions of his/her actions. With this in mind, children are dealt with in the youth justice system and not in the criminal justice system for adults. Never can they be imprisoned or punished with death. In the capital city of Delhi, however, adolescent delinquency has grown at an alarming rate. The involvement of the youth in grave crimes such as murder, murder and kidnapping has sparked national worries. Following the brutal Gang rape in Delhi (***Mukesh & Anr vs. State for NCT of Delhi & Ors***[237] on 5 May, 2017) in December 2012 (or ***Nirbhaya Case*** as it was often referred to), numerous discussions and

[235] Legal dictionary, juvenile delinquency, https://legaldictionary.net/juvenile-delinquency/ (last visited Sept. 13, 2021)
[236] Shivani jani, Juvenile Delinquency And Crime Prevention, legal services India e-journal, https://www.legalserviceindia.com/legal/article-5369-juvenile-delinquency-and-crime-prevention.html (last visited Sept. 13, 2021)
[237] Mukesh & Anr vs. State For NCT Of Delhi & Ors, (2017) 6 SCC 1

debates highlighted the more smooth approach to grave crimes by the youth justice system. The young people have been discovered to be as violent as the adults, forcing them to review the concept of young delinquents and approach them in India.

THE DEVELOPMENT OF DELINQUENCY

Research on normal child development and the development of criminal behavior over recent decades has revealed that individual, societal, community and interpersonal circumstances affect behavior. It is widely accepted that behavior includes anti-social and delinquent behavior, commencing with foetal development of the child and continuing throughout life, results in intricate interrelations between biological and genetic elements and environmental circumstances. [238]Genes clearly affect biological growth, but without environmental input there is no biological development. Biology as well as environmental impacts therefore on the conduct. Even in the face of various risks, many children reach adulthood without engaging in significant delinquent activity. Although risk variables can assist identify which children require preventative measures the most, they cannot predict which children would become major or chronic offenders. The majority of adult criminals were involved in delinquent behavior as children and adolescents; however, the majority of delinquent children and adolescents do not grow up to become adult criminals. Similarly, the majority of serious, chronically delinquent children and adolescents have a variety of risk factors, but the majority of those who have risk factors do not become serious, chronic delinquents. Furthermore, each individual component contributes just a small portion of the risk increase. However, it is commonly acknowledged that the more risk factors (poor parenting skills, family size, home discord, child maltreatment, and antisocial parents) a kid or teenager encounters, the greater are their chance of delinquent conduct.

The diversity of outcome behaviors explored is a problem with literature on risk variables. Certain research focuses on behaviors that satisfy diagnostic conditions for behavioral disorders or other anti-social illnesses; other studies focus on aggression, lying, and shopping; others rely as a result of interest on a juvenile court reference or arrest. In addition, at particular

[238] Bock and Goode, 1996

periods of child and adolescent development various risk factors and different outcomes may be more prominent than at others[239].

Most literature examining delinquent risk variables is based mostly on longitudinal studies of white men. Certain samples were selected from high-risk areas in particular. This book should be widespread among girls and minorities and to the public. In the last two decades, however, many of the risks of antisocial and delinquent conduct have been learned. The following are addressed social risk factors, including relationships between the family and peers. Finally, the risk factors of the community, including qualities of school and neighborhood, are considered.

THE DEVELOPMENT OF DELINQUENCY IN GIRLS

Behavioral differences between boys and girls have been recorded. Infant girls have stronger emotional regulation than infant boys, and infant boys are more likely to be angry than infant girls. This could have ramifications for the development of behavioral issues and delinquency. Although peer-directed violent behavior appears to be similar in both girls and boys during toddlerhood[240], boys begin to exhibit higher rates of physical aggressiveness than girls between the ages of 3 and 6. Rather than physical aggression, girls prefer verbal and indirect aggression, such as ostracism, character defamation, and peer exclusion. Internalizing illnesses, such as anxiety and depression, are more common in girls and may overlap with their behavioral issues. According to theorists, as a reaction to abuse and neglect, adolescent females may focus their rage and hurt inward. These inward-directed feelings might manifest as self-destructive behaviors including drug abuse, prostitution, and other self-destructive behaviors. Delinquency in both girls and boys is frequently preceded by some sort of childhood maltreatment. Some believe that one of the earliest steps in female delinquency is status offending (truancy, running away from home), which occurs frequently in response to harsh events at home[241].

Based on the limited study on girls, it appears that they share many risk factors for delinquency with boys. Early drug use, affiliation with delinquent peers, and academic issues are among the risk factors. However, it was discovered that, on average, girls were exposed to fewer risk factors than boys (e.g., violence, early leaving home, low I.Q., frequent spanking, first-grade

[239] Joan McCord, Cathy Spatz Widom, and Nancy A. Crowell, Juvenile crime, juvenile justice, national academy press, 122 (2001), https://www.nap.edu/read/9747/chapter/6#122
[240] Loeber and Hay, 1997
[241] See Supra note 5

absenteeism, and racial discrimination). Delinquent girls report major mental illnesses such as depression, anxiety, and suicide. In a survey of delinquent girls, Fully Half reported they thought of suicide, and roughly 64% of them thought more than once about suicide.

HISTORICAL BACKGROUND OF JUVENILE JUSTICE LAW IN INDIA

In the modern period, a worldwide movement for the special treatment of juvenile offenders has begun, including many industrialized countries such as the United Kingdom and the United States of America. This movement began in the late 18th century. Previously, juvenile offenders were treated in the same manner as other criminal offenders. For the same reason, the United Nations General Assembly enacted a Convention on the Rights of the Child on November 20, 1989. This convention aims to protect young offenders' best interests. According to the Convention, there shall be no judicial proceedings or court trials against juveniles in order to protect their social reintegration. The Convention directs the Indian Legislation to repeal the Juvenile Justice Act of 1986 and enact new legislation. As a result, Indian Legislation enacted a new act known as the "Juvenile Justice (Care and Protection of Children) Act, 2000."

The Juvenile Justice Act of 1986, attempted to give effect to the standards included in the Standard Minimum Rules for the Administration of Juvenile Justice, which were agreed by the United Nations countries in November 1985. The aforementioned Act consists of 63 Sections and 7 Chapters and is applicable across India with the exception of the state of Jammu & Kashmir.

JUVENILE JUSTICE ACT, 2000

This Act was enacted in the year 2000 with the goal of protecting children. It was amended twice by the legislature, first in 2006 and then again in 2011. The change was made to address the implementation gaps and loopholes.

Furthermore, the rising number of juvenile crime cases in recent years, as well as the harrowing tragedy of the "Delhi Gang Rape Case," has compelled lawmakers to enact legislation. The main disadvantage of the Act was that it contained ill-equipped legal provisions, and India's malfunctioning juvenile system was also a crucial factor in preventing juvenile crimes. The Juvenile Justice Act quickly superseded (Care and Protection) ACT, 2015.

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015 has come into force from January 15, 2016, and repeals the Juvenile Justice (Care and Protection of Children) Act, 2000.

Key Provisions:

- To remove the negative connotation associated with the word "juvenile," the Act's nomenclature was changed from "juvenile" to "kid" or "child in conflict with the law."
- Inclusion includes various new definitions, including orphaned, abandoned, and surrendered children, as well as minor, serious, and heinous crimes perpetrated by children.
- The clarity in the powers, functions, and responsibilities of the Juvenile Justice Board (JJB) and the Child Welfare Committee (CWC); precise timelines for Juvenile Justice Board (JJB) investigations; The Act requires that Juvenile Justice Boards and Child Welfare Committees be established in each district. Each must have at least one female member[242].

Special provisions for heinous offences committed by children above the age of sixteen years- In accordance with Section 15, specific procedures were taken to deal with offenders who commit abominable crimes in the 16-18 age brackets. Following a preliminary evaluation, the Juvenile Justice Board is given the option of transferring instances of abominable crimes of such minors to the Children's Court. The regulations allow the children to be placed in a "safe location" both in and after the trial until they reach the age of 21 years after the child's assessment by the children's tribunal. The child is either freed on probation following the evaluation and if the child is not reformed, the youngster is transferred to prison for the remainder of the sentence. The legislation will operate as a disincentive to young criminals who commit atrocious crimes like rape and murder and protect victims' rights.

Separate new chapter on Adoption to streamline adoption of orphan, abandoned and surrendered children-To improve the efficiency of adoption procedures for orphaned, abandoned, and surrendered children, the existing Central Adoption Resource Authority (CARA) is elevated to the level of statutory authority. A separate chapter (VIII) on Adoption

[242] Juvenile Delinquency Prevention, Impact Law, (last visited Sept. 13,2021) https://www.impactlaw.com/criminal-law/juvenile/prevention

contains extensive laws relating to adoption as well as penalties for failing to follow the prescribed procedure. Timelines for both in-country and inter-country adoption, including declaring a child legally free for adoption, have been streamlined. According to the rules, a single or divorced individual can adopt, however, a single male cannot adopt a girl kid.

Mandatory registration of Child Care Institutions-All child care institutions, whether run by the State Government or by voluntary or non-governmental organizations, that are intended to house children, either entirely or partially, must be registered under the Act within 6 months of the Act's enactment, regardless of whether they receive government grants. In the event of noncompliance, the legislation imposes severe penalties. Several rehabilitation and social reintegration programs have been established for children who have violated the law or who require care and protection. Children in institutional care are given a variety of services such as education, health, nutrition, de-addiction, disease treatment, vocational training, skill development, life skill education, counseling, and so on to enable them to play a constructive role in society[243].

Inclusion of new offences committed against children-The Act includes several new crimes against minors, which until now have not been effectively covered by any previous law. This includes: sales, acquisition and illegal adoption, body punishment in childcare institutions, use of children by activist groups, disability offences, and kidnapping and kidnapped. Penalties were stipulated to abduct or sell a child for the cruelty of a child, present a drug substance to a youngster. Any officer who fails to report a kid abandoned or orphaned within 24 hours is responsible for up to six months jail or for a fine of Rs 10,000 or both. The punishment for not registering childcare facilities is up to a year in prison or a one lakh rupee penalty or both. A penalty of up to seven years or one lakh rupee, or both, is imprisonment for feeding children poisoning liquors, narcotics or psychotropic drugs.

CHILDREN IN NEED OF CARE AND PROTECTION

Observation home: Those children are being taken to an observation house where they will only be held for a limited period of time while an investigation or trial is conducted. This institution is also used to custody children or youths under trial who are pending or waiting to be sent to a suitable family or a borstal in disagreement with legislation.

[243] United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), United Nation Human Rights, (last visited Sept. 13,2021) https://www.ohchr.org/en/ProfessionalInterest/Pages/PreventionOfJuvenileDelinquency.aspx

For neglected youngsters, children's homes are provided for those in need of short-term regulatory protection but no long-term residential training is required.

A youngster who is in a need of care and protection has to be presented to the Kid Welfare Committee within 24 hours. The Act requires that a kid who is found separated from their guardian is to be reported for compulsory reporting. Non-reporting was considered an offence punishable. The Child Welfare Board shall refer children in need of care and protection to an authorized child care agency and instruct them to perform a social investigation with a social worker, caseworker, or child welfare officer within 15 days. The Child Welfare Committees shall meet at least 20 days a week and a quarterly review of the operation of the Child Welfare Committee shall be undertaken by the District Magistrate.

Special homes or correctional facilities: The Juvenile justice legislation of 2000 also provides for the establishment of correctional facilities for the keeping of delinquent juveniles. In these homes, delinquent juveniles have access to basic comforts such as housing, medical care, education, and vocational training.

In a children's home for education, treatment, care, development, training, and rehabilitation, a kid in need of care and protection shall be placed. The law provides for open shelters for children who require short-term care to protect themselves from abuse or from street life. The Committee on Children's Welfare could acknowledge an enabling facility for a youngster that takes temporary responsibility. The Specialized Adoption Agency is responsible for rehabilitating children who are orphans, abandoned or abandoned.

Because of mismanagement and a lack of clear vision, as well as infrastructure, homes have become crime nurseries for adolescents in conflict with the law.

The primary goal of a Children's Home/Specialized Adoption Agency/Open Shelter shall be to take care and protection of a kid. Individual Care Plans shall be prepared by the Child Care Institution for children in need of protection and care or children in conflict with the law, ideally through family-based care. Any youngster who reaches the age of 18 and leaves a child care institution may be eligible for financial assistance.

PATTERNS AND TRENDS IN JUVENILE CRIME AND JUVENILE JUSTICE

Since the late 1980s, there has been growing concern about young people committing crimes. News accounts of serious crimes committed by children and adolescents, as well as criminologists' warnings of a rising tide of vicious juveniles, sometimes referred to as super predators[244], have contributed to a widespread belief that young people are becoming increasingly violent and uncontrollable, and that the juvenile justice system's response has been insufficient. In response to evidence of increased juvenile violence, state and federal legislators proposed, and most states passed, laws making the juvenile system more punitive and allowing younger adolescents and children to be transferred to the adult system for a broader range of offences and in a broader range of ways[245].

Arrest statistics, victim reports of crimes, and self-reporting of infractions are three common methods for measuring crime. These sources may produce varying crime rates and trends. Each source has advantages and disadvantages, and each provides just a partial picture of crime. This section discusses several data sources, as well as their advantages and disadvantages.

MAIN CAUSES OF JUVENILE DELINQUENCY

Understanding the reasons of juvenile delinquency is essential for avoiding a young person from engaging in inappropriate, harmful, or unlawful behavior. Individual, familial, mental health and substance addiction are four key risk variables that can identify young people who are prone to delinquent behavior. A child is frequently exposed to risk factors from more than one of these classifications[246].

[244] see, e.g., Bennett et al., 1996
[245] See supra note 5
[246] Ivlita Gogua, Juvenile Delinquency – Causes, Prevention, and the Ways of Rehabilitation, Penal Reform International, (June 23,2020) https://www.penalreform.org/blog/juvenile-delinquency-causes-prevention-and-the-ways-of/

INDIVIDUAL FACTORS:

Various risk factors for adolescent delinquency are recognized such as impulse, uncontrolled assault and failure to defer satisfaction. Multiple risk factors can in many cases be recognized as contributing to the engagement of juveniles in harmful, destructive, and unlawful behaviors.

FAMILY FACTORS:

The development of delinquent behavior in young individuals is related to a persistent pattern of family risk factors. The family risk factors include inadequate parenting, continuous disagreement between parents, neglect and abuse (emotional, psychological or physical). There may be children who believe in the same way when parents show lack of respect for the law and social norms. Finally, the children that show their parents' and their families' weakest attachment are exactly the same young people, including criminal behavior[247].

MENTAL HEALTH FACTORS:

A lot of mental health problems also play a role in adolescent misbehavior. It is important to remember, however, that certain forms of mental health illnesses, most notably personality disorders, cannot be diagnosed in children. However, there are precursors to these problems that can be seen in childhood and end up manifesting as delinquent behavior. One of the most common is conduct disorder.

SUBSTANCE ABUSE FACTORS:

Substance abuse is present in the majority of cases of juvenile delinquency. Two tendencies in substance abuse and juveniles have been discovered. For starters, today's youths are utilizing more potent narcotics than they were even ten years ago. Second, some youths start using drugs at an earlier age. It has been discovered that children in primary schools are abusing dangerous illegal narcotics. The use of these illegal substances, as well as the illegal use of legal substances, pushes young people to conduct crimes in order to earn money for drugs. Furthermore, when using drugs and alcohol, juveniles are significantly more prone to engage in destructive, hazardous, and unlawful actions.

[247] Supra note 2

BIOLOGICAL FACTORS:

Juvenile misbehavior is also explained by biological variables such as early physiological maturity or inadequate IQ. The hormonal changes in youngsters' bodies trigger their impulsive and rebellious behavior. Special precautions should be made to safeguard girls from prostitution and child pornography.

SOCIAL FACTORS:

Poverty and a lack of education are additional social variables that contribute to adolescent criminality. Substance usage habits also make youth more likely to commit crimes. Higher rates of delinquency are directly tied to broken households. These findings suggest that juveniles, who receive less parental supervision, live in dysfunctional family contexts, or come from underprivileged homes are more likely to engage in delinquent behavior.

It established age restrictions for criminal liability and exempted children under the age of seven from blame. Children between the ages of 7 and 12 were deemed mature enough to comprehend the nature of their actions. Social Media - Films and pornographic literature have also contributed to the rise in delinquency. In adolescence, sexual and other desires are frequently triggered by films and filthy books. As a result, they may begin their 'journey' by fulfilling them while committing crimes.

ENVIRONMENTAL FACTORS:

Delinquent behavior has been shown to be a learning reaction. Delinquents are not given criminal personalities by their parents or predecessors, but the surroundings and the social conditions that are unpleasant. Delinquency is not hereditary; it is the outcome of socio-economic situations and is primarily a coefficient of friction between the individual and the community. Environmental and sociological character is the major reasons of anti-social behavior. The social environment should therefore be held responsible for a child's delinquent actions, as in such conditions it detects criminal characteristics. It should therefore be the uncongenial family, school, neighborhood and society. Now we shall examine how the environment affects the formation of delinquency among minors[248].

An inadequate and poor family setting represents a fertile basis for delinquent germination. Family life and crime are in fact intimately linked. The results from many studies indicate that

[248] Supra note 12

the home environment, which is most sensitive to delinquency, with the following relationships or conditions:

A broken home is one in which the family is incomplete due to death, abandonment, separation, or divorce.

- Unusual envy and competition among siblings or children within the family, as well as their replies
- Inadequate parental control,
- The parents' or other family members' delinquent or criminal behaviour,
- Domestic strife,
- The family's financial struggles and poverty
- A boring, routine, and uninspiring home environment
- Deprivation of reasonable freedom and independence to children,
- Injustice and maltreatment of children
- Inadequate physical and emotional security.
- In these settings and environments, the youngster is deprived of the opportunity to meet his basic needs. He becomes a victim of emotional issues such as inferiority, insecurity, jealousy, or suppression, which cause maladjustment and, as a result, turn him into a hostile, rebellious, and antisocial personality. Thus, unfavorable home conditions are totally to blame for juvenile delinquency, and the fundamental cause of delinquent behavior must always be sought in the family background and home environment.

MALADJUSTMENT IN SCHOOL:

In many situations of delinquency, an unfavorable educational environment may be a strong motivator. It causes substantial maladjustment and, as a result, raises the likelihood of delinquent character formation. A defective curriculum, improper teaching methods, a lack of extracurricular activities, a lack of proper discipline and control, slackness in administration and organization, antisocial or undesirable behavior of teachers, maltreatment and injustice done to the child, and failure or backwardness are all examples of such an environment[249].

[249] See supra note 8

PREVENTION OF JUVENILE DELINQUENCY

Preventive measures are essential for such children. We must first identify and then treat those young people. If they are not prevented from committing the offence in good time, they become a regular offender. There is little doubt that the most effective strategy to reduce youth crime is to support children and their families at an early stage. Many government programmes strive to intervene early, and federal funding for community projects has allowed independent organizations to tackle the problem for the first time. These important components share the most effective programmes. So many lawyers and criminologists have offered several measures to prevent youth delinquency. Certain provisions are highly important for the well-being and development of young people. Delinquency Prevention is the wide word of all efforts to prevent young people from engaging in criminal or any other bad behavior. The need of investing resources to reduce delinquency has been increasingly recognized by governments. Prevention programmes include education and treatment for substance misuse, familial counseling, youth mentorship, parenting, educational assistance, and youth shelter.

There are two types of programmes for avoiding adolescent delinquency:

1. Individual Programs- Individual programme focus on delinquency prevention through counseling, psychotherapy, and correct education.

2. Environmental programs- The environmental programme entails the use of tactics aimed at modifying the socioeconomic situation that is prone to foster delinquency.

I. Individual Programme[250]:

a- Clinical programme

The aim is to support youth delinquents in understanding their personalities through the services of psychiatric social workers, clinical psychologists and psychiatrists. The function of the clinics has been listed as follows:

- Participation in pre-criminal discovery.
- To investigate chosen cases for research and treatment.
- To treat cases themselves or to recommend cases to other treatment agencies.
- To focus on other treatments of behavioral issues in children, based on the psychiatric requirements of the community.

[250] See supra note 12

- To work together to prepare students to specialize in the treatment of behavioral disorders.

b- Educational programme

Educational institutions have a big impact in countries where practically every child attends school, and preventive programmes can be introduced effectively through schools. Teachers should not discriminate against pupils; they should be treated equally and supplied with moral education, which is extremely beneficial to kids in their future lives. Moral education is an important aspect in determining a student's life. They should be able to distinguish between right and bad ideas that are beneficial to them and those that are not.

c- Family Intervention

The nature of human growth can make a strong case for interventions with expectant parents. The brain development during the foetal stage has life-long repercussions and can have an impact on the behavior, health of the mother and environmental impacts on the mother through chemical agents, such as alcohol, Nicotine and narcotics.

The pregnancy is most likely to continue to include parents with a history of social adjustment issues. Several preventive programmes have targeted pregnant teenagers from this perspective. These exercises can frequently be regarded interventions with disruptive adolescents to prevent antisocial behavior from inter-generating. Regrettably, participants in such intervention studies were often not tracked long enough to document the program's impact on mother and child disruptive behavior. Each community needs to guarantee parental education options that assist make decent homes, enhance family connections and educate and care for children. Parents learn how to raise healthy children in several educational programmes.

d- Mental Health

In prevention and treatment of youth offenders, this strategy is also helpful. It is not possible to emphasize too much to prevent the mental conflict and to make a correct mental adjustment in childhood and the value of mental treatment to cure a mental disorder. The life mission must be determined, and the energies to carry out the high mission must be directed. High feelings and values in children also prevent youthful delinquency. In October 1944 Dr R. Masani, former Director of the Indian Institute 72 of Psychiatry and Mental Hygiene, at the opening of the Indian Mental Hygiene Council, said that the use of mental hygiene was

extensive and diverse and played an important role in the prevention of delinquency and criminality in education, law, medicines, public health and industry.

e- Getting rid of the inferiority complex

Complex inferiority, dread and apprehension may occasionally lead a youngster to be criminalized in a false and misunderstood manner. Children should be encouraged to become trustworthy and happy. In their lives, discouragement is drawing them back. They should tackle several good and terrible phases of life properly and not be blamed for their shortcomings. Appreciation, sympathy and love ought to be showered to eliminate the concept of inferiority.

II. Environmental programme[251]

a- Community programme

The primary goal of the community programme is to reach out to those in need of assistance rather than having them approach employees and agencies. Another feature of this programme is that the engagement of the local community is regarded as more significant, with the role of professional leadership being limited to a minimum. The following are Marshal B. Clinard's key assumptions for these programmes:

- Local residents will take part in attempts to improve neighborhood circumstances, and they will not accept an unfavorable social and physical environment as natural and enviable.
- Because self-imposed modifications in the immediate environment will have genuine meaning for the resident and, as a result, will have a longer lasting effect.

b- Publicity

This strategy can also be used to help prevent juvenile delinquency. Newspapers, periodicals, radio, television, and motion pictures, among others, should offer factual reports about the different wrongs committed by juveniles and evaluate the genuine reasons of those wrongs, as well as protect minors from false and misleading reporting. The genuine position on their delinquent behavior should be presented and created in front of society so that they can be appropriately appraised.

[251] Krystina Murray, *The Importance Of Teen Substance Abuse Prevention*, Addiction Center, (Aug. 31, 2021) https://www.addictioncenter.com/teenage-drug-abuse/teenage-substance-abuse-prevention/

c- Family Environment[252]

The quantity of parental supervision, the manner in which parents punish their children, parental conflict or separation, criminal parents or siblings and the quality of the parent-child bond are all family characteristics that may have an impact on offending. Many studies have revealed a substantial link between a lack of supervision and offending, and it appears to be the most influential family effect on offending.

HOW JUVENILE JUSTICE SYSTEM IS DIFFERENT FROM CRIMINAL JUSTICE SYSTEM[253]?

Because of the defendant's age(s), the juvenile justice system differs from the adult justice system. While the youngster (up to 17 years of age) is placed in the juvenile system by default, it can be tested as an adult in specific cases. This occurs when adolescents are older (about 15-17 years) and the criminality is extremely bad (for example, a murder).

The first change your child will notice after getting arrested is that he will be brought to a separate detention facility from the jail. In Collin County, for example, adults are brought to the Collin County Detention Center, while minors are transported to the Collin County Juvenile Detention Center. In contrast to adult jail, where inmates can choose to sit all day or participate in the inmate worker programme, those detained in the juvenile detention centre are required to participate in academic education and other programmes designed to provide structure and continued growth to detainees throughout their time there.

Another distinction between the two systems is that the adult system is less concerned with rehabilitation and more concerned with punishment and retribution. The juvenile justice system prides itself on its emphasis on rehabilitation. It is possible that your child does not require rehabilitation; he or she could be a fantastic kid who is being blamed for something he or she did not do, or even if they did do it, it could have been a stupid decision made by an otherwise great child. In any case, it is critical that you understand that the juvenile system is structured in such a way that you will hear the state, judges, guardians ad litem, and almost everyone else involved in the case speak about your child as if he or she requires it, even if you and your child's attorney understand that this is not the case. Because the emphasis in juvenile cases is

[252] See supra note 8
[253] See supra note 12

less retributive and more rehabilitative, your lawyer has a variety of choices for assisting you in sealing the records. a juvenile may have his or her record sealed, which removes the incident from the juvenile's criminal history, if it has been two years since the case was discharged and the child has not gotten into any more serious trouble, i.e. no felonies, misdemeanors involving moral turpitude, or other actions requiring supervision. Finally, someone convicted in the adult system is said to be "found guilty," whereas a kid is said to be "adjudicated to have engaged in delinquent conduct" in the juvenile system.

Some of these differences are minute, but they should help you better understand the general approach in juvenile criminal justice as opposed to the adult system.

CASE LAWS

ARNIT DAS PETITIONER V. STATE OF BIHAR[254]

1. The trial court found that petitioner Arnit Das was not a juvenile on the date of occurrence in an investigation conducted under Section 32 of the Juvenile Justice Act, 1986 (hereinafter referred to as "the 1986 Act").the sessions court upheld the decision of trial court and The revision petition filed by the petitioner was dismissed by the High Court. Order of the High Court was put in issue by the petitioner in SLP (Crl.) No. 729 of 2000.

In an appeal (Criminal Appeal No. 469 of 2000) arising out of that special leave petition (since reported as Arnit Das v. State Of Bihar. 2000 5 SCC 488), dealing with that issue, it was observed: "In terms of the appellant's age, the determination is based on a careful examination of the evidence and is reached after taking into account all of the information on record as well as the valid reasons given for it. The finding arrived at by the learned ACJM has been maintained by the Sessions Court in appeal and the High Court in revision. We find no case having been made out for interfering therewith."

2. As a result, this Court affirmed the concurrent findings regarding the petitioner's age and that, on the day of the offence, the petitioner was not a juvenile under the 1986 Act's provisions.

[254] Arnit Das Petitioner V. State Of Bihar, Review Petition Crl. No. 1290 Of 2000 In Criminal Appeal No. 469 Of 2000 Decided On August 28, 2001

3. After the judgment was delivered by this Court on 9-5-2000, the petitioner filed a review petition seeking review of that judgment. The only issue raised in the memorandum of review petition is that the two-judge bench that decided ***Arnit Das v. State Of Bihar***, while holding that the significant date to determine whether an accused is a juvenile or not under this act is the date on which the accused appears in the court in enquiry proceedings for the first time, has overlooked the earlier view in ***Umesh Chandra v. State of Rajasthan***[255] wherein it was held that the crucial date in these type of cases is the date on which the offence was committed and not when the accused appears before the court in enquiry proceedings for the first time. In the memorandum of the review petition, the accuracy of the finding that the petitioner was not a juvenile (under the 1986 Act) on the date of the offence has not been challenged.

4. When the review petition was heard on 19-1-2000, the Division Bench noted that there appeared to be a difference of opinion on whether the date of the offence or the date on which the accused first appears in enquiry proceedings is relevant for determining whether or not an accused was a juvenile under the 1986 Act. The review petition was, therefore, referred to a larger Bench to resolve the conflict between the two opinions

5. Given the findings of an inquiry conducted under Section 32 of the 1986 Act that the accused-petitioner was not a juvenile for the purposes of the 1986 Act on the date of the offence, which finding has been upheld all the way to this Court, it is of no consequence, insofar as this petition is concerned, whether the crucial date for the purposes of the 1986 Act is the date of commission. The reference is only of an academic interest and the court declined to answer an academic question only.

6. It is settled practice that this Court does not decide matters which are only of academic interest on the facts of a particular case[256].

7. Thus, the court found out that the issue referred to the Constitution Bench does not require their consideration in this case. The review petition is accordingly dismissed, which itself has been referred to the Constitution Bench.

8. We, however, clarify that since learned Senior Counsel appearing for the petitioner had reserved his argument on the applicability of the Juvenile Justice (Care and Protection of

[255] Umesh Chandra v. State of Rajasthan, 1982 2 SCC 202
[256] See with advantage: Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd. 1983 1 SCC 147, R.S Nayak v. A.R Antulay. 1984 2 SCC 183 and Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi 1987 Supp SCC 93.

Children) Act, 2000, which repealed the 1986 Act, for raising it in the trial court when the order of reference was made, we are not expressing any opinion on the question whether the Juvenile Justice (Care and Protection of Children) Act, 2000 applies to the facts and circumstances of the instant case or not.

9. The review petition was thus dismissed[257].

RECOMMENDATIONS

A number of programmes have been successfully conducted with youngsters, pre-school children and primary school children to lower crime risk factors. It is often expected that eliminating identified crime-related risk factors will result in reduced crime. However, few studies have sufficient follow-up periods to evaluate whether criminal crime really is reduced. While eliminating various risk factors can be a positive outcome, it is crucial to establish what long-term impacts on crime and crime are preventive actions. Organizing follow-up studies of participants in programmes that have been found to be beneficial in reducing risk variables for delinquency is also a low-cost research technique.

- Federal youth development agencies, notably the Office of Juvenile Justice, the National Institute for Justice, the National Institute for mental health, and the National Institute of Children's Health and Human Development, should encourage and fund long-term results studies of well-designed short-term interventions.
- The consequences of educational policies and practices, such as grade retention, tracking, suspension, and deportation, must be thoroughly examined. This assessment should cover the impacts of such measures on crime and on the atmosphere and the environment of education and schools.
- Federal, state, and local governments should take action to provide treatment for pregnant women, particularly teenagers, who abuse drugs (including alcohol and cigarette use).
- For safety and effectiveness, all publically financed interventions should be assessed through science-based techniques. The public backing of intervention initiatives should

[257] Case mine, (last visited Sept. 13,2021)
https://www.casemine.com/judgement/in/5609ada0e4b0149711411ea6

include adequate money for such evaluations. Funding should be terminated for initiatives that have shown limited efficiency[258].

One or two antisocial youths may lower their antisocial behavior in a largely pro-social group, and enhance their pro-social behavior without affecting their pro-social youth. Certain well-designed assessments of risk-based interventions for youth, however, showed that the unwanted result of increased antisocial conduct of such youth in groups was even under strict adult surveillance.

- Federal and national money should be used to develop misbehavioural remedies for young people who do not aggressive youth or anti-social youth.

- Research on delinquency risk factors needs to focus on interaction effects between different risk variables. Research should be developed in particular on the effects of neighborhood characteristics and their connections with individual and family circumstances[259].

CONCLUSION

Our analysis of intervention approaches has produced very few successful programmes with trustworthy assessments. Clear advantages in reducing delinquency have been demonstrated in the work done with pregnant women, with pre-school children and their mothers and instructors, and with their parents in high-risk areas using scientifically adequate assessments. However, various widespread intervention tactics have been identified to enhance crime. Many of these initiatives attract young teenagers together. The panel decided that new ways should be promoted to provide interventions to prevent the risk of grouping misbehaved youth. The panel decided that a range of problems were addressed by the most efficient crime prevention programmes. Therefore successful pre-school programmes, rather than tackling crime alone, helped young mothers to teach their children, improved their health and education in

[258] See supra note 12
[259] Juvenile Delinquency in India, Forumias, (Oct. 26,2018) https://blog.forumias.com/juvenile-delinquency-in-india/

classrooms. Effective crime prevention measures appear to be programming facilitating healthy births, childhood, and childhood[260].

Multitudinous programming (e.g. school or community) which includes multi-components for parents, young people, and the environment, is more beneficial than a narrowly focused programme. Appropriate and scientifically credible assessment of the initiatives set up to address that concern should be used to raise public concern about juvenile criminality.

In the last twenty years, the rehabilitation model contained in the Youth Justice and Crime Prevention Act of 1974, which focused on juvenile offenders' needs, has lost more momentum to punitive methods which largely focused on crime. Government policy on youth crime should often battle with a balanced approach to the good development of children and youths who violate the law and the desire of the public to punish criminals.

This contrast between reconstruction and punishment for children and teenagers committing crimes gives juvenile offenders an ambivalent approach. Criminal activities must be abolished, punished, and condemned. In an increasing process of government policy for all young people, including young offenders, children and young adolescents involved in criminal behaviors must be educated and supported.

Adolescence is a time when teens form social networks, date, drive, and extend their horizons—all decisions that can have a positive or negative impact on youth and the community. Public policy on education, medical treatment, the control of alcoholic drinks, and youth crime reflects thinking that teenagers have not gained the skills or skills needed for adult status.

[260] See supra note 5

MATTERS CONCERNING SEAT AND VENUE OF ARBITRATION: CRITICAL AND COMPARATIVE ANALYSIS

Author: *Prity Kumari*[*]

ABSTRACT

The parties going for arbitration must confine their mind to the assorted aspects of the Mediation process while choosing a seat under the Arbitration and Conciliation Act, 1996. The selection of seats or venues in conflict during arbitration will be seen through the instance of various countries including India. The paper explores the selection of seats and venues in domestic arbitration. It mainly widens the view of whether the change of venue of arbitration needs a mutual agreement or not. It focuses on the issues that arose before the Supreme Court while resolving the dispute of selecting seats during adjudication. The broader aspect on which this paper relies is the conundrum of the seat and venue of adjudication. Further, it'll examine the curious case of seat/venue/place in arbitration and therefore the need for legal practitioners to use clear phraseology. It'll explore the numerous features of selecting a seat for arbitration as an analysis. In addition, the paper is going to cope up with the deepening crisis within the seat venue debate in 'Indian Arbitration'. Further, the impact of seats in arbitration, then Indian parties choosing the foreign seat of arbitration, and seat v. venue in contemporary arbitral jurisprudence are some important facts that we'd like to grasp. It highlights the recent position of law decided by the Apex Court with relation to the determination of seat of arbitration and at last provides the distinction between seat and venue of Arbitration. Before summarising the entire paper we are going to have a glance at a number of remarkable controversies associated with the seat of adjudication. Lastly, some suggestions are going to be given and through these suggestions, we've tried to resolve the dispute that arises during the selection of seat or venue.

Keywords: *seat, venue, arbitration*

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RESEARCH OBJECTIVE

The objective is to resolve the difficulty of choice of "seat" and "venue" during arbitration under consideration. The study of the recent position of law was decided by the Apex Court is relevant to the determination of the seat of arbitration and in the relevancy of their duty to allow the effect to the sacrosanct principle of party autonomy. Discussion on the difficulty of the jurisdiction of Indian courts over foreign seated arbitrations and issue of Indian parties choosing a foreign seat/far off the seat of arbitration and these points are discussed keeping in mind the Arbitration and Conciliation Act, 1996.

RESEARCH QUESTION

The following are the research questions formulated for the purpose of this research---

1. Does the change of "venue of Arbitration need a mutual agreement?

2. Does the choice of a "Seat" determine a court's supervisory jurisdiction?

3. What were the issues before the Apex court while giving judgment in dispute matters?

4. What is the scenario of seat v/s venue in contemporary Arbitral Jurisprudence?

RESEARCH METHODOLOGY

The research methodology adopted for this research is doctrinal research. The research focuses on verdicts given by the Apex Court. The methods of research opted are both analytical and descriptive. The sources of information named are secondary sources like case laws, scholarly articles, journals, and blogs.

LITERATURE REVIEW

The volume under evaluation printed under the propitious of *the* ***Charles L. Bernheimer Arbitration Education Fund***

Accords greatly to the current effort of arousing general interest and presenting the important aspects of arbitration. Insight of private character of proceedings, awards which

settled past discourse are not accessible for inspection as are published digests of the court verdict.

Morris S. Rosenthal under the title of "A businessman looks at Arbitration"

Inspects the specified needs of businessmen to retreat to arbitration and to assure its effectiveness by guaranteeing that a party to an arbitration consensus cannot afterwards refuse to adjudicate the matter and that an award should be qualified.

Alternate Dispute Resolution (Arbitration) could be a solution for both domestic and foreign disputes. Both sides have equal involvement in choosing an arbitrator and therefore the spot of arbitration is also at their option to choose. So, it is a fast and inexpensive solution to go for arbitration. It's never behind time to urge going for arbitration. Our judiciary is kind of slow and steady and it is often because the judicature is already overburdened with lakhs of pending cases. Keeping the full scenario in mind it's advisable to opt for Arbitration proceedings. General recognition of the excellence of Arbitration has been handicapped for a variety of reasons. And if people think - they are not going to perceive justice or the arbitrator will be biased or the strong and dominant party will influence the resolution of the arbitrator, then there are provisions in sections 12(1)(a) and 12(1)(b) and the fifth schedule of the act which gives you a transparent vision about your rights and obligations in Arbitration proceedings. Proponents of mediation have persistently engaged in efforts to spread more information about arbitration so as to beat these misconceptions.

INTRODUCTION

Alternative Dispute Resolution is a system of settling disputes outside the official judicial mechanism. It is classified into four types-Negotiation, Mediation, Collaborative Law, and Arbitration. Arbitration is a method of bringing a business dispute before a neutral third party for a ruling. The third-party, an arbitrator, considers the evidence presented by both sides and makes a decision based on it. Bringing a subject before an adjudicator is referred to as adjudicating it. In the context of litigation, an arbitrator is hired in the hopes of resolving a dispute without the expense and time commitment of going to court. The arbitrator rendered a decision that was binding on both parties at the end of the arbitration process.

Some important terms in arbitration:

Arbitration Clause: An arbitration clause is a section of the agreement that defines the rights and obligations of the parties within the instance of any dispute which arises over the contractual obligation or the other matter associated with such contract.

Arbitration Tribunal: An Arbitration Tribunal is defined as a single arbitrator or a panel of arbitrators under section 2(1)(d) of the Arbitration and Conciliation Act, 1996. Parties have complete discretion over the number of arbitrators they hire. If the parties cannot agree on the number of arbitrators, the arbitration tribunal will be made up of a single arbitrator. The number of adjudicators should be odd.

Arbitral Award: In an arbitration case, an arbitral award refers to a decision given by an arbitration tribunal. In arbitration, it's the final, legally binding conclusion. The award specifies the amount of money that the parties are entitled to recover. This award could be money that one party must pay to the other.

(a)Various aspects of the Arbitration process while choosing a seat under Arbitration and Conciliation Act, 1996

The court is set by the seat of arbitration, which might exercise jurisdiction over the arbitration hearings. The parties may by consensus make section 9 of the 1996 Act[261] applies even if the arbitration isn't held in India. If such an agreement is inattentive, the 1996 act simply operates within the territory of India. The core law that governs contracts is distinct from the law that governs arbitration agreements. If the parties fail to specify the laws that apply to the arbitration agreement, the test of "the closest and most intimate connection" will be used to determine the outcome. As a result, in the case of Emercon India, the same strategy was used. When applying the closest connection test, the jurisdiction in which the arbitration is supervised, as well as the parties' intentions, are deciding considerations.

(b)Curious case of seat/venue/place in Arbitration and want for a legal practitioner to use clear phraseology.

[261] Vaibhav s. Charalwar, Arbitration, concept of seat and venue under Arbitration and Conciliation Act, 1996 https://www.scconline.com/blog/post/2018/06/04/co ncept-of-seat-and-venue-under-the-arbitration-and-conciliation-act-2015/ (last visited-27th Aug, 8:40am)

People must be clear about the very fact that the Arbitration and Conciliation Act, 1996 doesn't employ the words seat or venue for adjudication, rather it employs the word 'place' for adjudication within the sense of 'juridical seat'. The relevant provision given in section 20 of the 1996 Act reads as-

(1) The parties are liberal to agree on the place of arbitration.

(2) Failing any agreement stated in sub-section (1), The arbitral tribunal will determine the location of the arbitration based on the facts of the case, including the comfort of the parties.

(3) Notwithstanding subsections (1) and (2), the arbitral tribunal may meet at any location it finds acceptable for consultation among its members, hearing spectators, specialists, or the parties, or examination of papers, commodities, or other things unless the parties agree otherwise."

(c)Importance of seat in Arbitration

A 'seat' or 'place' of adjudication not only asks where hearings will be held or reflect contract law, but it also establishes the framework for the mediation by granting the seat's courts supervisory control over the hearings. Choosing the wrong seat might cause a significant delay in the arbitration procedure.

It can expand the chance of parallel court proceedings and permit the award to be challenged on the extensive ground in local courts which cannot be authentic. If you select the wrong seat, then it may lie in a jurisdiction where the counterparty is extremely well connected and it poses evident risks. An arbitration might be challenged in the seat's courts as well. The amount to which the court intervenes in each case varies greatly, as does the arbitration seat. The law of the seat is extremely important when it comes to some official issues, such as whether or not an arbitral tribunal can award costs or interest, or whether or not a conflict of law rule must be used.

BRIEF HISTORY OF ARBITRATION LAW IN INDIA

(a)The Arbitration Act, 1940 and why it failed

Right from the very beginning, India has been an arbitration-friendly country. Mediation was in practice even before the codification of arbitration laws. In ancient and medieval India, settling disputes pertaining to the third party was popular. If a person was unsatisfied then, he or she could go to the court of law or to the king itself for appeal. Within the pre-court era, the leaders of the communities and families usually acts as arbitrators, and the rest of the people used to obey their decision. Later, panchayats were formed in villages to settle discourse between the parties. The fundamental Arbitration law in India was the Arbitration Act of 1899, which supported the English Arbitration Act, 1899, and it also expanded to the other parts of British India through section 89, schedule II of the "Code of Civil Procedure 1908". Later, based on the English Arbitration Act of 1934, the Arbitration Act of 1940 was authorized in India to combine and bring changes in the law touching on arbitration.

1. The Arbitration Act 1940 was enacted in India to consolidate and amend the law pertaining to arbitration, and it took effect on July 1, 1940. The Act repealed the Arbitration Act of 1899 as well as the relevant provisions of the CPC of 1908.
2. The Indian courts were given the authority under this Act to swap the award, revoke the award of arbitrators for reconsideration, and set aside the award on specific grounds.
3. The Act established the framework within which domestic arbitration in India was deduced.
4. The scheme of the Act is:-to hand out with arbitration without the interference of the Court (Chapter II)-to handle arbitration with the interference of the court where there's no suit pending (Chapter III)-to cover arbitration in suits (Chapter IV). Provisions common to any or all three forms of arbitration mentioned in (chapter II, III, IV) respectively constitute the remaining proportion of the Act (Chapters V to VII and also the Schedules).
5. The Act broadened in entire India except for the state of J&K.

Shortcomings of the 1940 act

1. Though the Act was a huge revolution in bringing a comprehensive law covering all important facets of arbitration, the requirement of its replacement started being felt with increasing urgency insight of the liberalization programme of the govt. of India. The law lacked statutory recognition of conciliation as a technique of settling disputes.

2. The Act granted permission to the courts to intervene at every stage of the arbitration proceeding; ranging from the appointment of the arbitrator through the interim stage to the passing of the award.
This procedure updated the culture of the judicature supervising the arbitration hearings and not providing arbitration the status of an alternate resolution mechanism. This was in inclusion to the real fact that the Indian judicature had a boundless backlog of cases which delayed the resolution of the problems that visited the court;

3. Any party interested in delaying the proceedings would turn to the court during any stage of the proceedings taking advantage of the backlog of the cases;

4. The Act did not prohibit the parties from raising disputes referring to the proceeding or validity of the arbitration agreement or the constitution of arbitration even after passing the award, while they have participation within the arbitration without objection;

5. The Act allowed the award to be questioned on a number of grounds, which includes the merits of the award as well.

6. Foreign investors were unwilling to take a position in India as they require a stable business environment and a strong commitment to the rule of law.

(b)The Arbitration and Conciliation Act, 1996

The arbitration may also be contested in the courts of the seat. The extent, to which the court intervenes in each case, as well as the arbitration seat, varies substantially. When it comes to some official matters, such as whether or not an arbitral tribunal can award costs or interest, or whether or not a conflict of law rule must be applied, the law of the seat is vitally relevant.

OBJECT OF THE ACT

1. to extensively cover international commercial arbitration and conciliation also as domestic arbitration and conciliation.
2. to reduce the authoritative role of judicature within the mediation process.
3. To ensure that each final arbitral award is applied in a similar way that a court decree would be.
4. Ensuring that an arbitral procedure is fair, efficient, and capable of meeting the requirements of specific arbitration.
5. To ensure that the arbitral tribunal provides reasons for its decision,
6. To ensure that the arbitral tribunal stays within its jurisdiction.
7. To allow the arbitral tribunal to use mediation, conciliation, or other procedures to encourage settlement of disputes during arbitral proceedings.

PRINCIPLE SHORTCOMINGS OF THE 1996 ACT

1. Arbitrators are not given the authority to issue summons, examine witnesses, or take evidence.
2. Because the arbitrator is appointed by the parties, the possibility of bias is high. One of the parties in a dominant position may compel the arbitrator to act in accordance with his or her wishes.
3. Arbitration awards can be enforced by the judicial system.
4. Dispute resolution outside of court remained slow and ineffective.
5. Despite the fact that disagreements are arising in India, foreign investors prefer to use foreign arbitration.

THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT 2015

The Arbitration and Conciliation (Amendment) Act 2015 went into effect on October 23, 2015, with the goal of making it easier to execute contracts quickly, recover monetary claims quickly, reduce the number of unresolved cases in courts, and speed up the process of resolving disputes through arbitration, in order to attract foreign investment by portraying India as an investor-friendly country.

KEY CHANGED BROUGHT BY THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT, 2015:

The Act modifies:

1. Section 12 - grounds for opposing the appointment of an arbitrator:
   It lays out a list of factors that "raise reasonable doubts about arbitrators' independence or impartiality" and require a written disclosure from a prospective arbitrator, as well as a list of circumstances that render someone unfit to nominate an arbitrator.
2. Appointment of arbitrators by a judge (Section 11 of the Act): indicating that appointment judgments are final and do not appear to be subject to appeal; restricting the scope of judicial review at this stage of deciding the existence of an arbitration agreement; and anticipating the court to reject comparable applications within 60 days.
3. Fast-track arbitration procedure: Section 29B of the Act mandates arbitral tribunals to give decisions within 12 months, subject to a six-month extension with the parties' agreement, and an extra extension should be allowed by the judicial system upon showing sufficient cause.
4. Court challenges to arbitral awards under Section 34: Under the new act, court challenges to arbitral awards must be addressed within one year.
5. Sections 9 and 17-interim measures: Under the Act of 2015, arbitral tribunals have the same power as courts in terms of interim measures, both in terms of scope and impact; after the tribunals have been constituted, courts cannot hear interim measure applications.

   The Act explains why Part I of the Act has the jurisdiction to offer interim relief. This could be especially helpful in light of the BALCO decision, which held that Part I of the Act did not apply to international arbitration. While this ruling was beneficial in that it narrowed the scope of court action in an international arbitration involving India, it practically eliminated any chance of judicial remedy in such cases. This clarification has resolved the ambiguity.
6. Section 31A, which sets a cost-regulatory framework.
   The Act established a comprehensive cost framework that included elements to consider when awarding contracts and calculating prices.

   The Act also modified section 36, which formerly allowed for the delay of execution of arbitral awards pending the outcome of a set-aside application. The new provisions only allow for a stay of execution if the court has made a particular order, and an

application to set aside an arbitral verdict does not automatically result in a stay of execution.

Basic Features of Arbitration

1. ***Arbitration is consensual***-- Only if both parties to the case agree to go to arbitration can the process begin. A settlement reached by the parties willingly is far superior to one imposed by a third party such as a judge, hearing officer, arbitrator, or expert. The term "consensual" plainly says that you cannot go to arbitration without both parties agreeing. In most cases, the parties have already included an arbitration clause in the contract to resolve any future disputes. This is done in case of a future dispute emerging from the failure to perform contractual duties. If both participants agree, then an already existing discourse can also be referred to arbitration.

   "Parties choose the arbitrators: The parties are free to choose their arbitrator under the Indian arbitration legislation, and they are authorized to choose arbitrators together who would operate as an umpire. Furthermore, the number of Arbitrators must always be odd. And the odd number criteria were established to ensure that there would be no conflicts throughout the arbitration proceedings."

2. ***Arbitration is neutral***--So that there is no bias during the procedures, the arbitrator should be a neutral individual. Apart from that, parties can choose other key criteria such as the applicable legislation, the language in which the hearing shall be conducted, and, most importantly, the arbitral venue. And because of these factors, neither team has a home-court edge. The arbitral tribunal's decision is final, binding on the parties, and simple to enforce.

ARBITRATION IN CONTEMPORARY WORLD

In any arbitration proceeding, the "seat of arbitration" is crucial. It not only states where an institution is located, where hearings will be held, and where a good pool of arbitrators may be found, but it also states which court has supervisory authority over your arbitration issue and the scope of those powers. When parties decide to arbitrate, the first and most important decision they must make is where to hold the mediation. However, when picking a seat for mediation, they must consider a few key considerations.

By establishing the ‘seat of arbitration,' the country establishes a legal relationship between arbitration and the arbitration rule and the courts on the one hand, and the arbitration rule and the courts on the other. In a realistic or traditional style, the seat of mediation must not be identified. Rather, it's a mechanism that gives the mediation a formal legal home. Every mediation involves some sort of statutory or executive rule. The physical location of the proceedings should not be disrupted by the "seat."

In any case, the parties are free to agree on the location of the mediation. However, there are a few uncommon arbitration rules that limit the parties' options. If the parties cannot agree, an arbitral tribunal may decide on the place or seat. While choosing a seat for mediation, some practical issues other than legal aspects should be addressed, such as the role and attitude of local courts in terms of direction and management, the convenience of transportation, and suitable facilities.

(a)Grounds for questioning the nomination of the Arbitrator

India’s Judiciary is already overburdened and is accordingly slow in disposing cases. Around 1.65 lakh cases are awaiting in every high court and more than 2.6 crore cases are awaiting in the subordinate judiciary. So, to overcome this we are in dire need of a faster and effective technique to dispose of the discourse. *The Arbitration and Conciliation Act, 1996* came into effect keeping a similar goal in mind. In India, this statute encourages mediation as an alternative dispute resolution method. It was an attempt to lighten the judicial load. The reasons for questioning or challenging an arbitrator are outlined in Section 12 of this 1996 statute. The 2015 amendment act added a schedule to section 12 that lays out additional factors that could lead to an arbitrator's challenge.

Certain circumstances must be disclosed: Section 12(1) of the act, as revised in 2015, requires the incoming arbitrator to produce a written disclosure of certain situations that could cast doubt on his independence or partiality. Whether or not a situation calls into question an arbitrator's independence will be decided by the arbitrator himself. Section 12(1)(a) states that if the arbitrator has direct or indirect contact with the parties, he must disclose it. He should also disclose any financial, business, professional, or other types of interest in the subject matter of the debate, as this will damage the case and reveal the arbitrator's prejudice. Section 12(1)(b) identifies any circumstance that can influence an arbitrator's willingness to make time sacrifices in order to finish the arbitration within a year.

The fifth Schedule of the act provides a certain type of relations which gives rise to reasonable doubts:

1. Arbitrator's relationship either direct or indirect with parties or counsel.
2. Arbitrator's involvement in the discourse.
3. Arbitrator's self-interest in the discourse.
4. Arbitrator's past collaboration with the discourse.
5. Relationship of co-arbitrators when there is more number of arbitrators.
6. Relationship of an arbitrator with parties and his relationship with others in dispute.
7. Some other circumstances[262]

(b)Jurisdiction of Arbitrators: Section 16(2), 11,2(1)(b), 7 and 37

Arbitrators' power or jurisdiction is restricted by the parties' explicit consent or agreement as to the scope of the arbitration, as well as the arbitrators' ability to decide their own jurisdiction. Arbitration is fundamentally a contract concern, and if the parties have not agreed to arbitrate a particular matter, it cannot be presented to binding arbitration. The scope of the arbitration, or the issues that may be considered by the arbitrators, is also determined by the particular language in the parties' written agreement. If the mediators rule on an issue or questions that were not made arbitrable by the agreement between the parties to the adjudication, the judicature may void the award on the grounds that the arbitrators exceeded their authority.

In ***Prem Laxmi & Co. v/s Tata Engineering and Locomotive Co. Ltd***.: The respondent modified the general condition of the transaction of goods, and this modification was done by removing the arbitration clause. The title 'Arbitration' was there in the said clause but the content of the clause showed jurisdiction of Bombay courts in case of discourse. The question that came up was about the dominion of the arbitrator and the arbitrator mentioned that he had no jurisdiction.

The judicature upheld the mediator's decision, explaining that a perusal of the content of the mentioned clause did not suggest that it could be construed as an arbitration clause because it

[262] Atharv Joshi, Grounds for challenging the appointment of an arbitrator, https://blog.ipleaders.in/appointment-arbitrator-grounds-challenge/ (last visited-25th Aug, 2021, 8:47 am)

refers to the fact that the contract was entered into in Bombay and that any disagreements or differences arising from the contract would be resolved by the Bombay judicature.

(c)Indian parties choosing the foreign seat of arbitration

A three-judge bench of the Apex Court of India decided the question of whether two Indian parties can choose a foreign seat for mediation in PASL Wind Solutions Private Limited vs GE Power Conversion India Private Limited after the High Courts were split on the subject. For example, the Bombay High Court held that permitting two Indian parties to nominate a foreign seat would be against India's public policy. The Delhi High Court [263]and Madhya Pradesh High Court,[264] on the other hand, showed the view that Indian parties were free to select any seat of arbitration within India or outside India.

PASL contended at first that two Indian parties could not choose a mediation venue outside of India since doing so would violate Indian law and be contrary to Indian policy. PASL stated that allowing the parties to choose a foreign seat would imply that they might choose a foreign substantive law to regulate their rights and obligations, which would be contrary to the Arbitration Act's provisions.

In this case, the Supreme Court concluded that the Arbitration Act and the Indian Contract Act of 1872 do not prevent two Indian parties from resolving their dispute outside of India. When two Indian parties choose a foreign seat, they will be able to seek interim relief from Indian courts if the assets against which the foreign award will be enforced are located in India.

[263] *GMR Energy Limited v. Doosan Power Systems India Private Limited,* (2017) SCC Online Del 11625
[264] *Sasan Power Ltd v. North America Coal Corporation India Pvt Ltd,* 2015 SCC Online MP 7417

CRITICAL ANALYSIS

(a) Seat v/s venue debate in contemporary Arbitral Jurisprudence

1. The applicability of part 1 of Arbitration and Conciliation Act, 1996 to internationally seated arbitration consensus, further it was initiated from Bhatia International v. Bulk Trading S.A. (2002)4 SCC 105.[265] Later on, it was settled by the Apex Court in 2012 in Bharat Aluminium Company Ltd. V. Kaiser Aluminium Technical Services Inc. (2012) 9 SCC 552.[266]
2. Other controversies include the theme of Arbitration of dispute till the judgement of the Apex Court in Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd & Ors (2011) 5 SCC 532.
3. The Arbitration related to fraud claims was in continuation since last decade and finally settled by the Court of last resort in A. Ayyasamy v/s A. Paramasivam (2016) 10 SCC 386.
4. The trendy controversy that received considerable importance is the seat-venue conundrum or you can say the courts are somehow confused or they face difficulty in regulating the seat of arbitration

The Apex court on various occasions has set forth influential judgment on seat, venue, place of arbitration, still, it seems a room full of vagueness.

(b)Change of venue of Arbitration needs mutual agreement?

It is not essential to change the subject of the contract if both parties intend to change the seat of the arbitration through conduct or implicit assent. The parties can jointly agree to change or replace the arbitration venue, and the mutually agreed location will become the arbitration venue. As a result, they keep in mind that changing the site of mediation for the sake of convenience is hinted at consulting authority upon the judicature of the altered venue.

In ***Inox Renewable v/s Jayesh Electricals***, the Supreme Court held that when a mutually agreed-upon seat of arbitration is changed to another location, the courts' exclusive jurisdiction

[265] Vaibhav s. Charalwar, Arbitration, concept of seat and venue under Arbitration and Conciliation Act, 1996 https://www.scconline.com/blog/post/2018/06/04/concept-of-seat-and-venue-under-the-arbitration-and-conciliation-act-2015/ (last visited-27th Aug, 8:35 am)
[266] Vaibhav s. Charalwar, Arbitration, concept of seat and venue under Arbitration and Conciliation Act, 1996 https://www.scconline.com/blog/post/2018/06/04/concept-of-seat-and-venue-under-the-arbitration-and-conciliation-act-2015/ (last visited-27th Aug, 8:40am)

changes and jurisdiction accordingly vests with the courts at the replaced seat of arbitration agreed upon by the parties.

The Hon'ble Apex Court decided in ***Videocon Industries Ltd. vs Union of India and Anrs*** that in the absence of any clause in the contract between the parties restricting any amendment or modification of a contract to only be done by an instrument in writing, the parties may mutually agree on a seat of arbitration and even change the seat of arbitration.

The parties have explicitly transferred the venue or location of arbitration by mutual agreement. The current legal position appears to be that if a seat is specified in the contract and the agreement has a clause requiring the contract to be amended in writing, then any change in the agreement must be made in writing in accordance with the contract's relevant requirements. In such conditions, the parties would be able to alter the seat of arbitration by following the course of action laid down in the contract.

(c)Problem before Apex Court while giving judgment in dispute matters over seat and venue

In ***Mankatsu Impex*** case- Another deviation, the apex court got an occasion to reanalyze the affair of seat and venue in the Mankatsu Impex's matter. The judicature, in this case, was moderating a contention that arose out of a memorandum of understanding which conveyed that the MoU is controlled by laws of India and courts in the country's capital will have authority in the matter. The discourse will be referred to and eventually deduced and decided in Hong Kong. The subject matter was where the arbitration proceedings will occur.

The judicature concluded in ***Hardy Exploration and Production (India) Inc. (2019) 13 SCC 472,*** that "the parties had not chosen the seat of arbitration and the arbitral panel had not established the venue of arbitration." The venue could not assume the status of the seat on its own; instead, "anything else is affixed to it as an attendant," the venue may become the seat, if "something else is affixed to it as an attendant." As a result, the Supreme Court decided that in our country the courts had jurisdiction to consider the challenges to the award. The Hardy Exploration case decision is of limited utility since it does not explicitly define the terms "seat," "place," and "venue," and it does not explain the additional conditions required to warrant considering the chosen site as a "venue." Ultimately, the court of last resort did not provide any clarity on this issue through this decision, other than the simple conclusion that a chosen venue might not be attended as the seat of adjudication in the absence of supplementary factors indicating that such chosen venue was intended to be the seat of mediation."

The court of final resort reasoned that "when a section or clause delegates a venue of arbitration and asserts that the venue of arbitration will be held at a comparable place, it specifies that the venue is eventually of arbitration- New Delhi or Hong Kong" in the case ***BGS-SGS-Soma-JV-Shashoua***.

(d)Selection of seat determines court's supervisory jurisdiction?

The term "court" is defined in section 2(1)(e) of ***the Arbitration and Conciliation Act, 199*6** as "the chief civil court of original jurisdiction in a district," which includes the High Court when it is exercising its usual original civil jurisdiction.

Section 20 allows the parties to choose a mediation location; if they do not, the arbitral tribunal will decide where the arbitration will take place. Depending on the nature of the debate, the territorial jurisdiction of courts is mentioned in sections 16 and 20 of the Code of Civil Procedure, 1908.

If the discussion is about immovable properties, their rights and interests, and the recovery of moveable properties, the court will have exclusive jurisdiction over the territory in which such moveable or immovable property is located.

The judicature of the places where hearings will be held will apply to every other discourse:

—cause of action arouses to some extent

—defendant dwells or works for profit, and in the event of a corporation, territorial jurisdiction will be exercised where the corporation's registered office is located.

Every court mentioned in section 20 of the CPC will have concurrent jurisdiction, and a party intending to litigate will be able to choose any of these courts for litigation, even in arbitral proceedings. Except for the purpose of execution of the award, which might be settled at any place where the award is likely to be satisfied, the judicature within whose jurisdiction the seat of arbitration is located will have exclusive authority in arbitration matters. The recent judgment of the Apex court of India in some cases like- ***Indus Mobile Distribution (P) Ltd. v/s Datawind Innovations (P) Ltd. And Ors. (2017) 7 SCC 678, Brahmani River Pellets Ltd. v/s Kamachi Industries Ltd. Civil Appeal No.5850 of 2019*** and judgment of three-judge bench in ***BGS SGS SOMA JV v/s NHPC Ltd. Civil Appeal No. 9307 of 2019*** leave no doubt about the

fact that the parties have a choice to choose a court that will exercise supervisory jurisdiction in arbitration matters exclusively.[267]

In Arbitration laws, the seat of Arbitration is of dominant significance. The Arbitral seat or venue is the judicial home where the proceedings will occur. When we will have a look upon the judgments where the seat/venue/place of arbitration was decided, you will get to know that it is full of controversy either it is the views of the corum or the judgment of the jury. The choice of seat in arbitration has always been a topic of debate. And till now we haven't reached any conclusion on the choice of seat or venue. There are terms and condition which shows that the seat in arbitration is determined by the mutual agreement and if the parties fail to decide mutually, then the arbitral tribunal will decide the place of arbitration where the proceedings will occur. So, you can see the criteria of choice of seat. But it's not so simple as it seems. The series of judgments shows its complexity. First of all, the parties rarely come to a mutual decision to have the same place of arbitration. Every party wants a place of proceedings as per their own convenience. And their disagreement gives the deciding power to the arbitral tribunal, which brings the parties in trouble, and sometimes it is quite expensive because the court also fixes the place of arbitration as per their own convenience. So, you can see everyone is deciding it as per their own convenience. Now if we will have a look upon the supervisory jurisdiction of the court then the series of judgments show that the court has got supervisory jurisdiction in the matters of dispute. But we have chosen the process of arbitration because we don't want to go to courts for their long procedure which sometimes takes decades for decision. But anyhow we are in any way going to court for the decision, so how is that justified because a party has chosen the process of arbitration as he/she doesn't want to get involved in the lengthy procedure of the court. But they are anyhow reaching the court for the judgment. So, there are a lot of flaws in this Arbitration process also and before anyone goes for arbitration, the party should have complete knowledge of the pros and cons of the arbitration process.

[267] Rakesh Kumar, Advocate, Arbitral seat and supervisory jurisdiction of the court: choice of parties, DSN Legal, https://dsnlegal.com/arbitral-seat-and-supervisory-jurisdiction-of-court-in-india.php (last visited-25th Aug, 2021, 7:41 pm)

CONCLUSION AND SUGGESTIONS

Seat-venue debate is a longstanding topic of discussion and it has become one of the ultimate hotly debated topics from the Arbitration world. Arbitration has a very significant feature i.e., the deduction of seat/place/venue by the parties. Here we have discussed what happens if there is a dispute between the choice of seat and venue during arbitration proceedings. Though the Apex court from the different decision has given a shot to solve this dispute and to an extent, it became successful in doing so. In the very beginning, we have seen that there is no such word as seat or venue in the Arbitration and Conciliation Act,1996, in fact, the actual term is "place of arbitration". It is on the parties whether they want to go for domestic arbitration or international arbitration but with some terms and conditions. The amount of popularity, especially the case laws this topic has created in a short span of time is just amazing. The interesting part is that every new case law comes up with ambiguity and creates confusion. The judgments or decisions unfortunately are not able to answer the above questions. But on the basis of established legal principles, we can say that answer to most of the questions mentioned above will be negative. The current judgments do not introduce any sort of the change in the position of this seat, venue debate.

PREVENTION MECHANISM OF YOUTH CRIME

Author: *Riddhi Rahi*[*]

ABSTRACT

Juvenile delinquency is the term used to depict the criminal demonstrations of the criminal guilty parties who are not major for example under 18 and to examine the current situation of the adolescent wrongdoing the exploration is finished. This exploration plans to investigate the instructive foundation of the reprobates alongside the family foundation and their financial status which influences the adolescents or which brings about the wrongdoing among adolescents.

Juvenile delinquency ranks among the top concerns when it comes to youth. The main purpose of prevention programs is to suppress juvenile and youth offences, to help street kids take part in idealistic self-examination and structure uplifting outlooks.

In this paper, we review the causes and effects of juvenile delinquency as well as all possible explanations that have contributed to delinquent behavior. The second major section focuses on what can be the possible preventive measure to deal with the rising crime rate. Section 3 covers the responsibilities and possible responses to juvenile offenders in the future. In the last section, we examine the current laws and analysis of prevention approaches already present, based on the latest reviews of the case study and its implications.

Keywords: *Juvenile delinquency, Crime prevention, Offence, Justice.*

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INTRODUCTION

Youth these days, regardless of social culture, sexual orientation, residence, morals, and religion Are dependent upon personal risks but at the same time are being given new personal freedoms—some useful and at the same time some possibly unsafe. Regularly, advantage is being pursued of unlawful open doors as youngsters submit different offenses, become dependent on medications, and use savagery against their friends.

Delinquency is a criminal behavior that is most commonly seen in underage offenders; also referred to as juveniles. Any offence committed by a minor that demonstrates behaviour that does not comply with the legal and moral norms of society is referred to as juvenile delinquency.[268] The offence committed in juvenile delinquency may not be a wrongful act or crime if committed by an adult for various reasons. It depends on the statute of the country. In the Indian context, a youth is a person who is less than eighteen years old. Nevertheless, the Indian Criminal Code determines that a youth cannot be charged with wrongdoing until the age of seven.

In the present situation, these juvenile activities are rapidly increasing and have several causes. The working conditions of poor children, addiction, and the environment they see at home and psychological factors play vital role in determining factors of juvenile delinquency. In cases of middle and high class children, peer pressure or peer rejection combined with substance abuse is one of the vital causes of criminal behavior. Early disruptive behaviors, school, community, race, gender, mass media, family and education are the determinants of juvenile delinquency.

Since puberty is the momentary time of life, during this stage one goes through fast progressive changes in one's physical, mental, moral, spiritual, sexual and social outlook.[269] They become impulsive and often temperament change is noticed. It is the time of anxiety, stresses, clashes and complexities. Accordingly, during this period they do certain things to fulfill one need or the other which often lead them to get delinquent.

The crime rate of juvenile violence was bleak. **The report Juvenile Offenders and Victims:** A Focus on Violence, distributed in May 1995, presumed that "if savage adolescent wrongdoing expanded in the future as it has in the beyond 10 years the quantities of adolescent

[268]Britannica "*Delinquency criminology*" para 1, 11 sept 2013 Encyclopedia Britannica, https://www.britannica.com/topic/delinquency (last visited 5th august, 20:10).
[269] Ignited "*Juvenile Delinquency In India Causes and Prevention*", Apr 2017 Ignited Minds Journals http://ignited.in/a/57753 (last visited 6 August,18:03)

captures for vicious wrongdoing will be over two times and the quantity of adolescent captures for homicide will increment almost 150 percent.[270]

Prevention is vital for such youngsters. Most importantly, we ought to recognize such adolescents and from that point itself give them treatment. The individual programmers and environmental programs are the two kinds of preventive programs available. The juveniles can be treated by a simple counseling or they may require a long stay at a rehabilitation Centre to gain a fresh perspective. It depends on the conduct of the offender and the seriousness of the crime. **Juvenile delinquency law**, **Juvenile Justice** (Care and Protection of Children) **Act, 2000** or the republic law seeks to consolidate the law identifying with juveniles in struggle with the law and youngsters needing care and protection, by accommodating legitimate protection, security and treatment having regard to their needs for improvement., and adopting a child-friendly methodology for adjudication and resolution of issues in the best interests of children.

Therefore, my research questions are:

1. What are reasons and explanations for juvenile delinquency?
2. What is the treatment methods used for juvenile delinquents?
3. What can be the scope of very young offenders?
4. What are the recent developments and laws related to juvenile justice and crime prevention?

TARGETS OF THE STUDY

Following are the objectives of the study:

1. Understand the rationale and causes for juvenile delinquency in India.
2. To analyze individual and environmental programs for prevention of further delinquency and conclude the effectiveness of one over the other.
3. Examine the possible capacity of juvenile offenders in their immediate and long-term future.
4. To study the statistics primarily based upon juvenile delinquency and the modern-day facts.

[270] Ojjdp "*Prognosis for the Future*", Ojjdp Publication, https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/reform2/ch1_d.html (last visited 6 August,18:016)

5. To observe the current legal guidelines for care and safety of juvenile offenders.
6. To apprehend the working and impact of such laws thru case studies and precedents.

RESEARCH METHODOLOGY

The research methods used in the research process are doctrinal. It includes various legal concepts and principles, such as cases, regulations, rules, etc. Conventional legal theory and court decisions report are the sources for this research. Both secondary and primary sources are used for critical inspection. Books, journals, library methodology, case studies, content analysis, articles, research papers, websites, court records, news, laws, regulations, and required knowledge are the basis for most of the information in this article.

WHAT ARE THE REASONS AND EXPLANATIONS FOR JUVENILE DELINQUENCY?

Understanding the reasons for juvenile delinquency is an essential piece of keeping a youngster from involvement in improper, destructive and illicit activity. Four essential risk components can recognize youngsters inclined to delinquent activities: individual, social, psychological wellness and substance abuse. Regularly, a juvenile is presented to hazard factors in more than one of these orders.

a) Individual factors

There are numerous risk factors that can be identified with child delinquency; however, the most important risk factor is the single factor. An immature child who has not received treatment, attention, education or temperamental characteristics can be a juvenile delinquent active due to these problems. Impulsive behavior and failure in the postponement of happiness, in numerous cases, are individual risk components that can be recognized as a contribution to the youth of treatment and participation in harmful, harmful and criminal activities.

In some cases, the tender age of young people in itself explains his crime. The causes cannot be identified to be so reckless, you never know what could trigger an act of criminal behavior in others, but the individual factors can be submitted in other additional categories.

i. **Language:** Language is the essential means with which Guardians and others influence minor behavior. The progress of the delayed language can build the feeling of anxiety

of a young man, hinder ordinary socialization and be related to a further crime of at the age of 30.

ii. **Temperament features:** these are individual inclinations beyond a shadow of doubt; Attributes of behavior that can be modified by ecological influences. The problematic temperament right next to the bat in life could be a marker for the first precursors of antisocial behavior and behavioral problems. The predominance of negative moods, such as anger and difficulty in control of behavior and emotions, including all impulsive behavior, are the possible examples.

iii. **Low connection with parental figures:** As in the initial mattress bonus, it carries out a significant job in a subsequent conduct and, delicacies. Closer to a child is for his mother, less probably a young man is in danger for delinquency. Everything can be recovered from the legitimate love and care of a mother in everyday life. Some preaching young people can participate in an intense antisocial behavior, which is also seen as a barrier for connecting with the elderly.

iv. **Substance abuse:** Drug use is probably the most dangerous practice and can lead to criminal behavior, whether through adolescents or environmental damage. You could say that young people affected by drugs are more effective in engaging in illegal behavior.

b) **Social factors**

The Study Group speculated that kids who created solid bonds to classrooms would adjust to the standards and qualities that schools promote, accordingly lessening their likelihood of anti-social conduct. Research into the classroom's impact on antisocial behavior has reliably shown that poor school performance is related to children's behavior problems, including dominance, initiation, and severity of illegal behavior. Weak bonds to classrooms (low morals), low educational goals, and helpless inspiration place kids in danger of being juvenile delinquents. Schools and communities also however can be hazard factors.

Although the relationship between school measurements and crime and crimes for children is insufficient, the test proposes that many school attributes, between companions, could be linked to antisocial behavior in children: low degrees of educator, poor relationships with students,

bad characterize the rules and expectations of conduct, requirement of inadequate rules; They are significant in the rotation of the minor behavior events.

The rejection of colleagues can also influence the crime of children and adolescents to induce the child rejected to associate with groups of peers and diverted bands. Furthermore, the districts disorganized with the weak social controls (for example, attempts for adults to youth behavior of control) allow the activity to die to become disconnected and even unnoticed. At the extreme end of the spectrum, some neighborhoods can also offer opportunities for delinquent behavior. For example, young people living in high-risk neighborhoods can have a high risk of offending, because they are exposed to multiple rules favorable to crime.

Mass communications can also be considered among the ecological components that lead the young man to bad conditions at this time. Despite the print media, such as magazines, documents and books, as well as Redo Broad Communications such as radio, TV and film; the phones and tablets in possession of young people including 2 years are used to send data to people. In particular through the web that children and young people use as a method for recreation time users can present themselves to some undesirable stimuli. Ferocious and energetic games, explicit materials, crime promotion publications can unfavorably influence minor and young people, leading them more destructive and annoying.

c) **Psychological wellness**

Mental disorders, especially severe depression and inattention and hyperactivity problems, are normal in adolescents and children with misbehaving. Some behavioral disorders can also reveal criminal behavior. Anti-socialists are not confused, lack empathy, irresponsible, careless, and insensitive, for example, guilt is easy to commit crimes. It is recognized that some strange practices of young people are the reason for future practices related to wrongful acts. Behavior problems are conditions caused by violations of social rules and dangerous behaviors such as fighting, lying, torturing creatures, etc.

Alcohol use status, age, intellectual gender, and mental status can all be counted as psychological factors; financial difficulties, family breakup after a divorce, physical loss in the family, weak family relationships, and the presence of criminals among family members can

all be viewed as psychological factors. Is the family psychological factor that leads the child to commit a crime.[271]

WHAT IS THE TREATMENT METHODS USED FOR JUVENILE DELINQUENTS?

Efforts have been made to identify possible violations at an early stage in order to enable preventive treatment. The state has an obligation to administer the parties involved in illegal crimes. Although these plans are made to correct the malevolent behavior of young people and prepare them for healthier lives, they say that prevention is still better than cure. In addition to mental health programs, counselling, and recreational programs, child crime treatment must address the problems of families with defects and mismatches.

There can be two programs to prevent juvenile delinquency:

1. **Individual plan:** The personal plan includes counselling, psychotherapy and legal education to prevent wrongdoing or further crime.
2. **Environmental Plan:** The environmental plan includes technical work the ultimate goal of which is to change the financial situation of offenders, which can be the main reason for encouraging apparent misconduct.

But in 1958 India passed the Central Probation Act, which led to a third form of juvenile offender handling procedures.

3. **Probation:** Probation is the most widely used method of treatment of offenders and is an agreement in which offenders are sentenced to probation and probation. In return, must live under the supervision of a test officer according to a prescribed rules assembly.

[271] Research Gate "A PSYCHO-SOCIAL INVESTIGATION ON THE CAUSES OF JUVENILE Research Gate "A PSYCHO-SOCIAL INVESTIGATION ON THE CAUSES OF JUVENILE DELINQUENCY, January 2019 Research Gate Publication, https://www.researchgate.net/publication/339447139_A_PSYCHO-SOCIAL_INVESTIGATION_ON_THE_CAUSES_OF_JUVENILE_DELINQUENCY (last visited 6 Aug,18:33)

1) **Individual plan**

i. **Clinical program:** The objective of this structure is to help through psychiatrists, clinical psychologists and psychiatric social workers to help minor criminals understand their problems of character. The main functions of clinical programs are:

- Participate in the disclosure of pre-criminals.
- Treat cases itself or to alter cases at different organizations for treatment.
- To discover the requirements regardless of the local young people.
- Coordinating in the preparation of students who intend to spend a significant time in the processing of social problems.

ii. **Educational program:** the effects of educational organizations are extremely enormous. Drugs should not be segregated among students. They should be treated similarly and given for extremely useful ethic education for students for their stay. Moral education is a critical factor for students, who decide his life. They must have the opportunity to understand the distinction between good and bad thoughts that are ideal for them and that they are not.

iii. **Hygiene programs:** This strategy is also useful in advance and treatment of bad youth conduct. To prevent psychological shock and achieve a legitimate mental change in childhood and the value of mental treatment to alleviate psychological influence cannot be emphasized enough. The mission of life must be resolved and the energies must be coordinated for the satisfaction of the great mission. The advanced high opinion and quality in young people also avoid youth crime. Advice and sessions of the profound brain are examples.

iv. **Parental teaching:** Every community must provide sufficient opportunities for parental education and consciousness, which will help to make large houses, further, will develop the family relationship and education and care of youth. Some teaching projects illuminate guardians in the best way to open solid and healthy children. The education of the abuse of substances, family consultancy, and parental education are the examples.

v. **Recreation projects:** Sports projects are a decent surveillance method in bad condition. Recreation programs train young people to connect with different adults and children and encourage communion with them. These corporate colleagues can help

children over later. Youth programs are intended to adapt to personality and capabilities of different young people and can incorporate games, dances, music, rock climbing, drama, karate, bowling, crafts and different exercises. It is accepted that youth energies can be around them to be channeled in similar activities, such as games and other exercises, which would verify transgressor between members. The creation of recreation agencies, such as sports, playgrounds, community centers, drama concerts, puppet shows, is so necessary to prevent crime and development of social work and groups of young people. In rural regions, recreation agencies must provide outdoor conference centers, playgrounds for sports and cultural sports. Associations and meetings / youth organizations must take and accept the responsibility to resolve these projects, so that minors can be far from the criminal psyche and bad conduct.

vi. **Elimination of the feeling of insufficiency through programs:** feeling of insufficiency, fear, fear can take the young person to carry out bad actions under deactivation and losing substantial sentence / impression. Young people need support to become trustworthy and great energy. Deterrence is delaying them into their lives. They must compromise adequately to address different periods of life very large and horrible and their disappointments should not be scolded. Appreciation, joy, compassion and love must bathe to wear the feeling of insufficiency or any kind of inferiority complexes. Most mentoring is the example.

2) **Environmental plan**

a) **Community Programmes:** The local area plan aims to contact people in need, not experts and individuals in the office. Another implication of the plan is to view the support from the surrounding areas as more important and to try to keep the knowledgeable leadership on the ground. In this way, local individuals are involved in efforts to change the situation in the region.

They do not recognize that adverse social and natural environments are natural and desirable, since timely and deliberate changes in the environment will be of real concern to residents who will affect their lives more profoundly. Promotion of education and youth asylum are examples.

b) **Publicity strategy:** This strategy is also very valuable in preventing juvenile delinquency. Newspapers, magazines, radio, television, cinema, etc. must honestly

present young people's misconduct from an appropriate perspective, truthfully report various young people's errors, investigate their real causes, and continue to protect minors from wrong and shoddy behaviors. And misleading reports. A truthful position regarding their illegal activities should be presented to the public and drawn up so that they can be properly investigated.

c) **Parental love and affection (the must have program):** Youngster needs unlimited, immediate and genuine form of love, care and insurance of his mom and father. By virtue of deficiency of such love and care the youngster may foster disappointment and discontent which would further prompt wrongdoing or what we may call delinquency. So parental love, care and assurance is extremely essential for the kid to prevent him from carrying out or doing the crime. Therefore, parental love, care and insurance is extremely fundamental for the youngster. This is the only strategy with 100% guarantee of improvement.

d) **Family management programs:** Family factors that may affect crime include the level of parental guidance, the way guardians discipline their children, parental disputes or breakups, criminal guardians or family relationships, and the status of parent-child relationships. Many studies have found that there is a close connection between lack of supervision and criminal activities, which seems to be the most important family impact on juvenile offenders. Therefore, there is a great need for a national family survey plan and parenting awareness of juvenile delinquency.

3) **Probation**

Probation is generally considered to be the first method of dealing with offenders and offenders accused of minor crimes. Probation can be a legal order, or it can be decided by the court carefully. Probation requires the offender to live a restrained and meaningful life while assuming financial responsibility. If these needs are not met, offenders may be placed in the organization. Sometimes, adopting offenders to foster homes is the ultimate strategy to keep young people out.

The dismissed treatment awaiting trial after the trial and in the organization changed from a rigorous exercise sergeant technique to a more psychological approach that focused on analysis and group therapy. Post-trial supervisors should strive to combine authority and compassion in the dual roles of law enforcement and social workers. This makes the post-trial supervisor's

role very boring, but the task is incredible. Regardless of the structure of the probation issue, research shows that probation is effective in most cases.

WHAT CAN BE THE SCOPE OF VERY YOUNG OFFENDERS?

The best method to prevent child delinquency was undeniably helping young people and their families from the beginning. The various state programs strive for premature mediation and government financing for local area units have allowed communities and autonomous groups to manage the problem of recent. There have been several projects that have tried to reduce this rate. Some are incredibly fruitful, while many others have an effect or without effect.

It is essential to decide the adequacy of different projects and perceive what works and what does not. During these lines, the best projects can remain executed and improved, while those who cannot interrupt work.

There are different types of projects right now. Those who are involved with the delinquent after the Freak conduct event, in general, will be less successful, since at that time the criminal behavior could be well-developed among children. The most profitable projects are those that mediate before the beginning of the criminal conduct and prevent anticipation programs. By participating in young people, he lives soon, after, bad conduct can decrease properly.

The prevention programs have decided the impact of the company in general, since they avoid that this crime occurs in any case. Furthermore, there are some anticipation programs that are more fruitful than others. Part of particularly effective anticipation programs is its vast nature.

Two projects that have both highlights: early intervention and meticulousness are domestic emergence projects and the beginning of the head. Both projects showed unimaginable results by focusing on explicit factors leading to a delinquent conduct. When these dangerous factors are reduced, the delinquent conduct is significantly less responsible for success. Taking into consideration everything, Juvenile justice Prevents programs, for example, family management, mental hygiene programs and early childhood brain recycling of programs are largely fruitful to dissuade errors for young people understood in the fact that they occur from get go in the child.

Although it is absolutely impossible to fully anticipate which children will act in criminal and criminal ways later, there are a many dangerous factors that have shown to be associated with these practices. Opening fatal substances, print challenges, a harmful and rude family are all

the dangerous factors identified with the poorer executive operation. This deficiency is then displayed for approximate behavior. The abuse or physical or potentially sexual exploitation are explicitly dangerous factors for murderous behavior. Similarly, it has been shown that in the initial phase; Withdrawal behavior is related to more serious results than the remaining behavior that occurs later, and therefore can be supported more in adulthood.

The ages of the curriculum vitae showing that the best indicator of the future past felony crime. Young people who show the constant problematic behavior will probably become criminals of young people, therefore, youth criminals probably become legitimate, aggressive or constantly adolescent criminals. The criminals of young people, than adolescents with a later onset of the crime, are a serious risk that the genuine criminals, rough and have chronic and futures of misconduct. Not all disruptive children will become transgressors, and not all child delinquents will be youth, violent or chronic criminals. However, most of the criminals of children, chronicles serious, violent and chronic have a history of problematic behavior that goes back to childhood.

The study that is collected in small criminals interviewed many areas, proved numerous unique researches and got a significant contribution from a study. The study group focused on the delinquent conduct of children aging from 7 to 12 years, in young problematic problems and carefully problematic and, taking into account the previous behavior from early years to adolescence. This coordinated application of significant experiences in the idea of the misconduct of the young man. The study of the study further recognized some significant danger factors that, if consolidated, can be identified with the beginning of the initial crime.

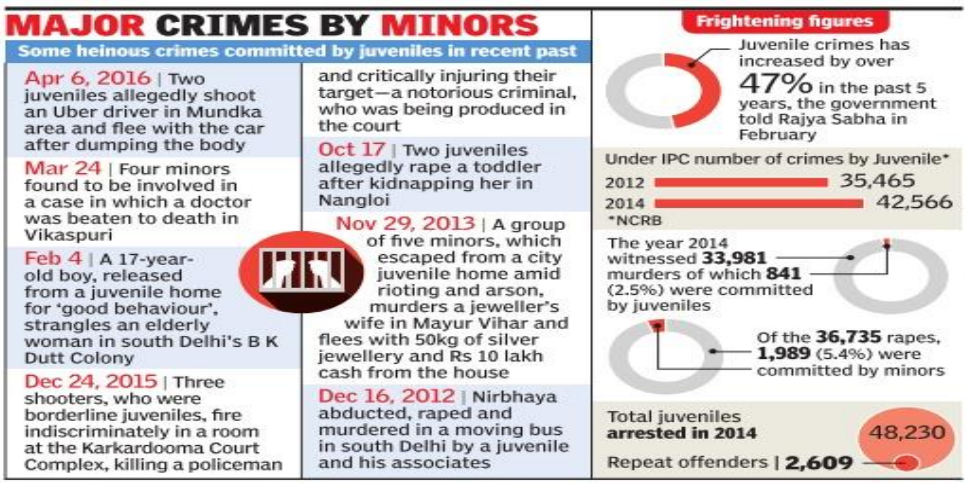
Keep all that apart from the behavior of the past is the behavior of the past. Children who show some problematic behavior will probably become children's criminals; therefore, young children are reasonable to become guilty holidays of genuine, brutal or continuous teenagers.

Current statistics on juvenile delinquency in India

- According to the latest data on juvenile delinquency, in India, one minor was arrested for raping a woman or girl at least every eight hours in 2019, and on average, more than three people were arrested for assaulting women every day. According to data released by the National Criminal Records Bureau (NCRB), a total of 2,750 teenagers were

arrested for rape, assault, and attempted rape in 2019. Among them, 1,383 and 1,327 were arrested for rape or assault, respectively.[272]

- The government's analysis of people arrested for rape and assault of women shows that most of them are in Madhya Pradesh, Maharashtra and Rajasthan they account for 58% of teenagers arrested for assault and 47% of teenagers arrested for beating and rape. Madhya Pradesh tops the list in both categories, with 295 arrests for rape and 348 arrests for assault, followed by Maharashtra (197 and 365).[273]
- According to statistics from the National Criminal Records Bureau (SCRB) of the State of Tamil Nadu (TN), most of the 2,949 adolescents imprisoned in the state for breaking the law in 2013, most lived with their parents or guardians at the time of the crime. The data shows that only 5% of juvenile offenders are homeless, which is contrary to the popular belief that most children who violate the rules do not have parents or older relatives to supervise them.[274]
- The number of juvenile crimes in the capital increased in 2016. From 1,671 in 2014 and 1,981 in 2015, this number has risen to 2,368 in 2016, making Delhi the nation's largest metropolitan area with a juvenile crime rate of 35.6%.[275]
- At the national level, most crimes against children are related to kidnapping and kidnapping (67.7%), followed by cases under the Child Protection from Sexual Offences Act (24.2%). Read IPC Article 376 (Rape).[276]



[272] Indpaedia "Juvenile delinquency in India" Indpaedia,http://indpaedia.com/ind/index.php/Juvenile_delinquency_in_India (last visited 6 August, 19:25)
[273] *Id*
[274] *Id*
[275] *Id*
[276] *Id*

WHAT ARE THE RECENT DEVELOPMENTS AND LAWS ON JUVENILE JUSTICE AND CRIME PREVENTION?

A. Brief Evolution of Juvenile Justice Legislation in India

After India gained self-government, India's youth justice strategy was organized around the arrangements recommended in the various articles of the Indian Constitution (Articles 15(3), 21, 24, 39(e) and (f), 45 and 47). India's Juvenile Justice Policy is also guided by various global conventions, such as the United Nations Convention on the Rights of the Child (CRC) and the Beijing Rules or the United Nations Standard Minimum Rules for Juvenile Justice. The Central Children's Act (1960) passed India's main law for the release and offending of children, which ruled out the detention of children under any circumstances. It also declared that the Juvenile Court and the State Support Agency are the two main institutions governing such children.

In 1986, the Indian Central Government passed a central law called the Juvenile Justice Act 1986. This is a social law designed to provide care, safety, treatment and rehabilitation for illegal and neglected youth. The mediation of youth issues was also reviewed. She set up juvenile courts for the wicked and youth welfare committees for non-criminal or ignorant youths.

The juvenile justice law (care and protection of children) was approved in 2000. He was welcomed in a legitimate uniform structure of justice throughout the nation. The main objective of the new law was to ensure that the delinquent of minors (up to 18) is not presented. The act also made agreements for the foundation and the machinery for the care, safety and recovery of children.

The event was again revised in 2006 and then in 2010. The law on youth justice, as well as adapting to consideration, warranty, restoration and improvement needs, moreover, the adolescent teenage system. You want the Youth Justice Council (Previous Court of the Court of the Court) by adopting a multidisciplinary strategy to start investigations. Under the act, the Child Welfare Committee was established to take into account the needs of young people. Alarm clock, the number of expansion of instances of infringements of children in recent years in progress and the terrible episode of "Delhi Gang Rack Case" has limited the officials to convince the law. The significant inconvenience of the law was that it contains legal provisions without preparation and the least deceased system was the

significant explanation to avoid minor crimes in India. The law was soon replaced by the juvenile justice law (attention and protection), 2015. New Act managing Juvenile wrongdoing came in 2015.

B. Juvenile Justice Act, 2015

The Juvenile Courts Act of 2015 replaced the Juvenile Courts Act of 2000 as a stronger and stronger justice framework is needed, focusing on methods of deterrence and reform. The treatment of minors should be different from that of adults; there has been conflict in parliament and the belief that minors should be given more room for change or reorganization or improvement. This is a conceivable framework in a very fair situation. The new Youth Courts Act (Welfare and Protection of Children) of 2015 aims in this way to determine and treat issues in a youth-friendly manner.

C. Some salient features are as follows:

Section 2 (12) of the Juvenile Justice (Care and Protection of Children) Act of 2015 defines a child, which means that a child is a person under the age of 18; is classified as "children in need of care and protection" and Section 2 (13) of the Juvenile Justice (Care and Protection of Children) Act 2015 states that "children in conflict" have laws."[277]

There was a clear distinction made compared to the facets of the crimes, which means that this was that the categories called crimes like atrocious, serious and small. There have been specific to you in relation to young people who have between 1618 years, if any kind of crime is committed by them, after the successful reading of their mental capacity, they can be judged as adults.

Introduction of Juvenile courts, which means that the special courts have been established that only youth crimes, such as the NDP courts, the courts dealing with a POCSO, etc.

With the introduction of the law of 2015, the term "child in need of care and protection" was expanded to a further level, taking into account many of the points mentioned in Section 2(14), of juvenile justice (child care and protection Act), 2015.

[277] iPleaders" Juvenile Justice System and Laws in India - A Detailed study" April 24, 2018 blog ipleaders https://blog.ipleaders.in/juvenile-justice-system-india/ (last visited 6 August, 19:30)

D. Case laws

The role of the courts is very important in ensuring the rights of people, including children, in society. The Supreme Court has done an excellent job of caring for and protecting children. Some highlights that show the judicial authority's position on child welfare should be that the Supreme Court in the **Bachpan Bachao Andolan v. Federation of India** has ordered that special attention should be paid to the following disasters through JMB Lokurand Deepak Gupta's statement. The Supreme Court ordered the national civil protection agency to take immediate action to take care of children, especially in the event of a disaster.

In the case of child re-exploitation in orphanages in Tamil Nadu and the Commonwealth of India by the Supreme Court, child care and protection legislation should benefit all types of children. God says that the definition of "vulnerable children" in the Juvenile Justice Act 2015 should be as detailed as possible. The court also issued guidelines to protect children's rights.

In another case, **Gaurav Jain v. Indian Trade Union**, the Supreme Court stated that children have the right to equal opportunities to care and to social rehabilitation and protection.

In **Laxmikant Pande v State**, the court stated that a child has the right to love and also the right to moral and material protection.

In **Kakoo v. Andhra Pradesh**, a 13-year-old boy raped a two-year-old girl. Judge Sakarya noted that long prison sentences will definitely turn juvenile offenders into criminals, and stressed the need for a more humanitarian approach to juvenile offenders' criminal development.

In **Raisul v UP State,** the Supreme Court stated that no person under the age of 18 should be sentenced to death. In the case of **Rahul Mishra v. Madhya Pradesh state**, it was found that Facie, the chief juvenile offender, appeared guilty but, due to his age, is in need of special protection under Section 12 of the law. In **Subramanian, Swamy v. Raju** the member of the juvenile justice committee. The gang rape case in Delhi opened in December 2012. In this case, one of the defendants was a minor. After committing such a heinous crime, he was not treated like an adult. He was dealt with by the juvenile justice commission and three years later sent to a special society, which is an irony of our law. In the **Mohammed Fairouz Bola v. State case,** the court found that bail for juveniles was not grace, but rather the approval of people who were obviously juveniles. The court further pointed out that Section 12 of the law is

mandatory unless there are compelling reasons to avoid it, so the above case study shows the nature of the judicial process in the field of juvenile justice in India.

This shows that the Indian judiciary has begun to become an ally of individual citizens and that the Indian judiciary is becoming Anne's partner in promoting better juvenile justice in the country. Within the framework of the constitution and legislation on juvenile justice, the judiciary actively strives for the welfare of the country's children. This process is not intended to torture them from the chain for fear of punishment, but rather to help and guide them to get rid of youth politics quickly and gradually develop into responsible and healthy adult citizens for Indian society in the future.

CONCLUSION

Misuse of 'JUVENILES' has been a long-standing practice. These criminals pass through a large amount of improper use that differs from nature as physical, sexual or mental or as a mix of all of them. Abuse has a lasting impact and significant about the life of a young man. The question of the undue useful of young people be genuine and is common to be resolved first. Furthermore, the motivation behind the reason why this was developed is that the public influenced children in a way Negative and in the public there are factors, for example, familiar impact, social climate, mental crisis and sexual abuse. This creates in young people; under blur, social atmosphere, mental confusion and sexual abuse. This creates in the low confidence of young people and passes through mental wounds, which corresponds to a delinquent behaviour.

What should be done with the subject that emerges in front of us? We cannot eliminate this danger; however, there are answers to maintain control over the subject of youth crime. For the biggest advantage of the crime, the individual must be restored as just over time, as it could be truly expected and coordinated in the public. In addition, the State must guarantee the privileges of these children and to invent the reformation and ingrain techniques in the estimates that can socially lift and give them a new discovery so they can be taken as a useful public.

The Juvenile Justice Act of 2015 can be seen as an exceptionally reformist step of the Indian government to keep pace with changes in patterns of adolescent crimes. The bold under the law of youth offender's treatment has pleaded guilty to having committed the crime as adults,

subject to the observations of the Council of youth justice. The Justice Verma Committee has been pronounced against the reduction of the age of children in conflict with the law. E 'was noted in the report that "any attempt to reduce the age of youth, or exclude some children from the scope of Juvenile Justice (Care and Protection of Children) since 2000, based on the nature of the violation and age, you will violate guarantees of the Constitution and international instruments, the **United Nations Convention on the rights of the child** (UNCRC)"

In any case, India's Supreme Court stood firm against the ideas and warnings from the Commission. It was claimed that the age of 18 was fixed in the light of the main idea of psychologists who young people or adolescents up to this age are flexible and can be transformed through recovery and restoration strategies. Then he argued that putting them with adult criminals that tells them in the universe of bad actions and convert them to hard core criminals, Indian courts remind this reality by administering the guilty parts that are not routine. Contractors would prefer not to disturb the prison with the appeals of the law.

In any case, when the most recent models are sectioned in the bad behavior of adolescents in India, as regards the example of the age and nature of the crimes presented, we apparently need to investigate and modify our teenage justice strategy. In India, it is demonstrated by the irregularity models that the current laws (before 2016) have not finished being an impediment. The topic deteriorates without certain adults on paper from the responsible guards to give them and help them separate the data they arrive through different sources.

Also. with high speed of industrialization and globalization, control of restriction and parenting control previously suitable to prevent people from sending crimes have become incapable. The essential socialization that worked through meetings such as the family, Peer meetings, the ties of the usual area and neighbouring family circles become ineffective in Indian culture. This led to introduce models in juvenile delinquency. It should be remembered that the legal subsystem is a piece of the largest social framework. Any changes overall greater, that is, the company requires changes in the constituent parts or smaller secondary systems. Moreover, when the changes are happening in the public in general at high speed, the general set of the laws must enter a state of harmony with the general public. Justice Juden Law (care and protection) 2015 brought these progressions.

ROAD MAP OF EVOLUTION AND DEVELOPMENT OF COMPETITION LAW: INDIA

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ABSTRACT

The Competition law & policy forms an inherent part of developing world to not only protect their domestic markets but also compete fairly and effectively in the international market. These policies have been very instrumental in fostering sustainable development as well as restricting anti-competitive behaviour which inhibits economic growth. The implementation of competition law must be in coherence with the level of overall development in the country since there is no one legal framework which would suit all the jurisdictions.

The competition policy of India creates an active and viable environment for the industries to compete domestically as well as internationally with an aim to promote economic development using advanced technologies and an adequate capital. Hence the government must play an active role in promoting economic liberalization by focusing on various policies such as foreign direct investment, licensing of technology, intellectual property rights and eliminating trade barriers rather than just following the conventional principles of the competition law.

The competition policy's main concern is that the corporations with market powers are not able to harm the interests of consumer by anti-competitive practices. Although the competition law and competition policy goes hand in hand yet they can be distinguished.

This article has the intention to portrait the evolution of the competition law in India. Why do we need such kind of law in India, what were the major reasons to bring MRTP and the road forward to Competition act?

Keywords: *Monopolistic practices, Restrictive practices, Unfair Trade practices, Competition Law, India, MRTP act 1969, Competition act 2002.*

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INTRODUCTION

A vibrant competition law framework is vital for any economy as it helps regulating a fair market, devoid of any anti-competitive practices that cause harm to costumers as well as the business. Competition law plays a crucial role in maintaining balance in the markets.

India adopted its 1st competition regulating law way back in 1969 in the form of Monopolies and Restrictive Trade Practice Act,1969, also known as MRTP act. It was framed on the grounds of socialistic ideas and philosophies, which is an essential element of directive principle of the state policy (DPSP) and its primary objective was to curb and restrict formation of monopolies in market because it was considered that any such concentration of power in free market will hamper the overall economic growth of the country.

The decade of 80s and 90s has been a very crucial decade for India, specifically due to the establishment of new economic policies and unfolding the Indian markets to the whole world which progressively widened the space for market forces and reduced the role of Indian government in business and other economic sectors. Because of such dynamic changes, a need for new law was felt to deal with the problem of unfair competition because the monopolies and restrictive trade practices act, 1969 (MRTP act) became obsolete in certain respect and that now there was a urgent need to shift focus from curbing monopolies to promoting competition in Indian market.

In 1999, a high-level committee was appointed to suggest a modern competition law in compliance with international developments taken place in 80s and 90s specially the new economic policies of 1991 which brought about Liberalisation, Privatisation and Globalisation (LPG) of the Indian economy.

The committee recommended to pass a new law for competition called the Competition Act and also recommended to establishment a new competition authority (The Competition Commission Of India) along with the repealing of the (MRTP) Monopolies And Restrictive Trade Practice Act, 1969 and winding up the MRTP monopolies and restrictive trade practice commission.

The Competition Act came into existence in January 2003 and the commission for the same was established in October 2003. The Competition Act states that it shall be the duty of commission to ensure freedom of trade carried on by other participants, to promote and sustain

competition and protect the interests of consumer as well as to eliminate the practices having adverse effect on competition prevailing in the Indian market.

HISTORY OF COMPETITION LAW IN INDIA

The competition law aims to prevent the anti-competitive practices with minimal government interference and it also prevents artificial entry barriers, facilitates market access and compliments other competition promoting activities.

Since attaining independence in 1947 India adopted and followed policies comprising what are known as command-and-control laws, rules, regulations and executive orders. The competition law of India namely the MRTP Act was one such law. In 1991, the widespread economic and the prime focus of the same was to have a more free market.

The post-independence period had witnessed a certain level of industrialization amongst the class of people who managed to attain an entrepreneurial rank despite the misery and havoc caused by the colonial rule. The country wholly adopted the Indian industrial policy after the independence, in order to protect and promote the economic development in India. The new policy clearly defined the role of the state in commercial development.

Constitutional provisions that instigated this effort

In Constitution of India , the Article 38 and 39 which are the part of DPSP and directs that, the state shall endeavour to promote the welfare of the people by securing and protecting as effectively as it may social order during which justice, social, economic, and political shall inform all the institutions of the national life and the state shall in particular directs its policy towards securing that the ownership and control of material resources of the community are so distributed as the best to subserve the common good.[278] Moreover, that the operation of the economic don't result in the concentration of the economic power/wealth and means of production to the common detriment.

[278] https://legislative.gov.in/sites/default/files/COI_1.pdf, Last visited on 10th October, 2020;(11:30 a.m.)

SHAPING MONOPOLIES AND RESTRICTRIVE TRADE PRACTICES (MRTP) ACT, 1969

Three studies primarily influenced the shaping of the MRTP Act.

1. **Hazari Committee Report on Industrial Licensing Procedure**. This was undertaken in 1955. This study stated that the states have been biased in granting industrial licenses only to the wealthy and influential entrepreneurs and which resulted in an uneven growth of industries.
2. **Mahalanobois Committee Report on Distribution and Levels of Income**. This was undertaken in 1964. The second study was by a committee set up in October 1960 under the supervision of Professor Mahalanobois to study the distribution of income and levels of income in the country.

   The committee presented the report in February 1964. The committee in its report noted that the top 10% of the population of India cornered as much as 40% of the income. The committee further noted in the report that the big business houses were emerging because of the planned economy model and it was practiced by the government in the country and suggested the need to collect comprehensive information relating to the various aspects of concentration of economic power.

   In conclusion of the report the committee mentioned that the economic model was planned in a way that it supported the successful industrialists and a handful of influential groups control a huge chunk of the income.
3. **Monopolies Inquiry Commission Report of Das Gupta**. This was undertaken in 1965 and it was enjoined to inquire the extent and effects of concentration of economic power in private hands and the prevalence of monopolistic and restrictive trade practices in important sectors of economic activity other than the agriculture. The monopolies inquiry commission presented its report in October 1965 and noting therein that there was concentration of economic power in the form of product-wise and industry-wise concentration. The commission also noted that a few industrial houses were controlling a large number of companies and there existed in the country large-scale restrictive and monopolistic trade practices as a corollary to it's finding the MIC drafted a bill to provide for the operation of the economic system so as not to result in the concentration of wealth.

The bill provided for the control of monopolies and prohibition of the monopolistic and restrictive trade practices (MRTP) went prejudicial to public interest. According to the study, the economic power was in the hands of a few commercial houses and restrictive and monopolistic trade practices were widespread.

SANCTION OF MONOPOLIES AND RESTRICTRIVE TRADE PRACTICES (MRTP) ACT, 1969

The bill drafted by the MIC and amended by the committee of the Parliament, became the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969 and it was enforced from June 01, 1970.The MRTP act drew its inspiration from the mandate enshrined in the directive principles mentioned part IV of the Indian constitution which aims at securing social justice with economic growth. The preamble of the MRTP act states that the statute is enacted to provide that the operation of the economic system doesn't result in the concentration of the economic power/wealth to the common detriment for the control of monopolies for the prohibition of monopolistic and restrictive trade practices (MRTP) and format is connected there with or incidental there too.

The regulatory provisions in the monopolistic and restrictive trade practices (MRTP) Act applied to almost each and every area of business may it be production, distribution, pricing, investment, purchasing, packaging, advertising, sales, promotion, mergers, and amalgamation and take-over of the undertakings (provisions relating to mergers, amalgamations and take-overs were deleted in the MRTP Act by the 1991 amendments to it)

This sought to afford protection and support to the consuming public by reducing if not eliminating monopolistic restrictive and unfair trade practices (UTP) from the market.

The main objectives of the monopolistic and restrictive trade practices (MRTP) Act were to prevent and control the monopolies, prohibit the monopolistic trade practices MTP, restrictive trade practices RTP and unfair trade practices.

The monopolistic trade practice is a result of the unreasonable pricing limiting or restricting competition or no free market limiting development technical and economic development by limiting production and supply making unreasonable profits.

The restrictive trade practices is a result of refusal to deal with consumers selective dealings discrimination and pricing schemes restriction of area tying up sales for instance refusing to

deal with certain class of consumers in relation to goods and services and offering discriminatory prices to different consumers.

The unfair trade practice was incorporated in the statute after the act was amended in 1984. This trade practice is a result of hording and destruction of goods promoting false and misleading promotion, contest, bargain, sales, misleading advertisements and false representation, free riding over someone else's reputation for instance the practice of making any oral or written statement which suggests that the renovated re-polished or old goods are new.

PROVISIONS UNDER THE MRTP ACT RELATING TO MONOPOLISTIC, RESTRICTIVE AND UNFAIR TRADE PRACTICES

- Under section 10 of MRTP Act: The MRTP commission is permitted to investigate into the matters related to monopolistic or restrictive trade practices on being referred by the central government.
- The unfair trade practices have been let down in the section 36 of the MRTP Act.
- The act also lays down a provision for the appointment of a director general of investigation and registration to facilitate the inquires carried out by the MRTP Commission as well as maintain records in relation to the restrictive trade practices.
  - The MRTP Commission received complaints from the consumers trade associations as well as individuals either directly or through different departments of the government.
  - The director genal of the investigation and registration, investigated a case preliminarily when a consumer files a complaint, he was then required to submit his findings to MRTP commission for further investigation under the relevant provisions of the MRTP Act, 1969.

THE PROCESS OF INVESTIGATION CARRIED OUT BY MRTP IN CASES OF THE COMPLAINTS AS THEY ARE FILED BY THE CONSUMERS

1. An individual consumer, a registered consumer or a trade association files a complaint
2. The Director General of investigation and registration carries out a preliminary investigation for finding the facts in a particular case.

3. If no prima facie case is established, then it gets dismissed but if the facts favour the case, then an action is taken against the complaint.
4. The commission takes strict action against the accused party for carrying out the unfair trade practices and restricts them by granting temporary injunction.
5. Once the final order is passed, the complainant may also be compensated for his loss.

AMENDMENTS TO THE MRTP ACT

- The 1984 Amendment

  The MRTP act was amended in the year 1984, as there were no provisions to protect the consumers against the unfair trade practices such as misleading advertisements which were conducted by the industries. The Sachar committee in 1978 had recommended that there must be a separate provision under the act enumerating different unfair trade practices so that it becomes convenient for the producers, suppliers and consumers to identify them and take action against them.

- The 1991 Amendment

  The MRTP act has been framed in manner which is effectively able to deal with different type of irregularities prevalent in the market. Before 1991, the MRTP act effectively regulated the functioning and growth of the large size companies with an overall worth of more than 100 crores. It supported them in seeking approvals from the government when establishing new subsidiaries maintenance of existing companies merges and acquisitions etc. The provisions which facilitated the approvals for the establishment of new subsidiaries expansion and maintenance of the existing companies from the government concentration of wealth and power of the monopoly companies and mergers and acquisitions were removed from the act. After this amendment the major emphasis was led on the identifying of monopolistic restrictive and unfair trade practices in order to protect the interest of the registered consumers producers, suppliers and industries of every size and rank.

LANDMARK DECISIONS UNDER MRTP ACT

- BATA FOOTWEAR (1975)[279]

  In this case BATA had a dominant position in the footwear market in India. It was actively involved in manufacturing of different kinds of footwear. The manufacturers essentially involved cobblers and other small-scale manufacturers, the agreements between the parties the small-scale traders to only buy raw materials and the soles from the parties and dealers approved by BATA. After analysing the agreements in question, the MRTP commission took the view that the acts committed by BATA were restrictive and monopolistic in the light of the provisions of the MRTP Act, 1969.

  According to the commission, such restrictive trade practices were detrimental to public trust agreement also stipulated that they use only those moles that were sold or supported by BATA

- MORDEN FOOD INDUSTRIES (1996)[280]

  In this case the MRTP commission had to deal with acomplaint of predatory pricing Morden food industries was engaged in the production of bread and bakery products. It was selling breads at lower prices than the cost of production so as to retain a dominant position in the market. It intended to eliminate all its competitors. Its ultimate motive was to increase prices after attaining a dominant position in the market. Pricing below marginal cost with an intention to eliminate competition is a monopolistic trade practice.

ROAD FROM MRTP ACT TO COMPETITION ACT, 2002

Many difficulties were faces while implementing the MRTP act since its birth in 1969 in relation to the provisions which were considered generic, obsolete and insufficient in dealing with several other offending trade practices.

- LIMITATION OF MRTP ACT

  There were several rulings of the supreme court as well as the MRTP commission which expressed the need for stronger provisions.

[279] Registrar Of Restrictive Trade vs Bata India Ltd.
[280] *Modern Food Industries Ltd. case*, 1996 3 Comp LJ 154, New Delhi, 1996.

Different cases that came under the MRTP act revealed the inadequacy of the legislation with regard to practices like bid rigging, cartels, collusions, and price fixing, predatory pricing and abuse of dominance as well.

Many lawmakers and scholars argued that even though there were general provisions against restrictive and monopolistic trade practices which may also cover all the other anti-competitive practices there was a strong need for identifying specific anti-competitive behaviours in order to protect the consumers and punish the wrong doers in an effective manner another important factor which changed the thought process of government mainly after 1991 economic reforms was the marked changes in the international and domestic trade. A stronger and an adequate law was needed to cope up with the progressive changes on the economic and trade front and this gave birth to the competition act, 2002 which attempts to promote free and fair competition in India.

- BIRTH OF COMPETITION ACT, 2002

  As aforesaid that with the change in perspective of true competition in the globalized economy it became crucial for India to adopt a competition policy system wherein the objective is shifted from preventing monopoly to one that promotes free competition amongst the market players. From a broad perspective, the changes could also be viewed as an attempt from the side of Indian legislature to modify the Indian Competition laws to be in tune with that of other leading jurisdictions of the world.
  As mentioned earlier, it was also extremely important to remove prevailing trade barriers and restrictions hindering the competition in India in the liberalized era.

  The result of this was new bill was introduced in the parliament, the competition bill was passed by the parliament in 2001and it became the competition act, 2002. It received the assent of the president of India on January 13, 2003 and it was published in the gazette of India on January 14, 2003. The competition act was partially enforced on 20th May 2009 when the provisions relating to the anti-competitive agreements and abuse of dominant positions were notified.
  In May 2011, the combination regulations were also notified and became operative from June 01, 2011.

DIFFERENCE BETWEEN MRTP ACT, 1969 AND COMPETITION ACT, 2002

	MRTP ACT,1969	COMPETITION ACT, 2002
BASE	This act was based on pre-1991 control regimes	This was based on the post-1991 reforms
ORIENTATION	This act was procedure oriented.	This was result oriented.
OFFENDING TRADE PRACTICES	The offending trade practices such as cartels and bid-rigging are not explicitly mentioned in the act.	In this act the offending trade practices were defined explicitly.
UNFAIR TRADE PRACTICES	Unfair trade practices were covered in this act	In this act the unfair trade practices were removed.
APPROACH	Rule of Law Approach.	Rule of Reason Approach to deal with the cases.
COMPETITION ADVOCACY	No competition advocacy.	High importance given to the competition advocacy.

COMPETITION ACT, 2002

The competition act, 2002 in its preamble states the following objectives:

1. Prevent practices having adverse effect on competition.
2. Promote and Sustain competition in the market protect
3. Protect the interest of the consumers
4. Ensure the freedom oh trade carried out by the other participants in the market.

The act provided for the established of the competition commission of India the CCI and it started its operation on October 14, 2003. The competition commission of India is a quasi-judicial party the commission inquire into alleged infringement of the provisions of the act either on its own or on the receipt of information by any person or reference made to it by the central government, state government or statutory authority.

The orders of the CCI passed under the specific sections mentioned under section 53(a) of the act can be appealed before the Competition Appellate Tribunal compact and the orders of the compact can be further appealed in the supreme court of India.

The competition act, 2002 covers the four major aspects of the competition law and as mentioned earlier the CCI begin to execute begin to execute them in different phases.

The four aspects are:

1. Anti-competitive agreements covered in section 3
2. Abuse of dominance mentioned under the section 4 of the act
3. Combination regulations mergers and alliances under the section 5 and 6 respectively
4. Competition advocacy dealt in section 49 of the act

COMPONENTS OF THE COMPETITION ACT, 2002

PHASE 1

In the first phase, the CCI focused exclusively on competition advocacy the commission took extensive advocacy measures by creating awareness and imparting training about the competition issues in many different forums.

PHASE 2

In phase two, the CCI started undertaking education works relating to anti-competitive agreements and abuse of the dominance. The anti-competitive agreements imply any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services which causes or is likely to cause an appreciable adverse effect on competition within India.

Abuse of dominant position refers to situation wherein any enterprise or group inert alia imposes unfair or discriminatory conditions or price in purchase of goods or services limits or restricts production of goods or provisions of services.

PHASE 3

The CCI started enforcing provisions relating to combinations (mergers, acquisitions etc.)

CASE LAW

Following case law waas inquired by the court with respect to the competition law.

1. Belaire owner's association v DLF (2001)

   CCI issued an order against DLF Ltd. Imposing a penalty of $124 million at the rate of 7% of the average turnover of the company.

   DLF ltd. A leading real estate company was found abusing its dominant position in the market and imposing an unfair condition in its agreement with their customers. The CCI found that the DLF unilaterally decided to increase the size of building from 19 floors to 29 without taking any approval and delayed its completion to the extent where buyers did not obtain the possession of their flats long after the contract mentioned.

   The competition tribunal had stayed the CCI's penalty order in BELAIRE CASE. Furthermore, it directed DLF to give an undertaking to deposit the entire fine with 9% interest in case the company lost the case. The ruling conveyed that the consumer welfare might be a significant determinant in future abuse of dominance cases. The ruling also initiated the idea government planning in real estate as a regulator to safeguard the interest of the consumers.

   The decision was appealed before the COMPAT.

AMENDMENTS

- 2007: the major changes brought in by this amendment include the designation of the CCI. It was initially proposed to function as a judicial body, but could now act as an expert body in an advisory capacity, to prevent and regulate anti-competitive practices.
- 2009: the act was further amended in 2009 and the competition (amendment) act 2009 amendment included the transfer of all the pending cases under MRTP and cases under Monopolies Act to the competition appellate tribunal.
- 2012: the competition act was amended in 2012 changing the definition of "turnover", "groups", reducing the overall time limit of finalization of combination from 210 days to 180 days and insertion of a new section 5A enabling the central government to lay down, in consultation with the competition commission of India, different households for any class or classes of enterprises for the purpose of examination acquisitions, mergers and amalgamations by the commission.

CONCLUSION

Competition law and policy in India is emerging as a means to enhance economic development and competition as well as protection of consumers in India. The Competition Act, 2002 was put together with intent to address the shortcomings in the Monopolies and Restrictive Trade Practices Act, 1969 in the light of the changed economic circumstances in the country. It aims to prevent discrimination and nourish competition in the Indian market so as to ensure free and fair trade by all the players in the market. Different decisions from the competition commission and courts have considerably changed the jurisprudence on this subject within a very span of time.

SCIENTIFIC MECHANISMS IN CRIME INVESTIGATION: A STUDY

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ABSTRACT

This research paper aims at highlighting the application of scientific mechanisms or measures in conducting crime investigation. The elements of the scientific investigation like forensic medicine, scientific laboratories, digital forensics, criminal investigation and other scientific techniques are discussed. The legal provisions in India dealing with forensic science although not explicitly, like certain sections of the Indian Evidence Act, 1872 and the Criminal Procedure Code, 1973 are described. Consonance with constitution of some methods of scientific investigation of crimes like handwriting and signature identification, fingerprint, impressions of thumb, palm and foot ascertainment tests, narco analysis tests are examined. The constitutional validity is analyzed in regards to article 20(3) of the constitution. The issues and problems existing in the sector of forensic science in reference to research, training, education, laboratories, etc. are discussed. Various measures that could be employed for strengthening this field and upgrading its contribution in the crime investigation are also analyzed.

Keywords: *Scientific measures, Investigation, Narco, Forensic,Crime*

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INTRODUCTION

Science plays a significant role in detection and investigation of criminal activities. Three categories could be framed to explain the contribution of science in investigation process. This includes forensic science, scientific laboratories, forensic medicine and criminal investigation, digital forensics and several other scientific techniques that have the objective of establishing evidence to deal with the legal issues.[281] Application of scientific methods in a structured manner is mainly done in investigation of crimes like murder or crimes that are committed against person. It includes formulation of an appropriate plan, development and construction of a suitable approach to handle the problem in question and then final interpretation and analysis of the conclusion accurately. In certain incidents, it becomes important to devise a chain of evidence to clarify the results obtained from the investigation.[282]

Evolution of scientific knowledge promotes the law enforcement institutions to apply the scientific methods in investigation. These instruments enable the proper scrutiny of the clues or traces found at the crime scene and the relevant proofs found with the persons involved in the same. A scientific report is prepared after the scrutiny of all these evidences. This report further assists the police in conducting investigations and later can be produced before the courts. Thus, scientific methods assist courts in taking decisions.[283] The evolution of scientific way of investigation is different for different nations. [284]

CONSTITUENTS OF SCIENTIFIC INVESTIGATION

a. Scientific Laboratories

Forensic science includes scientific laboratories to conduct scientific investigation. Inspection of the biological samples taken, human tissues and body fluids is done. Such samples are taken in several cases like that of poisoning, in the cases that involve the use of drugs and alcohol, etc. The officials of the laboratories are working in independent capacity of the police

[281] Francis E. Camps, *Science and Crime Detection*, 118 JOURNAL OF THE ROYAL SOCIETY OF ARTS 200, 200-210 (1970), http://www.jstor.org/stable/41370467, Sherry L. Xie, *Building Foundations for Digital Records Forensics: A Comparative Study of the Concept of Reproduction in Digital Records Management and Digital Forensics*, 74 THE AMERICAN ARCHIVIST 576, 576-599 (2011), http://www.jstor.org/stable/23079051
[282] J. B. Firth, *Forensic Science*, 93 JOURNAL OF THE ROYAL SOCIETY OF ARTS 228, 228-244 (1945), http://www.jstor.org/stable/41361975
[283] Alexander Joseph, *Scientific Instrumentation in Criminal Investigation*, 36 THE SCIENCE TEACHER 38, 38-42 (1969), http://www.jstor.org/stable/24152502
[284] Firth, *supra* note 2

department. Hence, these scientific investigators are impartial and give report which is not under the influence of police and therefore, have the authority to relieve the accused. [285]

Generally, police officers who have got the relevant training, select, collect, mark and pack the suitable material from the crime scene. The staff of the laboratories advice the crime scene officers in this regard. New techniques have been developed to scrutinize the stains of blood, skin, fluids, tissues, etc. under different type of conditions. The aim behind evolution of the new scientific methods and connection of these scientific techniques with the law enforcement framework is to assure that the resulting evidence would be productive. [286]

b. Forensic Medicine

Usually, two types of doctors play an essential part in scientific investigation. A police surgeon who examines the bodies of those people who die due to abnormal reasons or die through application of violence. They also examine the accused when they are charged for sexual offences or conduct of violent activities to ascertain whether they are required to be detained or not. Blood samples are also examined. Forensic pathologists are another kind of doctors who execute the autopsy of the bodies in post mortem rooms. This includes the use of X- Ray and photographic provisions. Fields like pathology, biology, physics, chemistry, metallurgy, firearms, pharmaceuticals, telecommunication, etc., are also taken into account under the scientific investigation. These fields are applied in coordination with the forensic science equipment and laboratories.[287]

c. Criminal Investigation

Police officers have the competence of conducting the investigation of crime. They have the man-power, expertise to carry out interrogations, connections with other police departments, team cooperation, etc. The scientific methods assist the investigation being conducted by the police officers. Coordination between the forensic scientists and the police officers allows handling the crime investigation in an efficient manner. The approach of the investigation being conducted by the police must be in reference to the findings in the autopsy and to the results obtained by the forensic laboratories. [288]

[285] Camps, *supra* note 1
[286] *Ibid*
[287] Camps, *supra* note 1
[288] *Ibid*

The interpretation and analysis should be done in an efficient manner by the forensic scientists so that the results prove to be constructive for the investigation. Efforts should be made to find accurate and speedy results through the means of the scientific methods. The scientific investigators should be an essential part of the police team carrying out the investigation. Hence, scientific methods provide great aid in finding the evidences and in the investigation process.[289]

d. Digital Forensics

Digital Forensic is a part of the forensic science. Digital forensics attempt to probe into the digital or electronic devices/ instruments and digital form of information that is generated by or stored into such devices. [290]

e. **Other Scientific Instruments**

The field of scientific methods is continuously widening. The range of forensic science is increasing gradually. Several technologies have developed in the contemporary times that is contributing in carrying out scientific investigation. Some of these are DNA tests, fingerprint technology,[291] handwriting identification, hair comparison[292], facial recognition or reconstruction, scanning electron microscopy, alternative light photography, LA-ICP-MS, etc.[293]

LEGAL PROVISIONS IN INDIA WITH REGARDS TO SCIENTIFIC INVESTIGATION

a. Indian Evidence Act, 1872

The Indian Evidence Act, 1872 (now would be mentioned as IEA, 1872) does not clearly deals with the position of the forensic or scientific evidences in the crime investigation and establishment of the same. However, certain sections deal with the status of such scientific techniques in the investigation.

[289] *Ibid*
[290] Xie, *supra* note 1
[291] B. Fakiha, *Technology in Forensic Science*, 7 THE OPEN ACCESS JOURNAL OF SCIENCE AND TECHNOLOGY 1, 1-10 (2019), doi:10.11131/2017/101258
[292] D. Michael Risinger, *The Nas/Nrc Report on Forensic Science: A Glass Nine-Tenths Full (This is About the Other Tenth)*, 50 JURIMETRICS 21, 21-34 (2009), http://www.jstor.org/stable/41550024
[293] Fakiha, *supra* note 11

Section 45 of the IEA, 1872 specifies that when the court is required to devise a view on certain matter that involves the questions of science or identification of the handwriting or fingerprints then the viewpoint of the expert who is a person possessing special skills in the field of science or in identification of handwriting or fingerprints on the question raised would be accounted as a relevant fact.[294]

Section 45A of IEA prescribes that if in a proceeding, there is a requirement for the court to frame a view on any point that is connected with any information that is send out or stored in any computer resource or in any digital or electronic form, the view of the Examiner of Electronic Evidence as per section 79A of the Information Technology Act, 2000 would be considered as a relevant fact. Such view of the examiner would be accounted as a viewpoint of an expert.[295]

If there is a requisite that a view needs to be formulated by the court in regards to the signature of a person that is in digital form then the stance of the official establishment that has certified such signature would be regarded as a relevant fact as delineated in section 47A of the IEA, 1872. [296]

Section 65B of the act, prescribes some requirements that should be fulfilled so that the electronic records could be admitted as a proof in the court. It is stated that the electronic records holding any information could be printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer and if the conditions mentioned in regards to the computer and information are found to be fulfilled then, such information would be accounted as admissible in the court without requiring further proof.[297]

Section 67 of the act states that the handwriting or signature that is claimed to be of a person on a document is required to be proved as that person's handwriting or signature. Section 67A of the act specifies that if it is argued that on an electronic record, electronic signature of a subscriber is attached then it must be proved that the electronic signature in question is that of the acclaimed subscriber. [298]

The court is empowered to compare the writing, seal or signature in question with the writing, seal or signature that is proved as per the satisfaction of the court to be of the person upon

[294] The Indian Evidence Act, 1872, § 45, No. 1, Acts of Parliament, 1872 (India)
[295] *Ibid.*, § 45A
[296] *Ibid.*, § 47A
[297] The Indian Evidence Act, 1872, § 65B, No. 1, Acts of Parliament, 1872 (India)
[298] *Ibid.*, § 67

whom it is alleged that the writing, seal or signature in question is his writing, seal or signature, to ascertain whether such claim is right or not. This method is applicable when there is a question to identify whether the finger impressions are of the alleged person or not. The court can ask a person who is attending the court to write down some words or figures to compare the same with those words or figures that are claimed to be written by the person so asked, in accordance to section 73 of the IEA, 1872[299]

Court can instruct to verify whether the digital signature that are claimed to be of certain person is his digital signature or not. This verification can be done by furnishing the Digital Signature Certificate by that person or the Controller or the Certifying Authority or by applying the public key given in the Digital Signature Certificate by any person for verification of such digital signature as specified in section 73A of the IEA, 1872.[300]

b. The Code of Criminal Procedure (CrPC), 1973

Some provisions specified in CrPC, 1973 are connected with the scientific methods of investigation of crime. These are-:

Section 53(1) of CrPC, 1973 allows for examination of the person alleged and arrested to have committed such offence which is of the nature or committed under such conditions that reasonable basis could be established as to form the opinion that examination of that person could be accounted as evidence for the commission of the alleged offence. This inspection by a registered medical practitioner would be considered as per law, when requested by a police officer whose rank is not under that of the sub-inspector and for any person who is working in bonafide faith and under his direction and assistance, for examining such person who is arrested as is essential on reasonable grounds to discern the facts that could be accounted as evidence in the court. Reasonable force that is necessary could be used for this purpose.[301]

Section 53A (1) permits examining a person who has been charged and arrested for committing or attempting to commit the offence of rape and reasonable basis could be established as to form the opinion that such examination of that person could be accounted as evidence for the commission of the alleged offence. This examination by a registered medical practitioner who is engaged in a government operated hospital or hospital governed by a local authority and in case of the unavailability, examination by any other registered practitioner of medical science

[299] *Ibid.*, § 73
[300] *Ibid.*, § 73A
[301] The Code of Criminal Procedure, 1973, § 53(1), No. 2, Acts of Parliament, 1974 (India)

within the radius of sixteen kilometres from the site where the offence has taken place, would be considered in consonance with law, when requested by a police officer whose rank is not under that of the sub-inspector and for any person who is working in a bonafide manner and under his direction and assistance, to examine such person arrested as is essential, on reasonable grounds to discern the facts that could be accounted as evidence in the court. Reasonable force that is necessary could be used for this purpose. [302]

A record of examination should be made in which the injuries or marks, if any, found on the accused should be included. The details of the material taken from the person of the accused for the purpose of DNA profiling should also be given. Reasonable information of the other material particulars should also be provided in this record.[303]

Section 54(1) of the CrPC, 1973 states that the inspection of the person arrested could be performed by a medical officer who is employed in Central or State service, immediately as the arrest of such person takes place, in unavailability of the medical officer, the examination could be performed a registered medical practitioner.[304] A report of examination should be created in which the injuries or marks of violence found on the body of the accused arrested and the estimate of the time of infliction of these injuries or marks should be included. [305]

Section 164A (1) of CrPC, 1973 allows for medically examining a woman upon whom the offence of rape is claimed to be committed or attempted to be committed. This inspection needs to be done by a registered medical practitioner after such women gives her consent for the same or after any person capable of giving consent on part of such women, provides the consent.[306] A report of examination needs to be prepared that shall comprise the information of the material collected from the person of the woman for DNA profiling, marks or injuries found, other relevant information with reasonable detail, general condition of the mental health of the women, etc. [307]

Examination in the above stated sections 53A, 54 and 164A of CrPC includes the examination of blood, blood stains, semen, swabs in the matters involving sexual offences, sputum and sweat, hair samples and finger nail clippings by the employment of modern and scientific techniques that consists of DNA profiling and several other such tests which are considered

[302] *Ibid.*, § 53A (1).
[303] *Ibid.*, § 53A (2).
[304] *Ibid.*, § 54(1).
[305] *Ibid.*, § 54(2).
[306] The Code of Criminal Procedure, 1973, § 164A (1), No. 2, Acts of Parliament, 1974 (India)
[307] *Ibid.*, § 164A (2).

essential by the registered medical practitioner in accordance to the specifications of each case. [308]

The police officers have to conduct investigation and prepare a report stating the apparent reason of death, giving information of such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what way, or by what weapon or instrument (if any) that may seem to cause such marks in case a person commits suicide or is killed by another person or by machinery or by animal or in an accident or under such conditions that creates reasonable question of execution of an offence as per section 174 of the CrPC, 1973.[309] 174 (3) of this section lays down certain provisions under which as per the rules of the State government, the body can be given for examination to nearest Civil Surgeon or any other qualified medical person appointed on part of the state government.[310]

Section 176 of CrPC states that the Judicial Magistrate or the Metropolitan Magistrate or Executive Magistrate or police officer conducting inquest or investigation can also direct for the examination of the body for the determination of cause of death of person in consonance to 174(3) (i, ii) of CrPC.[311]

A Magistrate can also direct for the medical examination of the accused for enquiring about the unsoundness of mind in case, the magistrate has relevant reasons to consider that the accused is of unsound mind and therefore, not competent to make his defence as per section 328 of CrPC code.[312]

Section 292 of the CrPC, 1973 states that any document which has the objective of being a report in the hands of Forensic Department or Division of Forensic Science Laboratory when submitted to him, in accordance to the notification of the central government for examination and report on any matter or thing during the course of proceeding can be accounted as a proof in case of any inquiry, trial or other proceeding as delineated in the provisions of this code. [313]

[308] *Ibid.*, § 53.
[309] *Ibid.*, § 174(1).
[310] *Ibid.*, § 174(3).
[311] *Ibid.*, § 176.
[312] The Code of Criminal Procedure, 1973, § 328, No. 2, Acts of Parliament, 1974 (India)
[313] *Ibid.*, § 292.

CONSTITUTIONAL VALIDITY OF SOME SCIENTIFIC METHODS

Article 20(3) of the Indian Constitution states that any person who is alleged of some offence cannot be compelled to be a witness against himself.[314] Right of protection against self-incrimination constitutes an essential element of common law criminal jurisprudence. This right is provided to a person upon whom accusation of an offence has been done. It safeguards the accused from becoming a witness and providing evidence against himself under compulsion.[315]

The field of science is advancing and different scientific methods are being developed that could be used to deal with crime.[316] The scientific tests prove to be very instrumental in conducting investigation. For example, test like Narco Analysis could aid the investigative agency when it is completely in dark and is not able to find any clue to establish the facts, evidences and truth. Such tests could provide some clues to the agency through which direction to continue the investigation could be established through which justice could be ensured to the innocent and the guilty could be punished. This kind of test is performed as a last resort only.[317]

Some of the scientific methods raise the question whether they are in conformity with the constitution of India. Many contentions were raised against the tests like Narco, DNA, etc., that they contravene the fundamental right against self-incrimination. The issue arises on the point whether these scientific methods could be utilized to collect the evidence against the accused. The courts have analysed some of the scientific methods and dealt with the issue of their validity. [318]

a. Fingerprints, Handwriting and Signature ascertainment Test

The honourable Supreme Court considered the validity of the scientific methods of handwriting and finger impressions identification in accordance to the Indian Constitution in the case of the State of Bombay v. Kathi Kalu Oghad and Ors. It was stated that "to be a witness" refers to providing knowledge related to the relevant facts in the question. This means communication of the personal knowledge of facts to the court that is having the nature of personal testimony

[314] INDIA CONSTITUTION. art. 20, § 3.
[315] MP JAIN, INDIAN CONSTTUTIONAL LAW (Lexis Nexis 8th ed. 2018)
[316] A.S. Dalal and Arunava Mukherjee, *Constitutional and Evidentiary Validity of New Scientific Tests*, 49 JOURNAL OF THE INDIAN LAW INSTITUTE 529, 529-542 (2007), http://www.jstor.org/stable/43952091
[317] Santokben Sharmanbhai Jadeja v. State of Gujarat, (2008) 1 GLR 497
[318] Dalal and Mukherjee, *supra* note 36.

makes one a witness. Summoning of a person by the authorities to provide a document for comparing the handwriting, signature or fingerprints, is a kind of mechanical process for conducting the investigation and inquiry of the case. Furnishing such document could not be considered as a statement which is having some personal knowledge that the accused possesses and thus, does not have the nature of personal testimony. Therefore, it cannot be considered that compelling the accused to give his fingerprints, impressions of palm, foot, thumb, specimen of handwriting or signature, by themselves incriminate the accused or has the tendency to do so. They are just a way to establish the facts and relevant issues in the case. Therefore, compelling an accused to furnish them does not breach article 20(3) of the Indian Constitution because the accused is not being forced to become a witness against himself. [319]

b. DNA Profiling

In Selvi and Ors. v. State of Karnataka, the dispute was on the constitutional validity of the DNA profiling method provided under the methods of medical examination as per sections 53, 53A and 54 of the CrPC, 1973 for conducting investigation. The honourable Supreme Court held that DNA profile is generation of a record through the DNA samples which are obtained from the bodily substances. The nature of DNA samples is that of the physical evidence against a person and is not like a personal testimony. They are the instruments to establish the link between the accused and the criminal act committed. Medical examination of DNA profile cannot be considered a testimonial act. Therefore, conducting this examination cannot account as impelling the accused to work like a witness against himself. Therefore, it is not against the provision delineated in article 20(3) of the Indian Constitution.[320]

c. Narco Analysis

In Santokben Sharmanbhai Jadeja v. State of Gujarat, the honourable Gujarat High Court described that Narco test results in the neutralization of the imagination of the person on whom such test is executed. The reasoning capacity is affected. The subject is able to answer simple questions and questions related to the facts that he already is aware of. It is difficult for the subject to lie or give false answers. After the administration of the test the subject is interrogated and the investigators record the answers to prepare a report to establish the evidences and discern the facts and truth. Article 20(3) of the Constitution is violated when a person is forced to become a witness or give statement against himself. Therefore, if the

[319] State of Bombay v. Kathi Kalu Oghad and Ors., AIR 1961 SC 1808.
[320] Selvi and Ors. v. State of Karnataka, AIR 2010 SC 1974.

statement recorded in this test is used against the accused and incriminates him then this test would be encroaching upon the protection given in this article. However, mere performance of the test that does not incriminate the subject(accused) cannot be considered a compulsive personal testimony. Thus, it is not against the constitutional provisions. [321]

ISSUES PREVALENT IN THE USE OF SCIENTIFIC METHODS

The point that the evidences generated through the use of forensic science are always reliable and accurate does not hold true in the real scenario. There is insufficient scientific research for confirming the authenticity of the results generated through the employment of scientific ways in investigation. There is a lack of research that could provide some measures which could quantify the uncertainty that could be found in the results of the forensic examinations. The strict standards of performance required in the scientific investigation are sometimes not sticked to. There is absence of proper administration in the forensic science area in some cases.[322]

Inadequacy of the research schemes highlights the biasness that could arise at the time of observation done by humans and the causes of human errors that could occur in the scientific analysis is one of the issues. Insufficient exploration of the new technology and inadequate survey of innovation are some impediments found in this field. One of the obstacles is the want of autonomy to the crime laboratories. In some cases, there is a lack of uniformity and compulsory licensing for the laboratories. The experts of forensic science field sometimes, do not report the outcomes of the examination in the standard and ordinary ways. Insufficiency and inefficiency in the education and training programs in the sector of forensic science is also a major issue.[323]

Measures for Upgradation of Scientific Mechanisms in Investigation Process

There is a requirement of development of the scientific methods and instruments for dealing with the issue of rising use of science in the violation of law and criminal activities. Research and development in the field of scientific investigation of crime is needed to be strengthened. The research could be done in the areas that enables making the operations of the scientific

[321] Santokben Sharmanbhai Jadeja v. State of Gujarat, (2008) 1 GLR 497.
[322] Harry T. Edwards, *Solving the Problems That Plague the Forensic Science Community*, 50 JURIMETRICS 5, 5-19 (2009), http://www.jstor.org/stable/41550023
[323] *Ibid.*

investigations better, bringing innovation in the analysis aspect of the examination, ensuring accuracy in interpretating the results, innovating new technology that could raise the efficiency of the laboratories, etc. Funding should be assured for these research projects. Forensic scientists and researchers need to be encouraged and incentivised to conduct the research.[324]

Forensic science is a dynamic field therefore, the forensic scientists should also be dynamic. Trainings need to be provided to the practitioners so that they could adapt to the comprehensive field of forensic science. Trainings would aid them in updating their knowledge. The trainings could also be provided in the fields of medicine, law, technology, etc., in addition to the trainings in forensic science. Forensic science comprises of several domains, different and unique techniques and diverse interpretations. Therefore, for learning forensic science and skills associated with it in a productive manner, formal education is required to be provided. Scientific investigation is aiding in delivering justice to the society. Hence, quality education is necessary for the development of quality professionals in this area. [325]

The laboratories should be well equipped with required equipment, technology, tools and facilities. Assessment of the ability and potential of the forensic laboratories should be done so that they can contribute to forensic science constructively. Accreditation and surveillance of the laboratories should be done to get more meaningful results. Integrity and confidentiality of the evidences found need to be ensured. Evidences, analysis and results must be of enhanced Equality. Indecisive and ambiguous conclusions of examination should be reduced. Efficiency should come with the speedy process of the scientific investigation of cases. The procedure of conducting the investigation must be proficient so that forensic science could assist in crime investigation in a beneficial manner.[326]

Advancement of science and technology has lead to the increase in involvement of science in the crimes committed and in the solutions dealing with the same. This necessitates regular interaction of forensic experts, police departments, judiciary, lawyers to understand the scientific development and its application in crime investigation. To assure justice and peace in the nation, there is a requirement that the forensic professionals should work in consonance with the legislations, rules and regulations, codes, associated agencies, police, etc. at the time

[324] Ministry of Home Affairs (MHA), New Delhi, *Perspective Plan for Indian Forensics* (July 2010)
[325] *Ibid.*
[326] *Ibid.*

of finding evidence, conducting investigation, implementing the laws. This interconnection should also be present during the trials, prosecution and execution of justice.[327]

CONCLUSION

Forensic science needs to be strengthened as it is contributing hugely in conducting investigation. This gives rise to the need of formulating proper strategies, reviewing and developing policies, upgrading the process of investigation, strengthening training and education in the field of forensic science. These steps are very essential as forensic science is acting as a safeguard from criminal activities. Coordination and an interlink between the varied domains of the forensic science should be assured. There is a requirement to resolve the conflicts created by scientific investigation so that forensic science could contribute efficiently.[328] The above stated issues in the field of scientific investigation should be dealt appropriately and the described measures for upgrading these methods should be implemented effectively. Explicit legal provisions in regards to the employment of scientific methods in investigation is not there. Therefore, for bringing clarity and strengthening scientific investigation, legal framework dealing with the same needs to be developed. All these steps would assist in the productive application of scientific mechanisms in crime investigation.

[327] MHA, *supra note 44.*
[328] *Ibid.*

SEDITION LAW: A FRIEND OR FOE?

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"Above all other rights give me the freedom to know, to speak, and to debate according to conscience."

-John Milton

ABSTRACT

Freedom of opinion and expression is essential for the entire development of a person. They are the foundation of any free and democratic society. Because it gives meaning to life, freedom of speech and expression is the first and basic human right, the basic condition of freedom, and the mother of all rights. However, when exercising freedom of speech, questions often arise, such as how far the state can regulate individual behavior. Personal autonomy is the cornerstone of basic freedom; therefore, every constraint is strictly evaluated. However, this right can always be appropriately restricted to ensure that it is used correctly and that all people have equal access to it. Section 124A of the Indian Penal Code of 1860 defines sedition as a criminal offence. The importance of this part in an independent and democratic country is a hotly debated topic. This article looks at sedition and why it cannot be compared with Article 19 (Right of Freedom of Speech and Expression) of the Indian Constitution. It also raises the issue of application in a democratic world where freedom of speech and expression is regarded as the mother of all rights, and compares India's sedition legislation with those of Australia, the United Kingdom, and the United States of America, as India's sedition law viewpoint Different from other countries.

Keywords: *Freedom of speech and expression, fundamental rights, democratic society, sedition, Indian constitution.*

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INTRODUCTION

In an orderly community, freedom of speech cannot be absolute, and this raises important questions about the legal boundaries that restrict freedom of speech. The nature, scope, and extent of restrictions, duration, and the availability or lack of effective dispute resolution mechanisms are factors that need to be considered. In democracies, freedom of speech is essential to the formation of public opinion on social, political, and economic issues.[329] Liberals describe freedom of speech as the ability to think and speak without government censorship, without fear of being punished or restricted. It is called basic human rights, natural rights, and many other titles.[330] The rights of all Indians to freedom of speech and expression are also protected by the Indian Constitution.[331] Therefore, it includes the right to express your thoughts and opinions on any subject in any way (including oral, written, or printed). Therefore, it can include freedom of speech and the right to disseminate or publish information.[332] Since personal autonomy is the basis of fundamental freedoms, every restriction should be carefully reviewed.[333] This right can always be appropriately restricted to ensure that it is exercised responsibly and is equally available to all.

FREE SPEECH AS A LEGAL PHILOSOPHY AND ITS CONSTITUTIONAL VALIDITY

There are two paths for Indian freedom of expression.[334] The **"moral paternalistic"** approach did not initially give people much freedom because they believed that people were perishable and inherently violent. In addition to being more conciliatory and tolerant in his **"freedom and autonomy"** approach, he also views the individual as an entity capable of making his own decisions; it recognizes a person's intelligence and imposes fewer restrictions on it.

Similarly, Dworkin cited two reasons as the basis of his argument for freedom of speech.[335] The opportunity to discuss and express oneself freely initially promoted good politics and at

[329] Associated Press vs. U.S.,326 US; see also UOI vs. Naveen Jindal, (2004) SC 1559.
[330] Dharam Dutt vs. Union of India, AIR 2004 SC 1295.
[331] Chintaman Rao vs. State of Madhya Pradesh, AIR 1951 SC 118
[332] Radha Mohan Lal vs. Rajasthan High Court, AIR 2003 SC 1467
[333] State of Madras vs. VG Row, AIR 1952 SC 196.
[334] Gautam Bhatia,*Offend, Shock, or Disturb: Free Speech under the Indian Constitution*. 1st Edn., Oxford University Press, USA., 2016
[335] Levin, Abigail. "Pornography, Hate Speech, and Their Challenge to Dworkin's Egalitarian Liberalism." Public Affairs Quarterly, vol. 23, no. 4, 2009, pp. 357–373. JSTOR, www.jstor.org/stable/40441541 (Last visited 3 Aug. 2021, 13:36 pm)

the same time played a controlling role in worse politics; however, this technology requires a basic understanding of the concept of freedom of speech. Second, the broader reason is the fair distribution of autonomy, as well as equal knowledge and respect for their freedom to express themselves freely.

He went on to say that moral agency is the cornerstone of a democratic society, and moral agency depends on the freedom of speech. Each of us should have the same opportunity as moral agents to influence the moral atmosphere of our common culture.

SEDITION

Section 124A of the Indian Penal Code, 1860, provides provisions for the crime of Sedition.

MEANING AND DEFINITION

When a person verbally or otherwise incites or attempts to incite hatred or contempt of a legitimate government, the crime of sedition under section 124A of the Indian Penal Code is committed.[336] Sedition is simply an infraction against public tranquility, and There are two types of public tranquility offenses, roughly speaking.

a. Those accompanied by violence, include tranquility disturbances of significant numbers or a wide local region;
b. Those who don't go along with violence but tend to cause it, such sedative remarks, seditious conspiracies, etc. These two actions endanger national security.[337]

1. WHAT DOES NOT CONSTITUTE SEDITION?

Use radical strategies to express opposition to government policies in order to improve or change them through legal means. It emphasizes that expressing opposition to government activities, but not arousing emotions, leading to the hope that violent acts will incite public disturbances should not be regarded as sedition.[338]

[336] Ins. by Act 27 of 1870, s. 5 and subs. by Act 4 of 1898, s. 4, for s. 124A
[337] Brij Bhushan and Ors. vs. The State of Delhi, AIR 1950 SC 129
[338] Kedarnath Singh vs. State of Bihar ,1962, AIR 955

In terms of sedition, the case of Balwant Singh against Punjab in 1995 is also worthy of attention. After the murder of former Prime Minister Indira Gandhi, the three chanted slogans.

The Supreme Court stated that "the slogan that two people appear accidentally once or twice alone cannot be construed as an attempt to incite or create hostility or dissatisfaction on the part of the government".[339]

As long as you do not cause hostility and disloyalty that may lead to public riots or the use of force, criticize government actions, or do not consider implementing policies for hate speech, as long as you do not use force.

2. WHAT ARE THE MAIN COMPONENTS OF SEDITION?

An important ruling by the Indian Supreme Court in ***Romesh Thappar vs. the State of Madras***[340] states that Laws ruling that freedom of speech and expression do not fall under *Article 19 (2) of the Indian Constitution* unless they violate national security or may overthrow the Indian government. The Supreme Court also found that in ***Romesh Thappar's case,*** restrictions on freedom of speech and expression were imposed due to threats to national security and escalating forms of public disturbances endangering national security, rather than minor peace-breaking acts that only affected the local area.

The Punjab High Court ruled in ***Tara Singh Gopi Chand vs. State***[341] held that Section 124 A is unconstitutional because it violates Article 19(1) (a) of the Constitution.

According to Delhi High Court's ruling in ***Kanhaiya Kumar***[342], While exercising the right to freedom of expression in accordance with Article 19(1) (a) of the Constitution, it is important to take into account the basic obligations of every citizen under Article 51A of Part IV ("Fundamental duties" section) the Supreme Court ruled, Section 124A cannot be interpreted as determining the crime of sedition under section 124A.[343]

[339] Balwant singh vs State of Punjab, 1995 (1) SCR 411
[340] Romesh Thapar v. State of Madras, AIR 1950 SC 124
[341] Tara Singh Gopi Chand vs. The State, AIR 1951 Punj. 27
[342] Kanhaiya Kumar v. State, NCT of Delhi 2016, 227 DLT 612
[343] Kedarnath Singh vs State of Bihar , 1962 AIR 955

1. In order to seek relevant behavior, violent means must be used to destroy the government.
2. In addition, the action must be aimed at or at least likely to cause dissatisfaction or disrupt public order through the use of force, and it must be encouraging.

3. WHY CAN'T INCITEMENT BE COMBINED WITH THE RIGHT TO FREEDOM OF SPEECH AND EXPRESSION?

Since the government can only be held accountable through free debate and open discussion in a democratic environment, democracy is built on the basis of free debate and open discussion.[344] In order to allow democracy to flourish, the Supreme Court stated that freedom of speech and expression are "basic values and necessary conditions" stipulated by the Constitution.[345] Freedom of speech not only contributes to the balance and stability of a democratic society but also continuously provides people with a sense of accomplishment.[346]

WHY SEDITION CANNOT GO HAND IN HAND WITH THE FREEDOM OF SPEECH AND EXPRESSION?

- **The remarkable balance between sedition and freedom of speech is incredible**

Article 19 (1) (a) of the Indian Constitution stipulates freedom of the press as a fundamental right. According to Article 19(2), if freedom of speech affects public order, decency, morality, or national security, the state can choose to regulate freedom of speech. Indian law cannot equate citizens' right to freedom of speech with the state's power to supervise them. The restrictions on freedom of speech are exceptions rather than rules. The prosperity of democracy is inseparable from a keen legislative vision, diligence, and the excellent guidance of public opinion and the media.

In ***Vinod Due's case***,[347] another court case not only overturned the FIR against him but also cited the Supreme Court's 40-year ruling that a journalist cannot be arrested for

[344] Maneka Gandhi v. Union of India, AIR 1978 SC 597.
[345] ibid para 8
[346] Ministry of Information & Broadcasting, Govt. of India v. Cricket Association of Bengal, AIR 1995 SC 1236
[347] Vinod dua v. Union of Inoda and ors, Writ Petition (Criminal) No. 154, 2020

criticizing the government alone, provided that he did not use violence against him. The government promotes or incites hatred between groups. With reference to the High Court's decision in Kedar Nath Singh v. Union of India in 1962, the bank claimed that according to the concept of the decision, every journalist has the right to be protected. The maid ruling that upholds freedom of speech, freedom of expression, and press responsibility as the fourth pillar of democracy is considered to be India's ***Vinod Dua V. Union of India.***

- **Critique alone is not sedition**

  If a person does not approve of administrative actions or other actions of the government but does not incite or attempt to incite hatred, contempt, or disgust, this provision is not violated.

  Including two Telugu-speaking journalists arrested for disseminating anti-government comments made by dissidents of the ruling YSR Congress Party in Andhra Pradesh under Section 124A of the Indian Penal Code (IPC).[348] The ABN Andhra Jyothi petition stated that since the YS Jaganmohan Reddy government took power in the state, the channel "has become a target of the state government and has been suspended at the request of the ruling party/state government."

  According to Bar and Bench, the broadcaster requested "a suspension of follow-up investigations and ordered the prohibition of the police from taking coercive action against the petitioner's company, his news broadcasting company or his employees" and "suspended the investigation".

- **It is rendered invalid due to its ambiguity**

  The wording of Section 124A of the IPC is vague: ***"Anyone who hates or flouts the provisions of Indian law through words, whether oral or written or through signs or visual representations or other means, will be punished indefinitely. Imprisonment. "Infidelity and all hostility."***

[348] Amoda Broadcasting Company Private Limited v. The Union of India, Ministry of Information and Broadcasting, Writ Petition (Criminal) No. 17389, 2014

According to the Supreme Court's decision in ***Shreya Singal v. Union of India (2015)***,[349] the ambiguity of the legislation may be a sufficient reason for repeal.

In ***Grayned v. Rockford***,[350] The U.S. Supreme Court pointed out that "inaccurate regulations may cause innocent people to get into trouble due to insufficient disclosure." Such rules entangle innocent citizens and even the police, forcing them to make false accusations under the sedition law.

There is no doubt that Section 124A of the IPC casts a wide enough net to trap dissidents, dissidents, media critics, political opponents, and civil society leaders who play an important role in a healthy democracy.

- **Sedition is not covered by Article 19 (2) of the Constitution**

According to Article 19(2) of the Constitution of India, the basic right of freedom of speech can only be restricted to "reasonable limits" and hatred is excluded. The Constituent Assembly unanimously decided not to use sedition as a basis for restricting freedom of speech. Incitement to hatred was first listed in Article 13 of the draft constitution, which is the same as the current Article 19. On the urging of ***Seth Govind Das, KM Munshi, and TT Krishnamachari***,[351] The Constituent Assembly agreed not to make hate speech an exception to freedom of speech.

It was concluded in the case of ***Ram Nandan v. State***[352] Section 124A of the IPC is unconstitutional because it violates the right to freedom of expression under Article 19(1), and is not protected by Article 19(2) because the restriction on interference with freedom of expression in Article 19(2) is substantive and serious.

However, it should be noted that this case was decided before Article 19(2) of the Constitution was amended.

- **Assessment of propinquity and ancestry**

Supreme Court rules in ***Odyssey Communications (P) Ltd v Lokvidayan Sanghatana***[353] Citizens have the freedom to watch movies on Doordarshan, and Article 19(1) of the Constitution protects this freedom as a basic right. They said that the series

[349] Shreya Singal versus Union of India, AIR 2015 SC 1523
[350] Grayned v. City of Rockford, 408 U.S. 104 (1972)
[351] CONSTITUENT ASSEMBLY OF INDIA – VOL. X, Page No. 1 & 3 Constituent_Assembly_Debates_On_10_October_1949_Part_Ii.PDF
[352] Ram Nandan v. State, AIR 1959 All 101
[353] Odyssey Communications (P) Ltd v Lokvidayan Sanghatana, 1988 AIR 1642

titled "Honi Anhonion" about Doordarshan promoted superstition and blind faith among the audience. Despite the petitioner's best efforts, he failed to prove that his actions hurt the public. On the other hand, the court held that the expression "for the benefit" rather than "for support" implies a "very broad" field of protection, extending to behaviors that "prone" to chaotic public order, rather than just doing so; the court then distinguished between "unconscious insults" and "intentional and malicious" insults and found that the latter was protected. This part was approved by the court. The purpose is to prevent complete arbitrariness and to comply with the appropriate standards of Article 19(2) of the Supreme Court. The Central Prison Superintendent, ***Fatehgarh vs. Dr. Ram Manohar Lohia, 1960,***[354] there must be a causality test and some sense of intimacy.

4. CONTEMPORARY APPLICATION AND USAGE OF SEDITION LAWS

The court's method of enforcing the law is inconsistent. Even if no formal law enforcement standards have been established, the causes are diverse, and the Pakistan cricket team has been supported in one game.[355] Criticize popular yoga experts in China and like a Facebook page[356], asking a question about the militants in Jammu[357], and so on are recent cases where some people were accused of inciting rebellion and often sentenced to jail.

The case that led to immediate legal condemnation was the Kanhaiya Kumar case, in which a leader of the JNU student community was accused of inciting rebellion for his slogan about Afzal Guru on campus. It was strongly criticized by the media and the masses. Those accused of making hate speech will lose their passports, be expelled from the government, and be required to appear in court regularly and pay attorney fees. In most cases, the allegations are rarely confirmed, but the trial itself becomes a punishment.

[354] Fatehgarh vs. Dr Ram Manohar Lohia, 1960 AIR 633

[355] New Delhi Television Ltd, https://www.ndtv.com/meerut-news/outrage-over-sedition-charges-against-students-who-cheered-pakistan-553043 (Last Visited on 6th Sept. , 2021, 8pm)

[356] Times Of India, https://timesofindia.indiatimes.com/city/kochi/Facebook-like-case-No-evidence-of-sedition-govt-tells-HC/articleshow/18254753.cms?from=mdr (Last Visited on 6th Sept. , 2021, 8:10pm)

[357] India Today, https://www.indiatoday.in/india/north/story/kashmir-university-lecturer-released-125863-2011-01-02 (Last Visited on 6th Sept. , 2021, 8:12pm)

According to the National Criminal Records Bureau, only 47 incidents of sedition were recorded in nine states in 2014. Some of these incidents did not lead to or encourage violence. Because of these cases, 58 people were arrested and only one was sentenced by the government.

In August 2014, the Kerala state authorities accused seven young men (mainly students) of inciting a rebellion, accusing them of refusing to play the national anthem in the cinema.

Musician S Kovan was arrested in Tamil Nadu in October 2015 for two songs criticizing the state government and accusing them of exploiting the poor through the state liquor store.

In 2012 and 2013, 23,000 men and women protesting nuclear power projects in Tamil Nadu were arrested and accused of "waging war against the country" and inciting hatred. Of these, only 9,000 were arrested for incitement.

As a result, each of these incidents was charged and arrested, but there was no evidence that violence was really encouraged. The current thinking is that even raising the issue of violations of people's rights that lasts for a decade is disloyal and violent. Rather than expressing yourself on a controversial topic, it is better to say that it essentially conveys a message: It is best not to express yourself, so as not to hurt the feeling you have never seen.

Arbitrary laws are likely to be misused. Space for disagreement and dialogue is the basic feature of a healthy civil society. When the government acquiesced and unilaterally declared that there was only one side of the problem, the weakening of this foundation had already begun.

5. SEDITION LAWS IN INDIA AND OTHER COUNTRIES: A COMPARATIVE STUDY

- **IN AUSTRALIA**

The Crimes Act of 1920 was the first comprehensive law to include sedition. According to these rules, convictions do not require subjective intent and encourage violence or public disturbances, which are beyond common law standards. According to the Hope

Commission established in 1984, Australia's concept of sedition should be consistent with the Commonwealth.

In 1991, the Gibbs Commission re-examined the riot regulations. However, the conviction for sedition should be limited to acts of inciting violence to undermine or undermine the authority of the Constitution. According to Section 80.2 and Article 80.3 of the 1995 Criminal Law, inciting the masses as a criminal offence and defense were included in Annex 7 of the 2005 Anti-Terrorism Law (No. 2) in 2005. According to the Australian Law Reform Commission (ALRC), the use of the term hate speech is considered inappropriate when defining the crimes included in the 2005 amendment.

ALRC's recommendations were implemented in the 2010 National Security Legislation Amendment Act, which deleted the term "riot" and replaced it with the term "promoting violent crime".

- **IN UNITED STATES**

The U.S. Constitution prohibits states from enacting laws restricting First Amendment rights to freedom of speech. The Sedition Act of 1798 made sedition a criminal offence in the United States. In 1820, the law was repealed. In 1918, the US Congress re-enacted the "Sedition Act" to defend the interests of the United States in the First World War.

However, in the following decision, the restrictions on freedom of speech are carefully explained. In Yates v. U.S,[358] the Supreme Court separated claim overturn as an abstract concept from claim action.

The law does not allow explicit restrictions on speech, but there are many concepts that can prevent the spread of hate speech. To give a few examples, "reasonable hearing test", "hazard test" and "combat language". However, in the case where the main concern is the procedural focus of case law on freedom of speech, the concept of deterrence has been recognized and has been most widely and clearly expressed.

- **UNITED KINGDOM**

The crime of sedition can be traced back to the Westminster Act of 1275 when it was believed that the king was the holder of divine authority. In order to show that hate speech is committed, it is necessary to consider not only the authenticity of the speech

[358] Yates V. United States, U.S. 1957; 354:298

but also the intention of the speaker. The crime of sedition was originally aimed at stifling the speech needed to oppose respect for the government.

The **De Libellis Famous**[359] This case was one of the first cases in which seditious defamation was classified as a crime, true or false. The case strengthened the concept of seditious libel in the UK. The reason for this decision is that real government criticism is more likely to undermine government authority and create unrest, which requires greater restraint. The global trend is mainly to support freedom of speech and oppose sedition.

When the British Ministry of Justice abolished sedition in 2009, the then Secretary of State for Justice argued that "sedition" and "seditious and defamatory defamation" was old accusations that date back to the fact that freedom of speech is still not widely the age of respect. Over the years, other countries have been abusing the country's outdated laws to justify the maintenance of similar laws. These laws help suppress political differences and restrict the country's freedom of the press against similar laws in other countries. These laws help suppress freedom of speech.

6. IS SEDITIOUS BEHAVE STILL RELEVANT IN TODAY'S WORLD?

The recent application of sedition laws in several cases has raised new concerns about the non-democratic nature and applicability of these provisions in today's constitutional democracy. Unfortunately, these rules last longer than colonial rule. The implementation of sedition laws by several Indian courts shows how outdated these laws are for today's culture and have made many recommendations for their application. In a democratic society like India, everyone has the basic right to freedom of speech and expression. Although sedition laws allow reasonable restrictions on these rights, the scope of these laws is the most important.

In our country where the rule of law prevails, it is against the constitution to indiscriminately accuse someone of sedition.

Since sedition laws rarely lead to legal proceedings, let alone convictions, public discussions about arrests have become extremely relevant to investigations. When it comes to accusations of colonial sedition, nationalism serves as a defense. Today, however, it is used to accuse individuals of inciting rebellion due to such appeals from

[359] 77 Eng, Rep. 250 KB, 1606

the state; citizens try these cases without trial. Activists, intellectuals, and other members of society who express disagreements are increasingly being labeled "anti-national," and sedition laws have played a key role in this regard.

Because of the law and the discourse on nationalism that it generates, the language of human rights and citizenship is the country's direct right to speak. Due to sedition laws, human rights defenders are often targeted. Under the Sedition Act, many human rights activists have been accused of ties to the Naxalite movement since the ***Vinayak Binayak Sen Pijush Piyush Babun Guha vs. State of Chhattisgarh***.[360]

Adivasi human rights activist Upendra Nayak was arrested on the same charge in 2018, and the public has received little attention. He has been committed to combating the Maoist subordination fraud allegations against Adivasis in Orissa. The Naxalite movement often defends arrests for riots, even if they are not based on violent behavior in the movement. Binayak Sens' possession of Naxal literature is considered a destructive inflammatory act because of his ideological affinity for the movement.

The existence of the dichotomy between citizens and the state is crucial because it means that the rights of citizens may harm the honor and integrity of the state.

[360] Vinayak Binayak Sen Pijush Piyush Babun Guha Vs. State of Chhattisgarh, 2011(266)ELT193(Chhattisgarh)

CONCLUSION

Since the implementation of the British sedition law, there have been inconsistencies, and the applicability in all cases is ambiguous and inconsistent. Since it is used to suppress people when it suits their interests and weakens their power, its applicability initially remains imprecise and unknown. It is used as a weapon to achieve political goals by suppressing speech that challenges state power.

In addition, the court failed to provide a clear understanding of the crime. In recent years, the implementation of hate rules has become so erratic that it has sparked widespread controversy. Although our hate policy was introduced in 1960, it is still used as a harassment strategy. Over the past 50 years, Indian culture has developed rapidly, and individuals have shown "tolerance" for actions that may be called "incitement to violence". The nature of the government has also changed, and its representatives have a new understanding of the government.

The rationale for using it to maintain law and order is no longer legitimate as hate speech is now used to address local issues and concerns that can broadly be viewed as defamation of elected officials. It is different from other countries such as Australia. Although the law has been repealed in other countries due to its arbitrariness, it is still legal in India. The ruling party abused the sedition law to punish those who stood up for the opposition. A person who expresses an opinion on a particular subject cannot be persecuted for inciting hatred unless his words incite the public to oppose the government.

The law can only be implemented after a thorough analysis of the motivations and results of a particular point of view. Although the protection of national security is necessary, it should not be used to stifle freedom of speech. As part of a flourishing democracy, dissent and criticism are a necessary part of a heated public debate on political issues. In order to avoid unreasonable restrictions, every restriction on freedom of speech and expression must be carefully reviewed.

UNDERSTANDING SEDITION LAW IN INDIA

Author: *Golak Bihari Mahana**

ABSTRACT

India has adopted various laws from the British rule, one such law is Sedition law. Section 124 (A) of the Indian Penal Code, 1860 talks about Sedition and also states the punishment for this offence i.e. imprisonment for 3 years which may extent to life imprisonment along with which fine may be added. In simple words Sedition may be defined as an act or acts done, which brings the people against the elected Government. Sedition law was first introduced by British Government in the year 1870. This paper will discuss about how this law was used to stop the leaders of independence movement and will also describe the historical background of Sedition law. Sedition includes all such practices which, may be by word, deed, or writing, disturb the peace of the State, Government or law and order of the country. This paper will discuss about the Constitutional Validity of Sedition law and about the judicial interpretation of this Section. Sedition law is basically to protect the sovereignty and integrity of the country. However, this law is considered as one of the most controversial law in India. Because it imposes a limitation on freedom of speech and expression of an individual. In this article you will find the difference between freedom of speech and expression as provided under Article 19 (1) of the Indian Constitution and Sedition law. Lastly, the paper will discuss about some important judgments which shaped and gave a proper interpretation to describe in the Sedition law in India.

RESEARCH OBJECTIVE

- The objective of writing this paper is to understand the concept of Sedition law in a better manner.
- To understand its Constitutional Validity.
- To understand the difference between Freedom of Speech and Sedition law.
- To find out how Section 124 (A) has been interpreted by Courts in India.

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RESEARCH QUESTION

This paper will try to answer the following questions:

- What is the historical background of Sedition law in India?
- Whether Sedition law puts up kind of restriction on freedom of speech?
- What are the developments that have been taken place over a period of time?

INTRODUCTION

Section 124 (A) of Indian Penal Code deals with the Sedition law in India. It is mentioned under chapter VI of IPC, 1860 which is related to "Offence against the State." Section 124 (A) was inserted in the year 1870 through Special Act XVII of 1870 by the British Government.

Section 124 (A) reads as: "*Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or aims to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life.*"[361] This Section doesn't provide a precise definition, but it covers all those aspects which are sufficient to charge someone under this Section.

Sedition includes all those activities, whether by words, deed, or writing, which are intended to disturb the tranquillity of the State, and lead ignorant person to endeavour to subvert the Government and laws of the country.[362] Sedition in general is considered as a hate speech towards the Government. But it refers to an act or act(s) which brings dissatisfaction and insurgency towards the democratically elected Government or Parliament to create a public disruption which may even lead to a civil war against the Government of the country.

Section 124 (A) simply points out those acts which are considered as seditious. Sedition law can sometimes be described as defamation against the elected Government. The main objective to frame Sedition law was to secure that the elected Government established by law in a State should remain stable and there shouldn't be any contempt towards it which threatens the integrity of the State.

[361] Section 124(A) of The Indian Penal Code, 1872.
[362] RATANLAL & DHIRAJLAL, The Indian Penal Code, {pg. 223} (36th edition, 2019).

ESSENTIAL ELEMENTS OF SECTION 124 (A)

Sedition law has obtained some disfavour in the recent times. Therefore, it is important to know about the essentials ingredients of Section 124 (A) of IPC. And which act or acts amount to sedition. There are two basic component of Section 124 (A):

1) Brings or attempts to bring into hatred or contempt towards the government.

Whenever there is an effort to bring or attempt to bring into hatred to provoke or attempt to provoke dissatisfaction towards the Government established by law in India[363], only then the person will be held liable for punishment under Section 124 (A) of the code. If anyone tries to attract the feelings of hatred for any sort of disruption, small or big, towards the elected Government then it is sufficient to make him guilty under Sedition law.

There is a fine difference between political criticism of the Government and an act which is causes disaffection against the Government[364]. If someone simply criticizes the works of Government or has a different opinion, it will not be sufficient to charge him or her under the Section of Sedition law.

2) Act or Acts by words, signs, visible representation or otherwise.

The interpretation to determine whether the act is seditious or not is very broad. To establish a charge under this Section, it is not important that the accused person must be the author of that seditious material. Mere circulation of such seditious material is sufficient to charge a Sedition case against him. Disaffection can be aroused in various different ways such as through a poem, drama or by a philosophical or historical discussion. Publication of the material plays a very significant role to decide the case of Sedition. If the material remains in the hands of the author and it is not published then it will not make him liable under this section. There is no specific definition of visible representation anywhere in the code, although it includes all types of communication or performance either by words; spoken or written. To conclude Section 124 (A) means when any person by any method, it may be by words spoken or written, distribute seditious material or by using that material creates a public panic or disruption will be liable under this Section[365].

[363] Asit Kumar Sen Gupta v. State of Chhattisgarh 2012 (NOC) Cr LJ 384 (Chh)
[364] Advocate Manuel PJ v. State 2012.
[365] Aravindam v. State of Kerala 1983 Cri LJ 1259.

HISTORICAL BACKGROUND OF SEDITION LAW

Sedition law as mentioned under Section 124 (A) of Indian Penal Code, 1860 has a remarkable history. Originally the law of Sedition was present under Section 113 of Macaulay's Draft Penal Code, 1837. However, in the year 1860 when Indian Penal Code was enacted this Section was not present in the code. But later on in the year 1870, by Special Act XVII of 1870, this Section was added to the code. By including this Section in the code the British Government's only intention was to suppress the leaders of the freedom movement in India and also to weaken the increasing objection against the Government.

Queen Empress v. Jogendra Chunder Bose[366] is considered as the first case which dealt with Sedition law in India. In this case the editor of the newspaper "*Bangobasi*" wrote certain articles which criticized the policy made by the British Government. And hence he was charged under Section 124 (A).

Later on, in *Queen Empress v. Bal Gangadhar Tilak*[367], which is one of the most important case for Sedition law, court in this case defined the term "disaffection" and also held that no one should provoke or attempt to provoke any kind of disaffection against the Government. In this case the court held that speeches given by Bal Gangadhar Tilak were published in the magazine "*Kesari*" which led to the murder of two British officers.

Sedition law was critically discussed in the Constituent Assembly. Sedition law hinders the fundamental right of freedom of speech and expression therefore, it was opposed by many leaders in the Constituent Assembly. After a long discussion, the Constituent Assembly came to a conclusion that there must be certain restriction to impose so that it will not infringe the basic fundamental right to freedom of speech and expression as provided by Constitution.

Constitution of India, under Article 19 (1) guarantees Freedom of Speech and expression as a fundamental right to all the citizens of India. However, by constitutional amendment clause (2) in Article 19 was added to put a limitation so that no one can hinder the public order and security of the state in the name of free speech and expression.

Although Sedition law was a colonial rule law and was introduced by British Government only to suppress the independence movement and its leaders in India, even after so many years Section 124 (A) remains the same in the code.

[366] (1892) ILR 19 cal 35
[367] (1897) ILR 22 Bom 112,151

CONSTITUTIONAL VALIDITY OF SECTION 124 (A)

After the independence, India adopted the Sedition law with certain restrictions to it. But in *Tara Singh v. State of Punjab*[368] the court contended that the law under Section 124 (A) of IPC, as unconstitutional. Because it hinders the fundamental right provided by Article 19 (1) of the Constitution i.e. Freedom of speech and expression.

Again in *Ram Nandan v. State*[369], Constitutionality of Section 124 (A) was challenged. This case is considered as the first case to deal with the constitutional validity of Sedition law. It was contended that Section 124 (A) of Indian Penal Code, is ultra vires of Article 19 (1) of the Constitution. Here the court held that this Section gives an unreasonable restriction on the freedom of speech and expression which is a fundamental right of an individual as guaranteed under Article 19 (1) of the constitution therefore, it should be declared void and unconstitutional.

However, in *Kedar Nath v. State of Bihar*[370] overruled the decision of *Ram Nadan v. State*. The Supreme Court in this case held that "this Section is constitutional valid and opined that only when it is interpreted that the words, written or spoken, etc. which have the destructive tendency or intention of creating public disorder or disturbance of law and order the law steps in to prevent such activities in the interest of public order, then only the Section strikes the correct balance between individual fundamental rights and the interest of public order."

Constitutionality of Section 124 (A) was supported by Supreme Court but it reduced its meaning and put some restriction on its application. In this case the Court clearly held that every citizen has a right to say or give an opinion, whatever he likes or dislikes about the Government or its working strategy, by using any medium, but it should not provoke people to take violence against the elected Government or there shouldn't be any intention to create public disruption in the country.

[368] 1951 Cri LJ 449
[369] AIR 1959 All 101, 1959 Cri LJ 1
[370] AIR 1962 SC 955

FREEDOM OF SPEECH AND SEDITION LAW

Freedom of speech and expression plays a very important role in a democracy. In *Romesh Thapper v. State of Madras*[371], the court observed that "Freedom of speech is the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the Government, is possible."

Article 19 (1) (a) of the Constitution guarantees every citizen right to Freedom of speech and expression. Freedom speech and expression means one is free to give his or her opinions by words, writing, printing, visible representation, or by any other communicable medium. However, it is not absolute in nature. It is subject to certain reasonable restrictions as mention under Article 19 (2). Reasonable restrictions are in the following, e.g., security of the State, friendly relations with foreign State, public order, decency and morality, contempt of court, defamation, incitement to offence, integrity and sovereignty of India.

Sedition is not defined in the code but it only talks about which act or acts should be considered as seditious work. In *Ram Nandan v. State*, the Allahabad High Court declared Section 124 (A) as ultra vires and unconstitutional. Here court held that this very Section limits the fundamental right to Freedom of speech and expression as given in the Constitution and is against the Constitution.

Later on in *Kedar Nath v. State of Bihar*, the court held that "Strong words used to express dissatisfaction towards the working of Government with a view to their improvement or alteration by lawful means would not come within the Section. Similarly, comments, however strongly worded, expressing dissatisfaction of actions taken by the Government, without provoking those feelings, which generate the tendency to create public disorder by acts of violence, would not be penal."

Supreme Court contended that this Section should be interpreted as a limit to the act or acts which intent to create disturbance in law and order or to provoke any type of violence in the country. Supreme Court reduced the scope of Section 124 (A), to make sure that it doesn't infringe or put an adverse affect on the fundamental right to free speech and expression.

Section 124 (A) will be ultra vires if it is applied on all those cases where a person has expressed his different opinion on Government or its policies by a word, written or spoken. Constitution has given every citizen right to Freedom of speech and expression with the help of which they

[371] AIR 1950 SC 124

are free to give their opinion on Government or its working strategy or its policies. Any speech which is against the Government or its policies, but it does not have the tendency to create disruption in the country will not come under the ambit of Section 124 (A) of IPC. In one of the important case in this regard is of *Balwant Singh v. State of Punjab.*[372] In this case, Supreme Court held that The casual raising of the slogans alone can not be said to be aimed at exciting or attempt to excite hatred or disaffection towards the Government as established by law in India, Section 124 (A) of IPC.

SOME IMPORTANT CASES LAWS

Kedar Nath Singh v. State of Bihar is one of the important case for sedition law in India as it set out the principles of Section 124 (A) of IPC, 1860.

In *P. Alavi v. State of Kerala,* the court contended that it is not sufficient to frame a charge under Section 124 (A) of IPC, if someone just criticize the present judicial setup or working of the parliament or legislative assemblies. The slogans raised by the petitioners were not enough to provoke the people to carry out any violence against the elected Government so it will not amount to Sedition.

In *Sankar Marathe v. State of Maharashtra*[373] , the court laid down some important procedure to arrest the accused person who is being charged under Section 124 (A) of IPC. The Court contended that the words, signs or representation must bring the Central or State Government into hatred or contempt or must be an incitement to violence. Comments expressing disapproval or criticism of the Government with a view to obtaining a change of Government by lawful means without any of the above are not seditious under Section 124 (A) of IPC.

In *Arun Jaltley v. State of U.P*[374], court rejected the Sedition case against Arun Jaitely, the then Finance Minister of India. He had given some comments on National Judicial Commission Act case. The Court said that *"A citizen had a right to say or write whatever he likes about the Government by ways of criticism or comments so long as he did not incite people to resort to violence. The article merely seeks to voice the opinion and the view of the author of the need*

[372] 1995 SC 1785
[373] 2015 Cri PIL no. 3
[374] 2015 All 6013

to strike a balance between the functioning of two important pillars of the country. It is surely not a call to arms."

In *Kahaiya Kumar v. N.C.T Delhi*, a student of JNU was arrested on charges of Sedition. The arrest was made due to organizing an anti-national event in the campus of the university and also in that event some anti-national slogans were raised. Mere raising of slogans is not sufficient to charge the person under Section 124 (A) of IPC, it should be done with an intention to create a public disruption or violence against the Government[375]. This basic requirement was not present in this case. Therefore, Supreme Court acquitted the accused. In *common cause v. Union of India* Supreme Court ordered that whenever there is a matter in relation with Sedition law, the authorities must keep in mind the principles laid down in the Kedar Nath Singh case.

There are certain instance where, the courts set aside the principles laid down by Kedar Nath Singh case and convicted the accused under Section 124 (A) of IPC.

In *Nazir Khan v. State of Delhi*[376], the accused was charged under Sedition law. The accused was allegedly involved in some terrorist activities in India. The Supreme Court observed that "the objects of Sedition generally are to bring about dissatisfaction and insurrection, and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of Sedition is to incite the people to insurrection and rebellion. It states that the offence under Section 124 (A) has been clearly established." In this case, Supreme Court of India did not consider the basic element laid down in Kedar Nath Singh case to charge an individual under Section 124 (A) of IPC it is important that an act or acts done should directly encourage violence against the Government established by law.

In another case *Binayak Sen v, State of Chhattisgarh*, Dr. Binayak Sen, a public health advocate, was charged under the Sedition law. He was charged for helping an active naxalite by passing him some information and it was found that he is possesses some naxal literature. Chhattisgarh High Court convicted him under Section 124 (A) of IPC and sentenced him for life imprisonment. At that time this judgement given by the High Court was highly criticized by everyone. However, on appeal of Dr. Binayak Sen Supreme Court of India granted him bail. Further the Supreme Court also observed that "We are a democratic country. He may be a supporter but it is not sufficient to make him guilty of Sedition. Drawing an analogy, the court asked if Mahatma Gandhi's autobiography is found in somebody's place, is he a Gandhian?

[375] Blawant Singh v. State of Punjab 1995 SC 1785
[376] AIR 2003 SC 4427

No one can be charged under the case of Sedition on the basis of materials found in possession unless it is found that the individual was diligently helping or harbouring Maoists."

CONCLUSION

Section 124 (A) of Indian Penal Code, 1860 deals with the Sedition law in India. This law must be applied on those cases where it was found that there is a tendency to create public disruption or chaos towards the elected Government by violence or illegal means. Giving certain views or opinion is the fundamental right in a democracy, it may be in support of the Government or against its policy. However, one shouldn't be charged under Sedition law if he or she has a different opinion with regard to the Government or its policies. Criticism shouldn't be considered as Sedition. Certain restrictions or limitations are required to protect the sovereignty and integrity of the country but it should not be used as a medium to suppress free speech or opinion of an individual. There is certain gap between actual law and interpretation of the law. Sedition law is a controversial law in India therefore Government should keep a balance between Sedition law and Freedom of speech, as criticizing or questioning the Government plays an important role to frame a healthy democracy. The Supreme Court of India has maintained the constitutional validity of Section 124 (A) of IPC, 1860 and whenever their is any sort of violence will take place then only conviction should be made not otherwise. *Kedar Nath v. State of Bihar* was considered as a landmark judgement with respect to Sedition law as it limited the scope and set down the basic principle of this very law. But it has been seen that authorities have misused this Section for their benefits. Due to the misuse of this colonial rule law, questions were raised by different organizations about the necessity of this law after more than 70 years of Independence. In recent time Supreme Court has also showed its concerned and asked Government to take necessary steps against this colonial era rule to stops its misuse. Now it is time to reconsider or improvise this colonial period law.

WITNESS PROTECTION SCHEME, 2018- A STEP TOWARDS WITNESS PROTECTION

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ABSTRACT

In India, Witness protection legislation was unquestionably necessary since it protects the lives, property, and family members of witnesses. Each of their statements is important because it has the power to alter the whole track of the case. Without their assistance, the Court would be unable to reach to a fair conclusion. Prosecution witnesses are pressed and encouraged to weaken or even destroy the prosecution process by whatever means necessary.Although, it is a harsh reality that the situation of witnesses in the current judicial system is deteriorating nowadays which is why The Scheme for Witness Protection was approved by the Supreme Court on December 5, 2018. Also, The Law Commission of India, in different reports, has underlined the difficulties that witnesses experience during the trail process and has urged that a complete strategy on protection of witnesses be incorporated. However, the scheme fail short of standards several issues, such as online intimidation, financial issues, etc. The objective of this study is to explore the concept of Witness Protection Scheme, 2018, and to highlight the challenges that witnesses face in the judicial system, as well as to study at witness protection in India.

Keywords: *Witnesses, Legislation, Scheme, Law Commission, Judicial system.*

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INTRODUCTION

In any country's judicial administration system, witnesses play a critical role. It is pertinent to remember that the witness's statement is crucial in the quest of bringing justice to the victims.

Witnesses have been very vulnerable and have been subjected to threats to life and property, harm, and harassment. It is necessary to guarantee that threats or intimidation of witnesses do not affect the inquiry, prosecution, or conviction of criminal offences.The need of witness protection has been emphasised by the Hon'ble Supreme Court of India in Swaran Singh v. State of Punjab,Justice Wadhwa noted"A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that, witnesses are required whether it is direct evidence or circumstantial evidence". [377] And in the most important Bakery Case, Zahira Habibulla H. sheikh and Another v. State of Gujarat, while defining Fair Trial, the Hon'ble Supreme Court observed that "If the witnesses get threatened or are forced to give false evidence that also would not result in fair trial"[378]

Further in State of Gujarat v. Anirudh Singh the Hon'ble Supreme Court of India held that: *"It is the salutary duty of every witness who has the knowledge of the commission of the crime, to assist the State in giving evidence."* [379]

Definition

In neither the Code of Criminal Procedure Code (1908) nor the Indian Evidence Act (1872), the term "witness" is defined. However, The Indian Evidence Act of 1872 specifies the competency of witnesses and the method of examination of witnesses[380].

According to Black's Law Dictionary, 'witness' has been defined as: "In the primary sense of the word, a witness is a person who has knowledge of an event. As the most direct mode of acquiring knowledge of an event is by seeing it, "witness" has acquired the sense of a person who is present at and observes a transaction."[381]

[377] Swaran Singh v. State of Punjab. (2000). 5 SCC 668. Indian Supreme Court.
[378] Zahira Habibulla H. sheikh and Another v. State of Gujarat. (2004) (4) SCC 158 SC.
[379] State Of Gujarat vs Anirudh Singh And Another. (1997). 6 SCC 514. Indian Supreme Court.
[380] Chapter X, Sections 135 to 166
[381] Garner Bryan A. (Ed), Black's Law Dictionary', 1596, 17th edn. West Group, St. Paul, Minnesota, 199.

According to The Oxford Dictionary the term defined as "one who gives evidence in a cause; an indifferent person to each party, sworn to speak the truth, the whole truth and nothing but the truth"[382]

Further, The Witness Protection Scheme defined the term "Witness" under Section 2(k)as "any person, who possesses information or document about any crime regarded by the competent authority as being material to any Criminal proceedings and who has made a statement, or who has given or agreed or is required to give evidence in relation to such proceedings[383]".

After going over all of the definitions, we've come to the conclusion that a witness is someone who has sufficient knowledge of the event and is capable of testifying in court.

WITNESS PROTECTION SCHEME, 2018

In December 2018, the Supreme Court of India approved the implementation of the Witness Protection Schemes, The Witness Protection Scheme has been approved by the Supreme Court of India. The National Legal Services Authority approved it after receiving comments from 18 states and union territories, and requests for recommendations from police officers, courts, and civil society and then finalised by the National Legal Services Authority (NALSA).This scheme aims to provide the appropriate protection for the witnesses. It also enhances the country's criminal justice system, which will surely boost national security.Section - 9 of the scheme also provides for the Identity change in suitable situations, if the witness requests it, and Part V of the Scheme including section – 11 provides for Shifting of witness to a secured place in any State and Union Territory of India. Also, it Provides a police escort to the witness up to the courtroom, and in more complicated cases, taking extraordinary measures such as, transferring of witness family to a safe place, as well as close protection and regular patrolling around the witness's house. The scheme also claims that the police would monitor the witnesses' social media profiles, emails, and phone conversations. In addition, CCTV cameras would be installed in the victims' homes in order to track down the person threatening them. This scheme allows for review and appeal in the event that a witness or police authority agrees with the Competent Authority's judgement. Within 30 days, a review can be submitted with the

[382] Catherine Soanes (Ed), Compact Oxford Dictionary, 1049, 14th impression, New York: Oxford University Press, 2005.
[383]The Witness Protection Scheme, 2018,https://www.mha.gov.in/sites/default/files/Documents_PolNGuide_finalWPS_08072019.pdf

Competent Authority, and if the review order issued by the Secretary of DLSA is unsatisfactory, an appeal can be made with the Chairperson of DLSA. If in case a witness files a fraudulent complaint, the State Legal Service Authority might file a lawsuit to recuperate the costs associated with the Witness Protection Fund.

PROCEDURAL FRAMEWORK

- Section – 6 of the Witness Protection Scheme 2018, deals with the procedure for filing an application- The applicant seeking protection under this programme must file an application with supporting documentation with the relevant body with territorial jurisdiction, either through the Superintendent of Police or at the time of the trial;When the Competent Authority receives an application in the prescribed form, the Commissioner will prepare a Threat Analysis Report, keeping the information contained therein completely confidential, and transmit the report to the Competent Authority within five working days.
- An interim order for the protection of the witness and his family members might be issued depending on the urgency of the situation due to an imminent threat.
- The Threat Analysis Report must be completed expeditiously by the Commissioner of Police in Commissioners/SSP in District Police investigating the matter And will have a threatening perspective to it, with appropriate measures to protect witnesses and family members as contained in clause 7 of the scheme or any other measure found appropriate.
- The hearing of the claims in connection with the application for Witness Protection will be recorded on approved confidentiality cameras.
- The State/UT/Witness CPO's Protection Cell is responsible for enforcing the Competent Authority's Witness Protection Order.
- If the Competent Authority determines that the Witness Protection Order previously issued has to be revised, the Competent Authority may submit it to the Commissioner of Police, who will prepare a new Threat Analysis Report.

PROTECTION MEASURES

The scope of protective measures taken by the competent authorities must always be proportional to the threat faced by the witness throughout the defined time period, according to the rules of the Witness Protection Scheme, 2018. They are:-

- Ensuring that witnesses and defendants are not confronted during the investigation or trial;
- Monitoring of mail and telephone calls;
- Make arrangements with the phone provider to change the witness's phone number or provide them with an unlisted number;
- Installation of security equipment such as security doors, CCTV, alarms, fences, and so forth at the witness's home;
- The witness's identify has been changed, and his or her previous identity has been suppressed.
- Changing the witness's address to a different location.
- Close protection, as well as regular patrolling surrounding the witness's home;
- Allowing a support person to stay present while the statement and deposition are being recorded;
- The Witness Protection Fund provides timely financial assistance for the witness's subsistence.
- Utilisation of specially constructed vulnerable witness courtrooms with specific preparations such as live connections, separate route for the accused and the witness, and possibilities to modify the face or utilise voice alteration methods through software, so that he/she is not recognised;

Apart from the above-mentioned measures, the witness may request that other measures be implemented.

THE LAW COMMISSION REPORTS

The Law Commission of India is an executive body of the Indian government that was established to provide recommendations on existing laws and the need for new laws.

14th Law Commission Report- The 14th Report serves as a great starting point. The committee noted in its report that there were "inadequate arrangements for witnesses in the

Courthouse."[384]It also goes through the causes for the longer delays in criminal cases. According to the law commission, the delays are mostly caused by the public's lack of participation in aiding in the court process when they are summoned as witnesses. This is due to the fact that witnesses often wait for hours before being taken into the courtroom. Witnesses are rarely compensated for their travel expenses and are not given travel allowances, which is extremely inconvenient[385]. Witnesses are unwilling to engage in the judicial process for all of these reasons. However, the objective of the aforementioned Report was quite limited, as it solely concerned with providing amenities to the witness as a means of protecting them.

Whereas the 14th Law Commission report concentrated on witness harassment and ill-treatment, the Law Commission of India proposed reworking on the Indian Penal Code in its **42nd report**. In the report, the commission proposed the addition of three new sections to the Indian Penal Code[386], The commission suggested that the conduct of intimidating or inducing witnesses throughout the course of the trial be punished.

When discussing 'Protection and Facilities to Witnesses,' the **154th Law Commission of India Report (1996)** refers to the 14th Law Commission Report and the National Police Commission Report. The report suggested that there should be measures for providing compensation to witnesses. The report detailed the discomfort and lack of facilities, as well as the accused's threat to the witnesses. It also recognised that the judiciary had severe flaws, such as not providing enough facilities for witnesses to give evidence. However, in the said report, the law commission failed to define the criteria and structure for granting witness protection.

The **172nd Report**, in particular, drew heavily on the decision in Sakshi v. Union of India[387], which argued for in camera trials to keep witnesses away from the accused and guarantee their evidence was obtained without fear of the public. According to this report, tThe present rules pertaining to Rape laws in India should be reviewed, Despite the fact that the study concentrated on the element of rape, it did recommend certain improvements in the situation of child abuse.

In December 2001, the Commission issued its **178th Report** for revising several civil and criminal statutes. The panel recommends three options in the aforementioned report. The Law Commission proposed the inclusion of section 164A to the Criminal Procedure Code, which

[384] The Law Commission of India, Reforms in Judicial Administration (Law Com No, 14, 1958) P.687-689
[385] The Law Commission of India, Report no.14, Reforms of Judicial Administration, 16 September 1958
[386] 21 Law Commission of India, Report no. 42, Indian Penal Code, June 1971
[387]Sakshi v. Union of India,(2004) (2) ALD Cri 504.

states that if the penalty for the offence is ten years or more, the witness' testimony shall be recorded in the presence of Magistrates. The report also addressed hostile witnesses and the safeguards that the police should take during the investigation stage to avoid witness obfuscation during the hearing. The Hon'ble Supreme Court has also emphasised the need of providing witness security on several occasions.

The **198th report** of the Law Commission on Witness Protection is perhaps the most detailed of the commission's studies on the issue. Aspects of 'Witness Identity Protection and Witness Protection Programs' were discussed by the legislation commission. The Commission suggested that witnesses' identities be safeguarded in all major crimes in which his life is at risk. The Law Commission was of the opinion that not all witnesses deserve the same level of protection, Section – 3 of the Scheme classified three categories, which have been developed based on the severity of the threat, namely:[388]

Category A: Comprises those cases in which a witness's or family member's life is threatened during the investigation, trial, or even thereafter.

Category B: Those cases in which the witness's or family members' safety, reputation, or property is threatened during the investigation or trial.

Category C: When compared to the dangers imagined in categories A and B, Category C include threats that are milder.Threats in this category includes harassing or intimidating the witness or his family members, reputation, or property throughout the investigation, trial, or afterward.

In its **239th repor**t, the Law Commission of India emphasised the need of quick investigation and trial of criminal cases involving prominent public figures. Furthermore, the Commission suggested that courts undertake a few infrastructure upgrades, such as integrating separate witness rooms and offering basic courthouse amenities such as seating, drinking water, snacks, and restrooms.

[388]Ministry of Home Affairs. (2018). Witness protection scheme, 2018. New Delhi: Ministry of Home Affairs.

RIGHTS OF WITNESS

The witness who comes forward to testify must provide some sense of security to the state, and it is the State's responsibility to provide appropriate safety to the witnesses. A witness has the following rights, as stated by different Law Commission Reports and the Witness Protection Scheme:

- Right to Information what is happening with the investigation and prosecution of a crime;
- Right to a Secure waiting area during court hearings;
- The Right to be treated with compassion and decency, as well as the right to privacy;
- The Right to be safe from violence and intimidation;
- Right to testify without disclosing identity; and
- The Right to a secure residence and mode of transportationThe Investigating Officer/Court is required to tell each and every witness of the existence and characteristics of the "Witness Protection Scheme."

JUDICIAL PRONOUNCEMENTS

Zahira Habibulla H. Sheikh and Others v. Gujarat State and Others[389]***,*** The Supreme Court Bench of Honourable Justice Raju Doraiswamy and Justice Arijit Pasayat noted that threatening or forcing a witness to provide false testimony will not result in a fair trial. We must recognise that the judiciary's role in providing total protection to a witness in a case is restricted.

In ***Delhi Domestic Working Women's Forum v. Union of India***,[390] the Supreme Court underlined the need of maintaining the anonymity of a rape victim who would be a crucial witness in rape cases.

In ***Hira Nath Mishra v. Principal, Rajendra Medical College***,[391] the court stated that in instances when the accused is a hardened criminal, care must be taken to ensure that the name of witnesses is not revealed.

[389] (2004) 4 SCC 158
[390] (1995) (1) SCC 14
[391] AIR 1973 SC 1260

In the case **NHRC v. State of Gujarat**,[392] The issue of witness identity protection and the necessity for a witness protection programme has been addressed.

In the case of **Bimal Kaur Khalsa**,[393] the High Court emphasised the necessity of a complete legislation on witness protection while simultaneously emphasising the importance of witness protection from the media.

The **State of Maharashtra vs. Bandu @ Daulat** [394]**-** In this case, an appeal was brought in the Supreme Court against a High Court decision of acquittal in a rape prosecution. The Supreme Court affirmed the conviction decision and recommended that the state government should establish specific centres for the examination of vulnerable witnesses in order to provide a conducive environment for victims and witnesses to freely testify.

Neelam katara v. Union of India[395] **-** The Delhi High Court underlined the importance of witness protection in this important decision. The High Court referred to numerous Law Commission's studies and witness protection laws in different nations before formulating its decision, and gave recommendations until the Delhi government enacted an adequate statute. According to the rules, police officers must provide appropriate security to the witness based on the severity of the threat.

In **Naresh Shridhar Mirajkar and others v. State of Maharashtra and others**,[396] the High Court approved the protection of witness testimony from publication, which was later reaffirmed by the Supreme Court since the witness's commercial interests would have been harmed otherwise.

LOOPHOLES

- The programme is heavily reliant on police participation and covers the behaviour of police personnel at all levels. A protection order is issued under the Scheme based on the Threat Analysis Report prepared by the Head of Police in each area. As a result, in high-profile cases involving politicians or prominent persons, the police officer may be pressured to reveal information about the witness to those individuals.Despite the fact

[392] (2009) 6 SCC 767
[393] AIR 1998 P&H 95
[394] (2018) 11 SCC 163
[395] ILR (2003) II Del 377 260
[396] 1966 (3) SCR 744.

that the scheme provides significant relief to witnesses in terms of their safety during the course of the trial and, in exceptional cases, even after the trial is completed, there appear to be some inherent flaws and loopholes in the scheme that raise doubts about its effectiveness.

- The second blunder is the limitation on the length of time for which protection is granted. A protection order is only effective for three months, after which the witness is once again exposed to the accused's threats. As a result, the three-month restriction should be reduced, and the witness should be protected until the danger perception is no longer present.
- The lack of infrastructure for the Scheme's implementation is the third loophole. The state is responsible for maintaining a functional criminal justice system, and some states may lack the resources necessary to carry out this programme successfully. The alternative is for the centre to provide help, yet nowhere in the programme does the centre have the authority to contribute even a single amount to the Witness Protection Fund.
- Also, cameras, travel and banking services, ordinary travel, and changing one's identification are also difficult. This need efficiency as well as privacy. They necessitate a time and location that India does not rule out due to its lack of courts and personnel.

SUGGESTIONS

We need an effective law not just a scheme or guidelines; also there should be a separate witness identity cell to prohibit witnesses' identities from being forged. The government should raise awareness of the Witness Protection Scheme in rural regions, as witnesses who are unfamiliar with the scheme are hesitant to come forward and testify in court. They must be allowed the freedom to adopt basic witness protection measures such as monitoring, escorting witnesses to work and court, and so on, while maintaining the witness's privacy. Police officers must be made more effective and free of political and social influence.

CONCLUSION

In India’s criminal justice system, provisions for witness protection have mostly been neglected.The examination of witnesses is crucial in every case, whether civil or criminal, and both procedural statutes outline how to conduct an examination of witnesses. However, This scheme aims to provide witnesses with enough and appropriate protection. This will help to strengthen the country's criminal justice system and, as a result, improve the national security situation.Witness protection is a pressing issue, and India must pass appropriate and comprehensive legislation to protect witnesses in order to improve the administration of criminal justice. Provisions should be established so that witnesses do not have to ask for protection or live in fear all the time. In several reports, the Law Commission of India has frequently underlined the witness's difficulties during the trial. The difficulties that witnesses encounter are-discussed by the Supreme Court in numerous declarations, and the need for facilities to be provided to them is acknowledged. Furthermore, the witness's grief and suffering caused by aiding in the court process can only be alleviated by instilling a sense of pleasure in their minds and treating them with respect and protection at all phases of the investigation and trial.

WITNESS PROTECTION SCHEMES

Author: *Madhavi Sinha[*] & Shikshanjali[**]*

ABSTRACT

Jeremy Bentham says that "witnesses are the eyes and ears of the judiciary" as they play an important role in bringing the accused to justice and seeing the truth in front of everyone. The Witness Protection Plan, 2018, is the first and first official attempt of the government at the national level to provide the necessary protection to the witness, which proves to be a solid base for the lifting of secondary victimization. This was to ensure that witnesses received the necessary protection. It also strengthens the adverse criminal justice system in the country and will inevitably increase national security from scratch.

The paper deals with the Witness Protection Act of 2018 in a very authoritative way. We have tried to explain all aspects of each law. What are the basic terms and definitions related to the law? Then we have described the reasons why we need to protect witnesses and what the scope of the law is. And then we explain in detail what steps the authority is taking to protect the needy witness under the law. We also briefly describe who we can monitor and verify whether the safeguards have been implemented or not, whether they are working or not. We have also cited the case law necessary for our claims and evidence to be authentic. And finally we closed all the things well so that everything fell under them.

Keywords: *Witness, protection, criminal justice, measures*

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INTRODUCTION

Whenever a person commits a crime, Heaven finds a witness "says Edward G. Bulwer. Therefore, the testimony is inevitable. Witnesses play a vital role in bringing the victim to justice and bringing the perpetrator to the place they deserve. Witnesses take on additional involvement in an adversarial criminal justice system in which the fate of cases rests entirely with the prosecution and the accused, and the prosecution witness becomes crucial in the search for the truth and ultimately, of justice. The status of a witness in court is very similar to that of a friend and supporter of the search for justice. And it is objectively and subjectively correct, as the decision of the judicial system that is prosecuted in India is deeply dependent on the witnesses and their conduct. The witness has the power to change the fate of the entire case.

Understanding the importance of the witnesses in Swaran Singh against the state of Punjab[397], J. Wadhwa said: "A criminal case is based on evidence, evidence that is legally admissible. Witnesses are required for this, regardless of whether it is direct or circumstantial evidence. He was also observed, by presenting evidence related to the initiation of a crime, that he was fulfilling a sacred duty to help the court find the truth that exposes justice. For this reason, the witness solemnly swears in the name of God to tell the truth, the whole truth and nothing but the truth". Testimony helps the court assess the merits of the facts and the circumstances of the case. Hence, the secrecy and veracity of the testimony becomes the cornerstone of the trip and hence the witness is said to testify under oath. The testimony can lead to the conviction or acquittal of the accused. Expedited adjudication or delay in the execution of the judiciary is also highly dependent on the quality and speed of witness testimony during the trial.

However, the successful operation of the criminal justice system depends largely on the willingness of the individual to provide information and evidence without intimidation or temptation. While the vital role of the Witnesses is recognized, the conditions of the Witnesses in India are dire. Here the witnesses no longer want to report to give their testimony. This situation does not develop overnight, but over time and mainly due to many factors that intervene in this process. The witnesses hesitate in the face of anger, pressure and intimidation of their life and existence by the accused party. The situation gets even worse when they discover that there is no binding or legal provision for the state to provide or add a guarantee for them. In addition, they have to be in court very often during the judicial process and face

[397] 1957 AIR 637,1957 SCR 953

postponements that force them to appear in court many times, which really bother them and also cause them financial loss. All of this ultimately leads to frustration and immense waste of time, work, and frustration. Furthermore, they consider that the behavior of the police, prosecutors and the courts is not exceptional and is very encouraging towards them. Apart from that, they face many other problems and these problems force them to become hostile. And hostility towards witnesses creates new problems for justice and allows for a speedy and fair trial.

The willingness of an ordinary person to work with the criminal justice system to produce their testimony or any evidence is certainly not determined by the constitutional expectations of them. Also, their reluctance has nothing to do with the great ideals of legal bases or the like. You hesitate because you have either already seen the consequences of his testimony or have taken advantage of them by attending court many times and questioning and exhausting for no valid reason. As the Supreme Court has also stated, "A witness is not treated with respect in court ... he waits all day and then finds the case deferred ... And if he does appear, he will not be examined or questioned and will find himself in an unfortunate situation.

Who is a witness?

The term "witness" is not clearly defined in the 1973 Code of Criminal Procedure or the Indian Evidence Act of 1872, the Soul Law for Evidence. So, if we analyze the meaning of the word "witness" in the following way:

a) In the Black's Law Dictionary, “witness” was defined as: “In the main sense of the word, a witness is a person who is aware of an event. Since the most direct way to gain knowledge of an event is to see it, 'witness' has acquired the feeling that a person is present in a transaction and is observing it. "[398]
b) Oxford English Dictionary, "Witness is an individual to whom something occurs and afterward can depict it to others."[399]
c) Merriam Webster Law Dictionary, "someone who testifies or is legally qualified to testify in a case or testify in a court or similar investigation" [400]” is known as a witness.

[398] *Black’s Law Dictionary**1778*** **(4th ed. 1968)**
[399] Oxford English Dictionary 1471 (2nd ed. 2015)
[400] Merriam-Webster’s Dictionary of Law, https://www.merriam-webster.com/dictionary/witness#legalDictionary , (last visited September 5, 2021)

d) Also in the scheme, witness is defined as "any person who has information or documents about a crime."[401]

After analyzing all the above definitions of "witness", we can conclude that for a person to be classified as a "witness" two conditions must be met, firstly, they must have some knowledge of the event, and secondly, they must be able to use this information forwarded to the competent authority.

Who is a hostile witness?

Again, the term "hostile witness" is not defined anywhere in the Indian Evidence Act of 1872 or in any other statute. So if we follow Black's legal dictionary, "hostile witness" is a witness who shows so much hostility or prejudice when questioned that the party who called him or his agent can question him, that is, let him be treated. as if the other party had called him. "[402]

A hostile witness is generally referred to as a witness who contradicts his testimony during the trial.

In the case ***Sat Paul v. Delhi Administration***[403], The Honorable Supreme Court tried in its judgment to define hostile witnesses under Section 37 of the case, saying: "To avoid controversy over the meaning of the terms" hostile "witness," hostile "witness," unfavorable "witness, the Having created Considerable problems and disagreements in England, the authors of the Indian Evidence Act of 1872 appear to have deliberately avoided the use of these terms, so that in India permission has been granted to cross-examine their own Witness, either party is not dependent on he. that the witness is referred to as "hostile" or "hostile" the truth of the party that invoked it is referred to as a "hostile witness" and the witness who does not prove a certain fact or proves a fact to the contrary is referred to as "unfavorable witness "because he is disadvantaged, contemporary, and unsuitable for the party that called him.

In the case ***R.K.Dey v. State of Orissa***[404], The Honorable Supreme Court defined hostile witnesses in its judgment and also made a distinction between "hostile" and "unfavorable" witnesses by stating that the primary purpose of a witness is to tell the truth to the party who visited him, he may not be hostile, but can actually be called an unfavorable witness.

[401]Witness Protection Scheme, 2018, § 2(k), Acts of Parliament, 2018 (India)
[402]*Black's Law Dictionary**1778*** **(4th ed. 1968)**
[403]Sat Paul v. Delhi Administration , AIR 1976 SC 294
[404]R.K.Dey v. State of Orissa ,1977 AIR 170, 1977 SCR (1) 439

NEED OF THE ACT

Witness Protection Act is required to complement the Article 21.

Seriously, the condition that we can have in the country where the law prevails, which has the largest democracy in the world and where Article 21 is available, to be able to enjoy the life and personal freedom of the second largest population in the world to protect, take a stand and fearlessly put our voice to the fore, that is, witness protection.

The Judiciary cannot allow the voices of the witnesses to finally remain silent, as the radio is slowly running out, because it is essential that the truth comes out and that ultimately justice is served.

Witnesses involved in heinous crimes need additional official protection or else they are very likely to face hostility from threats, kidnapping, intimidation and death. Therefore, it is imperative on the part of the government to ensure that the actual voice of witnesses is safe. And this can only be done by taking the necessary measures, which also requires a system less deployment.

The need to protect witnesses and find a fair and free path is necessary from the beginning because it demonstrates the competence of the Judiciary and, when it is not, it also calls into question the system of which the Judiciary has three pillars. History shows that every radical bill that came into force in India was based on the recommendation of many historic commissions and judgments. In the case of Zahira Habibullah H. Sheikh and Another v. Gujarat state. Just the need to protect the witness[405]. In the case, while defining the concept of 'Fair Trial', the Hon'ble Supreme Court observed that "If the witnesses get threatened or are forced to give false evidence that also would not result in fair trial". Further in *State of Gujarat v. Anirudh Singh*[406]. The Honorable Supreme Court also ruled: "It is the healthy duty of every witness who has knowledge of the commission of the crime to help the State to give testimony."

The want for this scheme have been envisaged with the aid of using numerous reviews of the Law Commission of India and the Malimath Committee. The 14th Law Commission Report changed into the primary ever example in which the difficulty of witness safety changed into delivered forward. Further, the 154th Report handled the scenario of the witnesses. The 172nd and 178th Report laid significance on safety of witness from the wrath of the accused. The

[405] (2004) 4 SCC 158
[406] (1997) 6 SCC 514

172nd Report specifically inherited a notable deal from the judgement in Sakshi v. Union of India which endorsed for in digital digicam trials to maintain the witness far from the accused and to make certain her testimony is procured with none public fear. The 198th Report titled "Witness Identity Protection and Witness Protection Programmes" says that the witness safety scheme want now no longer be restrained most effective to the instances of terrorism or sexual offences however must increase to all severe offences, as a result growing the scope of its applicability in addition to the functioning.

In the case of Manu Sharma v. State (NCT of Delhi)[407] The Supreme Court highlights the flaws in the criminal justice system, such as not taking statements from the police and withdrawing the testimony of witnesses due to intimidation for kidnapping, murder of relatives and bribes. The court cannot simply neglect these things and can never turn a blind eye to any of this. When a witness becomes hostile, the court will not act as a silent observer and will do everything in its power to bring out the truth.

In judgments like PUCL against Union of India [408] and NHRC v. Gujarat state [409], The need for a witness protection program raised the issue of witness identity protection and in the Mahendra Chawla [410] case; a written motion was made under article 32 covering 4,444 important issues related to the adequacy of the Indian criminal justice system. In criminal justice, the court is supposed to decide cases and, in principle, make judgments on the basis of the evidence presented to it. Therefore, witnesses play an unavoidable role in helping the court to make correct decisions. In the event of a dispute between the parties, the testimony becomes an important tool to reach correct conclusions.

It was about the protection and safety of the witnesses during the trial. Witnesses had dire consequences if they were deposed against Asaram, a self-proclaimed man-god who was charged with multiple rapes. Apparently ten witnesses have already been attacked and three killed. The main problem in the case was related to the protection and safety of witnesses during the search for clues and other procedures.

The petitioners alleged that up to ten witnesses were attacked and three were killed. Petitioner number 1 in this document, that is H. Mahendra, survived an assassination attempt in his

[407] (2010) 6 SCC 1
[408] AIR 1997 SC 568, (1997) 1 SCC 301
[409] W.P. (Crl.) No. 109 of 2003
[410] 2018 SC 2678

lifetime because he dared to testify against the self-proclaimed god-man Asaram. Petitioner number 3, Karamvir Singh, was the father of a girl raped by Asaram.

The petitioners alleged that the Uttar Pradesh police surprisingly withdrew half of the security deposit despite the threats. Petitioner number 4, Narendra Yadav, a journalist, survived an assassination attempt when he dared to write articles against the self-proclaimed Godman. When Defendant appeared veteran Attorney General Venugopal and experienced Assistant Attorney General Pinky Ananda argued that since the Apex Court primarily deals with issues related to the witness protection program, it would be appropriate for other states to implement it as well. The attorney general scholar was also asked to make suggestions in the form of a draft outline.

CRITICAL ANALYSIS

Ratio in Mahendra Chawla V. Union of India:

In the event that one can't affirm in court due to dangers or scares, it is a reasonable infringement of Article 21. Right to everyday routine incorporates inside its ambit right to experience in a general public free from violations and fears.

The contemplations that have impacted this Court to have an all-encompassing observer security system ought to be considered as a law under Article 141 and Article 142 of the Constitution until a sufficient law in such manner is outlined.

Directions Issued:

The Indian Union, as well as the states and territories of the Union, will enforce the witness protection program in 2018.

The court ruled that it is the law under Articles 141 and 142 of the Constitution until enactment of the adequate legislation on the subject.

State and Union territories establish testimonial complexes in all county courts in India.

The Witness Protection Plan, 2018 is the first national attempt to provide comprehensive witness protection designed to help eliminate any form of threat, intimidation, or loss of witness property or person.

Timeline:

14th Report of the Law fee of India, 1958: First ever reference given for Witness Protection in India.

172th Report of the Law fee of India: Judgement of Sakshi v. Union of India

178th Report of Law Commission of India: Further reference

State of Gujarat v. Anuridh Singh: The courtroom docket held that "It is the salutary obligation of each witness who has the expertise of the fee of the crime, to help the kingdom in giving evidence."

198th Report of Law Commission of India: This specific Report became absolutely devoted to the problem and subjected as "Witness Identity Protection and Witness Protection Programmes, 2006.

Section 195A IPC: The specific segment became added via way of means of the legislature which makes crook intimidation of witness a crook offence punishable with 7 years of imprisonment.

Additionally, there are numerous greater Acts which make the above stated offence punishable. Some of them are like: Juvenile Justice (Care and Protection) Act, 2015, Whistle Blower Act, 2011, Protection of Children from Sexual Offences Act (POCSO Act) 2012 and National Investigation Agency Act, 2008 etc. These acts additionally proved themselves beneficial to shield the proper of witnesses in opposition to the viable threats. These Acts and criminal provision assist witness to return back leading edge and empowers them additionally. But, it's also initiative that until the date there may be no any type of formal dependent programme added to deal with this large trouble in a holistic way which this trouble in reality required. But it's miles excessive time that witnesses need to be seemed as visitors who're invited for assisting with their testimony in accomplishing judicial findings up.

In the case of Shambhu Nath & others[411], The Supreme Court ruled: "If a witness is present in court, they must be heard that day. The court should know that most witnesses will only come to court at high cost after they have set aside their own side business.

[411] 1978 AIR, 8 1978 SCR (1) 591

Scope

The objective is to identify a series of measures that can be taken to protect Witnesses and their families from intimidation and threats to their life, reputation and property. ... The first mention of witness protection in India was in 1958 in the fourteenth report of the Law Commission of India.

It can be done in a number of ways, firstly by providing police protection to witnesses in a manner appropriate to the placement location in the courtroom. And another method is to use modern communication technologies like audio and video to record testimonials. That said, in the most complex, dangerous and prominent cases involving organized criminal groups, stricter and more exceptional measures must be taken to ensure that the witness is protected. And these measures can include offering a safe home to stay in, receiving a new or anonymous identity, and much more. However, the severity of the protection measures depends on each case.

Aims and Objective of Witness Protection Scheme, 2018

The rule of law is one of the basic structures of the Indian constitution. Our system needs a fair trial to uphold the rule of law, but for fear of intimidation and retaliation from the other side, witnesses do not pass it fairly. Pursuant to Section 118 of the Indigenous Evidence Act of 1872, "*All persons are empowered to testify unless the court determines that they do not understand the questions asked or can provide reasonable answers to those questions, age, and illness* ". Or the mind or any other cause of the same kind."[412]

The law does not discriminate against a witness for testifying, but our system has seen several instances of witnesses turning hostile. In the case of *Manu Sharma v State* (Nct Of Delhi) [413](prevalently known as the *Jessica Lall murder case*) there were more than 300 observers, yet they all turned antagonistic, with the greater part of them saying nothing regarding the observer or his family's standing or property due to dangers going from moderate provocation or terrorizing of the observer or his family, up to genuine dangers to the existence of the observer or his family.

[412] Indian Evidence Act, 1872, §118, No. 1, Acts of Parliament, 1872 (India)
[413]Manu Sharma v. State (Nct Of Delhi), (2010) 6 SCC 1

Consequently, the objective of the 2018 Witness Protection Program is to guarantee that the examination, arraignment and indictment of criminal offenses are not undermined by threatening or frightening unprotected observers against brutal or criminal accusations.

In *State of Gujarat vs. Anirudh Singh And Another*[414], The Honorable Supreme Court of India stated in its sentence under paragraph 28: "It is the healthy duty of every witness who has knowledge of the commission of a crime to assist the state in providing evidence; Unfortunately, for various reasons, in particular the deterioration of the legal situation and the principle of self-preservation, many witnesses are attacked and in some cases even direct witnesses are liquidated before being heard by the court ". Following this ruling and several other rulings, the Indian judiciary has repeatedly stressed that witness protection and hostility towards witnesses are necessary or indirectly assisted to assist law enforcement agencies and bring them to a fair trial, and witnesses should be confident and assured of their safety when reporting to court and other law enforcement agencies and testimony agencies.

In ***Mahender Chawla v. Union of India,*** The Honorable Court, in its judgment of 05/12/2018, considered the lack of a statutory provision and duly accepted this scheme and declared it to be law under Article 141 of the Constitution of India until a law is established. This scheme, having been declared as "law", will now be binding on all courts in the sovereign territory of India in order to have a uniform application procedure. Therefore, this outline is intended to identify a unified process that can be used to protect Witnesses and their families from threats to their life, reputation, and property.

TYPES OF PROTECTIVE MEASURES

At the procedural stage, it is necessary to establish a series of protective measures to ensure that the case is successfully carried out in the prescribed manner and that the process is not compromised at any cost. Some measures, such as video testimony or the privatization of the hearing by excluding the public from a hearing, aim to protect the identity, privacy and dignity of witnesses. There are also other measures, such as concealing witnesses or keeping witnesses anonymous, designed to provide physical security. The protection measures for judicial witnesses are basically permissible and regulated by procedural law. These measures are usually intended to prevent the accused and his family from damaging the physical integrity

[414]In State of Gujarat vs. AnirudhSinghh And Another, AIR 1997 SC 2780

and life of the witness, so in some cases it is allowed not to reveal the identity of the witness. And measures involving anonymous or behind-the-scenes testimony are not necessary if the trafficker already knows the identity of the witness. In other cases, however, the witness may have legitimate reasons to fear his personal safety if the defendant or others present in the courtroom receive his name and address. The courtroom-based witness protection measures mentioned above require dynamic technical equipment, well-trained staff, and sufficient and adequate financial resources. Therefore, sufficient resources must be made available to them to use them effectively.

Some Other Measures

In accordance with the provisions of the 2018 victim protection system, the generosity of the protection measures taken by the competent and competent authority must be appropriate to the threat to the witness for a specified period of time. They may include:

1. Ensuring that the witness and the accused are not housed together during the trial or investigation.

2. Contacting the telephone company to provide the witness with an unlisted telephone number for security reasons.

3. Provide the witness with the necessary security in all possible ways such as body protection, frequent patrols and through the use of security devices such as video surveillance, security doors at home;

4. Change of identity of the witness and suppression of the original identity for the required period.

5. Moving the witness to another place of residence.

6. Providing transportation in a government vehicle to and from the court on the day of the hearing;

7. Ensuring the presence of another person at the time the witness's testimony was recorded.

Implementation of in-camera negotiations;

1. Through the use of specially designed courtrooms, equipped with one-way mirrors and a separate passage for the accused and the witness and the possibility of changing faces, or through the use of voice change mechanisms through appropriate computer programs , the Witness to suppress his identity;

2. Granting of timely financial assistance for the maintenance of the witness from the witness protection fund;

3. In addition to the protection measures mentioned, other necessary measures may be considered at the request of the witness;

4. Apart from the protection measures mentioned above, the witness himself may request other prudent measures from the competent authority.

Categories of Witnesses by Perception of Threats

This scheme classifies witnesses into 3 categories according to the level of threat posed during and after the investigation / trial. This categorization not only classifies, but also simplifies the witness protection process, since people threatened with death danger need more protection than people with moderate threats.

According to the scheme, there are 3 categories of witnesses, Category A, Category B and Category C.

- Category A covers the most serious threats, up to and including the danger to the life of the witness or her family.
- Category B consists of threats that extend to the security, reputation or property of the witness or members of her family.
- Category C consists of moderate threats such as harassment or intimidation of witnesses.

THE FIRST STEP TOWARDS PROTECTION

Promising something on paper is eating a cake, but the main benefit will only be achieved when it is put into practice. To ensure protection against threats, the first step is to submit an application to the competent authority responsible for the case. This request is sent together with the supporting documents through the secretariat of members of the competent authority. After submitting the request, the next step is processing, which will help implement this scheme.

- Immediately after receiving the request, the member clerk issues an order to the competent authority and requests the threat analysis report from the deputy police commissioner responsible for the police subdivision in question.
- Given that the granting of witness protection through this system is somewhat lengthy and, therefore, depending on the urgency of the matter with respect to an imminent threat, the competent authority is authorized to inform the witness or their next of kin while the application is still pending. .

  The police also enjoy the immunity that nothing prevents them from providing immediate protection to the witness if there is a serious and imminent danger to the life of the witness or his family.
- Threat Assessment Report should be generated quickly while maintaining full confidentiality. This report is received by the competent authority within 5 business days of receiving the order.
- This report categorizes the perception of threat and also includes measures to adequately protect the witness or her family.
- While the witness protection request is being processed, the competent authority may interact with the witness and / or his / her relatives / employers or any other person deemed appropriate to determine the vulnerability of the witness. This interaction should also preferably be done in person, but if this is not possible, it should be done electronically.
- Witness protection requests are heard in front of the camera by the competent authority with complete confidentiality. In accordance with Section 2 (f) of this scheme, the closed-door procedure refers to a procedure in which the competent authority / court only allows the persons who are necessary in the hearing and decision on the application for protection of witnesses or deportation before a court must be present.

- After receiving the threat analysis report from law enforcement authorities, the competent authority must process the request within 5 business days.
- Overall responsibility for implementing witness protection rests with the chief of police in the witness protection cell of the state / UT or criminal court. However, if the change of identity and / or the relocation order is issued, it will be implemented by the Ministry of the Interior of the State / UT in question.
- Once the witness protection order has been issued, the witness protection cell submits a monthly monitoring report to the competent authority.
- If the competent authority finally determines that the witness protection order needs to be reviewed or the corresponding request is presented, the deputy representative of. The Police / Police Deputy Inspector of the responsible police department are created.

ALL ABOUT IDENTITY

Part III of this outline deals with how the identity of a witness can be protected if necessary. During the investigation or trial of a crime, the witness may seek protection of her identity for a number of possible reasons, including protection against harassment and intimidation. To request identity protection, a request can be made to the competent authority through its member secretary on the prescribed form.

The secretary member of the competent authority then requests the threat assessment report and questions the witness or her family member or any other person who can determine if an order is required to protect the identity of the witness.

If the member secretary considers it necessary to protect the identity of the witness, he issues an order and now it is up to the witness protection cell to ensure that the identity of the witness or her relatives is not revealed and that this includes the name. / ancestry / occupation / fingerprints / Address. In an emergency, the witness protection cell will provide details of the witness's emergency contacts.

In Part IV, this outline offers the witness the opportunity to change her identity. For this, the witness must request the above and the competent authority decides to grant the witness a new identity. The granting of new identities includes a new name / a new lineage / a new profession / a new number. On the other hand, however, these new identities should not deprive the witness of their predominant educational / property / professional rights.

These days with a strong online presence, identity can be easily revealed if your location is visible. Thus, this scheme also offers the Witness an option for his relocation, which has a similar process of identity change. The witness may remain in a safer place within the Indian Union depending on the welfare and well-being of the Witness, and all these costs are borne by the Witness Protection Fund.

Confidentiality and Storage Retention

All departments and officials involved in the procedures under this system are instructed to maintain complete confidentiality and to ensure that under no circumstances are records of any kind related to the procedures disclosed to any related person with the Related Procedures in every way possible except in the district court / court of appeal, and again, this is only done by written order. These records must be retained for up to one year after the last court case, after which the hard copy of the records may be disposed of after the scanned digital copies of the records have been retained.

CONCLUSION

Justice is necessary, but not at the expense of a person's life. This statement shows the reality of today's world where a person who wants to stand up and speak out against the culprit is threatened, harassed and intimidated by the other party. We have seen several cases where witnesses became hostile due to threats and harassment and changed their testimony, eventually leading to an unfair lead and a failure to exercise justice. The Witness Protection Act of 2018 is a major national step towards a fair path and system for delivering justice. It guarantees that any witness can share her information about the process without fear of threats. It guarantees that witnesses receive adequate protection in various ways, such as: B. by change of identity, whereabouts, etc.

This law has a broader scope since it includes the protection not only of the witness but also of her relatives, since a threat to the family weakens the person in the least possible way. There is a detailed explanation of the procedure to follow in case someone wants to take advantage of your benefit.

AN OVERVIEW OF INDIAN COURTS HELPING HAND: ALTERNATIVE DISPUTE RESOLUTION

Author: *Tusharika Singh Gaharvar*[*]

INTRODUCTION

Conflict is a critical part of life. We cannot say whether it's always appropriate or not . However, what's considerable is how capable we are of taking it under control . Negotiation strategies are frequently used for resolving warfare and are taken into consideration as a fundamental method for resolving the dispute for years.[415]

The ADR(Alternative Dispute Resolution) mechanism relates to an exchange of ways to settle disputes or conflicts which an individual or company entity would possibly encounter. It is extra powerful whilst the everyday negotiation manner is not able to provide remedy for the dispute. Alternative Dispute Resolution (ADR) is an opportunity for the Recognized Legal System. It is an alternative to litigation. As the courts in India are overburdened with the instances of litigation pending in courts. There changes into a want for ADR because of the dissatisfaction of people in litigation which follows the conventional rule of settling of disputes which takes a long time to settle. Under ADR all varieties of disputes like - civil, commercial, commercial and family, etc., are resolved, in some instances wherein humans aren't capable of beginning any form of negotiation and are not able to reach any settlement. Generally, ADR makes use of an impartial person whichenables the parties to communicate, speak the variations, and remedy the dispute. It is a technique that allows people and organizations to hold co-operation, social order and gives a possibility to lessen hostility.[416]

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[415] Nishita; Alternative Dispute Resolution in India, FDR INDIA, [Last visited July 19, 2021] ,https://www.fdrindia.org/old/publications/AlternativeDisputeResolution_PR.pdf

[416] By Manoj K Singh; The future of arbitration in India: Strengthening the process of alternative dispute resolution, Economic Timeshttps://m.economictimes.com/small-biz/legal/the-future-of-arbitration-in-india-strengthening-the-process-of-alternative-dispute-resolution/amp_articleshow/82114707.cms; [July 19, 2021,5:48 p.m]

HISTORICAL BACKGROUD OF ALTERNATIVE DISPUTE RESOLUTION IN INDIA

The 'Alternative Dispute Resolution Timeline' withinside the pages of the book start in the early 1800 BC whilst dispute decision turned into practice with the aid of using the ideas and thoughts of Phoenicians, the Greeks, the Indians, and the Irish. The rich traditions of Chinese mediation and Muslim tahkim, exceptional as they're from cutting-edge conceptions of Alternative Dispute Resolution, always acquire shorter shrift than they deserve. Among the interesting ancient illustrations of 'Alternative Dispute Resolution' phenomena are the position of Mohammed in heading off a battle over the reconstruction of Kaaba, and using symbolic contests to clear up land disputes in West Francia withinside the center ages.[417]

Thus, as pointed out above, the Alternative Dispute Resolution system is not a new experience for the people of India. It has been ubiquitous in our country since time immemorial. The legal history of the country indicates that throughout the centuries a man has been trying this procedure for seeking justice by making it easy, cheap, reliable, and convenient.

❖ GUPTA EMPIRE

There was a separate and distinct legal system in the era of the Gupta empire. The bottommost level of the legal system consisting of village assembly or trade guild. These were considered to be the councils appointed for the settlement of disputes that arised between the parties that appeared before them for justice. There were other separate councils appointed to decide several other important matters that came before them. Therefore, if people were not be able to reach any harmonious settlement, it was resolved by these councils.

❖ MUGHAL DYNASTY

During the Mughal Sultanate, most villagers of the dynasty used to resolve their cases in the village courts itself and appeal to the caste courts, the arbitration of an unbiased umpire known as Salis.

❖ MARATHA EMPIRE

The Panchayats were established during the Maratha Empire; these were considered to be the primary instrument of the civil administration of justice under the Marathas to arbitrate cases

[417] Historical background of ADR; https://www.assignmentpoint.com/arts/law/historical-background-adr.html [July 19, 2021.]

of simple and minor nature. The disputing parties were to sign an agreement wherein they must abideby the rules and regulations of the Panchayat. The Panchayat was authorized to study the case and pass its verdict impartially to the party. A "Mamlatdar", was basically the higher officer in the succession of judicial administration who was to confirm the verdict of the panchayat. Mostly, the Maratha Government supported the Mamlatdar and the Panchayat to adjudicate the cases, during that period.

- **BRITISH EMPIRE**

With the dawn of the British Raj in India, these traditional institutions of dispute resolution in some way started vanishing and the British Empire introduced the formal legal system for dispute resolution. At present, Alternate Dispute Resolution picked up pace in India, with its formation by the Regulations of Bengal. The Bengal Regulations were intended to boost the arbitration form of resolution. After numerous Regulations which contain provisions relating to Arbitration Act VIII of 1857 codified the procedure of Civil Courts excluding those established by the Royal Charter, which contained Sections that deal with arbitration in suits and the sections which comprise the arbitration without any intervention of the court. Subsequently, the Indian Arbitration Act, 1899 which was based on the English Act was passed. The Act became the first substantive law that dealt on the subject related to arbitration but the presidency limited its application.[418]

The year 1908, when the Code of Civil Procedure was re-enacted. There were no substantial changes made ina the code in the law of arbitration. The Indian Arbitration Act of 1899 was replaced by the Arbitration Act of 1940 and certain parts of the Civil Procedure Code, 1908 was enacted. The Indian Arbitration Act of 1940 amended and consolidated the law relating to arbitration in British India.

Even today, bodies such as the Village Panchayat consist of a group of elders and most influential persons in a village who decide the disputes arising between villagers. In recent years, the Panchayat has also been involved in caste disputes. In the year 1982, dispute settlements out of courts started through Lok Adalats. The Lok Adalat was first introduced on March 14, 1982, at Junagarh in Gujarat and it worked as a voluntary and conciliatory agency without any legislative assistance for its decisions. It received statutory status after the

[418] By Snigdha Shandilya & Pritish Kumar Pattnaik; Analysis of the Recent Development of ADR in Different Countries, Indian Legal Solution [July 19, 2021,6:00 p.m]
https://indianlegalsolution.com/analysis-of-the-recent-development-of-adr-in-different-countries/

enactment of the Legal Services Authority Act,1987. Lok Adalat has been extended throughout India

- **ARBITRATION ACT,1996**

After the replacement of the Arbitration Act of 1899 by the new Arbitration and Conciliation Act, 1996. Under the amendment of the CPC,1984 the matters concerning the family settlement are provided. The provisions which are made under the Acts i.e., Special Marriage Act, 1954 and the Hindu Marriage Act, 1955 for reconciliation. According to the Act i.e., the Family Courts Act,1984 it is the duty of the family court to make efforts for settlement among the parties. The 1999 Amendment in the code of civil procedure, 1908 which introduced section 89 is considered to be an essential advancement made by the legislature of India in the implementation of "Court Referred Alternative Disputes Resolution".

The Arbitration and Conciliation Act, 1996 additionally offers with the contractual subjects bobbing up out of the criminal relationship, the arbitral complaints being informal, much less expansive, and comparatively speedier, have proved to be an efficient opportunity method for the redressal of disputes and variations among the parties.[419]

DIFFERENT MODES OF ALTERNATIVE DISPUTE RESOLUTION

- **Arbitration**

Arbitration is somewhat similar to an informal trialand it basically avails the help of a neutral third party. The third party issues a final decision after hearing to each side andit is on the will of the disputing parties whetherthey agree to be binding or non-binding. When binding, the decision can be enforced by a court and is considered to be final. Although the arbiter is an active facilitator and will pronounce a decision.

- **Mediation**

It is very difficult to differentiate between mediation and arbitration as both the procedures are incredibly similar. One of the essential demarcations between the two is that a mediator, cannot force the disputed parties to agree and is not allowed to decide the consequence of the

[419] Lalit Sharma; Evolution of ADR Mechanisms in India, SCC ONLINE,;[July 19, 2021, 6:20 p.m], https://www.scconline.com/blog/post/2021/02/07/evolution-of-adr-mechanisms-in-india/

dispute. The mediator works with the parties to come to a solution that is made mutually, and the agreements through a mediator are generally non-binding.

- **Negotiation**

Negotiation is one of the forms of ADR which is frequently unnoticed for the reason of how apparent it is. In negotiation, there is no neutral third party to assist the parties in their negotiation, so the parties work together and conclude the dispute thru a compromise. The parties may select their attorneys who will represent them during the process of negotiations.

- **Med-Arb**

This form of ADR in one under which the arbiter primarily acts as a mediator, but the moment mediation fails, the arbiter will enact a binding decision. Med-arb is basically a combination of mediation and arbitration that comes from the advantage of the two.

- **Mini Trial**

A mini trial is a settlement process and not a trial as the name suggests. Each of the party presents their extremely summarized case. At the end of the mini trial, the representatives attempt to settle the dispute. If they failed to do so, then the impartial advisor can act as a mediator, he will be eligible to declare a non-binding opinion regarding the issue going to trial. Mini trial is considered to be the most unique method of ADR.

- **Summary Jury Trial (SJT)**

ASJT is analogous to a mini trial. Though, in this trial the case is presented before a mock jury. After hearing both parties, the mock jury produces an advisory judgment. Moreover, it is considered to be the order by court rather than the parties. After hearing the verdict, prior to litigation, the court generally requires the parties to at least attempt to settle the dispute.[420]

[420] By Atharva Naukarkar; ADR Mechanism in India; [July 19, 2021,7:28 p.m] https://bnwjournal.com/2020/07/13/adr-mechanism-in-india/;

IMPORTANCE OF ALTERNATIVE DISPUTE RESOLUTION IN INDIA

Under the Constitution of India, Alternative dispute resolution is mentioned under the fundamental rights in Article 14 and Article 21[421] which respectively deals with equality before law and right to life and personal liberty. The main objective of ADR is to maintain social-integrity and socio-economic as well as political justice which is protected by the preamble of our Indian constitution. It also provides free legal aid mentioned in the Article 39-A under Directive Principle of State Policy(DPSP) of the constitution[422]. In India, there is huge number of pendency cases in the court and ADR helps the courts to deal with the pendency of cases. It provides systematically developed mechanism through various modes of settlement which includes arbitration, conciliation, negotiation, mediation and Lok Adalats to assist the Indian judiciary in reducing the burden of the courts. It is to be noted that negotiation means self-counseling which is one of the modes of settlement in ADR does not have any statutory recognition in India.[423]

WHY ADR IS NOT SUCCESSFUL IN INDIA?

In India, courts can refer disputes which are capable of being settled between parties outside of the court through alternate dispute resolution under Section 89 of the Code of Civil Procedure 1908. The Apex Court of India has been encouraging parties to go with pre-litigation mediation to settle their dispute before resorting to proceedings of the court.

In the case of **Afcons Infrastructure v. Cherian Varkey Construction (2010)**, the Apex Court highlighted the importance of mediation, especially the matters related to commerce, and pragmatic that this type of Alternative Dispute Resolution (ADR) is an ideal form of resolving any dispute of the parties who faceintricate issues that they are willing to resolve through negotiations outside of the court.

Though, in India mediation has had very limited success, both in terms of the cases referred as well as the resolution rate in comparison to other countries.Furthermore, even after explaining the whole process to the litigants, many of them were doubtful of mediation. Previously many unsuccessful attempts at informal mediation is one of the main reasons which

[421] Article 14 and Article 21 Constitution of India
[422] Article 39-A of Constitution of India
[423] By Sujay; Alternate Dispute Resolution Mechanism, Legal services India, [July 19, 2021,7:44 p.m], http://www.legalservicesindia.com/article/224/ADR-Mechanism-in-India.html

contributed to this attitude. For the small percentage of litigants who had tried formal mediation on the recommendations of the court, the outcomes were not very promising. Litigants often cross the threshold with a 'win-or-lose' mindset.

One of the main reasons behind this behavior could be the well-documented admiration towards authority in Indian culture. In the meantime, mediation is intended at smoothening of conversation, the mediator has no power to enforce an agreement without the consent of the parties involved into it. The general lack of awareness of the mediator's role, makes the whole process of mediation lose its credibility. Litigants also treat it as a mere formality rather than giving it a fair chance.

The conclusion of all these factors has contributed to an overall lack of adoption of mediation in India, leaving the courts draining under the burden of millions of cases that could perhaps have been settled outside.[424]

RECOMMENDATIONS

- It is high time to spread awareness about the operation of legal system of India as a whole and educate the public at large about the benefits of Alternative Dispute Resolution. This can be done by educating people about it in schools, colleges, legal and professional training, by organizing camps which create social awareness about this prominent way of solving the dispute outside of the court and its various advantages.
- The pre-action protocols and the consumer Alternative Dispute Resolution which are existing rules should be reviewed to ensure the acquiescence and the documents of the official courts should be revised to include a belief that ADR will be attempted. It is very essential to encourage ADR at the beginning of a dispute and further this encouragement should be provided when proceedings are issued, notwithstanding of the track and cash value. The Court should intervene during the case management process instead at trial/judgment level only, probably with stronger cost sanctions.
- The cases which fall in the middle ground between small claims and high value litigation the funding was identified as the main challenge in this case. It is very

[424]By Eshwar Agarwal, Bani Singh And M.P. Ram Mohan; We need alternative dispute resolution mechanisms in India, The Week, [July 19, 2021, 8:20 p.m], https://www.theweek.in/news/india/2020/07/09/opinion--we-need-alternative-dispute-resolution-mechanisms-in-in.html;

essential that the ability to recover the mediation costs must be addressed by recognizing the cost of the third party, the venue and the parties' personal lawyers as a part of secure cost regime.[425]

IMPACT OF PANDEMIC ON THE ALTERNATIVE DISPUTE RESOLUTION

In the present situation where the pandemic has put the whole thing on clutch, it is very essential to mention about its impact on ADR. COVID-19 has caused destruction to the global economy by causing unprecedented disruptions.The pandemic will only exacerbate the case buildup in courts. The courts are expected to be flooded with pending cases post-pandemic. Of late, there have been several well-articulated views pushing for a greater role of mediation in dispute resolution. Efforts have to be taken by the judiciary, lawyers, government, and litigants to create an ecosystem conducive for mediation.Due to Covid 19, parties struggle to fulfil their contractual obligations which has given rise to a large number of commercial conflicts. Henceforth, due to this pandemic the Indian courts are overburdened by cases because of this the parties are more leaned towards ADS for a speedy resolution of the issue raised thru dispute. Due to this reason virtual hearing came into existence.[426]

[425]The future of ADR; https://www.eversheds-sutherland.com/global/en/what/articles/index.page?ArticleID=en/Litigation_Support/adr-report; [July 19, 2021]
[426] By Riya Dani; COVID-19 and Alternative Dispute Resolution, Via Mediation Centre, [July 19, 2021,8:45] https://viamediationcentre.org/readnews/NDMz/COVID-19-and-Alternative-Dispute-Resolution

2021 AMENDMENT

One of the most recent amendments in the Arbitration and Conciliation Act, 1996 is Arbitration and Conciliation (Amendment) Act 2021. The main intention of the law makerswas to amend the Act of 1996 and make India a more arbitration-friendly nation. The recent amendment has demarcated two major changes in the Act and those are:

- The first is to allow automatic stay on awards in some cases where the court has prima facie evidence that the contract on which the award is based was tainted by "fraud" and "corruption."
- The other most important modification in the Act of 1996 is the omission of the 8th schedule. It lay down the qualifications, experience, regulations, and norms that should be followed for accurate mediation of arbitrators.[427]Alternative Dispute Redressal is one of the most significant legal institutions which will succeed greatly in future. Due to change in time, the forms and mechanisms of ADR have also developed as per the environment and found different ways for resolving the dispute. Different emerging provisions are responsible for the improvement in the process of ADR. The recent Amendment in Alternative Dispute Resolution has provided a wide scope and exposure to this mechanism, which helps in carrying the procedure effectively.

Alternative Dispute Redressal is one of the most significant legal institutions which will succeed greatly in future. Due to change in time, the forms and mechanisms of ADR have also developed as per the environment and found different ways for resolving the dispute. Different emerging provisions are responsible for the improvement in the process of ADR. The recent Amendment in Alternative Dispute Resolution has provided a wide scope and exposure to this mechanism, which helps in carrying the procedure effectively.

[427] Shubham Prakash Mishra ; Impact Of The Arbitration And Conciliation (Amendment) Act, 2021 on India's Pro Arbitration Outlook, Bar and Bench, [July 19, 2021,9:00 p.m] https://www.barandbench.com/apprentice-lawyer/impact-of-the-arbitration-and-conciliation-amendment-act-2021-on-indias-pro-arbitration-outlook;

CASE ANALYSIS: BACHAN SINGH V. STATE OF PUNJAB (AIR 1980 SC 898)

Author: *Aarush Bhardwaj*[*]

INTRODUCTION

One of the most hotly debated topics of criminal law is the death penalty/capital punishment. While the death penalty has been abolished in the majority of countries throughout the world, it remains legal in India. The Indian legislature and judiciary continue to believe that death punishment is justified in some instances. Murder, rape, terrorism, offences under defence laws, and narcotics offences under certain conditions can all result in the death penalty in India. The case in question has become a hot topic in terms of the death penalty. Many legislative initiatives were undertaken after the Constitution to address the practicality and legality of death punishment. In 1973, the Criminal Procedure Code was amended, requiring "special reasons" for the imposition of a death sentence, based on the recommendations of the 35th Law Commission Report. "However, taking into account the conditions in India, the diversity of social upbringing of its inhabitants, the disparity in the level of morality and education in the country, the vastness of its area, the diversity of its population, and the paramount need for maintaining law and order in the country at this juncture," the Law Commission of India stated in its 35th report.

BACKGROUND

The current case represents a watershed moment in the history of the death sentence for murder under Section 302 of the Indian Penal Code and the method enshrined in Section 354, Sub-section (3) of the CrPC, 1973. The Apex Court of India established the "rarest of the rare concept" in this decision by placing restrictions on the death penalty. A five-judge panel of the Hon'ble Supreme Court of India declared a historic verdict in this particular case. The debate about the death penalty's relevance has raged and been discussed for a long period of time, with one side claiming that it is the most appropriate deterrent for preventing such

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crimes, while the other claims that this argument is solely based on speculation and not on facts of the current situation. This judgement established the legislation and emphasized the role of Judicial precedents when discussing about the appropriateness of death penalty in India, making it a watershed event for the country's capital punishment laws.

FIVE-JUDGE BENCH

The bench included the following judges:

- Justice Y.C. Chandrachud
- Justice A. Gupta
- Justice N. Untwalia
- Justice P.N Bhagwati
- Justice R. Sarkaria.

FACTS

Bachan Singh, the appellant, was declared guilty of his wife's murder by the court and sentenced to life in jail. His cousin Hukam Singh and his family gave him a place to live after the successful completion of his prison sentence, but Hukam Singh's wife and his children objected in various ways declaring the fact that they didn't want Bachan Singh to stay in their home. Vidya Bai was woken by an alarm a few days prior to this event in the middle of the night when she observed the appellant inflicting an axe strike on her sister's (Beeran Bai) face.

A short time after trying to stop the appellant, Vidya Bai was struck with an axe and injured in the face and ear, resulting in losing consciousness. When Diwan Singh heard the cry, he woke Gulab Singh who was slumbering nearby. Both Gewal Singh and Gurbak Singh ran to the appellant with an axe in his face and watched him drop it and flee.

Bachan Singh was convicted and sentenced to death under Section 302 of the Indian Penal Code for slaying Desa Singh, Durga Bai, and Veeran Bai by sessions judge later that year. The High Court upheld the sessions court's decision of death penalty and denied his appeal. Bachan Singh, the appellant, appeared before the Supreme Court on Special Leave to Appeal to ask the court if the facts of his case were "special grounds" for giving him the death penalty as required under Section 354(3) of the CrPC, 1973.

ISSUES

- The death penalty for murder is provided in Section 302 of the Indian Penal Code, 1860. Is this provision unconstitutional?
- Whether the facts discovered by the lower courts qualify as a "special cause" for imposing the death penalty, as required under Section 354(3) of the CRPC?

ARGUMENTS PRESENTED

APPELLANT:

First, the appellant argued that implementation of Section 302 of the IPC violated Section 19(1) of the Constitution. It was argued that the right to life is fundamental to the enjoyment of all six freedoms provided in Clauses (a) to (e) and (g) of Article 19(1) of the Constitution, and therefore the death sentence terminates all of them. The implementation of the death sentence, it was contended, would amount to an arbitrary limitation under Article 19 since it served no societal purpose and its usefulness as a deterrence was uncertain, and it was against the dignity of an individual protected by the constitution. The appellants further claimed that the death sentence was unconstitutional under Article 21 of the Constitution of India as it was an irrational, harsh, and blunt punishment that offended an individual's dignity.

RESPONDENT:

The respondents' attorneys argued the concept of sic *uteri tou ut alienum non laedas*, which states that a person may utilise their property in a way that does not infringe on the rights of others. They argued before the Court that the six rights granted in Article 19(1) are not absolute rights, but are subject to inherent limitations, requiring members of civil society to use their rights in a way that does not infringe or harm the rights of others.

DECISION

The constitutional arguments against Sections 302 of the IPC and 354(3) of the CRPC were decisively rejected by the Supreme Court of India. The court went on to state that Section 19(1)'s six basic rights are not absolute. Members of a civil society are bound by a reciprocal obligation not to use their rights for the purpose of infringing or impairing the rights of others (sic uteri tuo ut alienum non laedas). The court further clarified that article 19 clauses (2) to

(6) plainly limit the state's power to impose reasonable limits on citizen rights enjoyment. The court stated that in addition to these indicators in the Constitution of India, there are numerous others that indicate the constitution is well aware that the death penalty is provided in the Indian Penal Code 1860 for certain crimes, including murder.

Section 354(3) of the CRPC defines "special reason" as "extraordinary grounds" based on

"exceptionally severe conditions" for which the death sentence or life imprisonment is imposed. In granting the death penalty, the Supreme Court established the notion of "rarest of rare instances." The rule for those convicted of murder is life imprisonment, with the death penalty being an exception.

DETAILED ANALYSIS

By a vote of 4:1, the Supreme Court confirmed its previous judgement, holding that the death sentence as an alternative punishment for murder under Section 302 is not irrational nor against the public interest. It does not contradict either the law or the spirit of Article 19 of the Indian Constitution. It satisfies the requirements of the Constitution. The use of discretion under section 354(3) of the CRPC, 1973 should be limited to extraordinary and severe circumstances, and the imposition of a death sentence should be reserved for the most unusual of situations.

“Judges are never bloodthirsty,” the bench declared as it handed down its verdict. The judges based their decision on the cases of **Jagmohan Singh v. State of Uttar Pradesh** [428]and **Rajendra Prasad v State of Uttar Pradesh**[429], where a plurality was observed in the situation of Rajendra Prasad and it was further observed that if a certain individual is awarded the death sentence, his fundamental right i.e. The Right to life is infringed. In the instance of Jagmohan, it was noted that the nation's courts had discretion in determining the severity of the sentence or punishment. The accused is eventually protected by the judges' discretion based on the concept of a well-recognized legal judgement. Articles 19 and 21 were considered in determining the legality of the challenged provision. As a result, the panel was not able to reasonably conclude that the death penalty given by the court is unreasonable or contrary to public policy and individual interests under Section 302 Of the Indian Penal

[428] AIR 1973 SC 947.
[429] (1979) 3 SCR 646.

Code, and the provision in Section 302 of the Indian Penal Code was found to be neither unconstitutional nor void.

In regards to the second point, Section 354(3) authorizes courts to punish a person for a crime punishable by death or life imprisonment only where there are "exceptional reasons" for doing so. In very serious cases, the death sentence or life imprisonment is imposed. When making the decision, the aggravating and mitigating circumstances were given sufficient weight.

The order that was signed by the judges reads, “In accordance with the majority opinion the challenge to the constitutionality of Section 302 of the Penal Code in so far as it provides for the death sentence was also the challenge to the constitutionality of Section 354(3) of the CrPC, 1973 fails and is rejected.”

The only dissenting opinion came from Justice P.N Bhagwati, his views on the issue were not the mirror image of the other Judge’s opinions, according to him, he disagreed with justice Sarkaria because he believed that Section 302 of the Indian Penal Code because it provides for the imposition of capital punishment as an alternative to life, Section 302 of the Indian Penal Code is ultra vires and void as being in violation of Articles 14 and 21 of the Constitution because the law does not provide any guidelines on when it is okay to render a person's life indeterminate through a death sentence.

OTHER SIMILAR DEVELOPMENTS

- In the most serious situations of severe responsibility, the death sentence will be applied.
- Unlike in the past, the punishment currently is life imprisonment, with the exception of the death penalty. Taken together, the conditions in which the crime was committed need to be considered when imposing the death penalty.
- Only when life imprisonment appears to be insufficient punishment for the crime committed is the death sentence applied.
- Mitigating variables should be given greater weight than aggravating factors, and a comprehensive balance sheet should be created.

CONCLUSION

As stipulated in the current case, the death penalty should be reserved for the "rarest of conditions," according to its authors. It has essentially become an exception rather than a norm. By saying that death sentences should be viewed as exceptions rather than norms, the decision established precedent, but it did not specify the conditions for the "rarest of the rare cases." The majority position is provided by Justice Sarkaria, Chandrachud, and Gupta, whereas Untwalia validated section 302 of the IPC and 354(3) of the CrPC because of legality. The imposition of a death sentence has always captivated the nation's attention.

REFERENCES

1. Anon, Bachan Singh vs State of Punjab on 9 May, 1980. Bachchan Singh v. the State of Punjab. Available at: https://indiankanoon.org/doc/307021/ [Accessed September 30, 2021].
2. Mishra, A., 2020. Bachan Singh vs. State of Punjab. Law Times Journal. Available at: https://lawtimesjournal.in/bachan-singh-vs-state-of-punjab/ [Accessed September 30, 2021].
3. Mehendi, F., 2020. Case summary: Bachan Singh v State of Punjab (1980). Legal Bites - Law and Beyond. Available at: https://www.legalbites.in/bachan-singh-v-state-of-punjab1980/ [Accessed October 1, 2021].

CASE ANALYSIS: R v McNaughton (1843) 8 E. R. 718

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INTRODUCTION

'Actus Non Facit Reum, Nisi Mens Sit Rea` is a Latin maxim that means that an act does not make the person guilty unless the mind is also guilty.[430] This particular maxim identifies the two important elements necessary to convict of the crime committed. The two important elements are *Mens Rea* and *Actus Reus*, with the mental and physical elements involved, respectively. For a person to be legally responsible for an act, criminal intent is required, and therefore the ability of the perpetrator to establish criminal intent is a relevant consideration in determining the person's criminal responsibility. However, due to immaturity of age or lack of mental faculties, an individual may not have sufficient mental faculties to form a criminal intent. When such a defect is caused by mental illness, a person is said to be insane. A person who has a natural handicap to differentiate between right and wrong or good and bad, such as young children under a certain age, idiots, crazy, therefore is not punishable.

Stephen states in his Compilation of Criminal Law that "no act is a crime if the person who does it, is at the same time when it is done prevented either by defective mental power or by any disease affecting his mind from knowing the nature and quality of the act or from knowing that the act is wrong".[431] Over the years, the defence of the insane has developed through various precedents and laws. The McNaughton case, dating back to the 19th century, marks a milestone in the defence of insanity. The principle or rule in McNaughton's case is a legendary principle related to the defence of insanity.

BACKGROUND OF THE CASE

Medical insanity and legal insanity are not quite the same as one another. The first refers to insanity solely for medical reasons, while the second depends on the factors that must be proven in court to acquit the accused. Legal insanity provides a good defence against criminal liability. Each country has its own principles and tests in defence of insanity, which have

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[430]Actus Non Facit Reum, Nisi Mens Sit Rea, B & B ASSOCIATED LLP, https://bnblegal.com/actus-non-facit-reum-nisi-mens-sit-rea/
[431]Prof. S. N. Mishra, INDIAN PENAL CODE 198 (21st edn. 2018)

been established with the help of various precedents. There may be cases where a person is medically insane but not legally insane and vice versa.

Courts assume everyone is healthy unless proven otherwise, and therefore the burden of proof rests with the party challenging the insanity. Standard evidence is based on the likelihood or probability that the person is more likely to be insane and sane. However, legal proof of insanity is essential to successfully defend against insanity in criminal liability cases.[432]

FACTS

Daniel McNaughton was the offspring of a Glasgow wood turner. He was delusional that there was a conspiracy against him and was aware of the harassment of spies sent by the Catholic priest with the help of Jesuits and conservatives. The following was McNaughton's exposition during interrogation at the Bow Street Police Station. “Conservatives in my hometown made me do it. They followed me to France, Scotland and all of England. In fact, they follow me wherever I go... I have been accused of crimes of which I am not guilty; they do everything in their power to harass and persecute me. In fact, they want to assassinate me." [433]

The Police Commissioner knew of McNaughton's condition long before the shooting. Two years before the shooting. McNaughton asked him to drop the charges and then reminded him to appear before the sheriff. His delusions were directed against the Conservatives and he decided to kill the Conservative Prime Minister, Sir Robert Peel.

On June 20, 1843, Edward Drummond, Sir Robert Peel's private secretary, left the Prime Minister's house and McNaughton confused him for Peel. He followed him out of Whitehall Garden and onto Parliament Street and shot him in the back in front of several onlookers. Five days later, in Sir Robert Peel died. McNaughton was arrested by an officer who has a

[432] Ayush Verma, Applicability of McNaughton rules in contemporary situations, I PLEADERS (September 26, 2020), https://blog.ipleaders.in/applicability-mnaghten-rules-contemporary-situations/#Presumption_of_sanity_and_burden_of_proof
[433] T. V. Asokan, Daniel McNaughton (1813-1865), INDIAN JOURNAL OF PSYCHIATRY, (July- September 2007), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2902100/

witness to the incident and was taken to Bow Street Police Street. When investigated at Bow Street, the verdict was premeditated murder and McNaughton was charged.[434]

ISSUES RAISED

The hypothetical questions about insanity that the judges should have asked were the following:-

1. What law must be observed in relation to the alleged crimes committed by delusional persons against one or more subjects or specific persons: z At the moment in which the alleged the crime was committed, the accused knew that he was acting unlawfully, but was the denounced act under the influence of an insane deception in order to correct or avenge an alleged infringement or damage or to generate an alleged public benefit?

2. What are the correct questions to ask the jury when a person allegedly delusional in relation to one or more subjects or persons in particular is accused of the commission of a crime and insanity is installed in his defense?

3. How should the jury be left to determine the prisoner's state of mind at the time of the crime?

4. If a person who is under a mad deception about the existing facts commits a crime as a result, will he be executed as a result?

5. Can a doctor familiar with the disease of madness, who never saw the prisoner before the trial but was present throughout the trial and the questioning of all witnesses, give his opinion on the state of the prisoner's thoughts in the time of commission of the alleged crime or your opinion, if the detainee was aware at the time of the fact, was he acting against the law or if he was working under any deception and at what time?[435]

[434]Julia Upton, The M'Naghten Rule, LONDON PSYCHOTHERAPY (April 4, 2021), https://londonpsychotherapy.blog/2021/04/11/the-mnaghten-rule/
[435] R v McNaughton (1843) 8 E. R. 718; (1843) 10 Cl. & F. 200

ARGUMENTS

Dr. Forbes Benignus Winslow, an authority on the defence against insanity, was summoned. During the trial, Alexander Cockburn, the prosecutor, asked if the insanity was real or suspicious.

Medical experts confirmed that the delusions were real and that the shooting was delusional, and that McNaughton was carrying out an idea that had haunted him for years. All the evidence showed that the defendant was insane. However, the prosecutor made extensive and excessive use of Isaac Ray's treatise on the medical jurisprudence of insanity.[436] Cockburn cited extensively from the book rejecting traditional views of insane defence based on the defendant's ability to discriminate between good and evil in favour of causation.[437]

On the other hand, the defence attorney presented evidence showing that the defendant was during the commission of the crime. The doctors also supported the defence attorney, and it was found that the defendant's act was caused by delusions and that the case failed.

JUDGEMENT

The House of Lords referred the matter to the House of Fifteen Judges to enact laws on criminal liability in the event of insanity. The following principles can be derived from the judges' responses: -

- The defendant has committed the act of revenge or public benefit under the influence of an insane deception. At the time of inspection, he knew that the respective act was illegal.
- It is believed that everyone is healthy and has sufficient reason to be responsible for the crimes until proven otherwise to their satisfaction, and that to justify such a defence of insanity, it is clear that it must be proven that at the time of the commission the accused suffered from a defect of reason due to a mental illness that prevented him from distinguishing between good and evil or between good and evil.

[436]Supra Note 4
[437] Supra Note 2

- If the defendant knew that he should not commit the act and that the act was also against the agrarian legislation, then it is punishable and, therefore, the usual practice has been to leave the court asking the jury if the defendant has sufficient grounds to find out that he committed the wrong act.
- If the accused is only partially delusional and otherwise not insane, he must be considered in the same position of responsibility as if the facts about which the delusion existed really existed.
- A doctor familiar with the disease of madness, which has never seen the prisoner on the road, but was present throughout the journey and the questioning of the witness, cannot be asked to give his opinion on the condition of the prisoner of the commission of the crime or his opinion as to whether the defendant was aware at the time of the crime.[438]
- Based on principles established during the course of the trial, defendant McNaughton's attorney presented evidence to show that the defendant was insane in that moment when the crime was committed. Terms like murderous monomania and partial delusions were discussed during the trial, and the foreman jury without the retired jury ruled insanity.[439]
- McNaughton was acquitted of murder and forcibly committed under the Insane Criminal Act 180 for the remainder of his life for being insane. He was first admitted to the Bethlem Royal Hospital (he spent 20 years there); and in 1864 he was transferred to Bradmoor Asylum and died on May 3, 1865 at the age of 52.[440]

CRITICAL ANALYSIS

McNaughton's case has been widely criticized. One of the main defects is that it is based on the archaic belief in the preeminent role of reason in the control of social behaviour. Contemporary psychiatry and psychology emphasize that people's social behaviour is determined more by how they learned to behave than by what they know or understand. Critics believe that the legal definition is insufficient or sufficiently progressive, the medical part considers it misleading and obsolete for the compulsory admission of legally ill but not medically ill people. The European Convention on Human Rights builds up that "an

[438]Prof. S. N. Mishra, *Indian Penal Code* 200 (21st ed. 2018)
[439]Supra Note 5
[440]Supra Note 1

individual ought to possibly be endorsed hospitalization or detainment in the event that he has sufficient clinical experience".

These principles are criticized for deciding whether the defendant represents a danger to the general public or not. Likewise, the difference between temporary insanity and permanent insanity is difficult to discern legally.[441] It has also been controversial that the standards are too lax for the defendant with a serious mental illness to be exempted from their criminal obligation, regardless of the amount of disorder that causes them.

CONCLUSION

The rules established in the McNaughton case are considered an integral part of the recognition of the defence of insanity in criminal law. The established rules can be found in almost every country in the world with some transition.

The principles were initially criticized for excluding emotional facts, even after various advancements in recent years in areas such as neuroscience, psychology, medicine, etc. criminal laws, including India. India adopted the standards of the McNaughton Rules, which became the basis for Section 84 of the Indian Penal Code, which provided defendants with the defense of insanity against their criminal obligations. With new developments in today's world, the scope of Section 84 of the Indian Penal Code, which would include "medical insanity", should be expanded to exclude itself from the criminal obligation to provide necessary treatment to those with weak brains and they are fast to track down deranged defendants. The Indian Law Commission has made several proposals for the progress required by Section 84 of the Indian Penal Code. They believe that the test should be modified rather than resizing the daily existence in the basic standards, which seems to be a practical approach and should be taken into account.

[441] Ayush Verma, Applicability of McNaughton rules in contemporary situations, I PLEADERS (September 26, 2020), https://blog.ipleaders.in/applicability-mnaghten-rules-contemporary situations/#Presumption_of_sanity_and_burden_of_proof