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From the Chief Editor

It brings immense pleasure to announce the release of Volume 13, Issue 2 of Pragyaan: Journal of Law, a testament to the significant dedication and tireless efforts invested. Legal research is a nuanced pursuit requiring a profound understanding of diverse disciplines, and we take pride in presenting this issue that successfully consolidates impactful research contributions from esteemed scholars.

We keenly observe and appreciate the continuous improvement in the quality of research with each successive issue. The present volume, we believe, stands as a commendable representation of insightful scholarship that we hope will resonate positively with our readers.

We express our heartfelt gratitude to our valued advisors, meticulous reviewers, dedicated contributors, and esteemed editorial boards members, whose unwavering support has been instrumental in shaping this issue into its present form.

A sincere thank you to all those who have directly or indirectly contributed to the success of this publication. As we release this issue, we eagerly anticipate a continued and meaningful association with our readers, contributors, and the broader academic community.

Prof (Dr) Ashish Verma

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Contours of Online Free Speech in India: Rights and Limitations

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ABSTRACT

Rights are the cornerstone of individual autonomy. They are guaranteed as limits on the power of State.[1] In democratic societies they have been granted to protect individual from undue State interference. Freedom of expression has been enshrined in article 19 of the Universal Declaration on Human Rights.[2] It is considered to be one of the most significant rights as it allows a person to attain self fulfilment and strengthen the capacity to fully enjoy freedom.[3] With the advent of the Internet, freedom of speech has gained strength. The right to online free speech is a constitutionally protected right and must be respected by the state. The right to speech is subject to restrictions in the real as well as the virtual world. The right is subjected to 'reasonable restrictions' which are to be applied by the state. The state may at times abridges the freedom of online speech and makes it subject to arbitrary restrictions which shake the liberty of an individual. Online free speech includes different forms of speech under its ambit and some of which are not reasonable and must be restricted by the state in order to maintain peace and harmony. The constitutional courts have time and again upheld the right of online free speech and at the same time have asked the state to regulate the speeches which have the tendency to disturb the peace.

Through this paper the authors will try to understand the ambit of free speech in virtual world. To explore the scope of constitutional rights of free speech available in virtual world. To delimit the limitations imposed upon free speech in virtual world and to suggest the required legislative reforms to regulate the domain of free speech in virtual world.

Keywords: Constitution; Free Speech; Hate Speech.

Introduction

Being able to speak and express oneself freely is seen as one of the most fundamental human rights, without which a person risks of becoming a slave and losing their right to life. Freedom of speech and expression is acknowledged as a basic right in India.[4] No matter how offensive the speech may be, this right cannot and must not be unjustly restricted, even while it is not "absolute" and has "reasonable restrictions" attached to it.

The development of the virtual world is regarded as the best invention done by humanity in the previous two decades. Since everyone enjoys a wide range of fundamental rights in the actual world, including the right to free expression, it seems almost unbelievable that the virtual world, which has a very large population, is the only place where these rights are not guaranteed. The abuse directed in the online forum frequently spills over and is reflected in the real world as well since communication over the internet is quick, rapid, and reaches people with attributes like anonymity offering security to the speaker's identity.

Since social media can create a virtual world, it has been regarded as the fourth pillar of any stable democracy over the past two or three decades. Today, the virtual world is home to around one-third of the real world's population.[5] Even if every country grants its citizens some recognized rights and liberties, it is difficult to uphold these rights in the online realm due to a lack of cyber jurisdiction. Despite this, there is no clear distinction between the position and governance of human rights in the physical world and the

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1. J.S. Mill, On Liberty and Utilitarianism 4 (Bantam Classic, New York, 2008) as quoted in 267th Law Commission Report on Hate Speech.
2. "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Article%2019,media%20and%20regardless%20of%20frontiers.
3. Steffen Schmidt and II Mack C. Shelley, Barbara Bardes et. al., American Government and Politics Today (Cengage Learning, USA, 2014).
4. India Const., art. 19(1)(a)
5. Ankita Chakravarti, Government reveals stats on social media users, WhatsApp leads while YouTube beats Facebook, Instagram, India Today, (Feb 25, 2021, 17:26), https://www.indiatoday.in/technology/news/story/government-reveals-stats-on-social-media-users-whatsapp-leads-while-youtube-beats-facebook-instagram-1773021-2021-02-25

virtual world that can be made by the law. In no way, shape, or form are social networking sites virtual; nevertheless, the users who use them are; therefore, some liberties and privileges should be given to them, and certain restrictions should be placed on their rights to safeguard their digital democracy.

With decisions like Shreya Singhal v. Union of India[6], the Supreme Court has often demonstrated its concern for online free speech and its commitment to defending it. However, the Supreme Court and other high courts have expressed worry about speeches that hurt the outside world. Examples of how the "Free speech in the virtual world" is being challenged by hate speech include the Bulli Bai App case[7], Boys Locker Room[8], hateful tweets, online slut shaming, and several other social media statements. The number of hateful remarks in India is rising quickly; every day, we learn of new instances in which a single tweet or media platform post incited violence.

In 2021, the Indian government released new intermediary guidelines[9], which sparked a heated controversy about their "chilling impact" on the freedom to free speech online. The regulations are described as "due diligence duties" that the intermediaries must adhere to. This right to free expression has often been restricted by the government. The purpose of this research paper is to examine the state of free expression in the digital age and how the government imposes regulations to curtail it.

LEGAL REGIME VIS-À-VIS FREE SPEECH

Responsible speech is the essence of the liberty granted under article 21 of the Constitution. One of the greatest challenges before the principle of autonomy and free speech principle is to ensure that this liberty is not exercised to the detriment of any individual or the disadvantaged section of the society. In a country like India, with diverse castes, creed, religions and languages, this issue poses a greater challenge.[10] The ability to exercise one's right to free speech has benefited greatly from the digital age. Since the Internet connects the world and allows information to flow at the speed of light, this right to free speech can occasionally be restricted unjustly.

Free Speech as a Constitutional Right

Freedom of speech is seen as a fundamental right in India. However, unlike in the United States, this right to free expression is subject to several other legitimate limitations. Instance after instance, the constitutional courts have affirmed this fundamental human right to free speech.

The Constitution acknowledges that liberty cannot be absolute or uncontrolled and makes provisions in clauses (2) to (6) of article 19 authorising the State to restrict the exercise of the freedom guaranteed under that article within the limits specified in those clauses. Thus, clause (2) of article 19, as subsequently amended by the Constitution (First Amendment) Act, 1951 and the Constitution (Sixteenth Amendment) Act, 1963, enabled the legislature to impose reasonable restrictions on the exercise of the right to freedom of speech and expression in the interests of (i) the security of the State and sovereignty and integrity of India, (ii) friendly relations with foreign States, (iii)public order, (iv) decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Thus it was in this backdrop that the 'limits' to article 19 contained in 19(2) were arrived at, rather than approaching a definition of hate speech itself. [11]

In the case of Shreya Singhal v. Union of India[12], which dealt with the right to free speech in the digital sphere, the court ruled that section 66A of the Information Technology Act[13] was legal and unlawful since it restricted that right.

The Court determined that the section 66A was vague and overbroad because it applied to "all forms of innocent and protected expression." The constraints outlined in article 19(2) could not be interpreted to apply to the terms "annoyance" and "inconvenience" as specified in section 66A of the Information Technology Act of 2001. The court concluded that this clause will have a chilling impact on the right to free speech in the digital sphere since it can restrict protected and innocent speech.

In addition to defending free expression online, the Supreme Court mandated in Shreya Singhal that platforms that host content, including search engines and social media websites, stop routinely checking their sites for illicit material. This strengthened already-existing safe- harbour

6. (2013) 12 SCC 73
7. Ankita Garg, What is Bulli Bai app, what is its link to Sulli Deals, and how GitHub is involved: Story in 10 points, India Today, (Jan 10, 2022, 19:53), https://www.indiatoday.in/technology/features/story/what-is-bulli- bai-app-what-is-its-link-to-sulli-deals-and-how-github-is-involved-story-in-10-points-1898365-2022-01-10
8. Sakshi Chand and Anam Ajmal, 'Boys Locker Room': Delhi cops file case, kids from 4 schools, The Times of India, (May 5, 2020, 16:52), https://timesofindia.indiatimes.com/city/delhi/delhi-cops-file-case-for-sex-assault-chat- online/articleshow/75544935.cms
9. Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Ministry of Electronics and Information Technology, Government of India, February 25, 2021, https://www.meity.gov.in/writereaddata/file
10. Law Commission of India, 267th Report on Hate Speech (March 2017), https://lawcommissionofindia.nic.in/reports/Report267.pdf" Page: 5
11. ibid
12. (2013) 12 SCC 73
13. Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India)

protection. The court determined that reasonable requests for content removal from online platforms could be made by the judiciary and authorized government bodies. This was a turning moment in India's online free speech policy because content hosting platforms act as the gatekeepers of digital expression.

Internet Shutdown and the Right to Free Speech

Access to the Internet has been acknowledged by the constitutional courts as being integral to the right to life [14]. In the recent case of Anuradha Bhasin v. Union of India[15], the court found that the government had restricted people's freedom of speech by shutting down Internet services in Jammu and Kashmir for more than a year. The right to knowledge, the right to transmit, and the right to an opinion are all included in the right to speech.[16] Therefore restricting it would directly violate both a fundamental human right and the right to free expression.

The Supreme Court ruled that the magistrate had a duty to "balance the rights and restrictions based on the principles of proportionality and then apply the least intrusive measure" when using that power.[17] It further stated that "the power under Section 144, CrPC[18] cannot be used to suppress the legitimate expression of opinion or grievance or the exercise of any democratic rights." Since online communication is one of the key channels for the dissemination of information, the court explicitly stated in its ruling that the internet was covered by the Article 19 guarantee of freedom of expression and that its total shutdown would hinder the spread of free speech and expression.[19]

The Right to criticise and Offend

However, the right to offend is part of the freedom of expression, which is crucial to the functioning of a democracy. Since a little over five years ago, diverse segments of society have questioned whether "hate speech" may be justified under the right to free expression, with their positions frequently altering from one situation to the next.

The High Court of Delhi made the following observations in Tata Sons Limited v. Greenpeace International & Others.[20] "It's true that in the present day, libelous information can spread quickly and widely through other media as well. However, due to its ability to harm people's reputations and a particularly important factor taken into account when calculating damages in Internet defamation cases, it differs from its less common kin." [21]

Creating meme is another form of freedom of online speech. Though it one affects a person's reputation. But just because of it the state must not apply arbitrary restrictions over the circulation and creation of memes. We see cases where the people are put behind the bar when they criticise the government through memes.[22] In order to not curtail the freedom of speech adequate protection should be provided to online speech.

RIGHT TO FREE SPEECH AND LIMITATIONS ON IT

The framers of the constitution had put limitations on the freedom of speech so that the speech doesn't infringe other rights given to individuals. These limitations are provided in form of 'reasonable restrictions and the state limits the speech on the grounds of the speech having the tendency to violate public peace or hamper the national security or any other grounds as mentioned under art 19(2)[23]

Apart from the reasonable restrictions, the state limits "Free speech in the virtual world" by bringing up rules and regulations to regulate free speech in a manner that it doesn't intervene with other rights. The state while exercising its power often arbitrarily limits the free speech causing an infringement of the fundamental rights of the individual.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (Intermediary Rules)[24]

The Indian government proposed new rules to control internet expression. "The Information Technology (Intermediary Guidelines and Digital Media Ethics Code)

14. Faheema Shirin R.K v. State of Kerala & Ors., WP(C). No. 19716 OF 2019(L)
15. Anuradha Bhasin v. Union of India, W.P. (C) No. 1031 of 2019
16. ibid
17. ibid
18. The Code of Criminal Procedure, 1973, no. 2, Acts of Parliament, 1974 (India)
19. Anuradha, supra note 10
20. Tata Sons Limited v. Greenpeace International & Anr, I.A. No.9089/2010 in CS (OS) 1407/2010
21. ibid
22. see West Bengal: YouTuber arrested for meme on CM Mamata Banerjee, search on for seven more content creators, https://timesofindia.indiatimes.com/city/kolkata/west-bengal-youtuber-arrested-for-meme-on-cm-mamata- banerjee-search-on-for-seven-more-content-creators/articleshow/94488864.cms (Last visited on October 9, 2022);Meme creator arrested, https://www.thehindu.com/news/cities/Madurai/meme-creator-arrested/article31130657.ece (Last visited October 9, 2022)
23. Article 19(2) of the Constitution imposes restrictions on the freedom of speech and expression, namely, sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.
24. Information, supra note 6

Rules, 2021 ("Intermediary Rules")" which were changed, are hotly contested because they limit the freedom of speech. According to the majority of the public, these rules violate the fundamental right to free speech on several grounds.

Through these regulations, the Indian government has placed OTT platforms and other content hosting platforms under its purview. The regulations are described as "due diligence duties" that the intermediaries must adhere to. The due diligence requirements must be met to qualify for the conditional immunity from liability afforded by section 79 of the Information Technology Act. [25]

The measures, according to the Indian government, were necessary because OTT platforms and other content providers provide material that is vulgar, and immoral, promotes hate among communities, depicts women indecently, and contains material about child abuse, among other things.[26] The government also stressed the urgent need for a grievance officer who will inquire into issues about content that has to be prohibited

As much as they acknowledged and accepted the significance of the same, including the requirement for government criticism to preserve the foundation of democracy, a closer examination of these guidelines reveals that the government's genuine motivations are doubtful. As an illustration, in certain emergencies, intermediary platforms (such as Instagram, Twitter, and Facebook) must remove a specific user's content without giving them a warning, a fair hearing, or the chance to provide a defence upon receiving a directive from the government.

Speech that will be restricted by the government is not specified in its restrictions. Since any statement that the government even remotely interprets as being negatively directed at them can automatically be converted into "hate speech" or "fake news," this vagueness leaves the democratic voices of the users of these platforms at the government's whims. As a result, it has long been known that the absence of comparable safe harbour clauses has a "chilling effect" on content.

Hate Speech

The continuous problem of "hate speech" has repeatedly drawn the attention of the Supreme Court. As the cases of online speech are at a rise, leaving impact in the offline world, the Supreme Court directed the "Law Commission of India" to evaluate the problem of hate speech and to define it. [27]

Ihe commission considered the laws on hate speech in various jurisdictions, judicial pronouncements of the Supreme Court and the High Courts and As a result of which, the Commission submitted the 267th Report[28] and at par discussed hate speech and how it could be restricted by the government.

The Law Commission had suggested that the union government to pass a law banning hate speech, and also suggested to insert Section 153C in IPC[29] along with other penal provisions to limit the hate speech. The Supreme Court recently questioned this decision, adding that news anchors must forbid hate speech from being spoken on their programs. The Union was even asked by the court to state unequivocally whether it supported or opposed enacting rules against hate speech.

Free speech and National Security

The right to freedom of speech and expression may be restricted if the government determines that it could jeopardise national security, declare war on the government, accentuate foreign hostility, etc.

Following the case State of Bihar v. Shailabala Devi,[30] the court noted that gestures and pictorial representations that have a high likelihood of creating a problem for the state can be regulated and are covered under Article 19(2) of the Indian Constitution.

Constructive Criticism and dissent

As part of one's larger freedom of expression, which is essential to the operation of a democracy, one has the right to criticise and disagree. Citizens' other civic and political rights are at risk if they are not allowed to freely express themselves.

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25. Information, supra note 10
26. Ajay Amitabh Suman, Display of Violence & Sex in OTT Content, The Times of India, (JAN 23, 2021, 23:28), HTTPS://TIMESOFINDIA.INDIATIMES.COM/READERSBLOG/AJAYAMITABHSUMANSPEAKS/DISPL AY-OF-VIOLENCE-SEX-IN-OTT-CONTENT-29290/
27. Pravasi Bhalai Sangathan v. Union of India, AIR 2014 SC 1591
28. Law Commission of India, 267th Report on Hate Speech (March 2017), https://lawcommissionofindia.nic.in/reports/Report267.pdf"
29. Prohibiting incitement to hatred- 153 C. -Whoever on grounds of religion, race, caste or community, sex, gender identity, sexual orientation, place of birth, residence, language, disability or tribe –
    (a) uses gravely threatening words either spoken or written, signs, visible representations within the hearing or sight of a person with the intention to cause, fear or alarm; or
    (b) advocates hatred by words either spoken or written, signs, visible representations, that causes incitement to violence shall be punishable with imprisonment of either description for a term which may extend to two years, and fine up to Rs 5000, or with both.
30. AIR 1952 SC 329

The exploding Covid-19 surge in India prompted the Indian government to order Twitter Inc., Facebook Inc., and Instagram to block about 100 social media posts criticising its handling of the situation. This sparked public outrage and accusations of censorship in the most populous democracy in the world [31]. In India the youtubers as well as other netizens are arrested when they criticise the government over the internet. The videos and channels of many YouTubers has been banned by the government in order to limit the dissent and the criticism. This is another way in which the freedom of free speech is restricted by the state. The case of Vinod Dua v. UOI[32] is a classic example where the constructive criticism was recognised as sedition by the Union Government.

Banning Sites and Online content

The recent trend which is followed by the government in order to limit the free speech is the act of banning the sites and channels in the virtual world. There are many cases where the youtubers who have criticised the government's work were tagged as 'threat to national security' and their content was banned or deleted from the cyber space. This is another limitation which restricts the freedom of speech arbitrarily.

Cyberbullying

The use of online platforms to harass, threaten or intimidate others, it is always facilitated through the misuse of freedom of speech on social media, can have several emotional and psychological effects. It uses technology to target and victimize others.

CONCLUSION AND SUGGESTIONS

The Freedom of Speech is a bulwark of democracy. The digital world has strengthened this freedom of speech by providing everyone the platform and opportunity to speak. The virtual world has given people features like anonymity and easy access which has made people communicate with the world. The right to freedom of expression covers a wide range of activities, including the freedom for citizens to share their opinions with others.

However, it is true that one person's right should not preclude another person's right. This freedom is also restricted by the state by making it subject to reasonable restrictions. The state has time and again made efforts to limit the free speech in virtual world when it gets converted into the hate speech, sedition and defamation. Similar to this, if a right's scope is not defined, it has a negative effect.

It has become a common thing today, that the speech is curtailed in the name of national security or sedition or hate speech. The right should not be curtailed in a manner that it violates the very fundamental existence of a human being. The restrictions imposed must be just, fair and reasonable. The government should be cautious while taking measures to restrict the free speech. The limitation which are imposed by the state should have legitimate object, the limitations put must not be arbitrary.

Following suggestions are recommended to tackle the loopholes in the current legal regime and balance the interest of the state and the citizens: -

1. It is important that specific and durable legislative provisions be enacted which does not abrogate the right of free speech.
2. The Intermediary rules put forward by the government should be tested by the courts so that the freedom of speech is not curtailed.
3. A test should be laid down which tells what speech should be restricted.
4. The ban on internet facilities should not be imposed for a longer period of time as it curtails art 19 as well as art 21 of the constitution, as internet is basic necessity in everyday life. The state shall lay down a reasonable time period for which the state can restrict internet.
5. As constructive criticism is a part of democracy the government shall not regard it as sedition. Rather the criticism and opposition should be regarded as a part of free speech
6. The law commission has given its recommendation to insert provision on hate speech, the state shall enact the same in order to limit the rising hate speech in India.

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31. Newley Purnell, India Accused of Censorship for Blocking Social Media Criticism Amid Covid Surge, The World Street Journal, (April 26, 2021 11:56 am), https://www.wsj.com/articles/india-accused-of-censorship-for- blocking-social-media-criticism-amid-covid-surge-11619435006
32. Writ Petition (Cri.) No.154 OF 2020

A critical analysis of accused rights in Indian Criminal Justice System: A Human Rights Perspective

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ABSTRACT

This research paper endeavours to examine the critical issue of the rights of accused individuals within the Indian criminal justice system from a human rights perspective. Despite incorporating numerous constitutional guarantees and international obligations, India's legal framework encounters significant challenges in upholding the fundamental rights of criminal suspects. This study aims to undertake a thorough and critical analysis of the existing legal provisions, their practical application, and their impact on the human rights of the accused. Commencing with an in-depth overview of the rights enshrined in the Indian Constitution and relevant international human rights accords, the paper subsequently discusses the prevailing situation in India. It emphasises the utmost significance of safeguarding these rights, such as the right to legal representation, the right to a fair trial, and the presumption of innocence, as they constitute the bedrock of a just and equitable criminal justice system.

The paper proceeds to examine the obstacles that frequently hinder the effective preservation of the rights of the accused. These obstacles encompass inadequate legal aid, prolonged pre-trial detention, instances of police abuse and custodial violence, and the burden of proving innocence. Additionally, it investigates persisting barriers disproportionately affecting marginalised and vulnerable segments of society, including women, children, and religious minorities. The paper also proposes comprehensive measures that the Indian government should undertake to strengthen the protection of the rights of the accused, ensuring that all individuals are treated with fairness and equity under the law.

Keywords: Rights of Accused, Criminal Justice System, Human Rights Law, Constitution of India.

Introduction

The criminal justice system is the cornerstone of any democratic society, serving to maintain law and order, safeguard individual rights, and deliver justice to both victims and offenders. The preservation of the rights of accused individuals, who are presumed innocent until proven guilty, is central to this system. In the Indian context, safeguarding the rights of the accused is of paramount importance to uphold the rule of law and adhere to the principles of justice and fairness.[1]

From a human rights perspective, this research paper examines the crucial issue of accused individuals' rights within India's criminal justice system. India faces significant obstacles in effectively upholding the fundamental rights of criminal suspects, despite having numerous constitutional protections and being a signatory to a number of international human rights treaties. The objective of the research paper is to conduct a comprehensive and critical analysis of the extant legal provisions, their application in practise, and their effect on the human rights of the accused.

The Constitution of India establishes the framework for protecting individual rights and liberties, including those of the accused. The rights to protection against double jeopardy, self-incrimination, and protection of life and personal liberty are enshrined in Articles 20 to 22. In addition, Article 21, which is commonly interpreted as embodying the right to life and personal liberty, is intricately intertwined with the rights of the accused in the context of guarantees of a fair trial.

Moreover, by ratifying international conventions such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), India has pledged to uphold human rights principles. These international obligations emphasise the significance of providing individuals accused of crimes with due process, fair trial rights, and protection against ill-treatment and torture.

In India's diverse and complex legal landscape, however, the actual implementation of these constitutional guarantees and international commitments frequently faces significant obstacles. Accused individuals, particularly those from marginalised and vulnerable

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1. Smith, Kiiza. Rights of Accused Persons in Criminal Justice System. Kampala: Fountain Publishers, 2014. p. 21.

backgrounds, frequently encounter barriers to obtaining adequate legal representation, protracted pre-trial detention, and instances of custodial violence.

Inadequate legal aid services have long been a problem in the Indian legal system, frequently resulting in the denial of effective legal representation to poor defendants. As a consequence, vulnerable defendants may be unable to effectively present their case, and some may languish in pre-trial detention for extended periods while awaiting a fair trial.

Moreover, reports of misconduct by the police, custodial torture, and violence against accused individuals are common in India. The persistence of such practises undermines the integrity of the criminal justice system and erodes public confidence in law enforcement agencies. In addition, obstacles such as procedural delays, insufficient forensic facilities, and a substantial accumulation of cases exacerbate the plight of the accused and impede the prompt delivery of justice.

This research paper examines the human rights implications of the difficulties accused persons confront in India's criminal justice system. It examines how the violation of their rights not only affects their lives and dignity as individuals, but also raises broader questions about the efficacy and fairness of the legal system.

Overview of Rights of Accused & Obligations

The rights of the accused are the foundation of fair and just trials, ensuring that those facing criminal charges are treated with respect and provided with due process. In India, the Constitution and international human rights covenants establish a robust framework for protecting the rights of the accused, outlining a set of fundamental guarantees and state-mandated responsibilities. This section examines the constitutional provisions and international commitments underlying the protection of the rights of accused persons in India.

1. Constitutional Guarantees:

The Indian Constitution enshrines a comprehensive set of rights and liberties, some of which are designed to protect accused individuals during criminal proceedings. Notably, Articles 20 to 22 of the Constitution contain fundamental rights that are directly pertinent to the accused's rights. Article 20(3) protects the accused from being compelled to testify against themselves, thereby preventing self-incrimination. Article 20(2) prohibits a person from being prosecuted and punished twice for the same offence, a principle known as "double jeopardy." In addition, Article 21 is frequently interpreted broadly to include the right to life and personal liberty, which includes the right to a fair trial, protection against arbitrary detention, and freedom from torture and inhuman treatment.

D.K. Basu v. State of West Bengal (1997)[2]

In this landmark judgment, the court laid down specific guidelines to prevent custodial violence and torture. The case underscored the duty of the state to protect the fundamental rights of individuals in custody and mandated the registration of First Information Reports (FIRs) in cases of alleged custodial violence.

Selvi v. State of Karnataka (2010)[3]

In this case, the court discussed the admissibility of narco-analysis, brain-mapping, and lie detector tests on accused persons. The court held that compelling an accused to undergo such tests violates the right against self-incrimination as enshrined in Article 20(3) of the Constitution.

Sheela Barse v. State of Maharashtra (1983)[4]

In this case, the court emphasized the importance of preserving the human dignity of prisoners and ensuring humane treatment within the prison system. The court held that prisoners are entitled to all fundamental rights, including the right to be treated with dignity and respect.

2. Right to Legal Representation:

One of the core principles of the rights of the accused is the right to legal representation. Article 22(1) of the Constitution stipulates that an arrested individual must be informed of the grounds for their arrest and has the right to counsel and be defended by a lawyer of their choice. This constitutional provision recognises the significance of effective legal representation in ensuring a fair prosecution and protecting the rights of the accused.

Kartar Singh v. State of Punjab (1994)[5]

This case emphasized the importance of providing legal representation to an accused person at the earliest stage, including during the period of police interrogation and investigation. The court held that access to a lawyer is an essential safeguard to prevent custodial abuses.

3. The Right to a Fair Trial:

Both the Indian Constitution and international human rights law recognise the right to a fair trial as a basic human right. A fair trial ensures that the accused have the opportunity to present their defence, challenge the prosecution's evidence, and have their case heard by an

2. D.K. Basu v. State of West Bengal, AIR 1997 SC 610.
3. Selvi v. State of Karnataka, (2010) 7 SCC 263.
4. Sheela Barse v. State of Maharashtra, AIR 1983 SC 378.
5. Kartar Singh v. State of Punjab, AIR 1994 SC 125

impartial and qualified tribunal. This principle is enshrined in Article 21 of the Indian Constitution, which has been broadly interpreted by the judiciary to encompass a variety of rights to a fair trial.

Maneka Gandhi v. Union of India (1978)[6]

This landmark judgment expanded the interpretation of Article 21 to include the right to travel abroad, and the court held that the right to life and personal liberty is not limited to mere animal existence, but it includes the right to live with human dignity.

State of Rajasthan v. Abdul Mannan (2011)[7]

In this case, the Supreme Court reaffirmed the importance of the accused's right to a speedy trial. The court held that inordinate delays in trial proceedings violate the accused person's right to a fair and speedy trial and should be avoided.

4. The Presumption of Innocence:

The presumption of innocence until proven guilty is a fundamental component of the liberties of the accused. Article 21 of the Constitution recognises the presumption of innocence unless proven guilty in court. This fundamental tenet of criminal justice states that a person should not be stigmatised or regarded as a criminal until their guilt is proven beyond a reasonable doubt.

5. International Human Rights Commitments:

As a signatory to a number of international human rights conventions, India is obligated to safeguard the rights of the accused. In 1979, India ratified the International Covenant on Civil and Political Rights (ICCPR), which emphasises the right to a fair trial, the presumption of innocence, and protection against arbitrary arrest and detention. In 1997, India ratified the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), which prohibits torture and ill-treatment of accused individuals.

In light of the Constitution's explicit provisions and the judiciary's expansive interpretation, it is crucial to guarantee accused individuals a fair and just trial. Moreover, India's international obligations emphasise the importance of protecting the rights of accused individuals, prohibiting torture, and upholding the principles of due process and presumption of innocence. The subsequent sections of this research paper will examine the challenges and obstacles that impede the effective protection of these rights in India's criminal justice system and will propose measures to strengthen the protection of accused persons' rights in accordance with the country's constitutional and international obligations.

Challenges to Preserving the Rights of Accused in India

While India's legal framework establishes formidable constitutional safeguards and international duties to protect the rights of those accused, meaningful barriers persist in guaranteeing these defenses are in actuality shielded. These challenges, which are frequently entrenched in systemic and institutional factors, have significant implications for the accused's right to a fair trial, access to justice, and well-being as a whole. This section examines the numerous obstacles that impede the effective protection of accused individuals' rights in India's criminal justice system.

1. Inadequate Legal Aid Services:

For many facing criminal charges, one of the greatest challenges is securing proper legal counsel due to insufficient access to adequate representation. While access to legal counsel is foundational to ensuring a just legal process, far too many financially disadvantaged defendants lack the means to secure representation in defending themselves. Public defenders and legal aid services are frequently underfunded and understaffed, resulting in poor representation. Therefore, vulnerable individuals, particularly those from marginalised communities, may not receive effective legal representation, jeopardising their chances of a fair trial.

2. Lengthy Pre-Trial Detention:

In India's criminal justice system, lengthy pre-trial detention is a prevalent problem. Before their guilt or innocence is determined, defendants awaiting trial may be detained for protracted periods of time. Not only does lengthy pre-trial detention violate the accused's right to liberty, but it also hinders their ability to mount a proper defence. This difficulty is exacerbated by an overburdened judicial system, delays in case proceedings, and inadequate bail mechanisms.

3. Instances of Police Abuse and Custodial Violence:

Across the nation, cases of police abuse and custodial violence against accused individuals have been reported. The accused's right to life and dignity is violated by torture and ill-treatment in police custody, as stated in Article 21 of the Constitution. In spite of legal provisions prohibiting torture, insufficient supervision and accountability mechanisms have allowed such abuses to continue, eroding public confidence in law enforcement agencies.

4. Burden of Proving Innocence:

The principle of "innocent until proven guilty" places the

6. Maneka Gandhi v. Union of India, AIR 1978 SC 597
7. State of Rajasthan v. Abdul Mannan, (2011) 13 SCC 61.

burden of proof on the prosecution. In actuality, however, the burden of demonstrating one's innocence is often difficult for the accused. The reliance on confessions as the primary evidence and the lack of adequate safeguards against coerced confessions can lead to wrongful convictions and unjust results.

5. Disproportionate Impact on Marginalized Groups:

Within the criminal justice system, those coming from marginalized or at-risk groups including females, the young, minority faiths, and indigenous peoples confront further difficulties and bias in addition to what the accused normally encounter. The difficulties they face in defending their rights are often compounded by the regular incidence of bias, prejudice, and cultural insensitivity they must routinely weather.

6. Lack of Protection for Victims and Witnesses:

Insufficient victim and witness protection measures may discourage witnesses from testifying against the accused. This not only undermines the prosecution's case but also prevents the defendant from effectively challenging evidence or cross-examining witnesses.

7. Case Backlog and Procedural Delays:

The substantial number of pending cases in Indian courts causes significant delays in trial proceedings. Such delays can result in lengthy periods of uncertainty for the accused, impairing their mental and physical health and placing a strain on their families.[8]

Comparative Analysis and International Standards

A comparative analysis of criminal justice systems in various countries, as well as international standards and best practises, offers valuable insights and benchmarks for enhancing the protection of accused persons' rights in India. Learning from the experiences of other jurisdictions can aid in the identification of successful strategies and effective mechanisms for addressing the obstacles encountered by accused individuals. This section examines the significance of comparative analysis and the applicability of international human rights norms for advancing the preservation of the rights of accused individuals in India's criminal justice system.

1. Learning from Best Practices:

Comparative analysis enables India to learn from the experiences of nations that have effectively addressed comparable challenges in their criminal justice systems. Examining the legal aid mechanisms and public defender systems of countries with robust legal aid provisions, for instance, can inform India's efforts to improve access to legal representation for accused individuals.

2. Protecting Against Custodial Violence:

Examining how other jurisdictions have instituted safeguards against custodial violence and torture can provide India with invaluable insights. Adopting best practises, such as audio-visual recording of interrogations and regular human rights training for law enforcement officials, can aid in the prevention of human rights violations.

3. Addressing Pre-Trial Detention:

Comparative analysis can cast light on effective strategies for reducing pre-trial detention periods and reducing case backlogs. Countries with effective parole systems and case management practises can provide potential solutions for expediting trials and reducing pre-trial detention.

4. Promoting Restorative Justice:

India's efforts to provide alternative forms of dispute resolution that prioritise rehabilitation and reconciliation, particularly for non-violent and trivial offences, can be informed by an examination of restorative justice practises in other nations.

5. Ensuring Access to Justice:

Studying how other nations assure access to justice for vulnerable and marginalised accused individuals, such as through specialised legal aid services and interpreters, can assist India in overcoming the obstacles to justice faced by these populations.

6. Implementing International Human Rights Standards:

International human rights treaties and conventions, such as the ICCPR and the CAT, provide a common framework for promoting and safeguarding human rights on a global scale. India must adhere to these standards in order to fulfil its human rights obligations and protect the rights of accused individuals.

7. Monitoring and Reporting Mechanisms:

International human rights standards frequently necessitate the establishment of monitoring and reporting mechanisms to assess adherence to human rights obligations. India can improve its oversight and accountability procedures by learning from the experiences of other nations in establishing similar mechanisms.

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8. Chandra, Praveen. "Human Rights of an Accused Person: A Critical Analysis under Indian Laws." Indian Journal of Criminology 44.1 (2016): 1-16.

8. Engaging with Human Rights Bodies:

Active engagement with international human rights bodies, such as the United Nations Human Rights Council and treaty monitoring bodies, enables India to share its experiences, seek technical assistance, and receive advice on how to enhance its criminal justice system.

By applying comparative analysis and international human rights norms, India can strengthen its legal and institutional framework to more effectively safeguard the rights of accused. Adopting these practises can not only improve the equity and effectiveness of the criminal justice system, but also strengthen India's commitment to human rights principles and its standing in the international human rights community.[9]

Challenges in Implementation and Remedies

Identifying solutions to safeguard the rights of accused individuals in India's criminal justice system is essential, but reforms can be difficult to implement effectively. This section examines the impediments that could impede the successful implementation of proposed solutions and suggests strategies for overcoming these obstacles.

Challenges in Implementation:

1. Resistance to Change:

Implementing reforms in the criminal justice system frequently necessitates altering long-standing practises and mentalities. Resistance to change from within the system, including from law enforcement agencies, legal practitioners, and even some judicial officers, can hinder the implementation of new procedures and practises.

2. Resource Constraints:

The implementation of reforms may necessitate additional financial resources, technology, and capacity development. The allocation of necessary resources to support the reforms could be hampered by budgetary constraints and competing government priorities.

3. Capacity and Training:

Building the capacity of law enforcement officials, legal practitioners, and judicial officers is necessary for the successful implementation of reforms. Inadequate training on new procedures and human rights norms can compromise the efficacy of the reforms.

4. Overburdened Judiciary:

India's judiciary confronts a substantial backlog of cases, which can cause reform implementation to be delayed. Eliminating the backlog of pending cases and expediting judicial procedures are essential for effective implementation.

5. Political Will:

Significant criminal justice system reforms may require the political will and dedication of policymakers. Changes in governance or priorities can have an impact on the continuation and sustainability of the reforms.

Remedies for Effective Implementation:

1. Engagement of Stakeholders:

Bringing together all pertinent parties, such as law enforcement, legal professionals, the judiciary, civic groups, and academics, is indispensable towards cultivating consensus and endorsement for the proposed changes. Collaboration and dialogue can aid in addressing concerns and achieving consensus on the best course of action.

2. Training and Capacity-Building:

It is imperative that investing in ongoing instructional programs and efforts to foster abilities for law implementation officials, public guardians, and arbiters equips them with the skills required to execute the changes productively and, in a manner, consistent with humanitarian rights standards.

3. Awareness Campaigns:

Conducting awareness campaigns among the public, particularly vulnerable and marginalised communities, can inform individuals of their rights and the reforms being implemented. Additionally, it can increase public credibility in the criminal justice system.

4. Pilot Projects and Gradual Implementation:

Before scaling up, implementing reforms through pilot projects and phased approaches can aid in identifying obstacles and refining strategies. Gradual implementation can also lighten the system's load and facilitate adoption.

5. Monitoring and Evaluation:

It is essential to establish robust monitoring and evaluation mechanisms for assessing the impact of reforms. Periodic evaluations can identify deficiencies, successes, and areas for development, allowing for the implementation of adaptable measures as required.

6. Legislative Reforms:

Under some circumstances, particular reforms may necessitate legislative alterations to facilitate their execution. While human rights standards necessitate reconsidering the legal framework's alignment, policymakers might appraise refining its structure to harmonize with those principles.

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9. Chaturvedi, R. K. "The Right to a Fair Trial of an Accused Person in India." Journal of the Indian Law Institute 53.1 (2011): 1-22.

7. International Cooperation and Technical Assistance:

Engaging with international organisations and pursuing technical assistance can be of great assistance in the implementation of reforms based on human rights. Learning from the experiences of other nations can be especially useful for overcoming implementation obstacles.

8. Public Participation and Feedback Mechanisms:

Mechanisms for Public Participation and Feedback Involving the public in the reform process and soliciting their feedback can increase transparency and accountability. Input from the public can shape reforms to better meet the requirements of the community.

To overcome implementation challenges, a comprehensive and coordinated strategy involving multiple stakeholders, including the government, judiciary, law enforcement agencies, and civil society, is required. India can make significant progress in protecting the rights of accused persons, fostering a fair and just criminal justice system, and upholding its human rights commitments by addressing these challenges and adopting appropriate remedies.[10]

Conclusion

Ensuring the rights of the accused are respected in Indian criminal justice process is both a legally required duty as well as a basic human right that must be fulfilled for all people. Despite the fact that India's Constitution and international obligations provide a solid framework for protecting these rights, a number of obstacles impede their effective protection. This research paper examined critical issues, human rights implications, and comparative analysis to cast light on the path to a more just and equitable criminal justice system.

There are numerous failings within the system that deprive individuals of their rights and undermine justice, including insufficient legal support, abuse within detention facilities, the unjust detaining of individuals for extended periods prior to trial, and prejudices against at-risk communities. To defend the dignity of the accused, uphold the principle of "innocent until proven guilty" and enhance public confidence in the legal system, these challenges require immediate attention and thoughtful interventions.

India has the opportunity to implement comprehensive remedies utilising international human rights standards and best practises from other jurisdictions. Adopting these reforms can mitigate the difficulties, improve access to justice, and guarantee that the rights of accused individuals are protected at every stage of the criminal process. Among the most important measures to be taken are bolstering legal aid services, adopting safeguards against custodial violence, expediting trial proceedings, and promoting restorative justice.

To address the implementation challenges, a multifaceted strategy is required, including stakeholder engagement, capacity-building, awareness campaigns, and monitoring and evaluation mechanisms. Collaboration between government bodies, the judiciary, civil society organisations, and the general public is essential for criminal justice reform.

India must demonstrate unwavering political will and dedication to human rights principles as it advances along this path. India's dedication to fulfilling its role as a conscientious participant in the global organization advocating for human rights is demonstrated through its lawful duty to respect the freedoms of those being charged.

10. Khan, B. S. Criminology and the Criminal Justice System. New Delhi: Atlantic Publishers and Distributors, 2009. p. 211.

The Symbiosis of Artificial Intelligence and Legal Research: An Analysis

Animesh Kumar*

ABSTRACT

This study delves into the intricate relationship between artificial intelligence (AI) and legal research, offering a comprehensive analysis of their symbiosis. As AI technologies continue to revolutionize legal research methodologies, this paper explores the evolving landscape, addressing the integration of AI tools in legal analysis, information retrieval, and decision-making processes. Through a critical examination of the synergies between AI advancements and legal research methodologies, the study aims to unravel the implications for legal professionals, the efficiency of legal processes, and the overall landscape of the legal field. By dissecting key applications, challenges, and prospects, this analysis contributes to a nuanced understanding of the dynamic interplay between AI and legal research.

The purpose of legal analytics is to improve efficiency, accuracy, and consistency in legal decision making by providing insights and analysis derived from large amounts of data.

Keywords: Artificial Intelligence, legal research, efficiency.

Introduction

Generations of people living now and, in the future, will be able to look back and see how far technology has come in some areas. Technology has revolutionised changes for simplicity, swiftness, and efficacy, which can make routine tasks successful and productive.[1] If one compares historical India to contemporary India, one can see that business ownership and entrepreneurship have deep roots in the economy.[2] As a result of the consistent advancement of science and technology, people are collaborating across all sectors to promote dynamic growth. The government organises a census for the purpose of gaining and gathering information about the economy, with the primary objective of learning about social reforms, measures taken, and confirming the problem. To determine the facts and any concurrent issues that must be resolved within the allotted time, legal research is currently being conducted. It has been described as a necessary skill and defensive weapon that lawyers must possess in order to comprehend the advantages and disadvantages of the elevated problems that have arisen. Henceforth, legal officials must be integrated into the facilities for societal improvement, which will combat all disruptions.[3]

Legal research or having sufficient knowledge to achieve the objective can contribute directly to nearly every aspect of legal practise.[4] It can be defined as "the process of identifying, analysing, collecting, or gathering relevant information, and then applying the law to solve a specific problem," encompassing all the fundamental lawyering techniques.[5] Inter-disciplined research in the field of law and computers would facilitate meaningful interaction between legal academics and computer scientists.[6] In two ways, computers can be utilised most effectively to aid the legal profession. One is the information retrieval system, which can be created with the assistance of the law school and computer science department.[7]

The relationship between legal research and legal professionals has created a broad determinant for nearly all of the provisional achievements of activities that can address diverse sets of issues that can be examined in

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1. Umakanth Varottil, "Legal Services - 2020: A Snapshott" An Idea of a Law School Ideas from the Law School: A Collection of Essays-Legal Profession and Legal Services Part-II published on SCCOnline
2. Sher Hann Chua, "Thailand: Artificial Intelligence and Legal Research in the 21st Century", Mondaq, 02 April 2021, available at: <https://www.mondaq.com/trademark/1053766/artificial-intelligence-and-legal-research-in-the-21st-century> (last visited on: 17.02.2022).
3. Alison Wilkinson, "How AI is Revolutionizing Legal Research", Kira, 13 April 2020, available at: <https://kirasystems.com/learn/how-ai-is-revolutionizing-legal-research/>, last seen on 07/09/22.
4. Shaun LIM, "Judicial Decision making and Explainable Artificial Intelligence", (2021) 33 SAcLJ 280.
5. Samuel Maireg Biresaw & Abhijit Umesh Saste, "The Impacts of Artificial Intelligence on Research in the Legal Profession", International Journal of Law and Society. Vol. 5, No. 1, 2022, pp. 53-65, available at: <www.10.11648.j.ijls.20220501.17.pdf> (last visited on: 02.01.2023).
6. A. Lakshminath & Mukund Sarda, "Digital Revolution and Artificial Intelligence-Challenges to Legal Education and Legal Research", CNLU LJ (2) [2011-2012] 1.
7. Ibid.

depth. Every aspect of the problem has been subdivided into several subheads that are required to recognise the scope of the research, the nature of the standards, and the magnitude of the law, with the detonator defining the smallest approach.[8] In evaluating the practise, people implicitly use information technology to identify the root cause of the problem, without exaggerating the traditional form of technology for determining the issue's status.[9] These attempts to solve the norms with artificial intelligence,[10] computer tracking, device tracking, and numerous others, lead to the expansion of all resources.

In AI systems, a variety of stereotypical cases can be decided with the help of computer programmes in order to arrive at more accurate and timely conclusions. Humans can't work with such huge and complicated amounts of data, so AI is used instead.[11] Instead of relying on humans to process such enormous and complex amounts of data, AI is employed. This not only increases the efficacy of legal assistance, but also provides important data-driven insights that aid in fighting crime and upholding the law.[12] This must be aggressively pursued in order to create meaningful computerised programmes as an alternative dispute resolution mechanism.[13]

Leibniz,[14] a lawyer and one of the AI's forefathers, once said, *"It is unworthy of excellent men to lose hours like slaves in the labour of calculation which could safely be relegated to anyone else if machines were used."* Accuracy and precision are tools only a skilled lawyer possesses, can be found in abundance in an AI.[15]

LEGAL ANALYTIC RESEARCH: CONCEPTUAL ANALYSIS AND REGULATION

Legal research can be elaborated and described in a variety of ways; this term combines two intellects, "Legal" and "Analytical Research," which are both directly related to the advancement of technology and knowledge. Legal analytics refers to the use of data analytics and technology to support the practise of law, including legal research, litigation, contract management, and other legal processes. The purpose of legal analytics is to improve efficiency, accuracy, and consistency in legal decision making by providing insights and analysis derived from large amounts of data. Legal regulation of legal analytics is still evolving, with some jurisdictions placing restrictions on the use of automated decision-making tools in certain areas of the law, such as the determination of criminal guilt or the calculation of damages.[16] However, there is a growing recognition of the benefits of legal analytics and a trend towards more permissive regulation in many jurisdictions.

One interpretation of research is that it is the process of carrying out the steps or procedures that are necessary for the collection of information that will subsequently be analysed in order to gain an understanding of the topic. Another interpretation of research is that it is the process of carrying out these procedures.[17] The other definition of research can be stated as "the procedure of identification of the core matter which took place, accordingly, ascertaining the subject with relevant facts, applying all of the logic ordering for classification of the issues, framing hypothetical presumptions over the possibility of the situation, and finally asserting a conclusion." This definition states that research is "the procedure of identification of the core matter which took place, accordingly, ascertaining the subject with relevant facts, and applying all of the logic ordering for classification of the issues."[18]

Research or legal analytical research can be defined as creative, functional, and systematic work undertaken to increase the bulk stock of knowledge through the exchange of new applications for the availability of existing techniques. Identification (finding and searching), reading (retrieving over matter), interpretation of the matter (analysis and synthesising the subject), and ruling (decision or judgement pronouncement) are the rough categories for legal analytical research. The definitions of legal analytical research should be careful, diligent, elaborative, classified, exhaustive, and systematically levelled, wherein it is prescribed according to the role of

8. Ian Mcleod, Legal Methods (Palgrave Macmillan, England, 7th Ed. 1988).
9. Mary Ann Neary & Sherry Xin Chen. "Artificial Intelligence: Legal Research and Law Librarians" AALL Spectrum 21, no.5 (2017): 16-20, available at: <https://core.ac.uk/download/pdf/83100938.pdf> (last visited on: 21.12.2022).
10. Hereinafter referred as AI.
11. Sejal Chandak, "Artificial Intelligence and Policing: A Human Rights Perspective", 7.1 NLUJ LR (2020) 43.
12. Ibid.
13. Harry Surden, "Artificial Intelligence and Law: An Overview" (June 28, 2019), Georgia State University Law Review, Vol. 35, 2019, U of Colorado Law Legal Studies Research Paper No. 19-22, available at SSRN: <https://ssrn.com/abstract=3411869> (last visited on: 12.12.2022).
14. Gottfried Wilhem Leibniz, "Quotable Quotes" Goodread, available at: <https://www.goodreads.com/quotes/953543-it-is-unworthy-of-excellent-men-to-lose-hours-like> (last visited on: 17.02.2023).
15. Darshan Bhora & Kuldeep Shravan, "Demystifying the Role of Artificial Intelligence in Legal Practice", [2019] 8.2 NULJ 1.
16. A. T. H. Smith, Glanville Williams: Learning the Law (Thomson Reuters Professional UK Limited, London, 2016).
17. Ian Mcleod, Legal Methods (Palgrave Macmillan, England, 9th Edn. 2013).
18. Varnan Mathur, "Artificial Intelligence and Law", Legal Service India, available at: <https://www.legalserviceindia.com/legal/legal/article-8680-artificial-intelligence-and-law.html> (last visited on: 01/02/2023).

the authorities, scientific information gathering, an investigation that will define search and pursuing the evidence, knowledge about the subject matter, discovery of the truth, and finally the contribution with the matter. In regard to the logical area, the definitions of legal analytical research should be careful, diligent, elaborative, classified, exhaustive, and systematically levelled.[19]

Maintaining a rough sense of discretion over the interpretation of the law, which has many facets over its implementation relative to the scope of execution, has been further subdivided into reliance on primary and secondary sources. As a result, legal research is defined as the discovery of measures and norms for presenting an effective number of arguments toward the resolution of problems, which can be competent or incompetent.[20]

AI: BACKGROUND AND ITS FUNCTIONING

Our typical schedule, in which an individual is able to carry out all of the activities required for survival in accordance with his or her capabilities as a human intellect. Technology has the potential to make people's lives easier and can even take the place of certain aspects of people's lives, but in today's world, people are more reliant on technology than they are on their own abilities. This viable development plays an important role, both positively and negatively, in the overall picture. It is used for the welfare of the economy to ensure consistent growth, but in some places, it is rendering people unable to perform their activities, which makes it counterproductive. The Indian judicial system is completely predicated on the precedent of the case, which indicates that in order for judges to make a decision and issue a ruling regarding a topic, they must first observe and investigate all of the relevant facts. The highest authority and power have been transferred to the statutory authority, which can be difficult to make decisions like searching for a needle in a haystack at times, but that is the uniqueness of research and technological development. AI took place in the legal form of research to reduce problems and level up with the time-consuming factor, and eventually the game of investigation took a severe turn.[21]

AI has been classified as a mechanism wherein computers and other electronic devices are programmed in such a manner that they can undertake tasks that cannot be done with the human brain. Advancement and continuous development have had a positive impact on us because they assist and guide us in overcoming issues that are simple and unsolvable. While the people have faced the challenge of operating the system in an efficient and effective manner, it was hypothesised that this particular department could increase the nation's employment level, but the main disadvantage is that the person must be literate enough to operate the machine and technology.[22] This phenomenon can be characterised as the growing influence across the various sectors, which can adapt slowly but will ultimately be in a position to show the outcome at the earliest impact. In the meantime, there were only a few modifications made to the legal system in India regarding superior or high-level dense technology; however, this can be considered the beginning of globalisation. On the other hand, this is something that is promulgated by the team or group of lawyers to still work under the supervision of the old system in order to ensure that their work is carried out in an effective and appropriate manner. Because of this, the length of time it had been pending increased, and in some places it was considered to be more time-consuming; consequently, a gap was created in the various branches of the government.[23]

In contrast to the past, today's reality speaks a language of problem-solving and making decisions that hasn't been used much before. This has led people to become more familiar with new technology. Due to a few benefits, people in all types of occupations have been able to catch up with the rest of the world.

1. AI has caused a lot of problems in fields where it can work well,
2. As the case drags on and more people want to use self-service protocol systems, people start to think of themselves as globalised people.
3. This new technology makes it easier for lawyers to work together, which opens up more opportunities.[24]

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19. S. M. Biresaw, "The Impacts of Artificial Intelligence on Research in the Legal Profession", Preprints 2021, (Dol:10.20944/preprints202110.0085.v1), available at: <https://www.preprints.org/manuscript/202110.0085/v1> (last visited on: 01.02.2023).
20. Mirza Aslam Beg, "Impact of Artificial intelligence on Indian Legal system", Legal Service India, available at: <https://www.legalserviceindia.com/legal/article-631-impact-of-artificial-intelligence-on-indian-legal-system.html> (last visited on: 31/12/2022).
21. Sudipta Ranjan Sahoo, "Artificial intelligence and the Indian legal system", iPleader, 13 Nov.2021, available at: <https://blog.ipleaders.in/artificial-intelligence-and-the-indian-legal-system/> (last visited on: 08.12.2022).
22. Vasundhara Shankar, "Artificial intelligence in the Legal Field", Lexology, 22 Oct. 2021, available at: <https://www.lexology.com/library/detail.aspx?g=f206a791-d35e-4f55-ba13-139b478f628e> (last visited on: 08.12.2022).
23. Radhika Budhiraja, "Artificial Intelligence - The legal framework", Legal Advice Guru, available at: <https://legaladviceguru.com/artificial-intelligence-the-legal-framework-in-india/>, (last visited on: 09/12/22).
24. Constanta Rosca, Bogdan Covrig, et al. (eds.), "Return of the AI: An Analysis of Legal Research on Artificial Intelligence using Topic Modeling", available at: <https://ceur-ws.org/Vol-2645/paper1.pdf>, (last visited on: 30.12.2022).

AI and legal research are related in the way that AI was made to collect deep knowledge, rules, and factual information for governing in a systematic way, and legal research was made to analyse and observe the information collected for development.[25] AI is the only thing that can really change how people interact with each other in a fundamental way. This is true not only in the digital world, but also in other social, economic, financial, and political settings.[26]

INDIAN LEGAL FRAMEWORK AND IMPORTANCE OF AI

Recently, in the era of globalisation, new, cutting-edge techniques and skills have been discovered that developing nations should adopt for continued growth. All of the advantages were obvious to the logical consumer, which will promote the application of AI and other technological developments across numerous industries or sectors. Robotic concierges for hotels and restaurants are followed by automated entertainment that can be controlled by a cell phone or other electronic devices. Despite the limited amount of technological advancement, the Indian judiciary and other industries have a wealth of experience, and as a result, lawyers and other legal professionals are still accustomed to relying on the solution.[27]

AI significantly affects the gathering, observing, compiling, and then ruling of the judgement whenever it pertains to the right to practise and the right to act in Indian jurisdiction. The assessment of the situation, or, for example, a negative deterioration or a positive improvement, which can affect the implementation of the law, is an important application of AI in the field of legal research. As can be seen, using AI makes everything instantly accessible, and the lawyer has simultaneous access to data and information on the wealth and health sectors.[28] AI compiles all relevant information, but each source can be utilised for the upgradation and development of the Indian legal system, which is considered to be in a constant state of development, ratification, and expansion. Performing research or any desired activity requires a substantial amount of manpower and force, but with the aid of recently developed technology, i.e. AI, the entire path of the legal community can be levelled. Eventually, not everyone is content with the expansion of modernization and globalisation, but growing up in this era can be incredibly beneficial for coping with the economy.[29]

In order to implement high-quality research with consistent results across multiple parties, legal analytical research should be stable. Using evolving technology, attorneys can provide efficient and effective counsel for the attainment of objectives or litigate the specified case under the supervision of AI, resulting in a win-win situation.[30]

IMPACT OF AI ON THE LEGAL PROFESSION

As a result, recent and modern technological advancements that include a natural language for processing and learning have vastly surpassed traditional conceptions of how expertise can be evaluated. Legal research in a particular field and professionalism in general attire are not immune to disruption by AI. There was a back-predicted future hypothetical assumption regarding the future aspect in 2013: there will be a severe radical change in every field within this decade. It was further argued that it is implausible for information to radically permeate all facets of the economy and society. The exemption has always been enacted for the alterations that have made the legal profession highly regarded as a trained and skilled professional who is recognised for recognising legal issues. Collecting all pertinent data can aid in determining the probable outcome that can be cross-examined during the ruling. The optimal course of action can be determined by a dispute adjudication process involving the application of discretion, the use of experience and institutions, and the evaluation of the merits of the cases.[31]

In general, the task can be performed by highly skilled individuals, but the advancement of AI may be hampered by traditional beliefs, demonstrating that the legal profession is not immune to AI. As a result, AI has caused great disruption to legal research in specified fields.[32]

AI provides certainty, effectiveness, data efficiency, authenticity, and the ability to solve many problems, including legal autonomy. It is cost-effective and reduced over a significantly based situation, allowing a reasonable condition to be specified for unprofitable circumstances, unaffordable specifications, or data inaccessibility.

25. Aashirwa Baburaj, "Artificial Intelligence v. Nintuitive Decision Making: How Far can it Transform Corporate Governance?", (2021) 8.2 GNLU L. Rev. 233.
26. Supra note 13.
27. Branting, L. Karl, "Artificial Intelligence and the Law from a Research Perspective." 14 (3) Scitech Lawyer American Bar Association 32 (2018).
28. Supra note 13.
29. Teng Hu & Huafeng Lu, "Study on the influence of Artificial Intelligence on the Legal Profession", Volume-110 Advances in Economics, Business and Management Research Atlantis Press, 964-968 (2019).
30. Supra note 22.
31. Supra note 20.
32. Supra note 9.

Modern technology can help mass decision-making by searching with primary or secondary sources, classifying the problem, filtering the solving agenda, and dominating issues. AI has improved the Indian legal system's application and recognition of issues.

However, legal representation for defending against the party in court may vary by country depending on the law. As India is still developing, the court process is tedious, lengthy, exhaustive, and expensive.[33] Thus, research tools have been simplified into various perspectives, such as,

- have significantly enhanced retrieval quality for the extracted information,
- with an intuitive quality and minimal training requirements,
- working hour was drastically shortened.[34]

LEGAL ISSUES & CHALLENGES BEFORE AI

The power of computers is growing. There are billions of gigabytes of data, and virtual technology permeates every aspect of life. This ground-breaking AI technology will endure.[35] In recent years, the competition between people's perspectives and technological progress in the legal sector has intensified, which has been reflected in national and international jurisdiction. It is now widely acknowledged that all administrative structures must take full advantage of technological advancements and adapt to changing needs. The consistent support of individuals in a business environment can only enhance competition. Those who have been able to ignore efficient development have eventually become irrelevant and in the way of potential growth.[36] In the future, however, law sectors and other authorities will be considered as legal perspectives and technological advancement become the country's backbone. Some of the characteristics became overly sophisticated over time:

1. Effective client service innovation-as the service is typically provided to clients for problem counselling, it would eventually undergo a fundamental shift. A legal authority or authorised organisation will approach the client or parties in order to collect more authentic and cost-effective information. Establishing a professional relationship between people (clients or parties) and firms in order to defend them against legal issues that can be addressed with a PBPS.
2. Focusing on income as a means to increase profits, the legal profession is now viewed as a business that cares more about profit than client competition. Consequently, a rise in demand will result in an expansion of the workload, while the need for legal assistance will remain constant. Creating extraordinary conditions because of the difficulty of increasing service revenue Other legal companies will be less concerned with earned revenue and more focused on profits and margins, which will be more cost-effective.
3. As the legal profession has seen a rise in trading and customer satisfaction, AI-based solutions will be needed. E-discovery, automated contract drafting, and trademark search have been recommended for IT businesses. They can save money by using more efficient and effective law firms to get a large margin profit. AI relies on legal collaboration with the economy and professions that can solve social problems.
4. With the upgrading, advancing, and dynamically expanding future, legal authorities will place a significant emphasis on building brand value. Enhancing the law firm's reputation is one of the top priorities for branding or revaluation. This can tarnish the company's irresponsible segment. For law enforcement agencies to increase the value of their brand, they must rely on AI-based solutions and be technologically savvy.[37]

An AI analyses and interprets the case's facts as you upload the document, generates word suggestions to narrow down search results, compiles a list of relevant precedents, and offers visual support.[38] The general consensus is that document review takes up the majority of junior advocates time, and AI could perform this task. Reviewing documents is a structural process because it seeks to determine their applicability to hot topics and questions. The biggest flaw in AI systems is their lack of emotion.[39]

Another major issue comes before the usages of AI is copyright. For a "work" to be eligible for copyright protection under Indian law, it must first meet the "modicum of creativity" standard established in Eastern Book Co. v. D.B. Modak.[40] There is no conclusive evidence that an AI cannot meet the required "minimum level of creativity." The Copyright Act of 1957 stipulates that in

33. Supra note 29.
34. Supra note 24.
35. Anil G. Variath & Adithya A. Variath, "A New Social Contract for AI Governance in the Age of Fourth Industrial Revolution", [2021] 10.2 NULJ 1.
36. Supra note 2.
37. Supra note 27.
38. Supra note 15.
39. Supra note 15.
40. (2008) 1 SCC 1

order to own copyrighted works, one must be an "author," as that term is defined. This would be problematic, as AI is typically regarded as lacking legal personality.[41] The current legal framework under the Copyright Act of 1957 may not effectively address or regulate the creation of works where the actual creator or contributor of the "expression" is neither a human nor a legal entity. Thus, according to Indian copyright laws, the authorship of works created by AI would be contested.[42]

THE FLIP SIDE OF ARTIFICIAL INTELLIGENCE VIS-À-VIS THE LEGAL PROFESSION

A huge amount of man hours are needed to complete the work in professions like law, and the task at hand must be completed flawlessly without any mistakes. The best AI systems currently in use in the legal sector include ROSS, KIRA, Lawgeex, and E-Brevia. By completing time-consuming tasks like filing, drafting, reviewing, and processing a contract in a matter of days, these systems relieve the burden on lawyers.[43]

There have been misconceptions about technological advancement, specifically AI, that machine learning poses a threat to human survival by merely replacing lawyers in the legal field. Based on evidence and other circumstantial proof of verticals such as e-commerce, health care facilities, and departments related to accountancy, the only sector that can assist is the one of lawyers or attorneys who are more productive than their predecessors. The application of modern technology in a legal proceeding should simultaneously initiate the transition from "bar" to "bench", in which the judges can use NLP summarization for external assistance in summarising the arguments.[44] In recent cases, a relative issue with the statute of questioning was quickly brought to the judge's attention to determine its validity. Regardless of all the arguments, nothing supports replacing expertise and knowledge with technology; yes, AI and other electronic devices will provide authenticity and accuracy, but the field also requires efficiency and effectiveness.[45]

AI has been established in anticipation of economic growth in all defined sectors, in accordance with which a number of areas have utilised law and technology in a balanced manner; these include all of the following criteria:

1. Due diligence - the use of AI-based legal software for examining and analysing the contract, considering the agreement, conducting legal research, or even executing the electronic related discovery - has made the duties a crucial component of due diligence, which is gradually gaining in popularity,[46]
2. Hypothetical prediction of technology: AI and other relevant legal software are typically used to solve complex problems in a matter of minutes, while ensuring the quality of work and objectivity that clients expect in the final product,
3. Legal analytics: Lawyers and attorneys can also rely on judicial precedents and other pronouncements, which are dependable information sources that can be used to construct persuasive arguments, and
4. Automation and document correction-having the legal paperwork in the correct sequence and chronological order enables the attorney to be prepared in minutes by providing the necessary documentation.[47]

The foremost principle and responsibility of the attorney is to conduct all relevant research on behalf of the client, regardless of the assessed factual data and statistical evidence. For the purpose of establishing due diligence, there must be a comprehensive investigation and knowledge of the action that can provide long-term benefits to the client, but is also result-oriented.[48] The true result that should be ratified and amended within the provision is that the investigation is time-consuming, which indicates a lack of inspection and makes retaining the resolution prone to error, resulting in a gap between precedent and justice. AI cannot replace the human brain, but it does provide a reduction in human error, global information accessibility 24 hours a day, seven days a week, multitasking tasks that increase validation, assistance in every industry, and faster results.[49]

AI FOR LAWYERS

With simultaneous development and grievous technological growth, labour force or manpower has been substituted with machinery. It has been predicted that after one-two decade of globalization all the sectors would be in

41. Soaham Bajpai, "Artificial Intelligence and its Creation : Who Owns Intellectual Property Rights?", (2020) 10 GJLDP (October) 152.
42. Ibid.
43. Supra note 15.
44. Supra note 9.
45. Supra note 13.
46. Akhilesh Tiwari, "Impact of AI in Due Diligence and Law Practice", 2021 SCC OnLine Blog OpEd 49.
47. Sudipta Ranjan Sahoo, "Artificial intelligence and the Indian legal system", iPleader, 13 Nov.2021, available at: <https://blog.ipleaders.in/artificial-intelligence-and-the-indian-legal-system/> (last visited on: 08.12.2022).
48. Daniel Seng & Stephen Mason, "Artificial Intelligence and Evidence", (2021) 33 SAcLJ 241.
49. Supra note 2.

the position to project the working or functioning of the circumstances with the help of technology. This is eventually increasing the welfare notification and growth of the economy but ultimately will diminish the employment level for the people irrespective of expertise who have ample knowledge about the subject or the freshers that are in requirement of experience. This substitution will indeed impact the economy at large for sake of relevant development but somewhere the rational customer has to understand that alteration over the position will affect the normal labour growth.[50]

AI is a game-changer in the legal field and has the potential to revolutionise the way lawyers work.[51] However, no AI software or other technical-based technology has been specifically programmed to replace the attorney in enforcing all of the specific provisions. This can ultimately improve the performance of software, resulting in the creation of authentic information, accurate trials, and result-oriented analysis. The harsh reality of the situation contradicts the facts disclosed for the replacement policies. As the rules and bylaws have been modified, ratified, and enacted by judges and attorneys, if they are removed from the system, the Indian judiciary will be left with a gaping hole.

Relevantly, it is not possible to automate the observation of facts, analysis of the situation, decision-making process, or actual courtroom representation.[52] The use of AI software and other computer-based programmes can significantly reduce the time and effort required by lawyers while allowing them to deliver authentic results for their clients. The legal business in India has been categorised as infancy and is still eagerly awaiting an outcome more than the automated technology. AI and other aiding technologies, if they substituted for legal adjudication, would directly challenge the efficiency and knowledgeability of the clerical job.[53]

"The core idea behind AI development is not just limited to the supplanting of the human brain or just for the presence of the judge's procurement," Justice Dr. D.Y. Chandrachud once stated.[54] When re-evaluating the subject, there should be a guarantee of a more predictable, hypothetical, and consistent outcome and result, which will ultimately broaden the idea of accessing justice.[55]

There are a few options available to firms or service providers that can use AI as the leading business in the world and board likewise: First, the technology is used for assisting the legal adjudication to create more productive with lower costs that can benefit the public at large as well as the firm; Second, to achieve the goal computer and other electronic gadgets can perform all the fundamental operations related to the case for proper observation; and third, the technology is used for assisting the legal adjudication to create more productive with lower costs that can benefit.[56]

SUGGESTIONS AND RECOMMENDATIONS

As different forms of technology can sometimes lead to infringement, which can increase cyber threats, attacks, hacking, and other cybercrimes, law firms and legal authorities received a number of advantages for incorporating AI into the operation of the legal community. Attempts can be made to establish trustworthiness through the continuous development of intelligence, but there are numerous flaws in the provisions. Affordability can engender mistrust of government and sectors. The action can be governed by eventual implementation policies pertaining to security, severe consequences, and execution policies.

The first unresolved issue is one of awareness regarding the development of AI applications and the advancement of technology. By enhancing understanding of the capabilities, restrictions can be imposed. Regarding the growth and development of regulatory sectors, the judicial system should be in its infancy, where the optimal amount of time should be invested to maximise its economic effectiveness. Every industry is difficult to operate, but that does not mean that people will never legitimise the path to understanding the concept, and these globalisations are designed for the advancement of society rather than its substitution.

CONCLUSION

The language of legal analytics, which combines human intuition with a behaviour pattern that can be used to predict the future, is given legitimacy by observation and study. In general, the amenable path can be seen as a domain that affects the economy both negatively and favourably. One of the most innovative and rapidly

50. Supra note 29.
51. Speaking at the first anniversary of "i-Amicus," an artificial intelligence-based knowledge-sharing platform developed by the legal team of the ICICI Bank, Justice Hima Kohli discussed "Artificial Intelligence and the Legal Sector", available at: <https://www.livelaw.in/top-stories/artificial-intelligence-threat-opportunity-game-changer-supreme-court-judge-hima-kohli-221379> (last visited on: 12.02.2023).
52. Supra note 13.
53. Supra note 22.
54. Supra note 27.
55. Uday Shankar & Shubham Pandey, "Balancing the Scales of Justice through Artificial Intelligence", 63 JILI (2021) 190.
56. Supra note 24.

developing technological advancements that can enhance human reasoning has been held up as AI. Modern appliances have resulted in a high-cost investment that has been backed up. This investment is helping the economy in two ways: by centralising gathering, collecting, and analysis, it also makes people more inefficient. Growth is a necessary intermediary for technological development between human power and the human mind. The field of AI has split into positive and negative aspects, but there is always a risk lurking beneath the surface for every stable civilization. The general form of an amenable perspective that should compel mandatory actions for reducing the negative externalities, which may have a temporary effect, is considered to be legal research and practise. All professions require both qualitative and quantitative data to increase the quantity of research and produce an adequate amount of results. But with every application, ratification, alteration, and amendment, mankind eventually picks up how to use every new tool and implement every new step that will advance the law.

AI has the potential to have a significant impact on the legal industry, both in terms of increasing productivity and changing how legal services are provided. It is unavoidable; therefore, we must be ready to face it with insight, foresight, and an open mind. AI enabled tools can be used by lawyers to automate repetitive tasks, search vast amounts of data, and aid in contract analysis. AI can also be used to forecast the outcomes of court cases, assisting attorneys in making better decisions and allocating their resources. Concerns exist regarding the possibility that AI will displace human attorneys as well as the moral ramifications of relying on algorithms to decide crucial legal issues. In the end, AI is likely to present opportunities and challenges for lawyers and the legal sector as a whole.

Contextual Analysis of Rights of Muslim Women in India: Law and Practice

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ABSTRACT

The claim that Islam has provided women in India enough rights is a very complicated and multifaceted subject. There is a general presumption in the society that the Muslim women are at disadvantage when it comes to providing their lawful rights in accordance with Islamic law. A confluence of religious, cultural, social, and legal elements affects very woman's rights in any country, including India. The teachings of Islam, like those of other major religions, effectively address women's rights and roles, and these concepts are understood and used differently depending on the situation. Muslim women have benefited from the rights bestowed upon them by Islamic law in India, where Islam is one of the dominant religions. Islam affirms the dignity and equal worth of every person, regardless of gender and hence provides various rights to women.

The Constitution of India and various statues enacted by the Indian Parliament have also recognised various rights of Muslim women. This research article argues that Muslim women in India have sufficient rights in accordance with Islamic law and secular laws enforced in India. Further the role of judiciary in recognising the rights of Muslim women has also been laid emphasis.

Keywords: Muslim Women, Teachings of Islam, The Constitution of India, the Judiciary

1. Introduction

Before India gained its independence, the state acknowledged that different communities should be subject to different sets of religious laws in their personal, religious and family matters, and the courts have traditionally decided family disputes on this basis.[1] The Quran is the main source of Islamic law when it comes to women's rights. It recognizes how important it is to treat women with dignity and compassion and ensuring that they have the freedom to own and inherit property and pursue an education. In terms of their rights and prospects, Muslim women in India have made progress in a number of ways.

Muslim women who are well- educated and powerful take an active role in a variety of professions, including as politics, education, and entrepreneurship. Additionally, there have been initiatives to update personal laws to give Muslim women better legal safeguards in relation to inheritance, marriage, and divorce.

2. Muslim Women' Rights under Islamic Law

Quran is the primary source of Muslim Law. Muslims claim that Islam gives women specific rights and obligations, as well as a position of honor and respect. The legal safeguards and protections provided by the Holy Quran are thought to represent a significant advance over the pre-Islamic society's treatment of women in the fields of marriage, divorce, and inheritance, among others. The protection of women by men is mentioned in the Quran, with women's righteousness being defined in terms of submission to men. A recurring subject in modern Muslim writing, articulated by both sexes, is the naturalness of the situation in which women, due to their innate attributes and characteristics have clearly defined positions and are unable to perform tasks that are exclusively the domain of men. The unique—but complementary—duties assigned to each of them are determined by their psychological and physiological distinctions.[2]

Most of the Islamic religious scholars concur that from the outset of Islam in the early 600s CE, the Prophet Muhammad extended women's rights to encompass property, inheritance, and marital rights. At a time when women had few, if any, rights, it was a revolutionary action.[3]

2.1 Rights of Muslim Women in Hereditary Property

According to Islamic law, men and women have the same rights when it comes to working, making money, owning

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1 Justin Jones,"Towards a Muslim Family Law Act? Debating Muslim Women's Rights and the Codification of Personal Laws in India" 28 Contemporary South Asia, (2020).
2 Jane I. Smith, "Women in Islam: Equity, Equality, and the Search for the Natural Order" 47 JAAR,517 (1979.)
3 Women's rights in Islam: Fighting for equality, available at: https://www.dw.com/en/womens-rights-in-islam-fighting-for-equality-before-the-law/a-53539222 (Last visited on April 20, 2023).

property, and the idea of inheritance. The Quran mentions in Surah Nisa'4:7, about the share of women in the property as:

> *"For men there is a share from what their parents and close relatives leave, and for women there is a share from what their parents and close relatives leave, be it little or considerable; a definite share."*[4]

It is stated in the verse above that women, like men, inherit and have a part in property. Indeed, this text was sent to the Prophet Muhammad (S) during a time when women were devalued and devoid of dignity everywhere, but particularly among the benighted Arabs. During the Age of Ignorance, many defenseless newborn girls were even buried alive because males were humiliated to discover that their newborn child was a girl.

Again, the Holy Quraan, in Surah Nisa' 4:11, deal with more specific rights and share of women in inherent property.

> "Allah charges you in regard with your children: a son's share is equal to the share of two daughters; if the [children] are [only] daughters and two or more, their share is two thirds of the legacy, and if there is only one daughter, her share is half [of the legacy]; and each of the parents inherit one-sixth of the legacy if the deceased had children, and if the deceased had no children and the parents are the only heirs, the mother inherits one-third; if the deceased had brothers, the mother inherits one-sixth;[all this is] after executing the will and settling the debts of the deceased. You do not know which of your parents and children benefit you the most. This is Allah's injunction; surely Allah is All-knowing, All-wise."[5]

In light of the above, sons inherit twice as much as daughters, brothers inherit twice as much as sisters, and husbands inherit twice as much as wives under Islamic inheritance law. The only exception to this rule is the deceased's mother and father, who each receive an equal share of the deceased's legacy if they are still living at the time of the child's death. Although a girl's inherent rights are less than a boy's and a husband's rights are more than a wife's, Islam has acknowledged women's rights to a very large extent. Reason as to why the women have been given less right in relation to inherent property, as has been given clergy, is that after marriage women acquires right in the property of husband and, at the same time, it is incumbent upon the husband to maintain his wife.

2.2 Rights of Muslim Women on Marriage

While dealing with the right of woman on marriage, the Holy Quraan in Al Nisa 4:4states as:

> "And give to the women (whom you marry) their Mahr (obligatory bridal-money given by the husband to his wife at the time of marriage) with a good heart."[6]

Undoubtedly, the mahr prescription serves as a sign of respect and honour for the woman while also illustrating the gravity and significance of the marriage contract. Muslim husbands are required to offer mahr to their wives out of goodwill and the goodness of their hearts.

As long as their women are willing to serve their husbands, the majority of Islamic scholars hold that husbands should financially support their wives. If she refuses to follow what he says or does not, she does not have the right to spend this kind of money. Spending money on her is required since, according to the provisions of their marriage contract, she is solely available to her husband and cannot leave their marital residence without his approval. He has to treat her well and give her money in return for her making herself available to him for his amusement.[7]

Additionally, husbands have been admonished to treat women with due respect, to have a positive outlook on their wives, to be polite to them, and to give their wives anything that could soften their hearts toward him.[8]

As regards equality, women have similar rights over husband. The Quran in Surah Baqra reads as:

"And they (women) have rights (over their husbands as regards living expenses) similar (to those of their husbands) over them (as regards obedience and respect) to what is reasonable."[9]

In Islam, it has been stated repeatedly that males should treat women with respect and that their rights should be equal to and reasonable in comparison to their husbands. It is indisputable that women have been granted a number of rights and have received appropriate treatment in Islam.

2.3 Muslim Women Right to Education

The importance of education for a Muslim can be gauged from the fact that the very first verse to be revealed to the Prophet Muhammad talks about education. It reads as:

"Recite: In the name of thy Lord who created man from a clot. Recite: And thy Lord is the Most Generous Who

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4 The Holy Quran, Surah Nisa'4:7.
5 The Holy Quraan, Surah Nisa'4:11.
6 Id., 4:4.
7 Rights of Husband and Rights of Wife in Islam, available at: https://islamqa.info/en/answers/10680/rights-of-husband-and-rights-of-wife-in-islam (Last visited on July 12, 2023).
8 The Holy Quran. Surah Al Nisa 4:19.
9 The Holy Quran. Surah Al Baqarah 2:228.

taught by the pen, taught man that which he knew not."[10]

According to the Prophet Muhammad, it is incumbent upon every Muslim, both man and woman, to pursue education. Muhammad made a number of statements in this regard, one of which is outlined below.

"The seeking of knowledge is obligatory for every Muslim."[11]

Hence, it is undisputable fact that Prophet Mohammad(S) has also given so much importance to education and instructed every Muslim to seek knowledge an obligation.

3. Legal Rights of Muslim Women in India

The Parliament of India has passed a few legislations dealing with personal laws of Muslim Community. The Parliament has enacted the Muslim Personal Law (Shariat) Application Act[12] (hereinafter referred to as the Act) in 1937 to declare that Indian Muslims will be governed, in personal matters, by Shariat or Islamic Law. Section 2[13] of the Act talks of Application of Personal law to Muslims, and it reads as:

"Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)."[14]

Hence, this Act has declared that various personal matters, including marriage, talaq, gift, trust, guardianship etc. of Muslim Community, will be governed by Muslim Law only. But, it is most unfortunate that agricultural property has been kept out of the realm of Muslim Law and the women have been denied their rights in agricultural property.

The Dissolution of Muslim Marriages Act (henceforth referred to as the Act) was finally passed by the Indian Parliament in 1939 after a couple of years.[15] The objective of this Act is to harmonize and elucidate the requirements of Muslim law concerning divorce lawsuits filed by women who are married in accordance with Islamic law. It gives rights to Muslim women to file a suit for dissolution of Marriage under certain conditions. Section 2[16] of the Act provides for various grounds of dissolution of Marriage wherein Muslim Women are entitled to dissolve marriage. This Act has recognized certain rights to Muslim women after marriage.

After the judgement of *Mohd Ahmed Khan v. Shah Bano Begum*[17], wherein the Supreme Court upheld the judgment delivered by Madhya Pradesh High Court granting maintenance to Shah Bano Begum by her husband under section 125[18] of the Code of Criminal Procedure,1973. Nonetheless, a husband is only required by Muslim personal law to maintain his divorced wife for the duration of their iddat. The judgement was seen by the Muslim community as an attack on their personal and religious laws. To pacify Muslim community and addressing this issue effectively, the Government of India has passed the Muslim Women (Protection of Rights on Divorce) Act[19] 1986 (hereinafter referred to as the Act). By giving the parties the choice under section 5[20]of the Act to decide whether they want to be regulated by section 125[21]of the Code of Criminal Procedure, 1973, the Act has significantly overturned the Shah Bano Case[22]and reached a compromise. Following Shayara Bano v. Union of India[23],wherein the practice of instant talaq was declared as Un-Islamic and against the basic tenets of Quran, the Parliament of India has enacted the Muslim Women (Protection of Rights on Marriage) Act[24] in 2019. Section 3[25] of the Act declares the practice of instant talaq as void and illegal. Section 4[26] of the Act provides for punishment up to three years in case a husband pronounces instant

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10 The Holy Quran. 96: 1-5.
11 Al-Tirmidhi, 74
12 The Muslim Personal Law (Shariat) Application Act, 1937.
13 Id., s 2.
14 Ibid.
15 The Dissolution of Muslim Marriages Act,1939. (Act No 8 of 1939).
16 Id., s. 2.
17 Mohd Ahmed Khan v.Shah Bano Begum,AIR 1985SC 945.
18 The Code of CriminalProcedure,1973. (Act No. 2 of 1974 S.125.
19 The MuslimWomen(Protection of Rights on Divorce) Act,1986. (Act No. 25 of 1986).
20 The MuslimWomen (Protection of Rights on Divorce)Act,1986. (Act No. 25 of 1986) s.5.
21 Supra note 18.
22 Supra note 17.
23 Shayara Bano v. Union of India, (2017)9SCC 1.
24 The Muslim Women (Protection of Rights on Marriage) Act, 2019.(Act No. 20 of 2019).
25 Id.,s.3.
26 Id.,s.4.

talaq upon his wife.

Moreover, this Act further talks of certain rights of Muslim Women. Section 5[27] states that awoman upon whom triple talaq has been pronounced is entitled to receive from her husbandsuch amount of subsistence allowance for herselfand her dependent children. In the case that her husband gives her an instant talaq, a married Muslim woman has the right to custody of her young children, subject to the Magistrate's discretion, according to Section 6.[28]

4. Judicial Policy for Rights of Muslim Women

The role of the judiciary is not only to decide the disputes between the parties but it also works as a guardian of constitutional and the fundamental rights, including religious and personal rights. Muslims are subject to the application of Muslim religious law by Indian courts in all cases concerning family relations, property, and succession, as stipulated by the 1937 Muslim Personal Law (Shariat) Application Act.[29] The courts have accordingly applied Muslim Personal Law (Shariat) in adjudicating various personal matters of Muslim community.

In the Shamim Ara v. State of U. P. case, the Supreme Court held that a husband's divorce application filed without the knowledge of his wife could not be considered a lawful proclamation of talaq. The state officially determined for the first time what constitutes an appropriate talaq procedure.[30] This case is widely regarded as a watershed moment for Muslim women's rights in India.

In Dr Noorjehan Safia Niaz v. State of Maharashtra[31], (also known as haji Ali dargah Case) the High Court of Bombay has lifted the ban on entry of women inside the restricted area of Haji Ali Darga in Mumbai. The judgement has been welcomed by a group of women as a defining moment in the history of women, particularly Muslim women.

In the highly publicized Shah Bano Case, Mohd. Ahmad Khan v. Shah Bano Begum, the Supreme Court rendered a decision in support of maintenance awarded to a Muslim woman who had been unfairly divorced. The top court opined that Muslim women

must be maintained by their ex-husband in accordance with the Code of Criminal Procedure,1973. Nullifying the judgement, the Parliament of India has enacted The Muslim Women (Protection of Rights on Divorce) Act[32], 1986. Section 5[33] of the Act declares that the parties have an option whether they wish to be governed by the provisions of sections 125 to 128 of Code of Criminal Procedure, 1973. Hence a Muslim couple at the time of marriage is at the liberty to be governed by their personal laws or provisions of the Code of Criminal Procedure,1973.

In Danial Latifi v. Union of India[34]the top court passed a landmark judgement on right of Muslim women to receive maintenance. The Supreme Court of India clearly held that Muslim women, like women from other communities, are entitled to maintenance from their former husbands under the Code of Criminal Procedure, 1973.

The apex court in *Shayara Bano v. Union of India*[35](also known as Triple Talaq Case) has struck down the practice of instant talaq and declared the same as unconstitutional and un-Islamic. The majority of the judges were of the view that instant talaq triple (triple talaq) is not part of basic tenets of Islam as the same is also not sanctioned by the Holy Quran.

5. Futurity of Rights of Muslim Women

Although Muslim women have sufficient rights, such as the right to property, the right to an education, and the right to marry, it is important to note that there have been on-going discussions and debates about changing personal laws to better address issues like gender equality and protect Muslim women's rights. However, as was said above, Muslim women have received a variety of rights according to Islam and hadith. Periodically, the Indian Parliament has acknowledged women's rights. Muslim women's rights have been protected by a number of court decisions and efforts, and the legal environment may continue to change in the future. It's critical to remember that, cultural norms, socioeconomic considerations, and the degree of legal understanding among the community all have an impact on how Muslim women's rights are actually implemented in India.

The issue of Muslim women can be resolved more successfully through the correct execution and application of their rights than through the reformation of legislation. However, it is imperative that Muslim women's rights in

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[27] Id.,s.5.
[28] Id.,s.6.
[29] The Muslim Personal Law(Shariat)Application Act,1937.
[30] AIR 2002 SC 3551.
[31] Dr. Noorjehan Safia Niaz v. State of Maharashtra, 2016 SCC OnLine Bom 5394.
[32] The Muslim Women(Protection of Rights on Divorce)Act,1986 (Act No. 25of1986)
[33] Id. section 5.
[34] Danial Latifi v.Union of India (2001)7SCC 740.
[35] Shayara Bano v. Union of India,(2017)9SCC 1.

agricultural land be acknowledged as well as they are a part of the Muslim community. Education can play a key role in addressing the rights of Muslim women. It is important that the standard of education among Muslim women should be raised so as to make them more aware about their rights.

6. Concluding Remark

There have been beneficial changes in the area of extending rights to women in India, thanks to both Islamic law and the secular laws passed by the Indian Parliament. The judiciary has played a commendable role. It is incorrect to assume that Muslim women face discrimination under Islamic law. However, women in India continue to be denied a variety of rights, including the right to property, due to a lack of community awareness of Muslim law and a lack of understanding about Islam. Therefore, it is crucial to encourage communication, instruction, and knowledge in order to further improve Muslim women's rights in India and make sure they have equal access to opportunities and protections.

Furthermore, empowering women in all facets of life benefits not only individuals but also the entire society. For women to fully enjoy their rights in all aspects of life, on-going efforts must be made to overcome the remaining issues. The advancement of Muslim women's rights and gender equality can be greatly helped by promoting a progressive and inclusive understanding of Islamic teachings.

In conclusion, Muslim women's rights in India involve a complex interplay of religious, legal, and social factors. While legal reforms have been undertaken to protect these rights and address discriminatory practices, the challenge lies in their effective implementation and in fostering a broader societal shift towards gender equality.

Revisiting the Pardoning Powers in the Indian Constitution from the Prism of Rule of Law: A Comparative Study of India, United Kingdom, and the United States of America

Sakshi Agarwal*

ABSTRACT

Recently the Supreme Court liberated A.G. Perarivalan from incarceration by invoking its power to do complete justice under Article 142 of the Constitution. He was convicted for the assassination of Rajiv Gandhi (then Prime Minister) in 1991. This has again highlighted the inordinate delay and adoption of practices that are often inconsistent with the rule of law in the exercise of pardoning powers. In India, the President of India is empowered to grant pardons, reprieves, respites, or remissions of punishment or suspend, remit, or commute the sentence of any person for the conviction of any offense. This power is derived from Article 72 of the Indian Constitution. The Constitution of India under Article 72 and Article 161 confers pardoning power to the President and Governor respectively. With time, there has been an increasing demand for the enactment of specific guidelines to regulate the exercise of pardoning power to uphold the rule of law. Against the backdrop of such circumstances, the present paper seeks to study pardoning power systematically.

The paper explores the underlying rationale of the power of pardon along with the constitutional scheme of the same and then engages in a study of the trends involved in the exercise of such power by the presidents of the country. Apart from engaging briefly in the comparative perspective of pardoning power in other countries, the need for guidelines to regulate the exercise of pardoning power has been sought to be examined.

Keywords: Pardoning Power, Rule of Law, President, Punishment, Constitution of India.

I. Introduction

In India, the President[1] has been empowered to grant pardons, reprieves, remissions, etc. and a similar power has been conferred upon the Governor[2]. Ideally speaking, the pardoning power is an important element of any legal system as it is an instrument of mercy that helps in securing the rights of the convicts who, at times are victims of grave injustice caused either by circumstances or unjust operation of criminal laws. The pardoning power has been envisaged to be a part of the constitutional scheme and not an act of grace which necessitates proper and judicious use of such power to secure the rights of the people and thereby contribute efficiently to the delivery of justice. In the Indian context, it is often said that by such pardoning power, political will prevails over a decision that is taken after weighing the facts and evidence in light of the relevant laws. This is said because the President or Governor in India has the power to grant pardon, reprieve, remissions, etc. on the aid and advice of the Council of Ministers headed by the Prime Minister, and such power is not subjected to any guidelines or limitations under the Constitution.

In recent times, several disturbing trends have come to light in the exercise of pardoning power such as - inordinate delay in deciding the mercy plea; increasing instances of the Indian presidents and Governors granting or refusing pardon to death row convicts without paying heed to aid and advice of the Government. In such a backdrop issue has arisen whether the use of such power is going against the basic tenets of the rule of law and natural justice. For illustration and maintaining brevity in the exploration of the trend of exercise of pardoning powers in India, the researcher has focussed on the pardoning power of the President. However, in relevant places, the instances of the exercise of pardoning powers of the Governors have also been discussed in the paper.

II. Rationale of Pardoning Power

The rationale behind the president's pardoning authority is elucidated as follows: "The pardoning power intends to rectify potential judicial mistakes, as no human system of judicial administration is immune to imperfections. It represents a sovereign attribute aimed at alleviating a convict from a sentence that is deemed erroneous, severe, or disproportionate to the committed crime."[3] So it is said that the power to pardon is vested in the executive to rescue a person from punishment awarded by mistake or under some misconception as the judiciary being a human institution is also bound to commit errors.

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1 INDIA CONST. art. 72.
2 INDIA CONST. art. 161.
3 Durga Das Basu, Commentary on The Constitution Of India 7218 (Lexis Nexis 2016).

Similarly, in the case of *Kehar Singh,*[4] the Supreme Court expressed the view that recognizing the inevitability of judicial errors arising from human fallibility, the Constitution of India has incorporated a mechanism for redress in the form of executive pardon power.

The executive clemency has also been rationalised on the ground that once the convict has suffered the consequence of the mistakes committed and if it can be reasonably expected that he or she will adhere to the conduct of a law abiding citizen then pardon can be granted as society would gain nothing by further punishment of such convict.[5] Also, several scholars and jurists have endorsed the view that pardoning power, in deserving cases, should be exercised as an act of humanity.

III. Constitutional Framework of President's Pardoning Power

Before the enforcement of the Indian Constitution, the pardon laws in India mirrored those of England, as the sovereign of England concurrently held sovereignty over India. Following the Constitution's commencement, the president's pardoning authority is explicitly codified in Article 72 and is immune to alteration, modification, or interference by any statutory provisions.

According to Clause (1) of Article72, President has the power to grant pardons, reprieves, respites, or remissions in three situations - in case of an offence against a union law, if the punishment has been awarded by a Court Martial, and in all cases of sentence of death. Clauses (2) and (3) of the said Article specify that the powers to commute, suspend or remit of the Governor of any state or the officers of the armed forces vested by any law would be outside the purview i.e., would not be affected by the powers of the President.

So, the power to pardon means the power to grant pardons, reprieves, respites or remissions etc. The terminology used in Article 72(1) i.e., 'pardon', 'reprieve', 'remission' etc. have distinct meanings. Though there has been no uniformity in the meaning of the said terms, and they differ according to different scholars and jurists, for the sake of basic clarity brief explanation of the same has been furnished in the following paragraph.

'Pardon' is said to mean an act by which a person is released from serving the punishment for an offence. In *Biddle v. Perovich*[6] the court established that a pardon is issued based on the decision of the highest authority, determining that the greater public good would be achieved by imposing a penalty less severe than that stipulated by the judgment. On the other hand, temporary postponement of the execution of a death sentence is called 'reprieve'. In *Carlesi v. N.Y.,*[7] the court interpreted the term "reprieve" and held it as a means of a stay of the execution of a sentence or of enforcement of a penalty, for a temporary period. "Respite" has been said to mean the awarding of a sentence that is lesser than the actual penalty prescribed. In State *(NCT of Delhi) v. Prem Raj*[8] it was held that "respite" is something like a release in probation for good conduct under Section 360 of the Code of Criminal Procedure. Remission refers to a reduction in the amount of sentence without changing its character while suspension merely stays the execution of the death sentence. Lastly, commutation refers to a reduction of a penalty imposed because of a conviction of a crime. Such reduction can be both in severity and duration of the punishment.

IV. Exercise of Pardoning Power by the Indian Presidents

While exercising the power to grant pardon, the President is bound to act on the aid and advice of the Council of Ministers and cannot act on his own discretion. For the first time, in *Shamsher Singh,*[9] it was established that whenever the President is referenced in the Indian Constitution, they are expected to act by the counsel and advice of the Council of Ministers. The Court in this case inferred that the framers of the Constitution never intended to confer any absolute discretionary power on the president for avoiding the evil of dictatorship. The said ruling of the Apex Court was incorporated into the Constitution by amending Article 74(1) through the Constitution (42nd Amendment) Act, 1976. The same has been reiterated by the Apex Court in the subsequent cases as well, for instance in *Maru Ram*[10] Justice Krishna Iyer said- "The Constitutional conclusion is that Governor is a shorthand expression of the State Government, and the President is an abbreviation of the Central Government."

While it is firmly established through several decisions of the Hon'ble Supreme Court that the President of India, in evaluating a mercy petition, is constitutionally bound not to diverge from the advice provided by the Council of Ministers, instances have arisen where the President opted not to make any decision on the mercy petition, thereby leaving the matter unresolved.

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4 Kehar Singh v. Union of India, (1984) 4 SCC 693.
5 Epuru Sudhakar v. Govt. of A.P., (2006) 8 SCC 161.
6 Biddle v. Perovich, (1927) 274 US 480.
7 Carlesi v. N.Y., (1914) 233 US 51.
8 State (NCT of Delhi) v. Prem Raj, (2003) 7 SCC 121.
9 Shamsher Singh v. State of Punjab, (1975) 1 SCR 814.
10 Maru Ram v. Union of India, AIR 1980 SC 2147.

In India, following the issuance of a death sentence, the convicted individual, regardless of nationality, or any other person, has the option to submit a mercy petition concerning the individual either to the President's Office or the Ministry of Home Affairs (MHA). Alternatively, the mercy plea can be directed to the Governor of the relevant state, who subsequently forwards it to the MHA for further consideration. In some cases, such as in the case of *Yakub Memon*[11] the Union Government has also forwarded the mercy petitions filed before it, to the concerned State Government for the consideration of the Governor. This is perhaps based on the reasoning that the State which is involved in the investigation of the crime committed by the accused would be in a position to advise on the mercy plea of the said convict as it is bound to be better informed about the facts and circumstances of the case.

A request for clemency may be submitted from the prison either through prison officials or by the convict's lawyer or family. Presently, mercy petitions can also be sent via email to either the Ministry of Home Affairs (MHA) or the President's Secretariat.[12] So the procedure for dealing with a mercy petition is nowhere laid down and is entirely subjective. At this juncture, it would be appropriate to have a glimpse into the history of the exercise of pardoning power by the Presidents of India till now to understand the practices prevalent in the country.

V. Appraisal of Pardoning Power in India in the context of the Rule of Law

The bare text of Article 72 which embodies the presidential power to pardon does not contain any guidelines or conditions to be adhered to while exercising the power. Apart from this, no provision in the Constitution speaks directly or indirectly of any guidelines to be observed by the President (or Governor) in exercising the power to pardon. Furthermore, during the deliberations of the Constituent Assembly, there was no discussion or debate regarding the grounds and principles governing the exercise of these powers.[13] So because the Constitution is silent regarding the factors that must be taken into account by the President (or Governor) while exercising the power to pardon, it can be assumed that since the pardoning power was historically prerogative in nature, it was left to be so by the framers. The statistics discussed in the previous section of the study show that historically speaking the presidents of India have exercised the power to pardon in a very subjective and mercurial manner.

A. Erratic exercise of Pardoning Power

It has been categorically held by the Apex Court in the case of *Sarat Chandra Rabha*[14] that the President acts on a wholly different plane from that of the judiciary and in granting pardon the conviction remains intact. However, practically speaking, the result of the grant of pardon by the president by way of pardon, reprieve, remission, commutation, etc. is that the convict gets relief from the punishment imposed by the judiciary in some or the other way. In most cases, the advice tendered by the Council of Ministers to the president is also motivated by political considerations which further make such decisions whimsical and arbitrary. In view of this, according to the researcher it should be necessary to follow some yardsticks or guidelines to determine whether the case at hand is fit for a grant of mercy or not because if the same is not done then the rule of law tends to be violated which should always be upheld and adhered to in every democratic country.

In the case of *Shatrughan Chauhan,*[15] the facts revealed that undue delay was caused by the President in deciding the mercy petition of the death row convicts after the award of the death sentence by the Supreme Court, which was mentally torturous for the concerned convicts. In addition to this, the practice of filing repeated mercy petitions by the death row convicts also wastes the time of the executive. For instance, it was reported that a day after Yakub Memon submitted a new mercy petition to the Maharashtra governor, the Central government informed a five-judge Constitution bench of the Supreme Court that the practice of submitting repeated mercy pleas should be discontinued. This perspective found agreement with the court.[16]

B. Judicial Review of Pardoning Power

The judiciary has shown hesitancy in prescribing specific guidelines for the utilization of the presidential pardon power and has consistently maintained this stance in various rulings. The Supreme Court has expressed the opinion that the constitutional authority of the executive to grant pardons to convicts cannot be wielded by the Apex Court unless there is a breach of fundamental rights.[17] In *Kuljit Singh,*[18] the Supreme Court asserted that the President's pardoning power is a comprehensive authority that should be employed as necessary in the pursuit of justice. The Court emphasized that imposing judicially crafted constraints on this power would be undesirable.

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11 Yakub Memon v. State of Maharashtra, (2015) 9 SCC 552.
12 Maneesh Chibber, How the President decides matters of life and death, THE INDIAN EXPRESS (July 29, 2015).
13 DR. SUBHASH, supra note 9 at 3.
14 Sarat Chandra Rabha & Ors. v. Khagendranath & Ors., AIR 1961 SC 334.
15 Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1.
16 Legal Correspondent, Govt to SC: Stop repeat mercy plea, THE TELEGRAPH (July 23, 2015).
17 PTI, Supreme Court cannot exercise power of pardon vested with President, Governor, THE HINDU (October 18, 2016).
18 Kuljit Singh v. Lt. Governor of Delhi, (1982) 1 SCC 417.

However, in *Maru Ram,*[19] the Apex Court had emphasized making guidelines and ruled that till that time, prison rules of the States should be treated as guidelines. But again, in *Kehar Singh,*[20] the need for guidelines was opposed by the Apex Court on the reasoning that Article 72 should be construed in the widest possible manner and that there is sufficient guidance for the president in the history of the power and existing case laws. Subsequently, in *Shatrughan Chauhan,*[21] it was again reiterated that there was no need for laying down guidelines for the exercise of presidential power to pardon. However, in the said case, the Apex Court gave eleven guidelines for the effective disposal of mercy petitions and securing the rights of the convicts under Article 21 of the Constitution although it is to be noted that such guidelines were not meant to regulate the exercise of the pardoning power of president under Article 72.

To uphold the rule of law it is important to ensure that the exercise of discretion should be reasonable. Consequently, it is of utmost importance that for adherence to the rule of law, the discretion in exercising power to grant of pardon should be based on reasonable considerations.

Imposing judicial review on the exercise of discretion is by no means a foreign practice in the Indian context and the same can be discerned from the long history of judicial review of administrative discretion. In this context, it becomes relevant to mention the ruling of the Apex Court in *Tata Cellular,*[22] wherein it was categorically stated that while reviewing executive discretion the Court only must adjudicate upon the legality of the procedure followed and it does not act as an appellate authority in this regard. The Court then laid down a few conditions based on which the legality of the exercise of discretion is sought to be tested such as - whether an error of law was committed, the decision was taken in transgression of powers or there was an abuse of discretion or extraneous considerations were regarded etc.

The importance of judicial review of administrative discretion is further reaffirmed by Lord Denning's opinion in *Padfield v. Minister of Agriculture, Fisheries and Food,*[23] wherein he observed that if the decision-making authority is taking into account irrelevant factors or fails to account for relevant considerations then the Courts will intervene in the exercise of such discretion.

In *Swaran Singh,*[24] the Governor of Uttar Pradesh granted an order of remission to the convict within a period of two years for the remaining period of his life sentence. This was done after the convict's appeals to the High Court and the Supreme Court had failed. However, the Apex Court quashed the impugned order on the reasoning that it was passed without consideration of material facts and left it to the discretion of the Governor to pass a fresh order in consideration of the observations of the Court.

It is notable that in the *Satpal*[25] case, the Court held that pardoning power granted to the Governor is a constitutional power and is pliable to judicial review on limited grounds such as - if the Governor has acted without the advice of the government or in transgression of his jurisdiction or without application of relevant considerations or if the action is mala fide or without application of mind.

In 2022, the Supreme Court, utilizing its authority under Article 142 of the Constitution, released A.G. Perarivalan, who had been convicted in 1991 for the assassination of the then Prime Minister Rajiv Gandhi.[26] For the uninitiated, Article 142 of the Constitution confers power on the Apex Court to pass any decree or order to ensure complete justice in the matter pending before it. It is a well settled proposition that the object of the exercise of such power should be to uphold the rule of law[27] and by such power, the Court can grant equitable relief to correct injustice.[28]

Although it has been established that the Governor is bound by the advice of the State Cabinet while exercising power to grant pardon under Article 161, in the said case, the Governor of Tamil Nadu kept the decision pending for two and a half years after receiving the recommendation of the Cabinet to grant pardon to Perarivalan. Subsequently, on being inquired by the Court about the status of the Governor's decision in the matter, the Governor referred the recommendation of the State Cabinet to the President for his decision regarding the pardon of the convict. The Supreme Court in the said case held that nowhere does the Constitution under Article 161 empower the Governor to refer to the recommendation of the State Cabinet to the President for his decision regarding the pardon of the convict. Hence the Governor was held to have acted in an unconstitutional manner and against the spirit of federalism.[29] Consequently, keeping in view the undue delay by the Governor the Supreme Court

19 Maru Ram v. Union of India, (1981)1 SCC 107.
20 Kehar Singh v. Union of India, AIR 1989 SC 653.
21 Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1.
22 Tata Cellular v. Union of India, (1994) 6 SCC 651.
23 Padfield v. Minister of Agriculture, Fisheries and Food, 1968 AC 997.
24 Swaran Singh v. State of U.P., (1998) 4 SCC 75.
25 Satpal v. State of Haryana, (2000) 5 SCC 170.
26 A.G. Perarivalan v. State, 2022 SCC OnLine SC 635.
27 Rishabh Choudhary v. Union of India, (2017) 3 SCC 652.
28 Manish Goel v. Rohini Goel, AIR 2010 SC 1099.
29 A.G. Perarivalan v. State, 2022 SCC OnLine SC 635.

did not deem it fit to refer the matter back to the Executive. Finally, the Supreme Court taking into account various factors such as - prolonged imprisonment, satisfactory conduct of the convict, and his chronic ailments, liberated the convict by exercising its constitutional power to do complete justice.

The very fact that the said convict's prolonged incarceration of thirty-one years saw a long pendency of mercy petitions at the hands of the executive attracted the invocation of the Supreme Court's power to do complete justice as per Article 142 of the Constitution.

C. Checks on Pardoning Power

Due to the absence of specific guidelines governing the utilization of the presidential pardon authority, significant discretion is granted to the President, or more precisely, to the Council of Ministers whose advice holds binding authority over the president. In such circumstances, there is a potential for the advice of the Council of Ministers to lack objectivity. Moreover, within the framework of coalition governments, there is a potential hazard that the counsel given by the Council of Ministers might not genuinely reflect a 'fair, just, reasonable, and impartial opinion,'[30] and could be entirely influenced by political motivations.

It can be argued based on various precedents that the improper use of pardoning power has also led to violation of the fundamental rights of the convicts. Many factors like - undue delay in deciding the mercy petitions, deciding them without adhering to any proper procedure, or without giving any substantive reasons amount to a violation of fundamental rights. At this juncture, it becomes relevant to mention that even though on one hand the Apex Court has affirmed that the affected party cannot compel the pardoning authority for disclosure of reasons along with the decision of mercy petition.; however, the Court has clarified that non-disclosure of reasons to the convict does not mean that the said reasons cannot be enquired into by the Court while deciding the case.[31]

Frequently, it is argued that there is no necessity for a check on the pardoning power, as the political or electoral process serves as an effective check on the President when exercising this authority. This assertion is rooted in the idea that if the pardon prerogative is wielded arbitrarily, the president can be voted out of office. Nevertheless, this check can only guarantee accountability in nations where the President is directly elected, unlike in India, where the election is indirect. Furthermore, there is a growing acceptance that combining judicial review with existing political checks may result in greater accountability.[32]

Another check that has been envisaged on pardoning power is the impeachment of the President.[33] This again cannot be said to be an efficient mechanism to ensure accountability because the president is bound by the advice given by the Council of Ministers and in such a situation it would be improbable that the government would be willing to impeach the president for the unsatisfactory decision of granting or declining pardon especially if the said decision is in adherence to the advice given by Council of Ministers. It is submitted that the inherent nature of the requirements of the Article makes it very difficult to impeach the president as stringent conditions are laid down under the said Article. As an illustration, the initial stage in the impeachment process involves presenting a resolution to impeach the President, which must bear the signatures of at least one-fourth of the total number of members in the House intending to initiate the impeachment.[34] It's important to observe that the resolution must be endorsed by one-fourth of the total members of the House, rather than being based on the number of members present and voting in the House.

Another reason that justifies the demand for guidelines regulating the exercise of pardoning power is that there have been many instances of wrongful executions in the past leading to the failure of the pardoning power. In *Ravji alias Ram Chandra,*[35] the accused was sentenced to death based on a per incuriam judgment, and his mercy petition was rejected in a mere eight days as a result of which he was wrongly executed. Similarly, in *Surja Ram v. State of Rajasthan*[36] the mercy petition of Surja Ram was rejected in a mere fourteen days who was also wrongly sentenced to death based on a per incuriam judgment and was executed. Again, in *Harbans Singh,*[37] the mercy petitions of the convicts were rejected by the Executive. Nevertheless, in this action, it overlooked the fact that four years prior, the Supreme Court had granted the appeal and commuted the death sentence of a co-accused in a similar position.

Lastly, it is submitted by the researcher that the mental agony and suffering caused to the convicts in the time

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30 Naveen Thakur, President's Power to Grant Pardons in Case of a Death Sentence - Whether it is to be his
31 Unfettered discretion? CRI.L.J. 101 (1999).
32 Kehar Singh v. Union of India, AIR 1989 SC 653.
33 B. V. Harris, Judicial Review, Justiciability and the Prerogative of Mercy, 62(3) Cambridge L.J. 631(2003).
34 INDIA CONST. art. 61.
35 INDIA CONST. art. 61, cl.2.
36 Ravji alias Ram Chandra v. State of Rajasthan, (1996) 2 SCC 175.
37 Surja Ram v. State of Rajasthan, (1996) 6 SCC 271.

period of waiting for the disposal of the mercy petition by the President is inhuman to some extent. In *Shatrughan Chauhan,*[38] It was noted that an individual sentenced to death endures a life overshadowed by the imminent threat of execution, grappling with profound agony, anxiety, and the debilitating fear of facing the hangman's noose, all compounded by the uncertainty surrounding the impending execution. This is based on the reasoning that the mercy plea is preferred by the convicts after exhausting all the remedies which already take a lot of time. So additional delay caused in the disposal of mercy petitions further adds to the distress of the death row convicts.

VI. Comparative Perspective of Pardoning Power

In order to understand the position of pardoning power in a better manner the following paragraphs seek to examine briefly the pardoning powers in the United States of America and the U.K.

A. Position in the United Kingdom

In England, the pardoning power is a royal prerogative that is exercised on the advice of the Home Secretary. As held in the case of *R v. Foster*[39] Pardons under the prerogative come in three forms: an absolute pardon, which nullifies the sentence but not the conviction; conditional pardon, which replaces one form of punishment with another; and remission, which reduces the severity of the sentence without altering its nature. Ordinarily, the power of pardon is not available before the conviction of the accused. However, in *R. v. Boyes,*[40] it was held that pardoning power can also be exercised before conviction.

With time, in the U.K. the power to pardon is no longer treated as the prerogative of the sovereign and the same has been subjected to judicial review in several cases. For instance, in *R. v. Secretary of State,*[41] it was held that the Home Secretary in refusing to grant pardon had not given sufficient consideration to the availability of a conditional pardon suitable to the circumstances of the case.

B. Position in the United States of America

In the USA, Article II, Section 2 of the United States Constitution provides that "He (the President) shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment." The president does not wield the pardoning power arbitrarily, but rather acts upon the recommendation of the Department of Justice. This recommendation follows a thorough examination of the case records.[42]

Since 1900 Presidents have averaged approximately 150 pardons a year. However, in the last twenty years, presidents have granted fewer pardons. For instance, Jimmy Carter granted thirty-three percent of total pardon requests while George Bush only granted seventy-four pardons in his tenure.[43]

Nevertheless, it is noteworthy that in the U.S., Concluding his presidency, President Barack Obama surpassed all previous chief executives of the past sixty-four years in extending clemency to individuals convicted of federal crimes. In total, Obama granted clemency to 1,927 individuals, comprising 1,715 commutations and 212 pardons. This represented the highest number granted by any president since Harry S. Truman, who exercised clemency 2,044 times.[44] However, it is worth mentioning that he also received a considerably higher number of clemency requests than any U.S. president on record. This surge in requests was a result of an initiative launched by his administration to reduce prison terms for non-violent federal inmates convicted of drug crimes.

On the contrary, it is interesting to note that President Donald Trump in his tenure had granted clemency to very less cases which is comparable only to former presidents George W. and George H.W. Bush in the history of the United States since 1900. It was reported that 143 pardons and ninety-four commutations were granted by Trump during his tenure in the White House.[45]

In the United States, the authority to pardon can be invoked at any point after the commission of an offense, whether before or after trial or conviction, and Congress is precluded from imposing any restrictions on this power. It is noteworthy that the power to pardon in the USA is considered analogous to that in the U.K. Hence, this authority is regarded as a direct and linear descendant of executive clemency provisions historically exercised by the English Crown.[46]

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38 Harbans Singh v. State of U.P., (1982) 2 SCC 101.

39 Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1.

40 R v. Foster, (1985) QB 115.

41 R. v. Boyes, (1861) 1 B&S 311.

42 R.v. Secretary of State for the Home Department Ex Parte Bentley, (1994) QB 349.

43 KATHLEEN DEAN. MOORE, PARDONS: JUSTICE, MERCY, AND THE PUBLIC INTEREST 2 (Oxford University Press 1997).

44 DURGA DAS BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 7205 (Lexis Nexis 2016).

45 John Gramlich, Obama used clemency power more often than any president since Truman, POLICY COMMONS (April 25, 2023, 8:30 PM), https://policycommons.net/artifacts/618070/obama-used-clemency-power-more-often-than-any-president-since-truman/1598965/.

46 John Gramlich, Trump used his clemency power sparingly despite a raft of late pardons and commutations, PEW RESEARCH CENTRE (May 1, 2023, 10:30 AM), https://www.pewresearch.org/fact-tank/2021/01/22/trump-used-his-clemency-power-sparingly-despite-a-raft-of-late-pardons-and-commutations/.

It has been held by the US Courts that the Courts retain the power to interpret the Constitution and to determine whether the President has transgressed his constitutional power. In several decisions, the Courts have emphasized that if the President while granting a pardon imposes unconstitutional conditions or grants a pardon in anticipation of the commission of a crime or offence, the Court would interfere.[47] It is further notable that no guidelines or specific terms are framed for the exercise of such power. As a result of the wide expansive and unbridled power of clemency powers, the US Presidents exercised pardoning powers as they wished until the landmark case of *Biddle v. Perovich*[48] wherein Justice Oliver Wendell Holmes declined to accept that pardoning was an act of grace and he emphasised that it should be performed in the public interest and was a part of the constitutional scheme. Further, in the case of *Grossman v Ex Parte*[49] , remarked by Chief Justice Taft that the authority to grant pardons is a control delegated to the Executive, intended for specific purposes, such as mitigating or preventing a particular judgment.

In *Kehar Singh,*[50] Justice Pathak made a distinction between the pardoning powers in England and the USA. In the UK, he noted that the power is considered the royal prerogative of pardon, typically exercised by the Sovereign through the Home Secretary. This power is flexible, being applicable on various grounds, encompassing State interests and the intent to prevent judicial errors. It is perceived as an act of grace originating from the Sovereign. Conversely, in the United States, particularly since the formation of the Republic, a pardon issued by the President is not regarded as a personal act of grace but rather as an essential element of the constitutional framework.

From the above discussion, it is evident that in India pardoning power is similar to that of the U.S. and England with a few points of difference in India, the power can only be exercised only after conviction however it is not so in the U.S. Also, the said power is subject to judicial review in the U.S. while the position is not well concretized in India with regard to the same. Also, it seems that even in the U.S. and U.K. the exercise of pardoning power is not subject to any strict guidelines.

VII. Summing Up and Concluding Remarks

After conducting a study into the constitutional scheme of the presidential power to pardon and the relevant cases along with other authorities on the subject it is evident that many times due to the improper exercise of the pardoning power, injustice has been caused to the convicts. Even though the pardoning powers are often touted as the 'prerogative' of the President or the Governor; a plain reading of the relevant Constitutional provisions along with the judicial rulings on the subject make it clear that - in reality, it is the prerogative of the Government as the President or the Governor as the case may be, are ultimately bound by the aid and advice of the Council of Ministers.

It cannot be denied that some amount of discretion is bound to be present in granting pardon and so a fine balance needs to be struck between the discretion and relevant facts and circumstances which should be taken into consideration in each case to reach a viable decision.

Rule of law is a universally accepted norm in every democracy and therefore fundamental right to life and liberty should be given priority at all times. By this, it becomes essential that the pardoning powers envisaged in the Constitution should be regulated by certain basic standards such as - the mercy petitions should be decided in a reasonable time and the executive must ensure cognizance of all the relevant facts and circumstances before reaching a decision. Regarding the question of deciding the time limit for the disposal of mercy petitions - the researcher is of the view that the said time limit even though not stringent should be reasonable based on the facts of the case and the gravity of punishment involved.

The Constitutional framework of pardoning powers does not explicitly outline the criteria for the President or Governor to take into account when reviewing a pardon plea. In the researcher's view, this constitutional silence should be interpreted favorably by establishing clear guidelines. These guidelines should ensure that, alongside the advice of the Council of Ministers, due consideration is given to the pertinent facts and circumstances when making decisions on mercy petitions.

Even though the researcher agrees with the view taken by the Apex Court that it would not be possible to lay down strict guidelines as each and every possible situation cannot be envisaged by the legislators to guarantee objectivity and reasonableness in the exercise of such power, however, the establishment of certain compassionate guidelines as enumerated in the previous paragraph would - not only impel the Executive to take reasonable decisions it would also urge for speedy disposal. This is important as needless to say delay in justice is equivalent to denial which ultimately undermines the rule of law.

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47 ANDREW NOVAK, COMPARATIVE EXECUTIVE CLEMENCY: THE CONSTITUTIONAL PARDON POWER AND THE PREROGATIVE OF MERCY IN GLOBAL PERSPECTIVE 39 (Routledge 2015).

48 U.S. v. Nixon, (1974) 468 US 683; Schick v. Reeds, 419 US 256 (1974).

49 Biddle v. Perovich, (1927) 274 US 480.

50 Grossman v. Ex Parte, (1924)267 US 87.

51 Kehar Singh v. Union of India, AIR 1989 SC 653.

The judicial review of pardoning powers serves as a crucial mechanism to ensure adherence to the rule of law. This intervention by the judiciary is not construed as an infringement upon the Constitutional powers of the President or Governor; rather, it is aimed at safeguarding the fundamental right to life and liberty of convicts in deserving cases. It's crucial to recognize that India has endorsed the Universal Declaration of Human Rights, 1948, and the United Nations Covenant on Civil and Political Rights, 1966. Consequently, the nation is obligated to prevent the imposition of cruel, inhuman, or degrading punishment on convicts. Hence, instances of unexplained and unreasonable delays in addressing mercy petitions, as well as the undue exercise of pardoning power through practices involving extraneous considerations, undoubtedly warrant judicial intervention. This intervention is necessary to protect the fundamental liberties of convicts and, in turn, uphold the rule of law.So, every constitutional obligation should be discharged with due diligence and proper use of pardoning power can be an excellent tool to correct the flaws of the judiciary, imbibe the value of pardon for crime in deserving cases, and instil the confidence of the public in the justice system of the country.

E Commerce in Light of Data Privacy Regime in India

Ashok Kumar*

ABSTRACT

Along with the advancement in digitisation of services the term commerce has expanded itself in virtual space i.e., cyber space. E-commerce have become one of the most favourite mediums for trade and commerce. At present time, there are various E-commerce platforms which are being used to sell the products to their customers and the flexibility of selection of product and easy return of the items are facilitating their customers to use their platform for their daily need shopping. Amazon, Flipkart, Snapdeal etc., are some well-known e-commerce platforms which provide various products like groceries, apparels, electronic products etc.

It is a well-established fact that every coin has two faces, the bright side of the coin deals with the convenience, heavy discounts on products, multiple branded choices under one roof. According to IBEF, Indian e-commerce is projected to increase from 8% of the total food and grocery, apparel and consumer electronics retail trade by 2025. As of November 2022, the GeM portal has served 12.28 million orders worth Rs. 334,933 Crores (US $40.97) from 5.44 million registered sellers and service providers for 62,247 buyer organisations.

The dark side of the coin is unexplored till date as there are various loopholes in legal framework in Indian laws. One of the major consequences of using e-commerce platform is breach of privacy and threats of data theft or misuse of consumers data by these e-commerce platforms. It is the demand of time that India should have its dedicated data protection Act, which will regulate these e-commerce sites effectively.

Keywords: E-commerce, Cyber Law, Information Technology, Privacy, Data Protection, Intermediaries.

Introduction

Commerce is vital for the growth of economy of any nation. The rise in E-commerce has also arisen the worries for safe data sharing and privacy of data. The privacy concerns are very essential to be addressed and countered timely otherwise the customers may stop doing online transactions fearing of data theft and online frauds.[1]

The data shared by the consumers is used for analytics and strategy building for new business opportunities and upgrading the quality of services and increasing the business transaction.[2] Privacy is a core for any e-business. The relationship of consumer and service provider depends on high trust values. The values and ethics cannot be compromised for long. In era of competition this relationship is very fragile.[3] Consumers are very much concern about the data theft and thus hesitate in sharing the information and they do not appreciate sharing of data and analysing of data by artificial intelligence.[4] The rise in machine-based services using artificial intelligence has been a reason of debate from last many decades, and the need for reasonable policy.[5] Access to data about the consumers for data processing and doing analysis is unfair. In 2008, the US Federal Trade Commission had intervened to stop unfair trade practices by Comp Credit,[6] on the basis of personal choices made by customers the organisation had made a data and reduces the credit limit for those who were visiting pawn shops and other short term credit giving institutes.[7]

The storage of big data and then deeply analysing it to draw conclusions without the knowledge of customers or users is illegal under various provisions of law and even data shared with third parties[8] is not allowed.

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1. Budak C, Goel S, Rao J, Zervas G (2016) Understanding emerging threats to online advertising, ACM Conference on Economics and Computation pp: 561-578.
2. Lee I (2016) User Privacy Concerns for E-Commerce. IGI Global: Encyclopedia of E-Commerce Development, Implementation, and Management pp: 1780-1787.
3. Ackerman MS (2004) Privacy in pervasive environments: next generation labeling protocols. Personal and Ubiquitous Computing 8: 430-439.
4. Ackerman MS, Davis TD (2003) Privacy and security issues in e-commerce. New economy handbook pp: 911-930.
5. See, e.g., Ryan Calo, Artificial Intelligence Policy: A Primer and Roadmap, https://ssrn.com/abstract=3015350.
6. CompuCredit is a specialty finance company and marketer of branded credit cards and related financial services.
7. Ryan Singel, Credit Card Firm Cut Limits After Massage Parlor Visits, Feds Allege, Wired, 20 June 2008.
8. See generally, World Bank, New Forms of Data Processing Beyond Credit Reporting: Consumer and Privacy Aspects, 2018; and Responsible Finance Forum, Opportunities and Risks in Digital Financial Services: Protecting Consumer Data and Privacy, 2017.

Data privacy is a burning issue in a growing digital economy like India. Data is an asset of the individual thus sharing, using, selling and disposing it in any way is not allowed and attracts penalty, though in India we do not have any specific law for data protection as the Data protection bill.2019 is still pending. The new guidelines recently introduced for e commerce are to be read in light of Data protection laws.

A broad perspective of data privacy, informatics and E- consumers

Data Privacy

Privacy embraces a broad range of belief. The concerns on loosing personal data are loss to "individuality, autonomy, integrity and dignity,"[9] part of a broader range of ideas concerning free space in personal and social life. Piercing in privacy of an individual by analysing the data and knowing the preferences and developing of software which can hijack the future thought process too of an individual.

Data privacy is also important to keep the trust alive amongst the consumers and companies. The efforts to secure data gathered by the companies is viable and necessary steps to be initiated to have control on it. If the tripartite agreement is there and the data is shared to a third party then it is mandate to understand the repercussions resulting due to breach of privacy policy.

Informatics

"Informatics"[10] is the study of the behaviour and structure of any system that generates, stores, processes and then presents information; it is basically the science of information. The Field takes into consideration the interaction between the information systems and the user, as well as the construction of the interfaces between the two, such as the user interface.

E-Consumers and The Paradigm in Consumer Behaviour

Indian consumers are undergoing a shift in behavior driven by ease of use, privacy, trust and other technographic factors. A critical situation is changing the human behaviour towards different directions. COVID-19 pandemic has also changed the consumer behaviour shift up to a great extent and Numerous actions were taken, including full and then partial lockdown, to stop the spread of illness. Customers are the ones who fuel market growth, competition, and economic integration in any market. Consumer behaviour is changing as a result of economic volatility, though it's unclear how much of the change that occurred during the crisis will remain.

It is interesting to note that instead of having various benefits of the digital/ e-commerce platforms; low adoption is the reluctance among consumers because of the privacy and trust factors of the consumers.

It was observed that the role of experience was measured in the drivers of more familiar mobile shopping usages. The value of reassurance concerning financial and privacy concerns, as well as the enhancement of hedonic and emotional rewards.[11]

The attitude towards information sharing includes mobile privacy concern and trust of the mobile platform and research provides contributions towards measuring individuals' actual information protection practices, validating the relationship between behavioural intentions and behaviours and exploring antecedents to TPB-derived constructs.[12]

Privacy Policy the trump card for digital platform providers

At present, countries are moving ahead towards the digital economy. The cross-border commerce is no more tiring and time consuming. The digitisation has accommodated almost all in one and the other way. The barriers in commerce are removed by switching the business mode from offline to online. Thus, it is not a matter of debate that why e-commerce is gaining popularity in India and overseas.

Now it is very important to mention here that once you log in to the websites or in apps you are asked to give access to various other things on your device, other than this you are asked to give general information and if you enter into the transactions then you also give your critical and sensitive information to complete the transaction. It is the responsibility of the service provider to keep this data secured as per the rules framed. The privacy agreement is accepted from both the sides. This privacy agreement is very crucial and vital. The shared information builds a big data for the companies and this big data is asset of the individuals who shared it while interfacing with the service providers. The privacy policy has to be framed following the guidelines of Information technology Act,2000. In year 2011, Ministry of communication and information technology (MCIT), Government of India, notified the IT (reasonable security practices and procedures and sensitive personal data or information) Rules 2011. These provisions have come as a saviour to the end users and the

9. Lee A Bygrave, Data Protection Law: Approaching Its Rationale, Logic and Limits (Kluwer Law Intl 2002) 128-129
10. https://www.techopedia.com/definition/30332/informatics accessed on 27/02/2023
11. Gwarlannde Kerviler a, n, Nathalie T.M. Demoulin b, Pietro Zidda c (2016): Adoption of in-storemobile payment: Are perceived risk and convenience the only drivers? Elsevier.
12. France Belangera, Robert E. Crosslerb (2019), Dealing with Digital Traces: Understanding protective behaviors on mobile devices, Elsevier.

companies are bound to follow the rules framed for protecting personal data and they are also responsible for providing security to the big data received by the companies.

Visibility and Percipience Issues

The terms and conditions of privacy policy should be clearly mentioned and should be written in the language to be easily understand by the end users. The only challenge is how much consumers/users are vigilant to check the terms and conditions. The consent to the privacy policy is to be given after understanding the policy conditions. The moment you click on accept, you accept the policy and later you cannot blame the companies. Lack of awareness is the key factor for the issues raised in later stage about use of data.

Breach of Privacy Agreement and Repercussion of Non-Observance of Unison

What if the privacy policy is breached and what will be the consequences of such breach? In India section 43 A and 72 of IT Act,2000 talks about the consequences of breach. After Puttaswamy judgement passed in 2017, right to privacy has become a fundamental right and the individual can seek protection under the ambit of constitution of India. We shall be discussing on this a little more in article under the head of right to privacy a fundamental right.

Role of Intermediary and Control over Data Shared by the Users

Along with the rapid development of e-consumerism, the role of intermediaries such as: Amazon, Flipkart, Zomato, Big-basket, etc. is getting sophisticated. These intermediaries are representing themselves as a platform that is only responsible for providing the product of sellers to e-consumers, but it is a well-known fact that they are using the e-consumers' data for their so called "behavioural analysis" and they claim that the consumer's data will be safe at their end. Because of their technical supremacy, it is obvious to a non-technical user to believe the security mechanism of these intermediaries an as a result the data on the servers of these intermediaries are increasing enormously. According to "Politico",[13] "As the internet retailer expands into other parts of our lives, Amazon is building a data empire. Company's efforts to protect the user's data are insufficient, and there are some flaws in the company's security which is capable to expose customers' data to potential breaches, theft, and exploitation."[14]

Here, the most noticeable thing is that intermediaries claims that they do not store their users' data, meanwhile in their privacy policies they have a list of information that is to be shared by their consumers while using their service. For example, Amazon's website plainly states what data they collect from their customers: "contacts stored in customer's mobile, device configuration settings, name, address, payment details, and so on, the list is pretty long."[15]

Do intermediaries sell their customer's data? or they do not sell, it is a debatable topic. Intermediaries initially decline that they transmit their customer's data to any third party, but gradually in their privacy policy clause, they accept that they may share its customer's data with their affiliates,[16] some intermediaries accept that customer's data is an asset for them and they may transfer it to the third party if they have sold their business or service to the third party.[17]

After analysis of the above facts, it can be stated that these intermediaries have a vital role in transmitting e-consumers' data from one end to another end.

Do Intermediaries Have Any Control Over Data Shared by User with Them

In e-consumer market it is obligatory to the consumers to share their data with the intermediaries, otherwise they will be deprived of using online services of those intermediaries or e-commerce platforms.

The main concern is, "How safe is a consumer's data on an intermediary's server?" There have been numerous instances where consumer data has been hacked, and the government of India has taken no action because there is no data protection law in place to address this type of failure.

Some examples of data breach in year 2021-22 in India are given below:

- According to Raj Shekhar Rajaharia,[18] about hundred

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13. A global nonpartisan politics and policy news organization
14. Vincent Manancourt, "Millions of people's data is at risk- Amazon insiders sound alarm over security", Politico, 24/02/2021, available at https://www.politico.eu/article/data-at-risk-amazon-security-threat/ accessed on 23/02/2023
15. https://www.amazon.com/gp/help/customer/display.html?nodeId=GX7NJQ4ZB8MHFRNJ#GUID-8966E75F-9B92-4A2B-BFD5-967D57513A40__SECTION_87C837F9CCD84769B4AE2BEB14AF4F01, accessed on 23/02/2023.
16. Flipkart Privacy Policy, para 5- sharing of personal information, available at https://cloud.flipkart.com/privacy, accessed on 23/02/2023.
17. Does Amazon share your personal information, available at https://www.amazon.com/gp/help/customer/display.html?nodeId=GX7NJQ4ZB8MHFRNJ#GUID-8966E75F-9B92-4A2B-BFD5-967D57513A40__SECTION_3DF674DAB5B7439FB2A9B4465BC3E0AC, accessed on 23/02/2023.
18. Raj Shekhar Rajaharia is a security researcher & growth hacker.

million user's data was leaked and was available at the dark web for sale.[19]

- More than 2.5 million consumer's data of a stockbroking firm Upstox was leaked including KYC details.[20]
- According to CERT-in, Facebook and Twitter user's data got stolen[21]

In 2019, it was exposed that the employees of Amazon were listening to Alexa recordings and transcribe to improve the features,[22] this incident took place just after the incident of automatic activation malfunction in Amazon's Alexa device. Thus, it can be concluded that intermediaries do not have complete control over consumer's data shared to them.

Right to Privacy and the Constitution of India

The Journey from No right to a legal right and then finally in 2017 it was called a fundamental right was not smooth. The right to privacy was considered to be a fundamental right after a long mind-boggling discussion by learned supreme court judges while deciding the writ petition famously known as Puttaswamy case.[23] The concept of privacy had travelled far from the mere right to be let alone to recognition of data privacy as fundamental right. The following discussion will give a bird eye view on the same.

Judicial Developments on Right to Privacy in India

In the Puttaswamy judgement, the Supreme Court overturned its previous decisions of "M.P. Sharma v. Satish Chandra"[24] and "Kharak Singh v. State of Uttar Pradesh",[25] which had asserted that there was no fundamental right to privacy in the Constitution of India. An eight-judge Constitution bench ruled that the right to privacy was not a guaranteed fundamental right under the Constitution. In M.P. Sharma case, the court considered whether the search and seizure of documents in connection with an F.I.R. would break the right to privacy. Regarding Kharak Singh, the Supreme Court determined whether he regular police surveillance breached the constitutionally protected fundamental rights. Ultimately, they concluded that privacy was not a fundamental right, but was part of the personal liberty covered by Article 21 of the Constitution of India.[26] Nevertheless, Justice Subba Rao held a dissenting opinion, arguing that the right to privacy was an indispensable element of personal liberty under Article 21, and thus a fundamental right. Subba Rao's opinion was accepted by the nine-judge bench in the Puttaswamy judgement.

Conclusion and Suggestions

India is an emerging digital economy. This ongoing epidemic has taught a very important lesson for the survival of business. In present times when all sectors are moving towards digitisation, people are left with no choice other than learning and doing online transactions may be for commerce or may be for personal consumption. The users can be broadly classified into educated and not educated, aware and less aware, not aware about the privacy policy and consequences of breach of privacy policy. Thus, creating awareness amongst masses is the need of the hour. Since Puttaswamy judgement right to privacy has become intrinsic part of fundamental right to life and personal liberty, hence it has become the responsibility of the state to protect it.

Though we have legislations wherein data protection can be done but to stand tall in global market. we need a statute which binds and gives flexibility to the multi nationals too without harming data of consumers or users. And we need to have legislation for the welfare of e-consumers and data protection. The present IT Act is not sufficing and not able to cater the need in global market. We have to compete in global market with the global players. India should not lack behind due to paucity of law. Flexible laws which are globally acceptable with an essence of welfare of consumers. Judiciary brought right to privacy under the ambit of constitution of India and opened the doors for data protection bill in 2017. Now we have to work on synergising the laws related to data protection and law related to consumers and e-commerce. Recently, E-commerce rules, 2020 has been notified and we all are waiting for new Data Protection law. Data protection bill is the aspiration to combat with the reservations of Information Technology Act, 2000. It's never too late to start and ratify.

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19. Reethu Ravi, "Five Biggest Data Breaches That Hit India in 2021", available at https://www.jumpstartmag.com/five-biggest-data-breaches-that-hit-india-in-2021/, accessed on 20/02/2023.
20. Ibid.
21. ET Bureau," 8 biggest data leaks of 2019 that hit Indian users hard", The Economic Times, 17/12/2019, available at https://economictimes.indiatimes.com/industry/tech/8-biggest-data-leaks-of-2019-that-hit-indian-users-hard/what-causes-data-breach/slideshow/72839190.cms, accessed on 22/02/2023.
22. Laura M, "Does Amazon Sell Your Personal Information?", available at https://joindeleteme.com/blog/does-amazon-sell-your-personal-information/, accessed on 23/02/2023.
23. K.S. Puttaswamy v. Union of India (2015) 8 SCC 735
24. (1954) SCR 107
25. (1964) 1 SCR 332.
26. Gobind v. State of Madhya Pradesh, (1975) 2 SCC 148; R. Rajagopal v. State

Evolution of E-Arbitration: Challenges and Issues in the 21st Century

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ABSTRACT

As the globe struggles to recover from the devastating effects of the Covid-19 virus, several sectors face new problems that push their players to develop innovative solutions. E-arbitration is much like any other kind of modern dispute resolution. Since holding in-person arbitration hearings is impossible due to the epidemic, the industry has been compelled to reorient itself.

The rapid pace of technological adoption can be attributed to the increasing autonomy of the parties involved and the increasing flexibility of the arbitration proceedings. Problems of a different nature have arisen due to this widespread acceptance. The city's conventional buildings, services, and institutions are constantly being challenged, and technology is even being weaponized. Without a shadow of a doubt, arbitration's many advantages have made it one of the most popular choices for settling business disputes. This makes data protection a higher priority than ever. While focusing on the developing time digital communication in arbitration, this paper reviews the scope and procedure of arbitration, the differences related to the adaptation of these practices in India post-covid-19 and data privacy challenges and issues for effective privacy management of arbitration hearings.

Keywords: E-arbitration, Data Protection, Party Autonomy, Procedures, & Technology.

INTRODUCTION

E-arbitration arbitrates a dispute using electronic methods such as email and online file storage. Various methods of e-arbitration are employed. Before a disagreement may be resolved by an e-arbitrator online, the parties must first agree on the contract's parameters. Due to the COVID-19 outbreak, online sales are surging.

Virtual meetings and other forms of electronic communication are not explicitly prohibited by the Arbitration and Conciliation Act of 1996 (the "Act"). As stated in Section 24 of the Act (Hearings and written proceedings)[1], The parties can forgo their right to oral hearings if they do not choose to do so, but they have the right to do so. It makes it possible for the arbitral panel to decide whether or not oral hearings are required.

For legal experts, the pandemic has made a wide-ranging investigation of the employment of e-arbitrators, or electronic arbitrators, much more accessible. For this, it is necessary to describe the argument in detail and to provide proof papers and photographs to back up assertions.

In this situation, the e-arbitrator lurks in the shadows, perusing the materials presented and inviting the parties to respond by utilizing the knowledge they've been given.

E- Arbitration procedure:

- If a disagreement arises after digitally agreeing, it should be conveyed by electronic methods such as email, etc., as in traditional processes.
- Notices should be kept on a secure disc so that both parties may access them if they cannot resolve their differences.
- A notification of intent to arbitrate should be issued electronically.
- Following the installation of an E tribunal and the start of E arbitration, the proceedings should be video conferences and documented.
- Electronic versions of the claim, defense statements, and supporting documents should be submitted.
- When required, cross-examination should be done via video connections.
- The judgment should be made electronically, and a copy should be sent to the parties in signed, sealed envelopes for execution.

In terms of arbitration, India is quite ambitious. The Arbitration Act's amendment is essential to India's efforts to improve its legal system's efficacy and economy. The arbitral awards being challenged were de-automated because of this. Because of this change, arbitration sessions in India are now of higher quality. As a result, India could no longer intervene in arbitral rulings through the courts. When an arbitral judgment was involved, it helped strengthen Indian trust institutions even further.

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[1] Arbitration and Conciliation Act of 1996.

New to the pro-arbitration camp is the Arbitration and Conciliation (Amendment) Act 2021. The Act of 1996 has been changed three times in the previous six years, demonstrating the legislative readiness to modify the Act of 1996 and make India a more arbitration-friendly country. Section 34[2], which governs the automatic stay of awards awarded under the Act, is the necessary amendment to the Act of 2021. A party may apply to the Court to reverse an arbitral decision under Section 34. An automatic halt to the award's execution would no longer be granted merely by applying to set it aside following the change of the Act, however. In India, technology was incorporated into arbitrary processes regularly. This has gotten much attention lately, especially with the spread of the Covid 19 virus. The Arbitration and Conciliation Act specifically allows the parties to determine how the arbitral tribunal would carry out its processes (Section 19)". As a result of this epidemic, e-arbitration was born as a new kind of arbitration.

INTERDEPENDENCY OF E-ARBITRATION: CONDUCT AND PROCEDURE

Covid 19 has severely affected industry differently, and arbitration stands no exception. As a result of the procedures, parties to arbitrations are increasingly using video conferencing and other forms of remote participation to conduct their cases. The use of electronic arbitration is already commonplace, but the difficulties inherent in this form of dispute resolution have grown exponentially along with our dependence on technology.

The pre-Covid-19 survey conducted in 2018 by Queen Mary University in collaboration with White & Case[3] reveals that a significant concern regarding the use of IT in international arbitrations may be a lack of knowledge of the technology infrastructure (including associated costs) that, in a moment it will weigh in the in-person arbitration proceedings.

Validity of E-arbitration under the legal provisions: -

Arbitration and Conciliation Act, 1996: The Arbitration and Conciliation Act 1996 ("the Act") does not mention whether any arbitration may be conducted by virtual means.

- Section 24 (Hearings and Written Proceedings) of the Act [4]: (a) entitles the parties to oral proceedings or to waive this right if they consider it appropriate; and b) authorizes the arbitral tribunal to decide on the need for oral proceedings if no agreement is reached between the parties to the dispute.
- Section 18 (Equal treatment of parties) of the Act[5]. The fundamental core of the due process is a) equal treatment of parties, which leads to the interpretation that proceedings can be conducted virtually.
- Information Technology Act, 2000: e-arbitration includes proceedings, arguments, pleadings, evidence, notices, hearings and orders, all in virtual or electronic form. The Information Technology Act 2000 (the "IT Act") allows for e-arbitration under Section 4 (Legal Recognition of Electronic Records) and Section 5 (Legal Recognition of Electronic Signatures)[6].
- Indian Evidence Act, 1872: Section 65B (Admissibility of Electronic Records) of the Indian Evidence Act, 1872 provides the legal verification of electronic records and virtual proceedings[7].

Online arbitration proceedings are a testament to the flexibility of both arbitration institutions and the arbitration process. However, if misused, these methods might threaten fair procedures and equitable treatment of the parties involved. Furthermore, an arbitral award can be contested in accordance with Article V (1) of the New York Convention if "the party against whom the arbitral award is enforced, was otherwise unable to present his case[8] or if "the arbitration was not by the law of the country where the arbitration was held[9], or were the parties' agreement."

The integrity of an arbitral award results from a fair process based on party autonomy and a reasonable opportunity for the party to present its case. It is, therefore, not surprising that emerging guidelines such as the Seoul Protocol and the AAA Model Order on Virtual Hearings emphasize that virtual proceedings must be fair to all litigants[10].

The industry can keep running despite the present climate thanks to arbitration's adaptability and technical advancements. Despite this, they still face the challenges.

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2 Arbitration and Conciliation Act of 1996.
3 2018 International Arbitration Survey: The Evolution of International Arbitration, https://arbitration.qmul.ac.uk/research/2018/
4 Arbitration and Conciliation Act, 1996
5 Arbitration and Conciliation Act, 1996.
6 Information Technology Act, 2000.
7 Indian Evidence Act, 1872.
8 The New York Convention Guide 1958,
9 Ibid.
10 'Challenges in E-arbitration during covid-19 and recognition under different statue', VIA MEDIATION AND ARBITRATION CENTRE, searched on (Nov. 14th, 2022), https://viamediationcentre.org/readnews/MTMwNA==/Challenges-in-E-Arbitration-During-covid-19-and-Recognition-under-different-statutes

Cross-examining lawyers, witnesses, experts, and arbitrators are all affected by the evidential and technological obstacles posed by today's "virtual" environment.

CREATING DIFFERENCES: IS INDIA PREPARED TO ADOPT SUCH PRACTICES?

The technological dynamism in the legal industry has always been in people's eyes. Still, it recently has come to the forefront of the attention of both lawyers and the general public due to the Covid-19 pandemic. Various restrictions were put in place to prevent the spread of Covid-19, making it difficult to hear in person. The same has led to an increase in online hearings, and a consensus is emerging to better integrate the use of technology in dispute resolution, particularly in the hearing of arbitral matters[11]. In order to prevent enterprises from being burdened with unresolved conflicts as a result of parties' incapacity to meet in person to resolve disputes, emphasis was also placed on adopting new techniques. Unlike the courts, the ADR mechanism is not required to remove bureaucratic hurdles when implementing changes. Therefore, arbitral institutions are flexible and able to adapt to current needs. Although in both physical and virtual hearings, the basic principles of arbitration, i.e., autonomy, consent, fair treatment, confidentiality etc., must remain intact. The aim is to conduct substantive hearings remotely and as efficiently and safely as possible. However, the transition to virtual technologies will undoubtedly bring significant technical, procedural, legal and existential challenges.

Thus, the leading arbitral institutions like ICC, SIAC, and LCIA[12] have been issuing press releases since the sudden stop and are seeking proposals for online arbitration procedures, e-filing, virtual evidentiary hearings and online case management. Based on these proposals, specific guidelines for e-arbitration proceedings have been issued. The mechanism in them is now being applied rapidly in international arbitrations.

Process and Adoption: International Arbitral Institution:

- **London Court of International Arbitration (LCIA);**

The rules made under LCIA mention the use of videoconferencing during the arbitration explicitly. Article 19.2[13] of the LCIA Arbitration Rules gives the 'arbitral tribunal full power to determine the conduct of the arbitration and allows the hearing at any appropriate stage'[14] of the arbitration to "take place by video conference or telephone conference or in person at any place or time as mentioned.

Moreover, LCIA still needs to develop guidelines for virtual hearings. However, an online docket service available on their website allows urgent matters to be heard via video conferencing; thus, the new rules also held onto the evaluative and diagnostic investigation of the "new normal"[15] by going beyond purely technical matters.

- **International Chamber of Commerce (ICC);**

The ICC has issued guidance to parties[16], especially the legal representatives and tribunals, on possible measures that can be considered to mitigate the adverse effects of the pandemic on the virtual conduct of the arbitration process. 'The guidelines encourage parties, counsel and tribunals to minimize disruption and avoid difficulties through thoughtful use of case management tools either already available through the ICC Arbitration Rules or through additional steps the ICC International Court of Arbitration is taking to streamline its internal processes'[17]. Moreover, Annexure-I provides a checklist for the Virtual Hearings Protocol, and Annexure-II contains suggested clauses for the Cyber Protocols for the conduct of proceedings in cyberspace. These clauses serve as a guide for conducting virtual hearings.

The guidance also reminds participants of the procedural tools at their disposal to reduce delays through increased efficiency and provides guidance when holding conferences and hearings based on the parties' considerations. This includes using video conferences, audio conferences, or other comparable forms of communication, as specified in Article 24(4)[18] of the ICC Arbitration Rules. The ICC insisted through the instruction that disputes

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11 'Digital Transformation in the Age of Covid-19', OECD (2020), Paris, searched on (Nov. 20th, 2022), https://www.oecd.org/digital/digital-economy-outlook-covid.pdf

12 Nitin Nagpal and Anuj Jhawar, 'Online Arbitration Practices in India', MONDAQ 2020, searched on (Nov. 20th, 2022), https://www.mondaq.com/india/arbitration-dispute-resolution/978492/online-arbitration-practices-in-india

13 LCIA Arbitration Rules,https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2014.aspx

14 Supra note. 11.

15 Supra note 13.

16 'ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic', ICC 2020, searched on (Nov. 10th, 2022), https://iccwbo.org/content/uploads/sites/3/2020/04/guidance-note-possible-measures-mitigating-effects-covid-19-english.pdf

17 Ibid.

18 2021 Arbitration Rules', https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/

must proceed expeditiously as required by Article 22(1[19]) of the ICC Arbitration Rules. As suggested, these techniques include bifurcating proceedings, identifying issues that can be resolved based on documents, establishing claims/defenses which are frivolous, and proceeding where the live testimony of a witness or expert is not necessary to resolve the dispute

- Singapore International Arbitration Center (SIAC);

  In order to provide a fair, quick, affordable, and definitive settlement of the dispute, the tribunal shall conduct the arbitration as it deems suitable, following consultation with the parties, in accordance with Rule 19.1 of the 2016 SIAC Rules. Therefore, parties might want to talk with tribunals about whether virtual hearing options were a good fit for their situation. In addition, the arbitrator may hear the disputing parties via video conference as an alternative to a personal hearing under Schedule 1-Emergency Arbitrator of SIAC Rules[20], 2016 under Rules 7 and 8. The arbitrator may also issue any orders or give any injunctive relief as appropriate.

  SIAC also mentions that where in-person hearings are impossible or impractical, parties should discuss other options for in-person hearings with the tribunal, such as continuing the hearing virtually or via teleconference. Whereas subject to the suitability of the parties and discussion with the tribunal, it may refer them to use 'Maxwell Chambers for virtual ADR services and less complex cases, adopting a document-only procedure instead of a hearing'[21]. The protocol and process of the court's virtual hearing are entirely up to the SIAC's discretion. But the decision on the same should be made after consulting the parties.

The question now arises: how does India consider this viewpoint? To improve the effectiveness of online arbitration processes, the Law Commission of India promoted the use of technology in 2014, namely teleconferencing and videoconferencing. Despite this, these suggestions have not gained much support in India since arbitrators and counsels have not had enough exposure to technology[22]. However, the arbitral community in India is proactively working to develop India as an arbitration-friendly jurisdiction. The adoption of virtual arbitration could play a significant role in this movement.

The ICA uses video conferencing tools to conduct virtual arbitration proceedings[23]. The ICA Secretariat, after receiving emails from interested parties, will arrange for hearings to be held via video conference. The ICA also accepts the registration of new arbitration cases[24]. The letter issued by the ICA lists the documents required to start a case hearing along with the required fees. The ICA needs to develop guidelines for virtual hearings but is still processing the culture to adapt such proceedings.

DATA PRIVACY & CONCERNS: THROUGH THE LENS OF PERSONAL DATA PROTECTION BILL 2019.

Major international institutions have made tremendous advancements in the digital components of arbitration. But the Arbitration and Conciliation Act has been updated to address data protection after the arrival of the Indian force. Since cooperative methods are necessary when drafting arbitration terms that should be upheld, special care must be paid to ensuring confidentiality in arbitration.

The Arbitration and Conciliation Act 1996 was recently amended in the year 2019, and the Section 42-A was introduced to strengthen the confidentiality of data during arbitration proceedings[25]. At the same time, the judicial intervention in connection with the arbitration may be initiated by the parties to the arbitration for, among other purposes, an injunction, temporary injunction, or termination of the arbitrator's mandate. Furthermore, third parties may apply to the court for a reference to an ongoing arbitration. Parties seeking injunctive relief in each situation may rely on confidential courtroom arbitration data.

The amendment also 'allows the "Arbitration Council of India" to serve as the "holder" of arbitration proceedings. It is noteworthy that certain questions regarding the Data Protection Bill are raised by the modifications. 2019[26], as it remains unclear whether an arbitrator or arbitral

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19 Ibid.

20 Arbitration Rules of Singapore International Arbitration Centre', SIAC, (6th Edn. 2020), https://siac.org.sg/siac-rules-2016

21 'Covid-19 Update on WIPO's Arbitration and Mediation Operations', WIPO, https://www.wipo.int/amc/en/center/wipoupdate.html

22 'India: Technology in Arbitration: Impact of Covid-19', MONDAQ 2022, searched on (Nov. 10th, 2022), https://www.mondaq.com/india/aritration-dispute-resolution/1169096/technology-in-arbitration-impact-of-covid-19

23 Notice Indian Council of Arbitration, https://www.icaindia.co.in/Notice-for-ICA.pdf

24 Ibid.

25 Tarun Krishnakumar, 'Data Protection in India and Arbitration: Key Questions Ahead, WOLTERS KLUWER 2019, searched on (Nov. 08th, 2022), http://arbitrationblog.kluwerarbitration.com/2019/04/16/data-protection-in-india-and-arbitration-key-questions-ahead/

26 ' Need for Data Protection and Cyber Security in Arbitration', VIA MEDIATION AND ARBITRATION CENTRE, https://viamediationcentre.org/readnews/MTM1Nw==/Need-For-Data-Protection-And-Cyber-Security-In-Arbitrations

institution is a "data controller" under the said draft. The Bill further stipulates that only information necessary to exercise a legal claim may remain disclosed. However, the conditions for disclosing the information are still unclear, and the bill does not explicitly address arbitration.

The 2019 amendments seek to establish the Arbitration Council of India as an independent governing body. Whereas 'Section 43K of the amended Act imposes a statutory duty on the Arbitration Council of India to maintain an electronic repository of arbitral awards issued in India along with such other records as the regulations may specify'[27]. However, the regulations eventually notified under section 43K[28] would necessarily relate to the provisions of the Personal Data Protection Bill 2019.This is because the disclosure of data must meet the standards set out.

Further, the rules laid down by the Arbitration Council of India would have to decide the role of data controllers and data controllers. According to 'Article 3(13) of the Personal Data Protection Bill 2019'[29] , a data controller means "any person, including a state, a company, any legal entity or any natural person, which alone or in association with others determines the purpose and means of personal processing data" [30], while the data controller is the person to whom the data relate. Thus, it remains unclear whether an arbitrator or an arbitral institution is a "data fiduciary" under the Personal Data Protection Bill.

As we know, data privacy concerns are related to data security concerns. 'Article 36(b) of the Personal Data Protection Bill states that only information necessary to exercise a legal right will be disclosed' [31]. However, the reasons for the disclosure remain unclear as it is also important to note that arbitration is not expressly regulated by law. Thus, the courts will have to read arbitration proceedings into the scope of this provision to pass arbitral awards over the virtual platform.

As discussed above, there's an urgent need for a data protection protocol in India. The General Data Protection Regulation establishes specific data protection standards for the European Union and imposes sanctions for their violation. This creates a particularly pernicious problem in the Indian context, as lax domestic security standards run counter to the standards of international arbitrations. We are seeing the rise of online arbitration as a means to maintain efficiency and reduce costs. Even traditionally, physical processes such as entering evidence have been moved online due to COVID-19[32]. The problems noted earlier concerning the confidentiality of proceedings are exacerbated without a robust data security framework. The Personal Data Protection Bill does very little to address these loopholes. Even in cases of ad-hoc consent-based arbitrations, it remains to be seen whether data security standards will be considered mandatory or subject to mutual agreement between the parties. While it is unclear whether specific standards will come into effect shortly, it is necessary to draw attention to the growing threat of cybercrime. This can cause significant losses to both parties and undermine the legitimacy of the proceedings.

It also needs to be clear how data security and confidentiality can be protected in arbitration proceedings in India. The answer lies in moving to arbitral institutions that can ensure higher standards of compliance and implement robust data protection protocols to mitigate the myriad of problems that can arise from data breaches and cyber-attacks[33].

A legislative opportunity awaits us to harmonize the objectives of the Personal Data Protection Bill as it regulates data security with the regulations (to be drafted) for the Arbitration Council of India. On the other hand, the uncertainty regarding the exemptions from the duty of confidentiality under Section 42A deserves judicial intervention at the very first opportunity as it remains to be determined and non-understandable concerning the data protection rules.

CHALLENGES AND PROSPECTS:

Various challenges may arise in e-arbitration proceedings, and the authors have discussed some key issues here to show how parties, tribunals and appellate courts can effectively address them. The underlying principle of any solution is that any e-arbitration will promote mutual consent with party autonomy to ensure equality.

1. **Costs:** One of the critical factors associated with any arbitration proceeding, be it virtual or official hearings. Since arbitration cannot be conducted on any platform, several institutions have e-arbitration hearings platforms, increasing the cost of arbitration. In addition to the costs of using appropriate technologies such as the internet (with adequate bandwidth), virtual data room, video

27 The Arbitration and Conciliation (Amendment) Act, 2019.
28 The Arbitration and Conciliation (Amendment) Act, 2019.
29 The Personal Data Protection Bill, 2019, http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/373_2019_LS_Eng.pdf
30 Ibid.
31 Ibid.
32 'Worldwide: Data Protection in International Arbitration', MONDAQ 2022, searched on (Oct. 30th, 2022), https://www.mondaq.com/india/arbitration-dispute-resolution/1162204/data-protection-in-international-arbitration
33 Tariq Khan, 'The Growing Need of Data Protection in International Arbitration', SCC ONLINE, searched on (Oct. 22nd,2022),https://www.scconline.com/blog/post/2022/10/18/the-growing-need-for-data-protection-in-international-arbitration/

conferencing platforms/equipment, transcription, translation, proper hardware (such as screens, headphones, widescreen and high-quality cameras) etc. of this made a more costly affair.

Taking this forward from the New York Convention as a starting point for analyzing whether electronic arbitral awards are admissible in the current legal framework, it can be noted that the convention does not expressly provide for a signed and written arbitral award. Furthermore, "Article 8 of the UNCITRAL Model Law on Electronic Commerce expressly states that the requirement to submit information in its original form can be fulfilled by an electronic data message"[34]. Article 31 (1) of the UNCITRAL Model Law requires that "the decision must be made in writing and signed by the arbitrator"[35]. Following the Model Law, Section 31 of the Arbitration and Conciliation Act, 1996 in India requires the same. The Information Technology Act of 2000, however, has superseded the conventional notion of writing and signing by granting legal legitimacy to electronic records and digital signatures in and of themselves.

2. **Cyber security, privacy and data protection:** In India, having one's privacy is a fundamental right. Confidential information shared throughout these processes needs to be managed carefully. The PDP Bill 2019 and PDP Bill 2018 protocols, as well as the EU General Data Protection Regulation ("GDPR"), may be utilized to process, retain, transfer, and delete information for all directors in a restricted manner. The extent of data protection and privacy will be limited by express consent to processing information and a record of it. Rather than using public networks, Internet connections enable access to password-protected private and secure personal networks. In order to make documents available to all parties as per their rights, they can be stored, corresponded with, and ordered electronically using secure web channels and/or documents, cloud services, or royalty-based document-sharing platforms. Thus, a preliminary agreement on the admission of participants, proper identification and verification of participants carried out before the start of the virtual hearing, etc., will ensure no breach of trust between the parties involved [36].

3. **Confidentiality:** Section 42-A, as amended in 2019[37], 'imposes a duty of confidentiality on the parties and the arbitrator'. Confidentiality is an implicit aspect of arbitration, which an arbitrator can achieve by binding all parties and participants to an obligation of the said terms and actions. Adopting a confidentiality clause or rules of a designated arbitration service provider that require specified levels of confidentiality may also have the same effect. The virtual platform can also ensure software used in meetings to make 'end-to-end encrypted and not infiltrated by Trojans or bugs, and that separate rooms are provided for privileged communications'[38].

4. **Testimony of Witnesses:** When there is an inherent risk that an arbitral tribunal will subconsciously consider the shortcomings of virtual hearings when evaluating witness or expert testimony, thereby compromising the arbitrators' ability to assess the evidence. For example, "during cross-examination, members of the tribunal may not have the same ability to analyse the answers and body language of witnesses or experts as they do during personal testimony"[39]. A witness unfamiliar with online platforms may not look convincingly direct at the interviewer (via a computer camera). Therefore, it inadvertently raises credibility concerns where none exist. Additionally, in a virtual environment, a witness may be surreptitiously alerted off-camera or reading documents without knowing the tribunal or the opposing party.

   However, these initial challenges of testifying via video conference can be resolved by preparation and the legal team to ensure that their witnesses and experts are as familiar as possible with what awaits them in the virtual hearing.

5. **Unequal access to technology:** Parties from all around the world are involved in international arbitration processes. Consequently, a party, expert, or counsel in a developing Middle Eastern or African nation might not have the same access to modern technology or fast internet as a witness or expert in a European nation.

   Furthermore, the widespread worry that the technology currently employed by arbitral tribunals is insufficient is unfounded because, as we can see, courtroom technology has advanced significantly since the days of overhead projectors and is now a tool to help present evidence more persuasively

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34 UNCITRAL Model Law, https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration

35 Ibid.

36 General Data Protection Regulation,https://gdpr-info.eu/

37 The Arbitration and Conciliation (Amendment) Act, 2019.

38 Supra note. 13.

39 'Challenges and Opportunity of Virtual Heaning in International Arbitration', VILSON & ELKINS 2020, searched on (Oct. 27th, 2022), https://www.velaw.com/insights/challenges-and-opportunities-of-virtual-hearings-in-international-arbitration/

rather than a distraction or impediment. With just a click, virtual hearing packages provide thousands of referenced exhibits, legal authorities, witness testimonies, and expert reports, making it simple to review submissions. Parties can also adopt a number of useful guides and procedures released by arbitral organizations to make sure they are using comparable technology. The technology standard, which should establish a bar for e-arbitration, should be decided upon by the parties prior to the hearing, as is the case with many arbitrations.

6. **Translations and interpreters:** The issue related to translations and interpreters presents additional challenges in a virtual environment. If a 'witness requires interpretation to participate in the proceedings, reliable connectivity and transfer speed will be important' [40]. There is always a chance that the interpreter will misread the testimony or impose his interpretation of ambiguous language during the virtual hearing. When simultaneous interpretation is employed instead of consecutive interpretation, there is a considerable increase in risk. In order to safeguard their interests, the other side might decide to use a "control" interpreter close to the witness and the lead interpreter, who might raise concerns about the translation's correctness. In a virtual environment, this configuration might be difficult to apply and may cause issues with connectivity as well as audio and video quality.

7. **Duties of Arbitrators:** During an e-arbitration hearing, the arbitrators are in charge of effectively running the proceedings and striking a balance between the competing needs of due process and expedited procedure. Every ruling made is important, and this is especially true in the case of virtual hearings where there is a possibility of contesting the rulings' execution. Stays there outlines the parties' entitlement to due process.

CONCLUSION

Since e-arbitration is quick, affordable, and effective, it ought to be the technique of choice for resolving disputes. Despite being a novel approach to conflict resolution, e-arbitration is nonetheless subject to conventional arbitration laws. Parties and arbitrators should always consider the legality of the applicable arbitration agreements and procedures, the choice of law, the seat of the arbitration, and the form of the awards. These measures will help e-arbitration work within existing national and international treaties. It's true that justice postponed equals justice denied. Thus, we must meet the challenge head-on and to the best of our abilities rather than trying to avoid it. The parties' cooperation can finally quell arbitration matters left behind due to the pandemic. Therefore, all parties involved must unite and support each other to make virtual arbitrations a new reality.

Moreover, India should develop its own rules for e-arbitration over time. Arbitration on a virtual platform is no different from conventional arbitration. The only difference is the omission of a physical platform and the introduction of a virtual platform. Put otherwise, the legal obstacles present in traditional arbitration will persist in

[40] Supra note. 13.

Internet Shutdowns and Violation of the Right to Education: With Special Reference to India's National Education Policy, 2020

Dr. Farah Hayat*

ABSTRACT

For any country to flourish in the 21st century, access to Internet has very high significance. Not only does it make it possible for the world to come together and for human beings to connect with each other, irrespective of their geographical location, it also affects the pace of development and growth. In the education sector, students and educators heavily rely upon Internet as a source for information, dissemination of information, teaching and learning. The National Education Policy of 2020 (hereinafter referred to as NEP of 2020) of India has emphasized on the usage of Information and Communication Technology (hereinafter referred to as ICT) tools not only at the stage of delivering lectures, but also for creating content and study material, including e-content, as well as for assessment and evaluation of the students. This has increased the importance of Internet manifolds because without a sound and fast internet connection, taking online classes or conducting online quizzes or even carrying out research becomes extremely difficult. In such a scenario internet shutdowns are a great obstacle in the process of teaching and learning, especially through digital media. It violates the right to education guaranteed by the Constitution. Through this paper, the researcher has studied the rise in the frequency of internet shutdowns in India over the past 10 years and its impact on the access to education. Since, the government of India has put great emphasis on the implementation of the NEP of 2020, the researcher has tried to discuss the adverse effect of internet shutdowns on the realization of goals of NEP of 2020 and accordingly some suggestions have been put forward.

Keywords: Fundamental Right to Education, NEP 2020, Internet Shutdowns, ICT Tools, Online Learning

1. INTRODUCTION

Civil rights are essential to the functioning of a democratic society, and their protection is enshrined in international human rights law and many national constitutions. One such civil right is the right to education.

Right to education is often considered as a foundational human right, as education is necessary for individuals to exercise their full range of human capacities and to participate fully in the social and political life of their communities. Despite the existence of international human rights law, access to education varies widely around the world. As a civil right, education guarantees that every individual has the right to access quality education regardless of their race, ethnicity, gender, religion, socioeconomic status, or disability. The concept of education as a civil right means that the government has a responsibility to ensure that all citizens have access to education, and that education should be affordable and accessible to everyone. Education as a civil right is enshrined in various international human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child. These instruments emphasize the importance of education in promoting individual and collective development, and recognize education as a key tool for achieving social and economic equality.

In many countries, education is also enshrined in national constitutions as a civil right. For example, the United States' Constitution does not explicitly mention education as a civil right, but the Supreme Court has recognized education as a fundamental right under the Equal Protection Clause of the Fourteenth Amendment. The Constitution of India guarantees right to education as a Fundamental Right under Article 21A. Overall, education as a civil right is a crucial element in ensuring that individuals have the opportunity to reach their full potential, and that societies can thrive and prosper through a knowledgeable and skilled citizenry.

In the modern world, access to education is closely linked with access to Internet. It has revolutionized education by providing access to a wealth of information and educational resources that were previously inaccessible. The internet has become an essential tool for students and educators alike, enabling them to access educational materials, communicate with peers and instructors, and collaborate on projects. This is especially important in light of the NEP of 2020.

Internet shutdowns can disrupt online learning platforms and courses, making it impossible for students to access course materials, communicate with instructors and peers, and complete assignments. The internet provides students and educators with access to a vast amount of educational resources, including textbooks, research articles, and online databases. An internet shutdown can limit access to

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these resources, making it difficult for students to conduct research and learn about different subjects. It can result in a delay in the academic calendar, particularly if online learning platforms are disrupted. This can affect students' ability to complete their studies on time and may lead to a loss of learning opportunities. It can have a negative impact on students' academic performance, particularly if they are unable to access educational resources and continue their studies.

1.2 REVIEW OF LITERATURE

Internet shutdowns are a relatively recent phenomenon and therefore, scholarly research into their causes, legal implications and impacts on human rights is still at a nascent stage.

Benjamin Wagner[1] did a case study on Internet Shutdowns in Pakistan which was published in 2018. The article discusses the normalization of shutdowns in Pakistan and suggests that it is important to examine the specific dynamics of how these shutdowns occur in order to understand why they have become common. The concept of communicative ruptures is introduced as a means of understanding intentional government shutdowns of communication. The article also argues that short-term shutdowns are often aimed at preventing mobilization, whereas long-term shutdowns are better explained by examining disciplinary mechanisms and the denial of the existence of those who are different.

Gregorio and Stremlau[2] explored how there can be more transparency around decision-making processes behind Internet shutdowns and also discussed the limits of law when it comes to the imposition and implementation of shutdowns.

Shandler and Canetti[3] studied various theories that have been proposed to justify the recognition of internet access as a human right. These include arguments that highlight the protection of freedom of expression under the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. Some scholars have also suggested that customary international law could be applicable, or that internet access could be considered an auxiliary human right. The latter approach is viewed as the most promising, but further research is needed to validate this argument.

The causes and implications of Internet shutdowns have been studied in the report submitted to the Human Rights Council pursuant to resolution 47/16 by the Office of the United Nations Human Rights Commissioner in May, 2022.

But, there is a gap in research as far as the impact of internet shutdowns on the education sector in India is concerned and this research paper is an attempt to fill this gap in the context of its effect on realization of the goals under NEP of 2020.

1.3 HYPOTHESIS

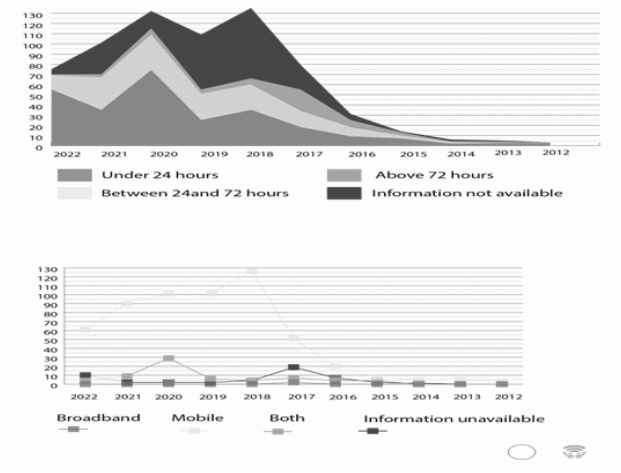
Internet shutdowns are an impediment in realization of National Education Policy, 2020 in India.

1.4 RESEARCH METHODOLOGY

The research is doctrinal in nature by using primary sources such as government reports as well as secondary sources such as books, journals, newspaper articles and websites.

2. ANALYSIS OF THE RISE IN INSTANCES OF INTERNET SHUTDOWNS IN INDIA

There has been a significant rise in internet shutdowns in India in recent years. According to the Software Freedom Law Centre's (hereinafter referred to as SFLC) Internet Shutdown Tracker, The Internet Shutdowns Tracker has recorded a total of 690 shutdowns in India since 2012. The first recorded shutdown was imposed in the then State of Jammu and Kashmir on January 26, 2012. There were 109 reported incidents of internet shutdowns in India in 2019, compared to 134 in 2018 and 79 in 2017. This trend continued in 2020, with at least 90 reported incidents of internet shutdowns in the first half of the year alone.[4]



Source: The Internet Shutdown Tracker (www.sflc.in)

1. B. Wagner, Understanding Internet Shutdowns: A Case Study from Pakistan, 12(1) International Journal of Communication (2018), https://research.wu.ac.at/ws/files/19834300/8545-33917-1-PB.pdf .
2. Giovanni De Gregorio and Nicole Stremlau, Internet Shutdowns and the Limits of Law, 14 International Journal of Communication 1-19.
3. Ryan Shandler and Daphna Canetti, A Reality of Vulnerability And Dependence: Internet Access As A Human Right, 52(1) Israel Law Review 77-98 (2019).
4. Internet Shutdowns in India 2022, SOFTWARE FREEDOM LAW CENTER, INDIA (Jan. 20, 2024, 1:09 PM), https://sflc.in/internet-shutdowns-india-2022.

Internet shutdowns in India are often ordered by state governments as an instrument of maintaining law and order or preventing the spread of rumors and fake news. The shutdowns typically last for a few hours or days, but in some cases, they can go on for weeks.

Internet shutdowns have a significant impact on people's lives and the economy. They disrupt communication, access to information, and essential services such as banking, healthcare, and education. They also have a chilling effect on freedom of speech and expression and can be used as a tool for censorship.

Civil society groups, activists, and journalists have raised concerns about the increasing frequency of internet shutdowns in India and their impact on human rights. They have called on the government to review the laws and policies that enable internet shutdowns, and to ensure that any restrictions on the internet are necessary, proportionate, and in compliance with international human rights standards.

In addition to concerns about the impact of internet shutdowns on human rights and the economy, there are also concerns about the lack of transparency and accountability around these shutdowns. In many cases, the orders for internet shutdowns are not made public, and the reasons given for the shutdowns are often vague or unsubstantiated. This lack of transparency makes it difficult for affected individuals and communities to challenge the shutdowns or seek redress.

There have also been reports of internet shutdowns being used to suppress dissent and stifle political opposition. In some cases, internet shutdowns have been ordered in response to protests or demonstrations, limiting people's ability to organize and communicate. While the government has argued that internet shutdowns are necessary to maintain law and order, critics argue that there are other ways to address these concerns that do not involve shutting down the internet. For example, law enforcement agencies could target specific individuals or groups engaging in illegal activities, rather than imposing blanket shutdowns that affect entire communities.

3. RIGHT TO EDUCATION AND INTERNET SHUTDOWNS

3.1 RIGHT TO EDUCATION

The Constitution of India, adopted in 1950, enshrined the right to education as a fundamental right under Article 21A. However, this provision was not enforceable until the passing of the Right of Children to Free and Compulsory Education Act (hereinafter referred to as the RTE Act) in 2009.

The National Policy on Education, adopted in 1968, laid out a framework for education in India, with a focus on universal access to education, improving the quality of education, and promoting social and national integration. India became a signatory to the "Education for All" initiative in 1990, which aimed to provide universal access to basic education and improve the quality of education.

The *J.P. Unnikrishnan and Ors. v. State of Andhra Pradesh and Ors.*,[5] is a landmark case in Indian constitutional law, which deals with the issue of right to education as a fundamental right. In 1993, a group of parents in Kerala challenged the admission policies of private unaided schools, which were charging exorbitant fees for admission, in the Supreme Court of India. The case was heard by a Constitution Bench of the Supreme Court, which delivered its judgment in the same year. The Supreme Court, in the Unnikrishnan case, held that the right to education is a fundamental right under the Indian Constitution, and that the State has a duty to provide education to all children up to the age of 14 years. The Court also held that private schools, which are run as commercial ventures, have a duty to provide education to children on a non-profit basis. The Court directed the State to regulate the fees charged by private schools and to ensure that no child is denied admission due to financial constraints. The Unnikrishnan case is considered a landmark case as it established the right to education as a fundamental right, and laid down guidelines for the regulation of private schools. The judgment has had a significant impact on the education sector in India, and has led to the passage of several laws, including the Right of Children to Free and Compulsory Education Act, 2009, which guarantees free and compulsory education to all children between the ages of 6 to 14 years.

The Sarva Shiksha Abhiyan, launched in 2001, aimed to provide universal elementary education (grades 1-8) to all children in India. The RTE Act, passed in 2009, made the right to education a legally enforceable right for all children between the ages of 6 and 14 years. The Act mandated that all children be provided with free and compulsory education, and that private schools set aside a percentage of their seats for disadvantaged children. The NEP 2020, outlines a vision for education in India for the next decade. The NEP emphasizes the importance of early childhood education, improving the quality of education, promoting multilingualism, and expanding access to higher education.[6]

5. AIR 1993 SC 2178.
6. Ministry of Human Resource Development, Government of India, National Education Policy, 2020, (Jan. 20, 2024, 1:15 PM), https://www.education.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf.

3.2 INTERNET SHUTDOWNS: A DIGITAL BLOCKADE

Internet shutdowns, also known as internet blackouts, occur when a government or other authority intentionally disrupts or blocks access to the internet or specific websites and online services. Internet shutdowns can occur for a variety of reasons, including political censorship, social unrest, or national security concerns.

The Indian government has frequently ordered internet shutdowns in various parts of the country to control the spread of misinformation and unrest. Since August 2019, the Indian government has imposed several internet shutdowns in the Kashmir region following the revocation of its special status. The longest of these shutdowns lasted for over 200 days, making it the longest internet shutdown in any democracy. In 2020, the Indian government-imposed internet shutdowns in parts of Delhi during protests against the Citizenship Amendment Act, 2019.

Internet shutdowns have been on a rise not only in India, but a number of other countries of the world. For example, China has one of the most sophisticated internet censorship systems in the world, known as the Great Firewall of China. The Chinese government frequently blocks access to websites and online services and has imposed total or partial internet shutdowns during times of political unrest, such as in the Xinjiang region and during the 2019 Hong Kong protests. In 2021, Myanmar's military junta imposed an internet blackout following a coup that overthrew the country's democratically elected government. In 2020, the Ethiopian government imposed an internet blackout in the Tigray region during a military conflict. The Belarusian government has imposed multiple internet shutdowns during protests and political unrest, including in the aftermath of the disputed 2020 presidential election. In early 2021, the Ugandan government imposed an internet shutdown during the country's presidential election, which was marred by allegations of fraud.

These shutdowns have been justified by governments imposing them on the grounds of public order and security, but they have been criticized by social activists and human rights advocates for violating the freedom of speech and expression of citizens while also limiting their right to information. But the violation of the right to education as a consequence of Internet shutdowns in a country that has been promoting the Digital India Plan since 1 July 2015, has not yet been a topic of much scholarly debate and research.

3.3 IMPACT OF INTERNET SHUTDOWNS ON EDUCATION

One right that forms the cornerstone of any democratic country is the right to education. In theory, it has been granted the status of a Fundamental Right under Article 21A of the Constitution of India. But in practice, it is still not enjoyed fully and with uniformity throughout the country. With the advancement in pedagogy techniques, there is rise in use of Information and Communication Technology (hereinafter referred to as ICT) tools in imparting education in schools as well as in higher education.

The application of technology in the education sector increased manifolds during the COVID-19 Pandemic when classes were being taken online and examinations were also being conducted through online mode. By the end of 2022, most educational institutions started conducting physical classes or have been functioning in hybrid mode but the use of ICT tools in teaching is on a speedy rise in consonance with NEP of 2020.

Long-term internet shutdowns have had significant negative effects, such as causing students to drop out of school or miss an entire academic year.[7] In Kashmir, for instance, slow internet speeds and connectivity issues resulted in a 40 percent reduction in the academic syllabus.[8] Parents have reported that their children have been discouraged from attending classes due to slow speeds, and the lack of access to education has caused emotional and mental health issues for many students. Moreover, some students have been unable to appear in important government exams for higher education or government jobs, while others have had to travel to different cities in order to obtain study materials or take exams.[9]

A petition was ?led in the Supreme Court of India in *Foundation for Media Professionals v. U.T. of J&K and Anr.*[10] stating the challenges students and schools were facing at the start of the pandemic. It was contended in this petition that an internet shutdown during a pandemic, particularly, is a violation of right to education of all the children living in Kashmir. The Court's dismissal of the petition was premised on the argument that stat security would supersede education, especially where terrorism is concerned. This was a decision arrived at after consideration offered by the Court to the desirability and convenience of access to internet in light of "a worldwide pandemic and a national lockdown".

7. Peerzada Ashiq, We're in the stone age, say Kashmir students on Internet shut down, THE HINDU, January 25, 2020, (Jan. 7, 2024, 1:23 PM), https://www.thehindu.com/news/national/were- in-the-stone-age-say-kashmir-students-on-internet-shut-down/article30653509.ece .
8. 40% syllabus relaxation in class 10-12 exams, GREATER KASHMIR, October 31, 2020, (Jan. 7, 2024, 2:31 PM), https://www.greaterkashmir.com/news/front-page-2/40-syllabus-relaxation-in- class-10-12-exams/ .
9. Fateh Veer Singh and Rishab Jain, J& K: Students' NEET preparation suffers amidst Sluggish Internet Services, THE WIRE, 11 February 2020, (Jan. 7, 2024, 2:32 PM), https://thewire.in/rights/kashmir-students-neet-internet .
10. Foundation for Media Professionals v. U.T. of J&K and Anr., (2020) SCC online SC 453.

4. IMPACT OF INTERNET SHUTDOWNS IN THE CONTEXT OF NEP OF 2020

4.1 SALIENT FEATURES OF NEP OF 2020

The NEP of 2020 aims to provide universal access to education at all levels from pre-primary to grade 12, and ensure quality early childhood education for children aged 3-6 years.[11] The curriculum is structured into 5+3+3+4, with no hard separation between different subjects or streams. The policy emphasizes the promotion of multilingualism and the use of Indian languages as the medium of instruction until at least grade 5. Assessment reforms have been introduced, including board exams held twice a year, and the establishment of a new National Assessment Centre.

The policy also prioritizes equitable and inclusive education, with a special focus on socially and economically disadvantaged groups. There are measures in place to recruit and evaluate teachers based on merit, and resources are made available through school complexes and clusters. The NEP also aims to increase gross enrolment ratios in higher education to 50% and establish multidisciplinary education and research universities. The policy promotes the use of technology to enhance learning, assessment, planning, and administration, and aims to achieve 100% youth and adult literacy. The government plans to increase public investment in the education sector to reach 6% of GDP and strengthen coordination among education boards. The Pandit Madan Mohan Malaviya National Mission on Teachers and Teaching (hereinafter referred to as PMMMNMTT) was launched in 2014 to address teacher training and capacity building and will continue until 2025-2026 with an outlay of Rs. 493.68 crore.

4.2 SIGNIFICANCE OF INTERNET UNDER NEP, 2020

The NEP 2020 of India recognizes the important role of the internet in education and aims to leverage technology to enhance access, equity, and quality in education. The NEP 2020 recognizes the need for creating digital infrastructure and connectivity in all educational institutions, including schools, colleges, and universities. This includes providing high-speed internet connectivity, computer labs, and other digital resources to students and teachers.

Second, the policy recognizes the importance of online and distance education, particularly for marginalized and disadvantaged communities. It aims to provide increased access to digital education resources for all learners, including those in remote and underserved areas.

Third, it aims to develop high-quality digital educational resources and platforms that can be accessed by learners of all ages and backgrounds. This includes digital textbooks, multimedia content, and other resources that can enhance the learning experience and support self-paced and self-directed learning.

Fourth, it recognizes the need for providing teachers with the skills and knowledge required to effectively use digital technology in the classroom. It proposes the development of comprehensive training programs and resources to support teacher professional development in the use of technology in education.

Fifth, the NEP 2020 proposes the use of digital technology for assessments and evaluations, including online testing and adaptive testing. It also aims to develop assessment tools that can measure skills beyond rote memorization and encourage critical thinking and problem-solving skills.

Sixth, the policy proposes the creation of a National Educational Technology Forum (hereinafter referred to as NETF) to facilitate the exchange of ideas and best practices in the use of technology in education. The NETF will bring together experts, educators, and other stakeholders to collaborate on the development and implementation of digital technologies in education.

Overall, the NEP 2020 recognizes the transformative potential of the internet and digital technology in education and aims to leverage these tools to provide quality education to all learners in India. The policy proposes several measures to achieve these goals, including the creation of digital infrastructure, development of digital resources, and teacher training and professional development in the use of technology in education.

4.3 IMPACT OF INTERNET SHUTDOWNS ON REALIZATION OF OBJECTIVES OF NEP, 2020

The National Education Policy 2020 of India emphasizes the use of technology and digital platforms for teaching and learning. However, internet shutdowns can significantly undermine the goals of the policy by disrupting access to online resources and remote learning platforms.

Internet shutdowns can be disadvantageous for the National Education Policy 2020 of India in the following ways:

- **Limited access to online resources:** The internet is a major source of information, including news and other critical updates. An internet shutdown can make it difficult or impossible for people to access important information, including emergency services, healthcare information, and educational resources.

11. National Education Policy, 2020, supra note 6 para 3 sub-para 3.2, at. 10.
12. (2020) SCC Online SC 25.

Hence, they are seen as a violation of human rights, particularly freedom of expression and access to information. The United Nations Human Rights Council has stated that disconnecting people from the internet, even for short periods, is a violation of international human rights law.

The National Education Policy 2020 emphasizes the use of technology and digital resources for teaching and learning. During an internet shutdown, students and teachers may not have access to online resources such as e-books, research articles, and other learning materials. This can significantly impact the quality of education that students receive, as they may not have access to the latest research or updated learning materials

- **Disruption of online classes:** With the COVID-19 pandemic, many educational institutions in India have shifted to online classes to ensure continuity in education. Even when most schools and colleges have resumed physical classes, the utility of internet in teaching and learning has been realized like never before. However, during an internet shutdown, students and teachers may not be able to attend these classes, leading to a disruption of the teaching and learning process. This can lead to a significant loss of learning for students, especially those in higher education who may miss out on critical lectures and discussions.
- **Negative impact on student engagement:** The NEP 2020 emphasizes the importance of promoting student engagement and participation in the learning process. However, an internet shutdown can significantly reduce student engagement and motivation, as they may not have access to online resources or be able to attend online classes. This can lead to a decrease in student performance and an overall decline in the quality of education.
- **Unequal access to education:** Internet shutdowns can exacerbate existing inequalities in access to education. Students from low-income families or rural areas may not have access to alternative modes of learning during an internet shutdown, leading to unequal access to education. This can further widen the gap between students from different socioeconomic backgrounds and impede progress towards achieving equitable education for all.

In such a scenario, internet shutdowns are a death knell for the proper implementation of the NEP, 2020 since they can significantly undermine the goals of NEP 2020 of India. They can disrupt access to online resources, online classes, reduce student engagement, and exacerbate existing inequalities in access to education. Therefore, it is important for the government and other stakeholders to ensure that students and teachers have access to uninterrupted and reliable internet connectivity, especially during the ongoing pandemic when online learning has become essential for education continuity. In the case of *Anuradha Bhasin v. Union of India*[12], the Supreme Court issued guidelines for the imposition of internet restrictions in a proportional manner. These guidelines were framed by keeping in mind the constitutional constraints which should always be observed while curtailing the rights under Part III of Constitution. The guidelines can be summed up as:

1) Orders must be published

2) Publishing of order will entitle the courts to review them

3) Principle of proportionality should be used in order to make it non arbitrary

4) Suspension must not be extended beyond reasonable requirement

5) Such suspension orders should be open to review committee Recently in Foundation for Media Professionals v. Union Territory of Jammu and Kashmir & Anr., the Supreme Court of India reiterated to the balancing of basic rights under the Constitution with the reasonable restrictions.

5. CONCLUSION AND SUGGESTIONS

This study, therefore, proves the hypothesis that internet shutdowns are an impediment in realization of National Education Policy, 2020 in India.

The discourse of conflict in theory and practice of right to education is an ongoing one, with advocates working to raise awareness of and to push for greater protections for this fundamental right, especially as far as internet shutdowns are concerned. The ultimate goal is to ensure that right to education is respected and protected for all individuals, regardless of their geographical location, social background, political inclinations or economic circumstances. Moreover, for the successful and lasting implementation of NEP, 2020 it is imperative that government authorities take note of the adverse effect internet shutdowns are bound to have on the education sector. Therefore, while there may be legitimate reasons for temporary internet shutdowns (such as in cases of public safety or national security), these should be narrowly tailored and implemented with transparency and accountability to minimize their impact on the human right to education. It is also being suggested that in terrorist infested regions secure internet lines should be established so that there will be a balance of both rights and restrictions. Furthermore, public emergency must only be deemed to have occurred if a noti?cation is published by the Government to that effect because undoubtedly, internet shutdowns are antithesis to India's campaign of Digital India.

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PRAGYAAN: JOURNAL OF LAW

EDITORIAL POLICY

PRELUDE

Pragyaan: Journal of Law is a flagship law journal of School of Law, IMS Unison University and is a bi- annual peer-reviewed journal, first published in 2011. It seeks to promote original and diverse legal scholarship in a global context. It is a multi-disciplinary journal aiming to communicate high quality original research work, reviews, short communications and case report that contribute significantly to further the knowledge related to the field of Law. The Editorial Board of the Pragyaan: Journal of Law (ISSN: 2278-8093) solicits submissions for its Volume 13 Issue 2 (Dec 2023). While there are no rigid thematic constraints, the contributions are expected to be largely within the rubric of legal studies and allied interdisciplinary scholarship.

CONTRIBUTION

We seek contributions in the form of:

1. Articles (Maximum 8,000 words inclusive of footnotes and Abstract)
2. Essays (Maximum 4,000 words inclusive of footnotes)
3. Case Comment/Legislative Critique & Notes (Maximum 3,000 words inclusive of footnotes)
4. Book Review (Maximum 2,000 words inclusive of footnotes) besides other forms of scholarly writing

- Place tables/figures/images in text as close to the reference as possible. Table caption should be above the table. Figure caption should be below the figure. These captions should follow Times New Roman 11point.

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   Title of the paper should be bold 16 point, and all paragraph headings should be Bold, 12point.

3. **Cover Letter:**

   First page: It should include (i) Title of the Paper; (ii) Name of the Author/s ;Co-authored papers should give full details about all the authors; Maximum two author permitted (iii) Designation; (iv) Institutional affiliation; (v) Correspondence address. In case of co-authored papers First author will be considered for all communication purposes.

   Second page: Abstract with Key words (not exceeding 300 words).

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   Introduction, Subject Matter, Conclusion, Suggestions & References. Name (s) of author(s) should not appear on this page to facilitate blind review.

5. Plagiarism Disclaimer:

Article should contain a disclaimer to the effect that the submitted paper is original and is not been published or under consideration for publication elsewhere. (Annexure I) The signed document must be e- mailed/ posted to The Editor along with manuscript.

6. Citations:

All citations shall be placed in footnotes and shall be in accordance with format specified (Annexure II). The potential contributors are encouraged to adhere to the Appendix for citation style.

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All Correspondence/manuscripts should be addressed to:

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Annexure I

PLAGIARISM DISCLAIMER

To,

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Annexure II

PRAGYAAN-JOL - CITATION STYLE

CASES

IN MAIN TEXT:

Jassa Singh v. State of Haryana

IN FOOTNOTE:

Jassa Singh v. State of Haryana, (2002) 2 SCC 481

The full citation should be provided in the footnote even if the case name has been mentioned in full in the main body.

Government to be written in full.

Example: Kesavananda Bharati v. State of Kerala ; M.C. Mehta v. Union of India.

SHORTENED FORM

If the same case is going to be cited subsequently, the full citation used the first time should be followed by the shortened form by which the case will be referred to subsequently, in inverted commas, and in square brackets.

Example: M.C. Mehta v. Union of India, [1997] 2 SCC 353 [Taj Trapezium case] Subsequent references

Taj Trapezium case, [1997] 2 SCC 353

The shortened form should be used every time after the first time a case is cited.

QUOTES FROM CASES

Per Subba Rao J., "a construction which will introduce uncertainty into the law must be avoided. It is conceded by the petitioner that the power to amend the Constitution is a necessary attribute of every Constitution". (Footnote original citation of case or shortened form as per rules stated above)

Single Judge:

S.H. Kapadia J.

Chief Justice of India

Thakkur C.J.I.

More than one Judges

K.G. Balakrishnan C.J.I., S.H. Kapadia, R.V. Raveendran, B.S. Reddy and P. Sathasivam (JJ.)

UNPUBLISHED DECISIONS

Name of the parties, Filing No of Year, Decided on date (Name of Judges) (Name of Court) **Example:**

> BP Singhal v. Union of India, W.P. (Civil) No.296 of 2004, Decided on May7, 2010(K.G. Balakrishnan C.J.I., S.H. Kapadia, R.V. Raveendran, B.S. Reddy and P. Sathasivam (JJ.) (Supreme Court of India).

INTERNATIONAL DECISIONS

Case name, (Party names) Judgement, Year, Publisher, Page No (Court Name) Example:

Case Concerning Right of Passage over Indian Territory (India v. Portugal) Judgment, 1957, ICJ reports, 12 (International Court of Justice)

LEGISLATIVE MATERIALS

When citing Constitution, it should be in Capital letters while other Statutes it should be First letter of the word in Uppercase followed by lower cases.

CONSTITUTION

Art. 21, THE CONSTITUTION OF INDIA, 1950.

OTHER STATUTES

Sec. 124, Indian Contract Act, 1872.

BILLS

Cl. 2, The Companies (Amendment) Bill (introduced in Lok Sabha on March 16, 2016).

PARLIAMENTARY DEBATES

Question/Statement by Name, DEBATE NAME, page no (Date) Example:

- Question by N.G. Iyengar, CONSTITUENT ASSEMBLY DEBATES 116 (August 22, 1947).

- Statement of V. Narayanaswamy, LOK SABHA DEBATES 5 (March 10,2010).

BOOKS

TEXTBOOKS

Name of the Author, NAME OF THE BOOK, Volume (Issue), Page (Publisher, Edition, Year)

Example:

H.M. Seervai, CONSTITUTIONAL LAW OF INDIA, Vol. 3, 121 (Universal Law Publishing Co. Pvt. Ltd.,4th Edn., 2015)

- In the case of a single author,
  M.P.Jain, INDIAN CONSTITUTIONAL LAW, 98 (Kamal Law House, 5th Edn., 1998)
- If there is more than one author and up to two authors,
  M.P.Jain and S.N. Jain, PRINCIPLES OF ADMINISTRATIVE LAW, 38 (Wadhawa, 2001)
- If there are more than two authors,
  D.J. Harris et al, LAW OF THE EUROPEAN COMMUNITY ON HUMAN RIGHTS, 69 (2nd Edn., 1999).
- If there is no author then the citation would begin from the Title of the Book.
- If the title of the book includes the author's name then the book should be cited as an author less book.

Example:

Chitty on Contracts, Vol. 2, 209 (H.G. Beale ed., 28th edn., 1999).

EDITED BOOKS

Name of Editor/s (Ed.) NAME OF BOOK, page no./s (Publisher Name, Year of Publication)

- **In the case of a single editor,**
  Nilendra Kumar (ed.), NANA PALKHIVALA: A TRIBUTE, 24 (Universal Publishers, 2004).
- **If there is more than one author and up to two editors,**
  S.K. Verma and Raman Mittal (eds.), INTELLECTUAL PROPERTY RIGHTS: A GLOBAL VISION, 38(2004).
- **If there are more than two editors,**
  Chhatrapati Singh et.al. (eds.), TOWARDS ENERGY CONSERVATION LAW 78 (1989).

COLLECTION OF ESSAYS

Name of Author, Name of Article in Name of Collected Book Page No (Editor Name, Year of Publication)

M.S. Ramakumar, India's Nuclear Deterrence in NUCLEAR WEAPONS AND INDIA'S NATIONAL SECURITY 35 (M.L. Sondhi Edn., 2000).

REGILIGIOUS AND MYTHOLOGICAL TEXTS

TITLE, Chapter/ Surar Verse (if applicable)

Example:

THE BHAGAVAD GITA, Chapter 1 Verse46

ARTICLES

Name of Author, Name of Article, Volume (Issue) NAME WHERE ARTICLE IS PUBLISHED page no (Year of Publication)

LAW REVIEW ARTICLES

A.M. Danner, Constructing a Hierarchy of Crimes in International Criminal Law Sentencing, Vol. 87(3) VIRGINIA LAW REVIEW 415 (2001).

MAGAZINE ARTICLES

- **Articles in print versions of magazines**
  Uttam Sengupta, Jack of Clubs and the Cardsharps, OUTLOOK 22 (June 11, 2016).
- **Articles published in a magazine arranged by volume**
  A. Bagchi, Sri Lanka's Experiment in Controlled Decentralization: Learning from India, 23(1) ECONOMIC AND POLITICAL WEEKLY 25 (January 2, 1988).
- **Articles in print versions of newspapers**
  Robert I. Freidman, India's Shame: Sexual Slavery and Political Corruption are Leading to an AIDS Catastrophe, THE NATION 61(New York Edn., April 8, 1996).

MAGAZINE ARTICLES ONLINE VERSIONS

Name of Author, Name of Article, NAME WHERE ARTICLE IS PUBLISHED (Date of issue)

available at link where it is published (date of last visit)

It is mandatory to use exact link where the article of published removing the hyperlink

- **Articles in online versions of newspapers**

  Mehboob Jeelani, Politics stretches list of Smart Cities from 100 to 109, The Hindu (2 July 2016), available at http://www.thehindu.com/todays-paper/politics-stretches-list-of-smart-cities- from-100-to-109/article8799010.ece(Last visited on July 2,2016).

- **Articles in online versions on magazines**

  Uttam Sengupta, Jack of Clubs and the Cardsharps, OUTLOOK (11 June 2016), available at http://www.outlookindia.com/magazine/story/jack-of-clubs-and-the-cardsharps/297427(Last visited on July 2, 2016).

REPORTS

LAW COMMISSION REPORTS

243rd Report of the Law Commission of India (2012)

ONLINE REPORTS

World Trade Organization, Lamy outlines "cocktail approach" in moving Doha forward, (2010), available at http://www.wto.org/english/news_e/news10_e/tnc_chair_report_04may10_e.htm (Last visited on May 10, 2016).

INTERNATIONAL TREATIES

Art. 5, UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), July12, 1998, ISBN No. 92-9227-227-6, available at: http://www.refworld.org/docid/3ae6b3a84.html (accessed July 2, 2016)

GENERAL RULES

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- Single numbers do not begin with 0
- Remove hyperlinks in all citations of URLs
- The format of dates should be – June 25,2016
- Capitalisation – The start of every sentence should be in capitals. In titles, do not capitalise articles, conjunctions or prepositions if they comprise of less than four letters.
- Italics – Italics are to be used in the following instances:
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- No. for number
- Reg. for regulation
- Sec. for section
- Vol. for volume
- Edn. For edition
- Ed. For editor
- Ltd. for Limited
- Co. for Company
- Inc. for Incorporated
- Add "s" to the short form for the plural form.

FOOTNOTES

- Multiple citations in the same footnote should be separated by asemicolon.

Connectors–

- Id. and supra are the only connectors which may be used for cross referencing
- These connectors can only be used to refer to the original footnote and may not be used to refer to an earlier reference.
- The format for referring to the immediately prior footnote shall be one of the following:
- When the page number(s) being referred to are the same as in the previous footnote
- Id.
- When the page number(s) being referred to are different from the previous footnote
- Id., at 77-78.
- The last name of the author, when available, should be used before the supra. The format for referring to footnote earlier than the immediately prior footnote shall be: Seervai, supra note 6, at 10.

Introductory Signals

- No introductory signal to be used when the footnote directly provides the proposition.
- The signal 'See' shall be used when the cited authority clearly supports the proposition.
- All footnotes must not end in a period (fullstop).

QUOTES

- For quotations below fifty words in length, the quote should be in double inverted commas and should beitalicized.
- For quotations above fifty words in length, separate the text from the main paragraph, indent it by an inch from either side, and provide only single line spacing. If the main text has only single line spacing, the font size of the quote shall be reduced by1.

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Authors of research paper should present an accurate account of the work performed as well as an objective discussion of its significance. Underlying data should be represented accurately in the paper. A paper should contain sufficient detail and references to permit others to replicate the work. Fraudulent or knowingly inaccurate statements constitute unethical behaviour and are unacceptable. Review and professional publication articles should also be accurate and objective, and editorial 'opinion' works should be clearly identified as such.

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Authors may be asked to provide the research data supporting their paper for editorial review and/or to comply with the open data requirements of the journal. Authors should be prepared to provide public access to such data, if practicable, and should be prepared to retain such data for a reasonable number of years after publication. Authors may refer to their journal's Guide for Authors for further details.

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It is not acceptable to enhance, obscure, move, remove, or introduce a specific feature within an image. Adjustments of brightness, contrast, or color balance are acceptable if and as long as they do not obscure or eliminate any information present in the original. Manipulating images for improved clarity is accepted, but manipulation for other purposes could be seen as scientific ethical abuse and will be dealt with accordingly.

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