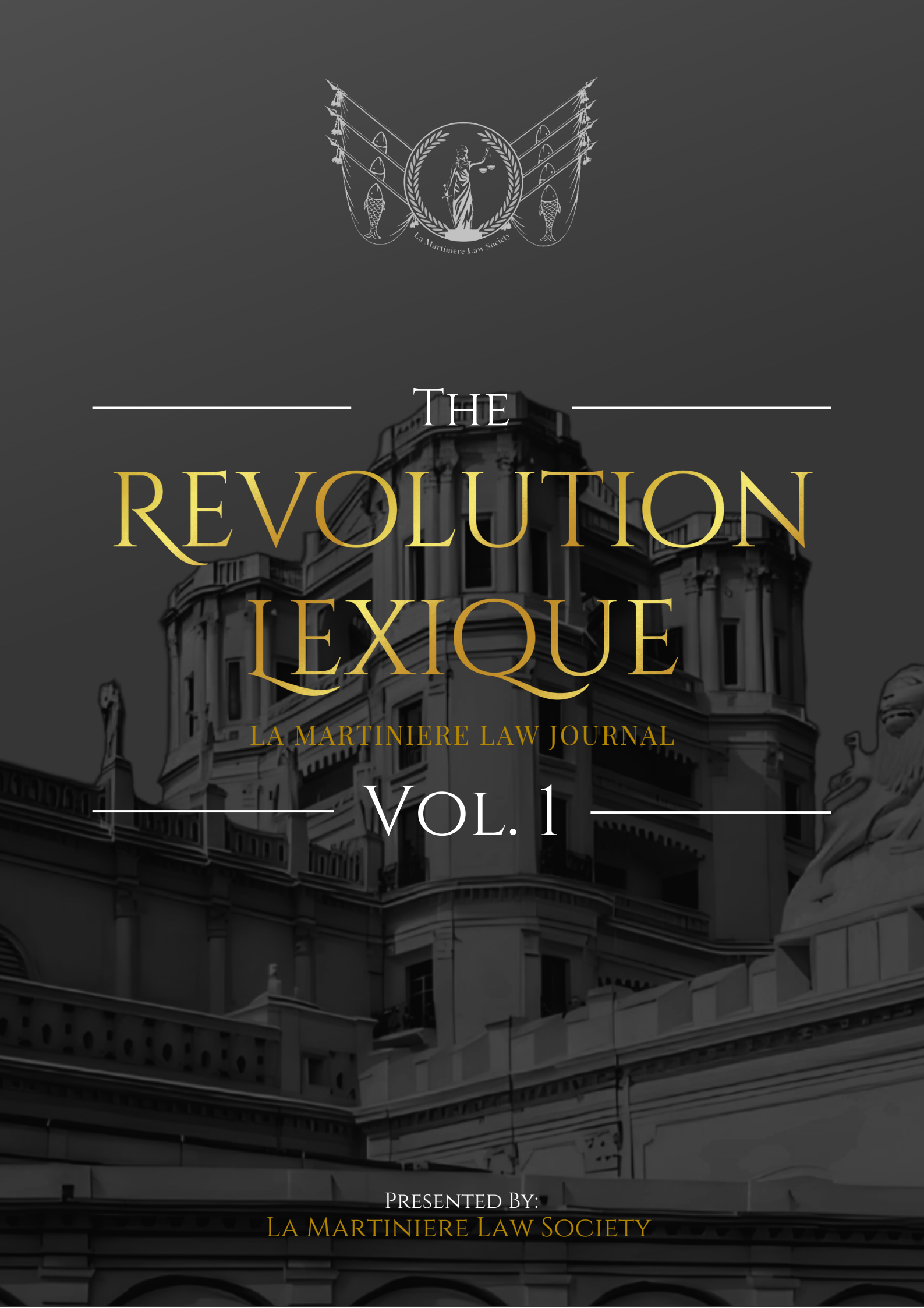

The Revolution Lexique

La Martiniere Law Journal

Vol. 1

Presented By:

La Martiniere Law Society

The Revolution Lexique

LA MARTINIERE LAW JOURNAL

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The Revolution Lexique

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Principal's Message

It gives me great pleasure to learn that the boys of La Martiniere College, Lucknow, under the auspices of La Martiniere Law Society are publishing the very first La Martiniere Law Journal to coincide with the Moot Court being organized by them. Not only are our pupils of Legal Studies involved in this, but the programmes shall extend to any pupil with an interest in law and an understanding of the issues involved.

I have been briefed about the contents of this first edition and look forward to reading what the boys have put together in an organized, academic and structured manner. Many different talents and abilities have gone into the production of this first volume. The academic and legal inputs have also been supported by editorial assistance, designing and other requirements that are associated with publication. This contributes towards many different talents being utilized.

Of particular interest will be the analysis of how young minds consider contemporary problems and issues. There are bound to be traditional patterns in thinking, but there is the confidence that the expression of the contemporary generation's thought will also be recorded. La Martiniere Law Journal must continue to express the thoughts of young people in this controlled dynamic. It is hoped that the volumes that follow will also match the standard set in this inaugural issue.

I wish the editors, contributors and designers the very best in their chosen fields.

Mr C. McFarland
Principal

The Revolution Lexique

Faculty Advisor's Message

I am delighted to extend my warmest greetings as you delve into the pages of the La Martiniere Law Society's Annual Law Journal.

While going through these articles, our students' dedication to exploring the intricacies of the law is evident on every page, making this publication a true testament to their academic skills.

To the contributors and members of the editorial team of La Martiniere Law Society, your insightful analyses and commentaries are not just words on paper; they are catalysts for progressive legal thinking.

I urge all readers to go through the article herein, and understand the relevance of the topics in the modern age. May the content within inspire your intellect and spark engaging discussions.

Mrs H. Dhawan
Faculty Advisor

The Revolution Lexique

Editor-in-Chief's Message

Greetings Everyone,

I, Rakshan Agarwal, with the power vested in me as the Editor-in-Chief of the 'La Martiniere Law Society', welcome you to the first edition of the La Martiniere Law Journal. This edition has been brought to you by the Editorial Team, who has collected numerous facts related to the topics contained hereafter, and has tried its best to provide you with the most accurate and truthful information. However, we have published the following articles while keeping away any personal biases we have related to the following topics.

I hope that this journal will prove to be informative to its readers, and will be able to give at least some new bit of legal information, that the public at large should be well aware of.

The articles included in this journal are closely related, but not limited, to the legal system which is prevalent in India, wherein the Editorial Team has tried its best to demonstrate how various judicial functions are performed, and how the Acts are both useful, but sometimes, restrictive in nature.

La Martiniere Law Society is organising its 1st Inter-School Moot Court, and we hope that all the students attending this event are able to get better at formulating their case and preparing their oral arguments, but ultimately have a pleasant time with us.

In the end, I would like to wish all of you the best wishes for the upcoming event.

Regards,
Rakshan Agarwal,
Editor-in-Chief, LMLS.

The Revolution Lexique

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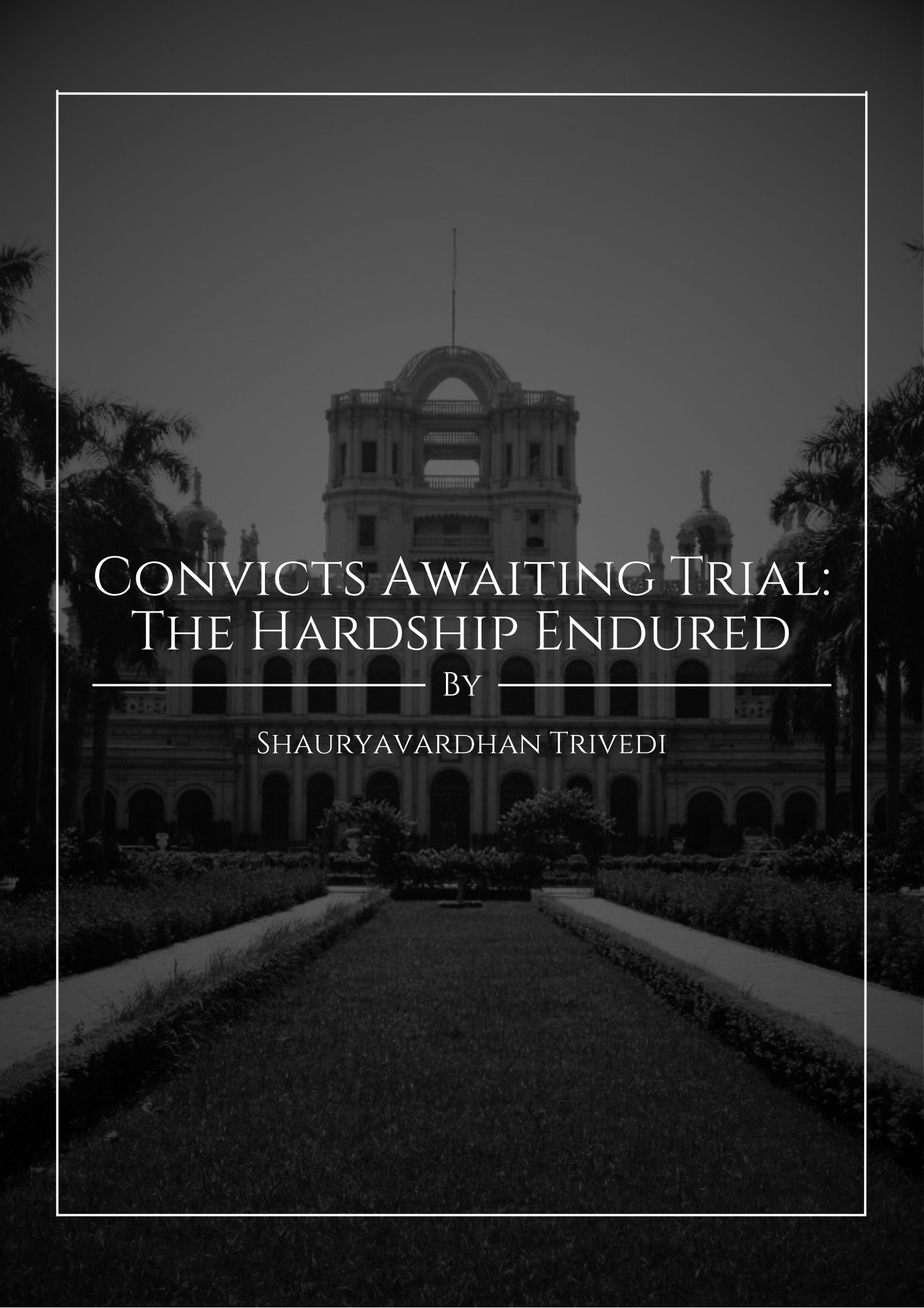

Convicts Awaiting Trial: The Hardship Endured

By

Shauryavardhan Trivedi

" We know not whether the laws be right, Or whether laws be wrong; All that we know who lie in goal Is that the wall is strong; And that each day is like a year, A year whose days are long."
- Oscar Wilde

1.1. **Introduction: -**

1.1.1 What are "Convicts awaiting trial"?

The criminal justice system is designed to maintain public safety and uphold the law. One key aspect of the system is the treatment of individuals accused of crimes, commonly known as "convicts awaiting trial" or pretrial detainees. Pretrial detention is an essential component of the criminal justice system, as it allows the courts to ensure that defendants show up for trial and prevents them from committing additional crimes while awaiting trial.

1.1.2 Background

There are now more than 500,000 total prisoners in India as of 2021, out of which 70% are pretrial detainees[1]. The truth is that the alarmingly increasing number of convicts is leading to severe overcrowding in prisons all over the world. This results in prison conditions that breach United Nations and other standards that require that all prisoners be treated with respect due to their inherent dignity and value as human beings.

1.1.3 Imprisonment and Human Rights

One of the most fundamental human rights, individual liberty is acknowledged in national and international constitutions all throughout the world[2]. Governments must demonstrate that the use of incarceration is required to achieve a significant social goal and that there are no less restrictive ways to achieve the goal in order to take that right away, even temporarily. Inevitably, being imprisoned leads to the loss of liberty, but in reality, incarceration also frequently violates a number of other fundamental rights. Prisoners, not only in India but throughout the world, are denied access to even the most basic essentials. They are frequently kept in appallingly cramped quarters, unclothed, and underfed.

In response to a Supreme Court directive[3], a commission within the Bureau of Police Research and Development (BPR&D) was formed to develop a draft model prison handbook and ensure that jail regulations are uniform countrywide. The Central government approved the creation of a prison handbook, which was then distributed to the State prisons in 2003.

"A major problem of human society is to combine that degree of liberty without which law is tyranny with that degree of law without which liberty becomes licence[4]."

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[1] Prison Statistics India-2021, Executive NCRB Summary, PSI-2021 3
https://ncrb.gov.in/sites/default/files/PSI-2021/Executive_ncrb_Summary-2021.pdf

[2] The International Covenant on Civil and Political Rights (ICCPR), 1979
https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND

[3] (1996) Ramamurthy vs State of Karnataka

[4] (1977) Indira Gandhi vs Rajnarayana

1.2. **The Problems at Hand: -**

1.2.1 Legal Representation

One of the most significant challenges facing individuals awaiting trial is access to legal representation. In many cases, these individuals are unable to afford a private attorney, and public defenders may be overworked or have limited resources. As a result, they may not receive adequate legal advice or representation, which can impact the outcome of their case.

The consequences of these hardships are immense, with convicts experiencing physical and psychological trauma that can have long-term effects on their health and well-being. The lack of access to legal representation also means that many convicts may spend years in jail without a fair trial, leading to a loss of their livelihood and social status.

In Abu Mujahid v. State of Maharashtra, our Honourable Apex Court ruled that the Magistrate is under duty and obligation to fully inform the accused of his right to consult with and be represented by a legal professional during the first production. If the accused lacks the resources to retain counsel of his choosing, legal aid will be provided to him at the expense of the State, and any failure on the part of the court constitutes dereliction of duty, and the concerned Magistrate will be held accountable.

1.2.2 Living Conditions

Individuals awaiting trial are often held in detention facilities that are overcrowded, unsanitary, and lack basic amenities such as access to clean water and adequate healthcare. These conditions can exacerbate existing health problems and lead to the development of new ones, which can impact the individual's ability to participate fully in their trial.
A study conducted by the Vera Institute of Justice[5] found that improving conditions of confinement resulted in a reduction in violent incidents and improved mental health outcomes for detainees. The study also found that improvements in staff training and facility design led to a decrease in incidents of suicide and self-harm among pretrial detainees.
The Hussainara Khatoon 111 v. Home Secretary case exposed the poor status of criminal justice administration in the state of Bihar. Numerous men and women who were awaiting trial had been detained in Bihar jails for periods of three to ten years without having their cases started.

1.2.3 Bail

Despite the fact that bail is a necessary remedy to secure freedom offered by the legal system, it is rendered ineffective in three situations:
1) When the accused is not represented by a legal counsel and is unaware of his right to apply for bail due to a lack of legal literacy;
2) When the accused is represented but bail is rejected mechanically without a reasoned order;
3) When the accused is represented by a legal counsel and succeeds in securing bail but is unaware of his right to do so.

[5] Kayla James & Elena Vanko, The Impacts of Solitary Confinement, 2-9, 2021
https://www.vera.org/downloads/publications/the-impacts-of-solitary-confinement.pdf

The first situation can be resolved by improving the country's legal aid programme, under which several officials, including police officers, judges, and jail authorities, are required to notify and offer legal assistance to the accused.
A powerful and active district judiciary that decides on the bail petitions in accordance with good legal grounds can completely prevent the second situation. The magistrates and trial judges would benefit greatly from the rules for granting bail established by the Supreme Court and provide the accused with proper legal representation.

1.2.4 Slow Processing of Cases

Another challenge facing individuals awaiting trial is the length of time it takes for their case to be processed. In many cases, individuals may be held in detention for months or even years before their case is heard, which can result in significant hardship for them and their families.

To address this issue, governments should work to streamline the criminal justice system, including increasing the number of judges available to hear cases, improving the efficiency of court procedures, and implementing alternative dispute resolution methods such as mediation or plea bargaining.
The percentage of undertrial prisoners confined for more than three years has increased by 140% since 2000, while the percentage share of undertrial prisoners confined for less than 1 year has decreased by 7.5%[6]. This evidently states that trials are taking longer than before and the number of people awaiting completion of their trial in prisons for long periods is increasing unabated.
Several studies have demonstrated the effectiveness of alternatives to detention. For example, a study conducted by the Pretrial Justice Institute found that the use of electronic monitoring resulted in a lower rate of failure to appear in court and a lower rate of re-arrest among pretrial defendants. Similarly, a study conducted by the Urban Institute found that community-based programs were effective in reducing the use of pretrial detention and improving outcomes for pretrial defendants.

1.2.5 Mental Health

Another major issue, which is not limited to pretrial detainees but also convicts in general, individuals held in detention while awaiting trial may experience significant mental health challenges as a result of their circumstances. They may feel isolated, anxious, and depressed, and may not have access to the mental health support they need to manage these challenges.
By providing lodging, meals, limiting access to drugs, alcohol, and cigarettes, and offering some access to healthcare, imprisonment may, for some convicts, have a short-term good health benefit. The downside is that once these advantages are released, people stop receiving them, thus this protective effect is just temporary. In fact, studies show that compared to all other groups, all-cause mortality was twelve times higher in the first two weeks following a person's release from jail[7].

Intentional and accidental injuries to individuals who are incarcerated, corrections officers, and correctional facility staff are common. In one survey conducted in the United States of America, more than 32% of convicts in state correctional facilities reported being injured since their admission to the prison. One of the major causes of death in jails every year from 2000 to 2014 has been suicide[8], thus proving that the deterioration of mental health is one of the major consequences and hardships endured by convicts awaiting trial.

[6] Jail Mail, Commonwealth Human Rights Initiative, January 16th 2020
https://www.humanrightsinitiative.org/publication/jail-mail-ten-things-you-should-know-about-indian-prisons-an-analysis-of-ncrbs-prison-statistics-india-2018

[7] Taxy S, Samuels J, Adams W. Drug offenders in federal prison: estimates of characteristics based on linked data. Bureau of Justice Statistics; 2015
https://www.bjs.gov/content/pub/pdf/dofp12.pdf

[8] Bronson J, Carson AE. Prisoners in 2017. Bureau of Justice Statistics; 2019
https://www.bjs.gov/content/pub/pdf/p17.pdf

To address this issue, governments should invest in mental health support services for individuals held in detention. This can include providing access to mental health professionals such as psychologists or social workers, offering group therapy sessions to help individuals build a sense of community, and implementing stress reduction programs such as yoga or meditation.

1.2.6 Corruption

The prevalence of corruption and nepotism amongst police officers, jailors, etc. allows the formation of a class divide in prisons, which proves harmful for pretrial detainees as they, being new to a certain facility, are harmed by the sects and "gangs" already established in the facility.

Another ongoing issue in the jails of India is the physical mistreatment of convicts by the guards. Some nations still tolerate the regular use of leg irons, fetters, shackles, and chains as well as corporal punishment. Unjustified beatings are a common occurrence in several Indian jail systems. The risk of custodial sexual abuse is higher for female inmates in Indian jails. The issue was common around the world but was particularly acute in the United States, where many women's prisons had more male guards on duty than female. Female convicts were often subjected to widespread sexual assault and brutality since they were sometimes housed with male inmates.

The risk of being raped while being arrested by the police is especially high for women. Since many of the victims are migrant women, protests on their behalf are ineffective because they lack the established community connections that would support them. In India, the likelihood of custodial rapes varies from state to state and prison to prison. Only a small number of cases are brought about by chance; the majority go unnoticed or unreported. If not, they most likely would not have been reported. The victims of rape run a much more serious danger of retribution or rejection if what occurred to them is made public than in Western nations. Their families and husbands could reject them. In nations like India, the prospects of marriage are significantly diminished for unmarried ladies. These criminal statistics are accessible in India, giving the impression that the rate of rape in detention is rising. The woman has little or no opportunity to raise a prompt outcry after the rape, and the almost certain outcome of a complaint is that the victim would suffer more while nothing would happen to her rapists. It is unlikely that the woman's shame would ever be known by anyone other than the victim and her rapists if she maintains silence. The fear of further retribution is especially great when the rapists are the police.

Another significant issue with Indian jails is the use of torture and other cruel physical punishment when people are in their care. Third-degree torture does place routinely within prison walls, sometimes going unreported. These incidents only come to light when the media or a human rights committee raises the issue. The proper treatment of inmates mentioned in the prison acts and in various manuals along with the guidelines of the apex courts are neglected by the police staff and sometimes it leads to the deaths of prisoners under their custody. These acts of torture cause the victim to suffer both physically and psychologically, and it might take them a while to get over the trauma.

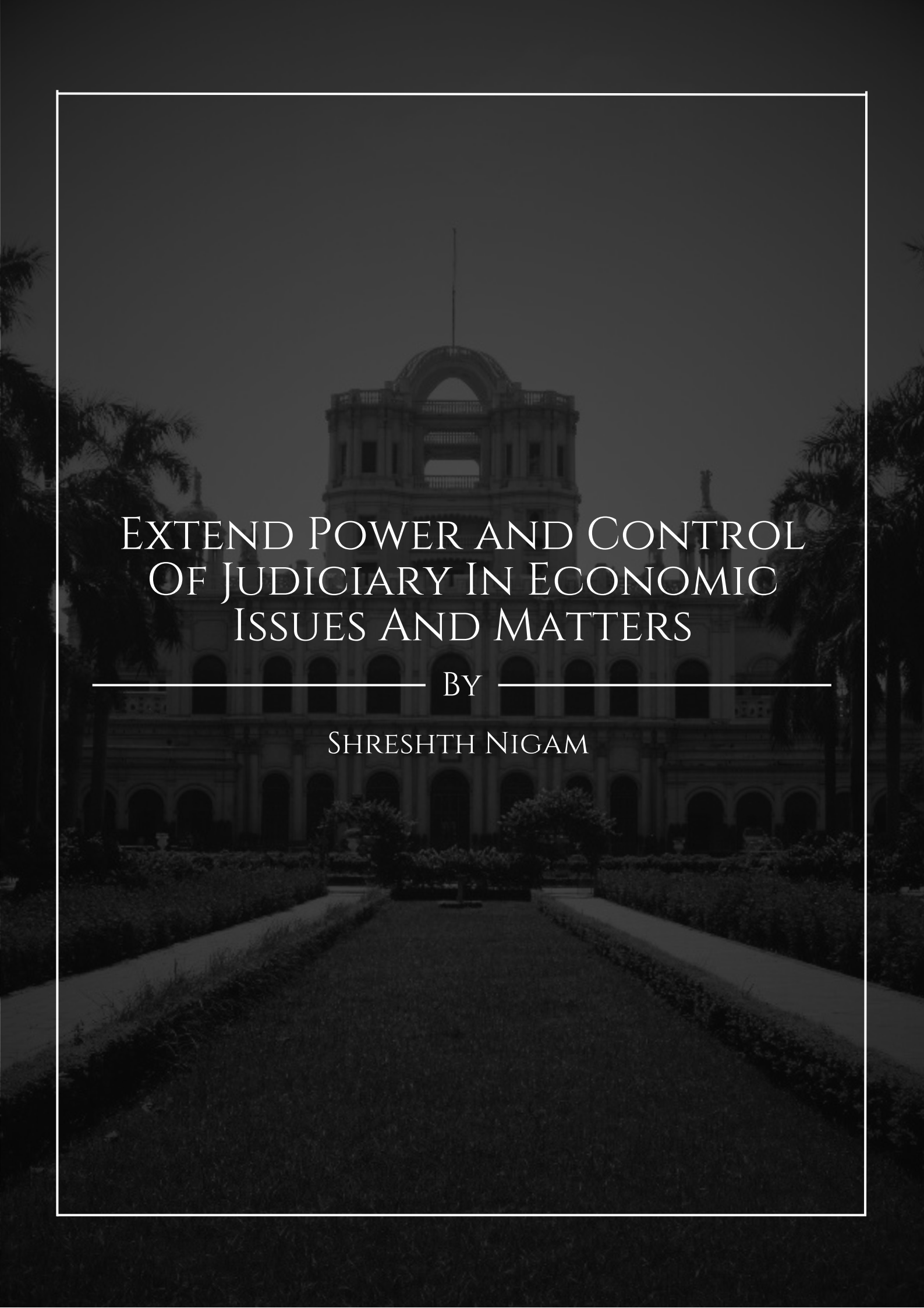
1.2.7 Conclusion and Suggestions: -

It is impossible to pinpoint a single explanation for the problem of undertrials lingering in prisons. The system as a whole has failed, necessitating swift, coordinated, and collective action. To solve the

issues, the executive, legislative branch, and judicial branch must work together. Although encouraging, initiatives like FASTER and the recent Supreme Court announcement regarding the hearing of 10 bail petitions each day only scratch the surface of the problem.

In conclusion, the plight of convicts awaiting trial in India is a significant issue that requires urgent attention. The justice system needs to focus on improving living conditions, legal representation, and expediting trials to ensure that individuals are not subjected to inhumane treatment and lengthy detention periods. The government needs to invest in new facilities, increase staff members and resources, and introduce alternative dispute-resolution mechanisms to help reduce the backlog of cases. Improving access to legal representation through legal aid programs, pro bono services, and technology can also help ensure that all individuals have access to justice. The implementation of these improvements will help reduce the hardships endured by convicts awaiting trial and ensure that the Indian justice system is fair, just, and accessible to all.

The only possible way to fix these underlying problems, is to eliminate the societal narrative that the human rights and values of convicts are not our priority, there are no protests regarding this, nor are there any shouts on the political stage. The only thing we see is hatred and villainization of those who have been convicted, not even taking into consideration that many of them might have been wrongfully arrested or detained. We hope this article brings to light this major issue surrounding not only India but the entire world.



Extend Power and Control Of Judiciary In Economic Issues And Matters

By

Shreshth Nigam

2.1. **Introduction: -**

At the point when individuals consider what courts mean to them, they ordinarily think with a public law attitude. They ponder the "huge issues" chosen under constitutions. That kind of legal activity overwhelms both public discernment and legitimate grant.
Accordingly, when individuals ponder what courts mean to them, they contemplate controversial policy-centered issues and universally detailed criminal cases. This incline toward contemplating public law is promptly evident in the different stories and by covering captures and standard criminal preliminaries and marquee sacred prosecution like the Indiana elector recognizable proof instance of Crawford v. Marion Area Political Decision Board[1].

Confidential law frequently gets shunted to the rear of individuals' psyches since they consider it exclusively influencing the gatherings. Undeniably less inclusion is given to misdeed or contract activities including organizations or individual residents in their monetary lives. The incomparable downturn gives a magnificent second to consider the job of courts in the economy because, in truth, confidential law has an impact past the gatherings. Organizations respond to agreement and misdeed cases. They frequently contribute or not, advance, or not, situated to some degree on how courts will treat them when arrangements go south or then again items fall flat.

Courts can add to urban information by webcasting their procedures into school and auxiliary school homerooms, adding to metro instruction programs or simply providing a neighborhood class with a couple of seconds of the adjudicator's time. There can be no question that a superior taught people prompt a more grounded economy[2]. Courts must likewise give their best to reinforce families since more grounded families diminish wrongdoing, produce better-taught residents, and lessen neediness — all variables positive to the economy. At a snapshot of supported high joblessness, I will concentrate here on the courts' effect on organizations and occupation creation.

No level of meaningful law improvement — even world "best practice" for the creation of meaningful law — will carry Law and order to a country without compelling enforcement. A sound legal executive is vital to requirements. Almost certainly a few specialized laws can be upheld by regulatory means, yet a Law and order, in the essential monetary feeling of securing property and upholding contracts, requires a legal executive to determine questions between private parties. Furthermore, security against the actual state is made more straightforward where the legal executive can resolve a discussion raised by a confidential party against the state given established arrangements or parliamentary legislation. One end broadly settled upon, not simply in the financial writing yet additionally among lawyers and legitimate researchers, is hence that the legal executive is a fundamental figure of Law and order and all the more extensively in the financial turn of events.

Top-level salary nations have less formalism than one or the other African or Latin American Countries[3]. If, as proposed above, more prominent formalism might be related with more noteworthy precision (fewer blunders of reality and law) and more prominent equity, higher pay nations, having more abundance, could be anticipated to "consume" more formalism. In any case, the inverse is the situation. Indeed, even inside legitimate families, richer customary law nations have lower formalism scores than more unfortunate customary law nations, and a comparative relationship holds for common law nations.

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[1] Crawford vs Marion County
https://supreme.justia.com/cases/federal/us/553/181/

[2] THE JUDICIARY'S ROLE IN ECONOMIC PROSPERITY RANDALL T. SHEPARD *
https://mckinneylaw.iu.edu/ilr/pdf/vol44p987.pdf

[3] Legal Origins, Labour Law and the Regulation of Employment Relations
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1544032

In any case, there is essentially nothing to recommend that formalism is efficiently connected with the relative improvement of a country. When one searches inside areas, there seems, by all accounts, to be no relationship whatsoever inside certain locales: More well-off Latin American nations have formalism levels like more unfortunate Latin American nations. The equivalent is valid in Africa.
However, regardless of comparative degrees of formalities (entirely more elevated levels of formalities), the richer nations in these districts have a lot more limited typical term times for both taking a look at assortment and removal.

2.2. **Judicial Efficiency: -**

The development of a very much worked legal framework is achieved on the rear of the protection of property privileges and legitimate financial backer insurance, the well working of monetary business sectors, the business help furthermore, the maintaining of the firm development.
We research the impacts of legal proficiency on financial development, utilizing a new dataset over the period 2010-2018 drawn by the EU Equity Scoreboard study. All the more explicitly, we gauge a static development condition controlling for elective legal proficiency measures. That's why our discoveries prove the failures in the activity of legal frameworks present hindrances to financial development, and thus, positive advancements in legal effectiveness can be development upgrading.

Failures in the activity of legal frameworks, estimated on the other hand as (a) lengthier court procedures, (b) lower paces of leeway of gathered unsettled cases, (c) expanding weight of forthcoming cases and (d) a high inflow of new cases, all subvert financial development. Our outcomes legitimize the further reception of legal changes in European Patrons that fortify the authorization of private agreements, boosting the homegrown and outer venture choices and supporting the European economies to accomplish and support powerful development rates. Finally, we observe that civil beginning general sets of laws, which are portrayed by a more serious level of formalism in legal techniques comparable with customary law beginning frameworks, block financial development.

A significant difference in efficiency levels exists between developed and developing countries. A World Bank analysis of the data showed, for example, that “high-income countries” scored much higher on efficiency than either African countries or Latin American countries. And a study reaching a similar conclusion, based on an index of the “efficiency of the judicial system,” found a “mean score for the efficiency of the judicial system across developing countries is 6.26, compared with 9.14 in developed countries.” Once again, the studies point to the need for reform in developing countries but do not help in determining what reforms will work best.

2.3. **Freedom of Judiciary: -**

The title "Legal Balanced Governance" implies to be an examination of the qualification between French-style "partition of abilities," which is worried about keeping the legal executive from disrupting the power of the governing body, and U.S.-style "governing rules," which is worried about permitting every one of the three branches - executive, judiciary and legislature - to monitor and adjust the other two branches.

Against that relevant foundation they find that custom-based law frameworks do better than civil law frameworks in securing "economic freedom" (however they view it as no massive contrast in safeguarding "political freedom"). The creators continue to examine their work based on private law starting points. This is despite England's prohibition on the legal executive to check and adjust the governing body, which, as seen above, is in England considered sovereign, similarly in France. The Lawful Beginning creators do this regardless of the way that numerous civil law frameworks, including a lot of Europe and Latin America, do. This allows the legal executive to check and balance the assembly through a judicial audit.

2.3.1. Supreme Court of India comments upon interference in Economic Matters by Courts

The Supreme Court of India has commented that courts should not interfere in economic and regulatory policies. Endorsing the conclusion of the Reserve Bank of India denying assent to an Indian merchant, Akshay N Patel, from agreeing to facilitate the export of Chinese-made PPEs to the USA, a bench of Justices D Y Chandrachud, Vikram Nath and B V Nagarathna said the deference of the RBI to the government policy banning the export of PPEs was justified as it was in the public interest to stop shortage of PPEs during the pandemic. The report stated that exports from a foreign country to yet another country did not result in a shortage in India, but they did deplete the world's stocks, which could have been seized by rich countries for hoarding and lowered India's reliance on imports of personal protective equipment. Patel had challenged the denial of permission to execute bank documents for facilitating PPE export from China to the USA. He also challenged the policy banning PPE exports.

Writing the judgment, Justice Chandrachud examined in detail the regulating role of RBI in sync with the government's economic and regulatory policies to nuance the role of constitutional courts in issues involving such policies. Justice Chandrachud said, "It is a trite law that courts do not interfere with government economic or regulatory policy. This lack of interference is in deference to the democratically elected government's wisdom, reflecting the will of the people." On the case in hand, he argued, "... the regulations introduced by RBI are like statutory regulations and demand a similar level of deference that is accorded to executive and Parliamentary policy." The three-judge bench held that the constitutional courts must be circumspect that "the rights and freedoms guaranteed under the Constitution do not become a weapon in the arsenal of private businesses to disable regulation enacted in the public interest." This issue was specifically alluded to by the President and the PM, who had said that some vested interests were resorting to PILs in the guise of violation of fundamental rights to impede the economic development of the country.

"The Constituent Assembly Debates carefully crafted restrictions on rights and freedoms to ensure democratic control over the economy," Justice Chandrachud-led bench explained in explaining the ruling. Regulation must conform to executive policy and within the limits of the statute. A regulated economy is a critical facet of ensuring a balance between private business interests and the State's role in ensuring a just policy for its citizens." In what could be heartening for the political executive, the bench stated, "Regulating the economy is a reflection of the compromise between the interests of private commercial actors and the democratic state which represents and protects collective interests." Scholars across the world have warned against the judiciary constitutionalizing an unregulated marketplace."

"With economic transformation, the courts must also be alive in the socio-economic milieu. The right to equality and the freedom to trade cannot include a right to evade or avoid regulation. In liberalized economies, regulatory mechanisms represent democratic interests in setting the terms of operation for private economic actors," it said. The bench added, "This Court does not espouse the shunning of judicial review when the actions of regulatory bodies are questioned. Rather, it implores intelligent care in probing the bona fides of such actions and nuanced deference to their expertise in formulating regulations.

Invalidating regulatory actions in the name of upholding fundamental rights and freedoms without carefully evaluating their objective of social and economic control may harm the general public interest." The bench upheld the RBI's decision to not permit the export of personal protective equipment. The court stated that it continues to serve as a constitutional watchdog to prevent excesses by the government. It continues to determine the proportionality of a State measure. This is done by considering the nature and purpose of the extraordinary measures implemented to manage the pandemic.

Democratic interests that secure the well-being of the masses cannot be judicially aborted to preserve the unfettered freedom to conduct the business of the few[4]."

2.3.2 Indian Express Vs Union of India

An unmistakable and most renowned decision on this issue came in the notable instance of Indian Express Papers v. UOI (revealed in AIR 1986 SC 515), which showed that on a monetary strategy, no legal mediation is passable. Here, the High Court meddled to strike down the unnecessary duty on newsprint since it resolved that the inconvenience of the great expense on it violated the major right to speak freely of discourse under Article 19(1)g. On a simple ground of outlandishness, the burden of expense even by revision of warning can't be tested, it said. Financial strategy isn't justiciable except if it disregards basic freedoms.

Numerous decisions followed, which fortified this end. The Kasinka Exchanging versus UOI - 1994(74) ELT 782(SC) and Shrijee, Deals Organization versus UOI - 1997(89) ELT 452 (SC) held that tax collection strategy can't be articulated upon by the courts except if there is an infringement of the Constitution.

There was an opposite case with two adjudicators, on account of Dai-Ichi Karkaria Ltd versus UOI - 2000(119) ELT 516(SC). Nonetheless, numerous decisions like the three following — Association of India versus Godhawani Siblings - 2000(141)ELT16(SC); Association of India versus Bharat Trade and Industry-2002-TIOL-603-SC-CUS; and Bannari Amman Sugars Ltd versus Business Duty Official 2005 (1) SCC 625 — having been conveyed after this Karkaria judgment, which is all against the Kataria judgment, this judgment can be taken as saved.

2.3.3. Balco Representatives Association Vs Union of India

Following the first case now let us take another matter on account of Balco Representatives Association versus UOI detailed in (2002) 2 SCC 333, the High Court has said: "In a majority rule system, it is the right of each chosen Government to follow its strategy. Frequently an adjustment of Government might bring about a change in concentration or change in monetary strategies. Any such change might bring about unfavorably influencing a few personal stakes. Except if any wrongdoing is

[4] THE TIMES OF INDIA. https://timesofindia.indiatimes.com/india/deference-to-peoples-will-stops-courts-from-interfering-in-economic-policy-sc/articleshow/88136914.cms?utm_source=contentofinterest&utm_medium=text&utm_ca+mpaign=cppst

carried out in the execution of the strategy or the equivalent is in opposition to law or mala fide, a choice achieving change can't essentially be obstructed by the Court."

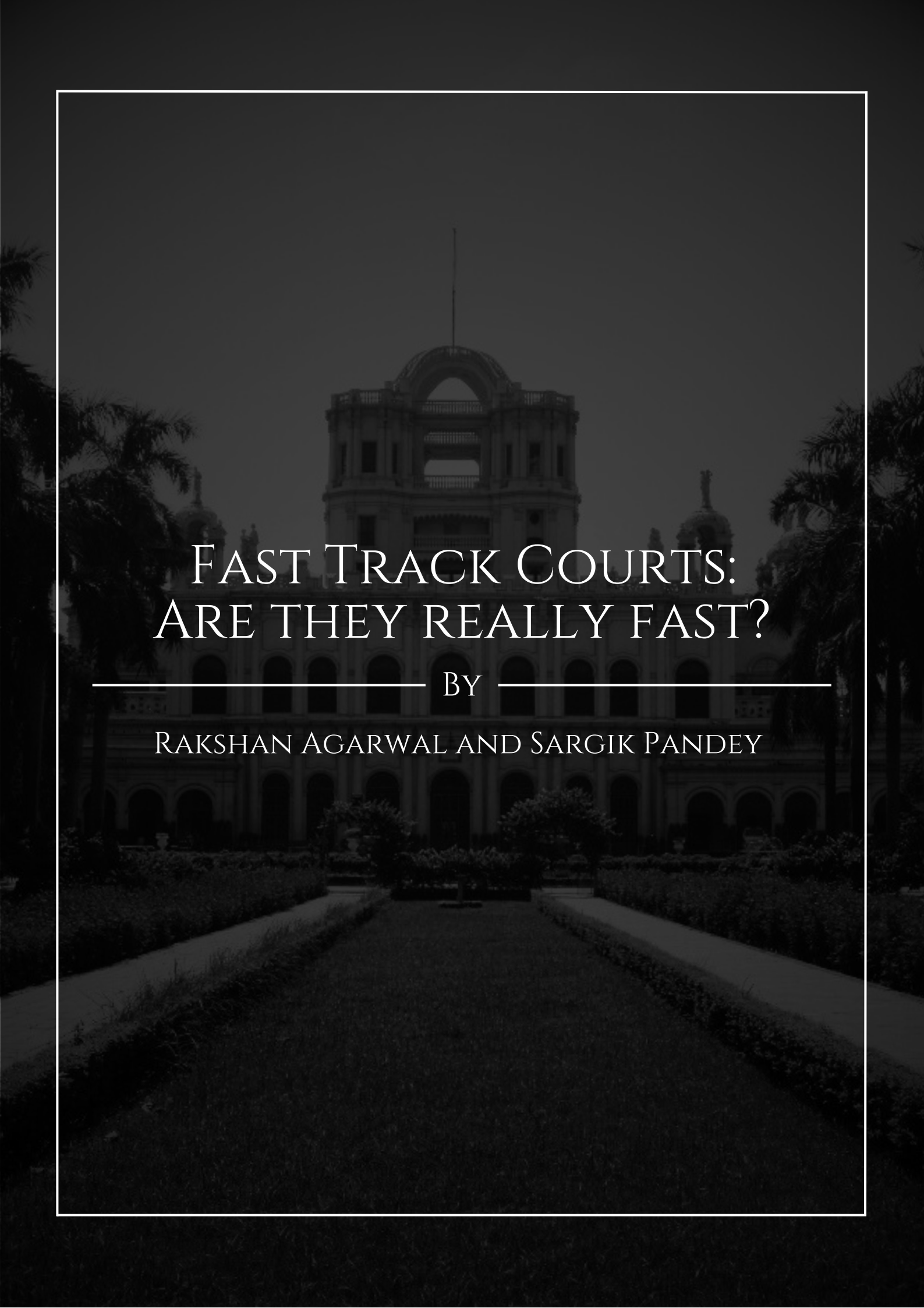
This multitude of cases happened when the public authority strategy was more severe and the impacted party requested mercy. Then again in the ongoing Telco case, the public authority attempts to be more permissive and that too by going similar to taking a Bureau choice. The High Court has, in actuality, gone too severe which adds up to saying the public authority's financial approach has been tossed in half where the Court has no locale.

An unmistakable lawyer on one of Telco's sides has thought that the public authority has genuine grounds to feel bothered and document a survey request. Assuming that the public authority documents a survey request, its vitally lawful board ought to be that where there is a deeply grounded point of reference set down collectively by a few High Court decisions over a significant period, the current court had no purview to save the public authority's more liberal monetary strategy and set a portion for only 10 years.

For what reason did the public authority not contend this point prior that the points of reference have been ignored and ward has been expected where there is none, involving about which we can say that equivocal is the methods of senior lawyers or conceivably there is more than whatever meets the eye.

2.4 Conclusion and Suggestions: -

In conclusion, the topic of extending the power of the judiciary in economic matters is a complex and highly debated issue. While proponents argue that empowering the judiciary can lead to fairer economic decisions and greater accountability, opponents raise concerns about potential judicial overreach and the impact on democratic processes. It is crucial to strike a delicate balance between judicial power and the authority of other branches of government, such as the legislature and executive. Any extension of judicial power should be accompanied by clear guidelines, checks and balances, and robust mechanisms for transparency and accountability. Further research and careful deliberation are necessary to determine the optimal role of the judiciary in economic matters, taking into account the specific context and needs of each country or jurisdiction.



Fast Track Courts: Are they really fast?

By

Rakshan Agarwal and Sargik Pandey

3.1. **Introduction: -**

The Fast Track Courts were established in the year 2000, to prevent the further backlog of cases in the Supreme Court and High Courts of India. They were approved following the report of the 11th Finance Commission , according to which 1734 fast-track courts were supposed to get established, The report said -

"We have observed that there is a pendency of about two crore cases in the district and subordinate courts of the states. We are providing a grant of Rs 502.90 crore for creation of additional courts specifically for the purpose of disposing of the long-pending cases… This will enable the states to create 1,734 new additional courts[1]*."*

Till the year 2005, only 1562 courts were functional. The experimental scheme was supposed to end in the year 2005, but the government decided to continue with the fast-track courts for another six years. In the year 2011, 1192 functional fast-track courts existed in India.

2012 seemed to be the year in which the rebirth of fast-track courts happened. The case of the rape and subsequent death of a physiotherapy student, which took place on the 16th of December, 2012[2] urged the Central Government to postpone the deadline to March 2015. A fund amounting to Rs 80 Crore was offered by the Central Government to pay for the judges' salaries. This was done to deliver speedy and fair justice to the victims of cases involving child trafficking (POCSO ACT), and heinous crimes against women, specially-abled and senior citizens of the country. Currently, 1023 Fast Track Courts are operating in India.

Even with the availability of Fast Track Courts and this being a top priority case, it took nearly eight years to deliver justice because the course of law has to take its own time to decide upon the judgment. This is the reason why there is a need for an increase in the number of such courts and also a track on their efficiency so that people can have a fair and speedy trial.

3.2. **What are Fast Track Courts?**

It is safe to assume that all of us are aware of the facets of our Judiciary and their respective jurisdictions. With the perusal of this journal, we would like to introduce a specially augmented court to our readers, the 'Fast Track Courts'.

3.3. **Fast Track Courts - The reality: -**

The name of these courts contains the term 'fast' signifying quick action taken by law to resolve the cases brought to it, but in reality, the term is not as suitable here as one might think.

In the year 2019 alone, nearly 26,965 cases were resolved in India by the FTCs, but 81% of these cases took almost between one and ten years to get settled. This data has been supplied by the National Crime Records Bureau (NCRB)[3].

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[1] "There is nothing 'fast' about fast track courts" https://indianexpress.com/article/opinion/columns/eleventh-finance-commission-report-fast-track-courts-pocso-act-6118359/

[2] Delhi gangrape convicts hanged: A timeline of events since the December 16, 2012 incident https://indianexpress.com/article/india/delhi-december-16-gangrape-case-timeline-convicts-hanged-6322624/

[3] Duration of Completion of Trials by Various Courts for IPC & SLL Crimes - 2019 https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2018A.5_1pdf

This clearly shows that the FTCs are unable to deliver justice fast enough to the Indian public.

There is an ample amount of data to further prove this fact.

The FTCs took around one to ten years to dispose of 69% of the 17155 cases filed under the POCSO Act, 2012 (Protection of Children from Sexual Offences)[4]. This is even though the Act specifically stated that the courts must complete the trial within one year (at the most) of the date the crime took place.

At the end of the year 2019, rape cases had a pendency rate of around 89.5%, while the conviction rate remained below par at around 27.8% (Data provided by NCRB)[5].
88.8% of the POCSO cases remained pending at the end of the year, with only 34.9% of cases getting the convict(s) punished of the total cases closed.

The data presented above shows how the FTCs are incompetent in doing their tasks. However, these results are not caused by its poor performance or any such reason. Instead, numerous factors can be blamed for this.

3.4. **The Problems obstructing the fast course of justice: -**

Multiple reasons have been identified for the poor performance of the Fast Track Courts, some of which are -

1. The procedure that the FTCs follow in deciding a case is not so different from the regular procedure being followed in other High Courts and lower courts.
2. The caseload on the FTCs is the same when compared to the caseload on other courts. Deepika Kinhal, a senior resident and lead at the Vidhi Centre for Legal Policy, says -

"A fast track court is set up for a category of disputes… These categories themselves have a large chunk of cases. So it is just like any other court hall in the district judiciary -- you have the court hall under individual judges who have anywhere between 50 to 100 cases listed per day[6]*."*

1. No Changes have been made to expedite the rate at which the cases can be heard and disposed of.
2. Further, no clear mandates have been set which clarify which cases are considered to be applicable to be brought before the FTCs and which are not.
3. Delays can also be caused when the decisions of the FTCs are challenged in the High Courts or the Supreme Court of India.
4. These courts are understaffed to say the very least, just like the regular courts. The judicial officers are constrained in terms of capacity and time.
5. There is no check on the lawyers who are indulged in the case, to see whether their actions are in any way wasting the time of the court.

[4] POCSO Act,2012
https://wcd.nic.in/sites/default/files/POCSO%20Act%2C%202012.pdf

[5] Court Disposal of IPC Crime Case- 2019
https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2018A.1_1.pdf

[6] What's Slowing down India's FTCs?
https://www.indiaspend.com/police-judicial-reforms/whats-slowing-down-indias-fast-track-courts-700397

3.4.1 Why do such problems arise?

1. The Supreme Court back in 1986 recognised 'speedy trial' as a fundamental right but the procedures that they follow are the same as followed in the other courts which as we can easily perceive beats the purpose of establishing FTCs in the first place. A major reason that FTCs in India cannot fulfill their sole purpose is that they follow the same red-tape procedure just like the same courts around the country which delays justice.
2. As mentioned above, another such problem is caused due to the workload on the judiciary. It is a well-acknowledged fact that the Indian judiciary is under such an immense workload and understaffed which is the main reason why we are infamous for delayed justice. The judges are from session courts and are given extra responsibility in these courts but as mentioned earlier they are already fewer in number as compared to the sanctioned number of judges[7].
3. The rate at which cases are heard and disposed of needs a major change in these FTCs. A lot of the judicial procedure followed in the FTCs is the same as any normal court which is the major cause of delay. The same number of hearings and all the same time-consuming formalities that were obstructing the fast trial in sessions court is also followed here resulting in the inevitable backlog of cases[8].
4. There is a big need for clear mandates to decide which cases are more important for a Fast Track trial. Although all cases might be equally critical still there need to be some criteria or otherwise, it burdens the already overburdened FTCs thus resulting in slow and delayed justice.
5. The Supreme Court of India and the High Court have in their jurisdiction all the rights necessary to challenge the judgements of the FTCs but this causes a delay in any action taken regarding it.
6. As mentioned in point 2 the Indian judiciary is highly understaffed thus resulting in an overburdened judicial staff who are highly constrained in time and capacity. This results in an impact on their personal being both in physical and mental aspects. As of February 20, 2020, around 21% of the sanctioned strength (24,018) of judicial officers in subordinate courts was vacant in different states; of the 5,146 vacancies, a large number of seats were vacant in the states of Uttar Pradesh(1,053), Bihar (776), Madhya Pradesh (370), Rajasthan (309) and Gujarat (308), according to a standing committee report from March 2020.

3.5. **Conclusion and Suggestions: -**

This is why there is a need for a systematic change in the whole essence and structure of the Fast Track Courts system. As already mentioned above, the FTCs were made in the spirit to increase the speed of trials and justice so the people involved in the cases do not have to wait decades for a judgement. India has one of the highest pendencies of cases when compared to other states.

Only the judiciary is not at blame here, there are multiple factors such as law and order and procedure which cause such delays. Another important reason is the rising crime rates which further burden the under strength and overworked judiciary, that is why it is also necessary for the community to work on outreach programs and also find funding for social measures to try and minimise damages.

There should also be an increase in accountability of the judiciary so they work more efficiently with also a check over the lawyers who might be trying to waste the time of the court.

As Justice Munishwar Nath Bhandar, Chief Justice Madras High Court had very well put, "Justice delayed is Justice denied", we should understand the need of a speedy, fair and just trial[9].

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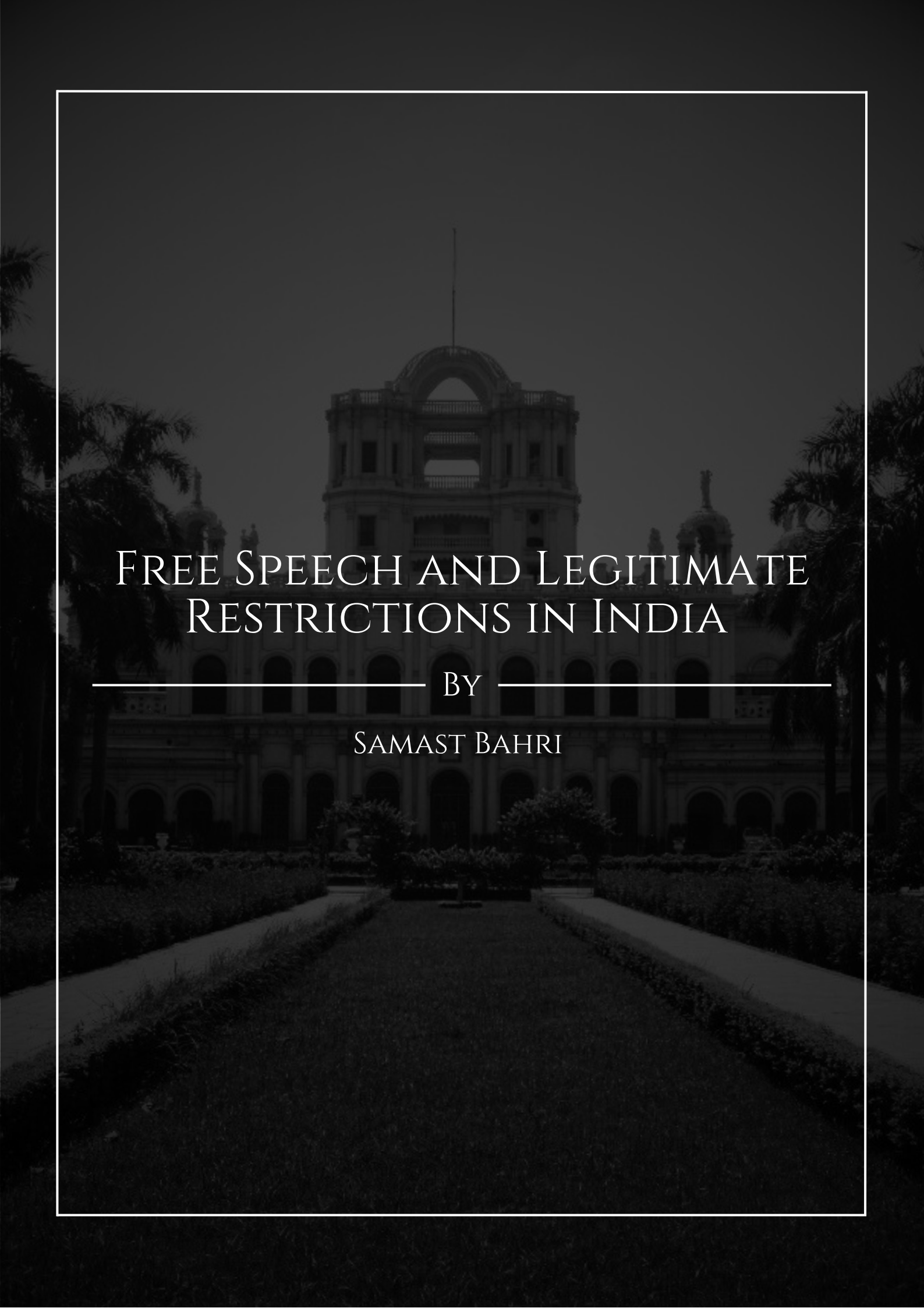
[7] The hard realities of India's fast-track courts
https://www.thehindu.com/opinion/op-ed/the-hard-realities-of-indias-fast-track-courts/article28838795.ece

[8] "Miscarriage of Fast Track Courts"
https://www.legalservicesindia.com/articles/misoj.htm

[9] Criminal trial delays – An overview
https://timesofindia.indiatimes.com/readersblog/thelegalaudience/criminal-trial-delays-an-overview-44908/



Free Speech and Legitimate Restrictions in India

By

Samast Bahri

4.1. **Introduction: -**

This right is undoubtedly one of the most essential privileges enjoyed by mankind, as it is enshrined in both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Article 19 of the Universal Declaration of Human Rights states that "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[1]." The Indian Constitution's integral Article 19 (1) expresses "All citizens shall have the right to Freedom of Speech and Expression[2]" as part of the Fundamental Rights outlined in its Third Part.

The philosophical reasons for the incorporation of freedom of speech and expression in any civilized nation's Constitution could be categorized into 2 prominent explanations:

1. An instrumental approach to the defense of freedom of speech and expression is based on the premise that it is inevitably and uncompromisingly necessary to facilitate citizens with a mechanism intended to enable them to accomplish greater socio-cultural and political goals, in order to maintain freedom of speech and expression. In this theory, a healthy democratic system is accompanied by an open-minded and liberal society that promotes independent discourse. A number of important aspects of this category include "speech promoting democracy", "speech promoting truth", and "marketplace of ideas[3]".
2. An intrinsic theory of defending free speech and expression that emphasizes that free speech and expression play a fundamental role in the development of one's autonomy regardless of the individual's social utility and is a desirable end in itself[4].

Several political scientists, scholars and philosophers have extended numerous arguments to back the right to Freedom of Speech and Expression. For instance, the "marketplace of ideas" theory substantiated largely by American philosopher J.S. Mill in his renowned 1859 publication "Liberty" emphasises that people would be in a position to discover worldly truths only out of unhyphenated, unrestricted and uncensored dialogues and not out of blindly trusting pre-existing thoughts and theories unquestioningly[5]. The right to freedom of speech and expression extends to various ways by which one can convey, receive and impart their thoughts, opinions and feelings, employing verbal and/or non-verbal means of communication via any medium of communication. Penning manuscripts, publishing content online, making videos and movies, using actions and gestures, and showcasing symbols such as political flags, banners, etc. all fall under free expression.

Judicial creativity, judicial wisdom and judicial craftsmanship have broadened the purview of Freedom of Speech and Expression in India by inclusion of the underneath mentioned facets: -

a. Freedom of Press;
b. Freedom of Commercial Speech;
c. Right to Broadcast;
d. Right to Information;
e. Right to Criticize;
f. Right to expression beyond national boundaries;
g. Right not to speak or right to silence.

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[1] "Universal Declaration of Human Rights." https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf.

[2] Singh, CS Deepak. "Article 19-Freedom of Speech and Expression and Its Limitations." https://taxguru.in/corporate-law/article-19-freedom-speech-expression-limitations.html

[3] Liang, Lawrence. Free Speech and Expression. 2016. The Oxford Handbook of the Indian Constitution, University Research Paper. Academia: https://www.academia.edu/attachments/52916285/download_file?st=MTY2MDAxOTAzMSwyMjMuMTgxLjE2Mi4x&s=swp-splash-paper-cover

[4] Schultz, David. "Marketplace of Ideas." THE FIRST AMENDMENT ENCYCLOPEDIA, www.mtsu.edu/first-amendment/article/999/marketplace-of-ideas.

[5] Singh, CS Deepak. "Article 19-Freedom of Speech and Expression and Its Limitations." https://taxguru.in/corporate-law/article-19-freedom-speech-expression-limitations.html.

4.2. **Important Supreme Court Cases related to Freedom of Speech and Expression: -**

Some notable Supreme Court cases that are in sync with the 7 aforementioned inclusions in Free speech are: -

1. Romesh Thapar vs State of Madras (1950) and Indian Express vs Union of India (1985)- for the freedom of the press (the cases asserted that press freedom is a vital part of democracy that includes freedom of publication, freedom of circulation and freedom against pre-censorship);
2. Tata Press Ltd vs Mahanagar Telephone Nigam Ltd (1995) for freedom of commercial speech (the case asserted that advertising, which is nothing beyond a commercial transaction, is nonetheless dissemination of information regarding the product advertised and falls under free speech and that in a democratic economy, free flow of commercial information is indispensable);
3. Union of India vs Association for Democratic Reforms (2002)- for right to information (The case concluded saying "One-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions.");
4. S. Rangarajan vs P. Jagjivan Ram (1989)- for right to criticize (the case asserted everyone's right to formulate opinions on issues of general concern and that open criticism of government policies and operations is not a ground for restricting expression)[6];
5. Maneka Gandhi vs Union of India (1978)- for right to expression beyond national boundaries (the case concluded that free speech and expression extends beyond international borders and citizens can use it even outside India)[7]. This case acted as a major event for the alterations made to Article 21, and
6. Bijoe Emmanuel v. State of Kerala (1986)- for right to not speak or right to silence. (The case revolves around the proposition that nobody can be forced to speak something unwillingly and even denying to sing the National Anthem does not violate Prevention of Insults to National Honour Act, 1971)[8].

However, though the right to freedom of speech is immense and covers numerous parameters of communication, it also relies on a specific number of legitimate restrictions. The Indian Constitution proudly defends the right to free speech and expression under Article 19(1)(a) but imposes upon the citizens a given number of reasonable restrictions while they exercise the right. Article 19(2) of The Indian Constitution inducts the parameters of containing the right in Article 19(1) as the sovereignty and integrity of India, the security of the State, maintaining friendly relation and interactions with Foreign States, public order, decency or morality or about contempt of court, defamation or incitement to an offence to be considered legitimate grounds of limiting the right to freedom of expression in the country[9].

4.3. **Framework of Right to Freedom of Speech and Expression: -**

Hence, the parameters of containing free speech and expression in India are: -
1. Sovereignty and Integrity of India:Included as a parameter of restricting free speech by the 16th Constitutional Amendment, this ground enables the government to protect India's sovereignty and integrity while combating secessionist tendencies in the country. The South Indian Dravida Kazhagam and the Plebiscite Front in Kashmir are examples of organisations that have had a history of raising

[6] Singh, CS Deepak. "Article 19-Freedom of Speech and Expression and Its Limitations." https://taxguru.in/corporate-law/article-19-freedom-speech-expression-limitations.html

[7] Pradhan, N. "Constitution of India-Freedom of speech and expression." , www.legalserviceindia.com/legal/article-572-constitution-of-india-freedom-of-speech-and-expression.html#:~:text=In%20Maneka%20Gandhi%20vs%20Union,not%20confined%20to%20National%20boundaries.

[8] Singh, Ashutosh. "Discussion on Bijoe Emmanuel case." ipreaders.in, 12 Oct. 2020, https://blog.ipleaders.in/discussion-bijoe-emmanuel-case/

[9] Karn, Chinmay. "Limits to Freedom of Speech and Expression in India: A Socio-Legal Analysis." www.legalserviceindia.com/legal/article-5782-limits-to-freedom-of-speech-and-expression-in-india-a-socio-legal-analysis.html.

separatist cries against the Union of India and it becomes peremptory for the government to contain speech that promotes secession[10].

2. Security of the State: -Security of the state is an issue of very heavy prioritization and a government must possess the authority to carry out restrictions on activities affecting it. The term "security of the state" refers only to serious and aggravated forms of public order e.g., rebellion, waging war against the State, insurrection and not ordinary breaches of public order and public safety, e.g. unlawful assembly, riot, affray. Thus, speeches or expressions on the part of an individual, which incite or encourage the commission of violent crimes, such as, murder are matters, which would undermine the security of the State.
In 1997, a Public Interest Litigation (PIL) was issued by the People's Union for Civil Liberty under Article 32 of the Constitution against the Union of India talking about frequent cases of government tapping telephones. The legitimacy of Section 5(2) of The Indian Telegraph Act, of 1885 was put to question in the case. The Supreme Court concluded that "occurrence of public emergency" and "in the interest of public safety" is the sine qua non for the usage of the provisions of Section 5(2). If any of these 2 parameters are not involved in the context of a discussion, the government cannot legitimately exercise its power under Section 5(2). Telephone tapping, hence, contravenes Article 19(1) (a) unless it falls under the grounds of reasonable restrictions under Article 19(2).

3. Friendly Relations With Foreign States: - Included as a parameter of limiting free expression by the First Constitutional Amendment Act (1951), it serves India's national interests of not allowing speech that bears the potential to have a substantial damage on India's strategic ties with other nations. This provision safeguards India's foreign policy interests to prohibit unchecked, malicious propaganda against another state with which India holds auspicious ties[11]. India's Constitution is the world's sole Constitution to hold such a clause. The Foreign Relations Act, (XII of 1932) provides punishment for libel by Indian citizens against external dignitaries. However, the Interest of friendly relations with other States would not legitimise the suppression of reasonable condemnation of the Government's foreign policy.

4.Decency and Morality: - Bearing quite wide meanings, the words "decency" and "morality" happen to be identical to containing "obscenity" in speech in the Indian Constitution. The decision of the famous Regina vs Hicklin case (1868) of England is looked upon as an international landmark judgement in defining obscenity[12]. The test of obscenity so published by English Jurist Cockburn C.J. defined obscenity as "whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall. It is quite certain that it would suggest to minds, of the young of either sex or even to persons of more advanced years, thoughts as a most impure and libidinous character."
Another prominent case in this context is that of P. K. Somnath vs State of Kerala wherein the Court concluded that even a photographed nude male or female body cannot qualify the test of "obscenity" until it has "something more" to it that makes it obscene. The phrase "something more" revolves around the poses and facial expressions of the person photographed, basing the title of "obscenity" on the subjectivity of viewers, and leaving behind no objectively usable set of criteria for defining obscenity. The Supreme Court of India adopted the Hicklin test proposition in Ranjit D. Udeshi vs state of Maharashtra case. However, in the Aveek Sarkar vs State of West Bengal, the Supreme Court preached that obscenity must be adjudged based on a "Community Standards Test" that examines the level of contemporary social acceptance of apparently obscene content in that community. The Indian Penal Code forbids the sale, exhibition, dissemination, and purchase of obscene content in public places between sections 292-294[13]. The Indecent Representation of Women (Prohibition) Act, 1986

[10] Raza, Aqa. 'Freedom of Speech and Expression' as a Fundamental Right in India and the Test of Constitutional Regulations: The Constitutional Perspective. 2016. O.P. Jindal Global University, University Research Paper. ResearchGate: https://www.researchgate.net/publication/306899769.

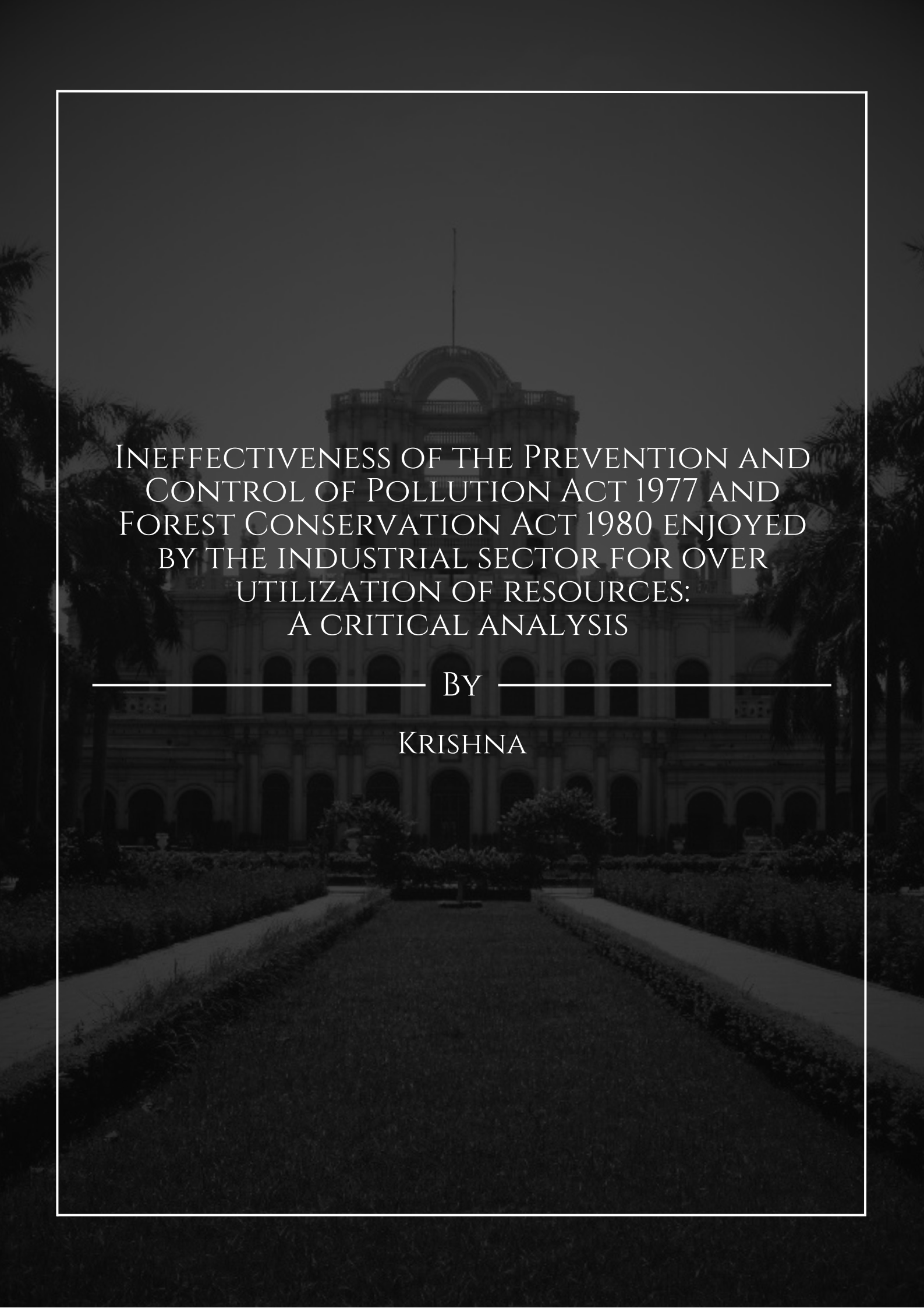
[11] Patanjali, Dheerajendra. "Freedom of Speech and Expression India v America - A study." ,https://www.indialawjournal.org/archives/volume3/issue_4/article_by_dheerajendra.html

[12] Green, William . "Hicklin Test." THE FIRST AMENDMENT ENCYCLOPEDIA, www.mtsu.edu/first-amendment/article/969/hicklin-test.

[13] "Anti Obscenity Laws in India explained - https://www.youtube.com/live/7FINQbEzJyQ?feature=share

penalises individuals indulging in the derogatory picturisation of females via manuscripts, photos, etc while the Information Technology (Amendment) Act, 2008's section 67(B) criminalises publishing, promoting and possessing items of child pornography[14]. However, "morality" continues to remain a subject that doesn't become an objectively remarkable concept, thereby leaving an ambiguous parameter for society to think that a specific form of speech should or shouldn't be restricted under Article 19.

[14] Arundhati. "Laws Regarding Obscenity in India." www.lawyersclubindia.com, 11 Aug. 2022 ,www.lawyersclubindia.com/articles/laws-regarding-obscenity-in-india-15097.asp.



Ineffectiveness of the Prevention and Control of Pollution Act 1977 and Forest Conservation Act 1980 enjoyed by the industrial sector for over utilization of resources: A critical analysis

By

Krishna

5.1. **Introduction: -**

India is a country with a rapidly growing economy, which has come at a considerable cost to the environment. The Pollution Prevention and Control Act 1977 [1] and the Forest Conservation Act 1980[2] are two important pieces of legislation that were implemented to regulate industrial activity and protect the country's natural resources. These Acts were supposed to ensure that the growth of the industrial sector did not come at the expense of the environment. However, despite these laws, the industrial sector has continued to overutilize resources and cause environmental damage.
This report will critically analyze the ineffectiveness of the Pollution Prevention and Control Act and the Forest Conservation Act and explore the reasons behind the industrial sector's violation of these laws. It will also examine breakthrough cases that have highlighted the inadequacy of these laws in preventing environmental degradation. Finally, this report will discuss recent controversies that further demonstrate the ineffectiveness of these laws. By doing so, this report aims to shed light on the urgent need for stronger environmental legislation in India.

5.2. **Background: -**

The Pollution Prevention and Control Act 1977 was enacted to regulate the emission of pollutants from industrial activity. The Act applies to various industrial sectors, including factories, power plants, and transportation. The Act provides for the establishment of Pollution Control Boards at the state level, which are responsible for granting permits for the discharge of pollutants. The Act also sets standards for ambient air quality and noise levels and provides for inspecting industrial premises.

Similarly, the Forest Conservation Act 1980 aims to regulate forestland use and protect forests from overexploitation. The Act provides for the creation of a forest conservation fund and the establishment of a committee to oversee forest conservation activities. The Act also provides for penalties for violations of its provisions.

The Pollution Prevention and Control Act 1977 was implemented to address the adverse effects of industrialization on the environment and human health. The Act was designed to control and reduce the discharge of pollutants into the environment from various industrial sectors. It established a legal framework for monitoring and controlling industrial emissions, to prevent environmental pollution and protect public health.

The Act defines "pollution" as the presence of any solid, liquid or gaseous substance in the environment, including noise, which may be injurious to human beings or other living organisms. It mandates the establishment of Pollution Control Boards in each state, which are responsible for granting permits for the discharge of pollutants into the environment. The Act also sets out emission standards for various industries and provides for the inspection of industrial premises to ensure compliance with these standards.

Similarly, the Forest Conservation Act 1980 was implemented to regulate the use of forestland and to protect forests from overexploitation. The Act was enacted in response to the large-scale deforestation and depletion of forest resources in India. The Act establishes a legal framework for the conservation, management, and development of forests and wildlife.

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[1] Water (Prevention and Control of Pollution) Cess Act, 1977
https://mpcb.gov.in/miscellaneous-topics-information/cess/cessdetails

[2] THE FOREST (CONSERVATION) ACT, 1980
https://www.indiacode.nic.in/bitstream/123456789/1760/1/forestAA1980.pdf

The Act provides for the creation of a forest conservation fund to finance conservation and afforestation activities. It also establishes a committee to oversee the implementation of the Act's provisions. The Act prohibits the diversion of forestland for non-forestry purposes without prior approval from the central government. It also provides for penalties for violations of its provisions.
However, the interpretation and implementation of these Acts have been a matter of debate and controversy. The industrial sector often interprets the Acts in a manner that allows them to continue their activities without significant modifications, while the environmentalists view them as tools for protecting the environment from the adverse effects of industrial activity. This has led to a conflict between the two groups, with the environmentalists calling for stricter enforcement of the Acts and the industrial sector demanding relaxation of the regulatory measures to ensure ease of doing business.

5.3. **Ineffectiveness: -**

Despite the enactment of the Pollution Prevention and Control Act and the Forest Conservation Act, the industrial sector continues to engage in the overutilization of resources and cause environmental damage. The reasons for the ineffectiveness of these laws are manifold.

1. Lack of Awareness and Education:

One of the primary reasons for the ineffective implementation of the Pollution Prevention and Control Act and the Forest Conservation Act is the lack of awareness and education. Many industries and people are not aware of the laws, their provisions, and the implications of non-compliance. There is a need for better awareness campaigns, education, and outreach programs to make people aware of these laws and the importance of environmental protection.

2. Lack of enforcement:

One of the main reasons for the ineffectiveness of the Pollution Prevention and Control Act and the Forest Conservation Act is the lack of enforcement. The government agencies responsible for enforcing these laws are often understaffed and under-resourced, making it difficult for them to ensure compliance.

Another factor that contributes to the ineffectiveness of these laws is the inadequate monitoring and evaluation mechanisms. The Pollution Control Boards are responsible for monitoring and evaluating the implementation of the Pollution Prevention and Control Act, but they are often understaffed and lack the necessary resources and technology to do so effectively. There is a need for stronger monitoring and evaluation mechanisms to ensure compliance and deter non-compliance.

3. Weak Implementation Framework:

The Pollution Prevention and Control Act and the Forest Conservation Act suffer from a weak implementation framework. The government agencies responsible for enforcing these laws often lack coordination and cooperation, resulting in a fragmented and ineffective approach to environmental protection. There is a need to establish a more robust implementation framework with clear roles, responsibilities, and accountability mechanisms to ensure the effective enforcement of these laws.

4. Exemptions and Loopholes:
The Pollution Prevention and Control Act and the Forest Conservation Act have several exemptions and loopholes that industries can exploit to evade compliance. For example, some industries are exempted from obtaining permits, while others can obtain permits by simply paying a fee. Similarly, some activities are considered "non-polluting" and, therefore, are not regulated by the Acts. There is a need to close these loopholes and exemptions to make these Acts more effective.

5. Corruption:
Another major reason for the ineffectiveness of these laws is corruption. The industrial sector often engages in corrupt practices to evade the provisions of these laws. For example, they may bribe officials to obtain permits or ignore violations of these laws.

Political interference is another significant factor that undermines the effectiveness of these laws. Industries often use their political influence to circumvent environmental regulations and obtain exemptions or permits. Political interference also hampers the functioning of government agencies responsible for enforcing these laws. There is a need for the depoliticization of environmental protection and ensuring the autonomy of these government agencies.

6. Lack of public participation:
The lack of public participation is another reason for the ineffectiveness of these laws. The government agencies responsible for enforcing these laws often do not involve the public in decision-making, leading to a lack of accountability and transparency.

7. Weak penalties:
The penalties for violations of the Pollution Prevention and Control Act and the Forest Conservation Act are often weak and ineffective. The fines imposed for violations are often too low to deter industrial activities that cause environmental damage.

5.4. **Breakthrough cases: -**

These Breakthrough cases illustrate the inadequacy of the Pollution Prevention and Control Act and the Forest Conservation Act are numerous, with each case serving as a clear reminder of the dire need for better implementation and enforcement of these laws.
There have been several breakthrough cases that have highlighted the ineptness of the Pollution Prevention and Control Act and the Forest Conservation Act in preventing environmental degradation: -

- One of the most notable cases is the Bhopal Gas Tragedy[3], which occurred in 1984. The incident resulted in the release of a toxic gas cloud that killed thousands of people and caused long-term health effects for many others. The incident was attributed to the negligence of Union Carbide, the company responsible for the plant's operation, in adhering to safety regulations and standards.
- Another significant case is the Sariska Tiger Reserve Scandal, which came to light in 2005. The Sariska Tiger Reserve is a protected area in Rajasthan, India, that is home to several endangered species, including tigers. The scandal involved the discovery of the disappearance of all the tigers from the reserve due to poaching. The incident was attributed to the failure of the Forest Department to enforce the provisions of the Forest Conservation Act effectively.

[3] Bhopal Gas Tragedy,1984.
https://www.legalservicesindia.com/article/373/Legal-Aspects-of-the-Bhopal-Gas-Tragedy.html#:~:text=The%20Legal%20Battle%3A%20%2D%20In%20the,grounds%20of%20forum%20non%20conveniens.

- Another example is the Jharia Coalfield fire[4], which has been burning for over a century in the state of Jharkhand, releasing toxic fumes into the air and causing serious health hazards for the local population. Despite being a designated conservation area, illegal mining activities have continued unabated, causing extensive environmental damage and disregarding the provisions of the Pollution Prevention and Control Act.
- Similarly, the rampant sand mining activities in the state of Kerala have caused serious damage to the fragile coastal ecosystem, destroying important habitats and contributing to the erosion of the coastline. The state government has failed to enforce the provisions of the Forest Conservation Act, which require the prior approval of forest officials for any activities in forested areas. This has allowed mining activities to continue unchecked, causing severe environmental damage.
- Another example is the Sterlite Copper Smelter Plant[5] in Tamil Nadu, which was ordered to be shut down by the Tamil Nadu Pollution Control Board due to its violation of environmental norms. The plant was emitting harmful pollutants into the air and contaminating the groundwater, causing serious health hazards for the local population. Despite the legal provisions of the Pollution Prevention and Control Act, the plant was allowed to operate for years without adequate checks and balances.
- Another significant case is the Vedanta mining case[6], where the Supreme Court of India revoked the mining permit granted to Vedanta Limited for its bauxite mining operations in the Niyamgiri Hills. The court found that the mining operations would cause significant environmental damage and violate the rights of the local tribal communities. The case highlighted the inadequacy of the Forest Conservation Act in protecting forestland from overutilization.

The above cases demonstrate the urgent need for stricter enforcement of the Pollution Prevention and Control Act and the Forest Conservation Act, as well as greater public participation in environmental decision-making. These laws must be strengthened and implemented effectively to ensure that industries comply with environmental regulations and do not cause irreparable damage to the environment.

5.5. **Recent controversies: -**

In recent years, there have been several controversies that further demonstrate the ineffectiveness of the Pollution Prevention and Control Act and the Forest Conservation Act. One of the most significant controversies is the proposed amendment to the Forest Conservation Act, which aims to simplify the process of diverting forestland for non-forestry purposes. Environmentalists have criticized the proposed amendment, stating that it will result in more forestland being diverted for non-forestry purposes, leading to further deforestation and ecological imbalance.

The draft Environment Impact Assessment (EIA) notification 2020[7], has been heavily criticized for diluting the EIA process and making it easier for industries to obtain environmental clearances. The notification has been met with widespread protests from environmentalists, who argue that it will result in greater environmental degradation and threaten the country's biodiversity[8].

[4] Jharia Coalfield Fire Case Study
https://ijsrem.com/download/jharia-coalfield-fire-case-study/

[5] Sterlite Copper Smelter Plant Legal Case study
https://www.reuters.com/article/sterlite-copper-smelter-case-latest-idINDEE94D08N20130514

[6] Analyzing the Vedanta Alumina Limited (VAL) Orissa India case
https://blog.ipleaders.in/analyzing-vedanta-alumina-limited-val-orissa-india-case/

[7] Environment Impact Assessment (EIA) Draft, 2020.
https://parivesh.nic.in/writereaddata/Draft_EIA_2020.pdf

[8] Enviormental Impact Assesment(EIA): Draft,2020https://www.drishtiias.com/to-the-points/paper3/environmental-impact-assessment-eia-draft-2020#:~:text=No%20Public%20Reporting%20for%20Non,Appraisal%20Committee%20or%20Regulatory%20Authority

The amendment aims to simplify the process of obtaining forest clearances for infrastructure projects. However, environmentalists have raised concerns that the amendment will lead to the overutilization of natural resources and harm to the environment. The controversy highlights the need for a balanced approach to environmental regulation that takes into account the interests of both development and environmental protection.

In 2019, the National Green Tribunal (NGT) issued a notice to the Uttar Pradesh government and a sugar mill for allegedly violating the Pollution Prevention and Control Act. The mill was accused of discharging pollutants into the Ganga River, resulting in the pollution of the river and harm to public health. However, the people in power were firm on not letting the accusations affect the "mal-productivity" of the mill. The incident highlighted the need for stricter enforcement of the Act and the consequences of non-compliance[9].

Similarly, in 2021, the NGT issued a notice to a cement company for allegedly violating the Forest Conservation Act. The company was accused of mining limestone in an ecologically sensitive area without the necessary permissions. The case highlighted the need for stricter implementation of the Forest Conservation Act to prevent the overutilization of natural resources.

Moreover, recent controversies also suggest that the implementation of these laws is often affected by corruption and lack of accountability. In 2020, a report by the Comptroller and Auditor General (CAG) of India highlighted several irregularities in the functioning of the Central Pollution Control Board (CPCB). The report found that the CPCB failed to take necessary actions against polluting industries and did not recover penalties imposed on them. The incident highlights the need for greater accountability and transparency in the implementation of environmental laws[10].

5.6. **Conclusion and Suggestions: -**

In conclusion, the Pollution Prevention and Control Act and the Forest Conservation Act are crucial laws in India that aim to regulate industrial activity and protect the environment. However, the inadequate implementation and enforcement of these laws have allowed the industrial sector to continue overutilizing resources and causing environmental damage.

The lack of enforcement, corruption, and weak penalties have all contributed to the ineffectiveness of these laws. Additionally, the lack of public participation has led to a lack of accountability and transparency in decision-making.

Despite these challenges, there is hope for future improvements. The government can take steps to strengthen the enforcement of these laws and increase penalties for violations. The public can also play a more active role in decision-making and holding industrial actors accountable for their actions. Furthermore, the Indian government has taken steps in recent years to address environmental concerns, such as the creation of the National Green Tribunal and the launch of the Swachh Bharat Abhiyan campaign[11]. These efforts demonstrate a commitment to improving environmental protection and sustainability in the country.

Overall, while the Pollution Prevention and Control Act and the Forest Conservation Act have not been entirely successful in preventing environmental degradation in India, there is room for improvement and hope for a more sustainable future.

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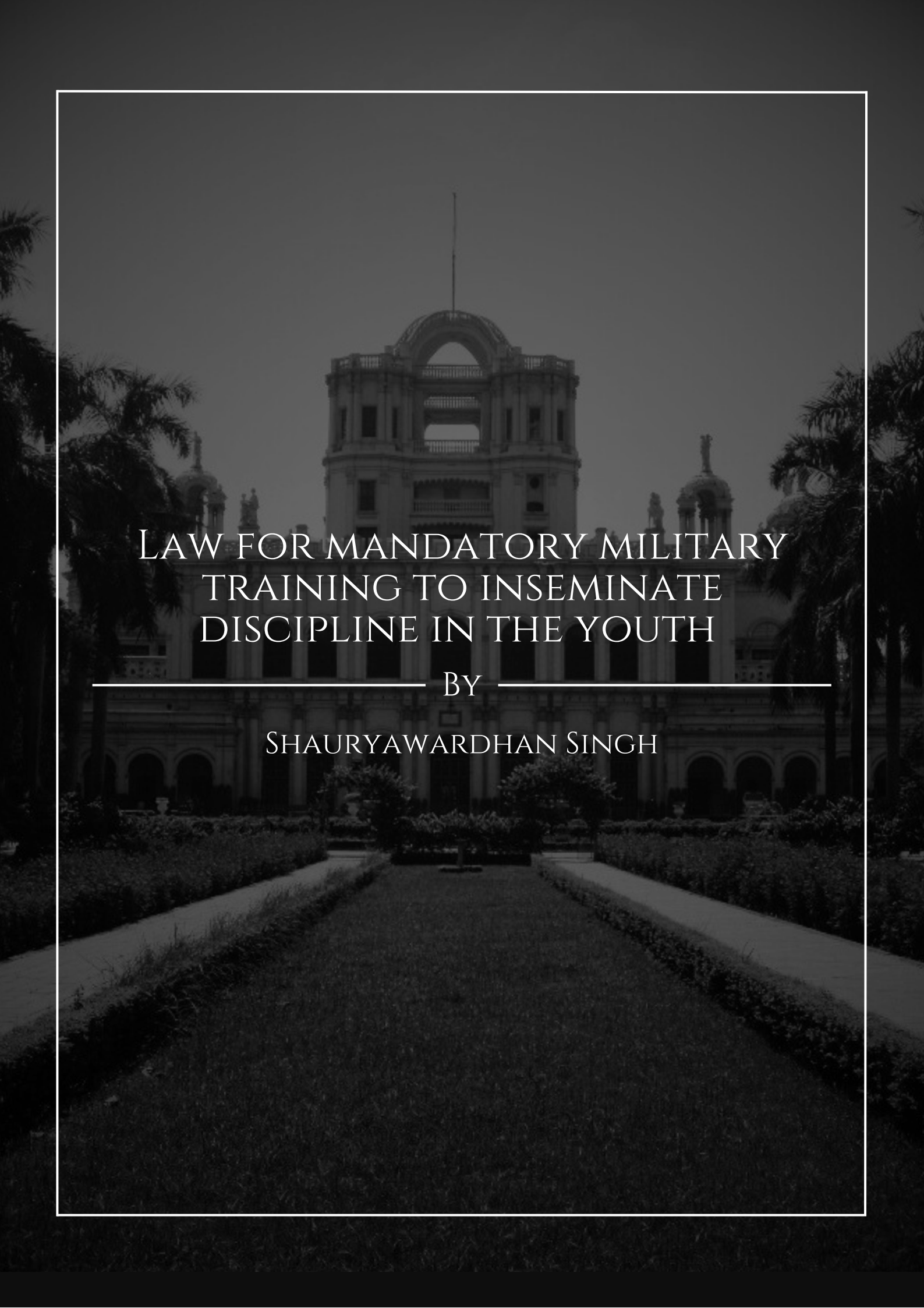
[9] National Green Tribunal notice to Uttar Pradesh Government.
https://indianexpress.com/article/india/national-green-tribunal-notice-to-up-government-on-encroachment-in-agra-park-5139506/

[10] A report by the Comptroller and Auditor General (CAG)
https://cag.gov.in/uploads/download_audit_report/2021/8.%20Chapter%204-06243f94b9e6980.83880648.pdf

[11] An Analysis of the Swachh Bharat Mission
https://www.indiabudget.gov.in/budget2019-20/economicsurvey/doc/vol1chapter/echap08_vol1.pdf



Law for mandatory military training to inseminate discipline in the youth

By

Shauryawardhan Singh

6.1. **Introduction: -**

One has to protect his/her land if he wants prosperity to be present in the land's aura. The youth of our generation is one such that the world has never seen before, perhaps this is the magic of evolution. Having accessibility to various pleasures, a fundamental yet strong human component they are starting to lack is discipline. An efficient solution to this which the Indian Parliamentary Committee on Defence in early 2018 recommended was to introduce five years of compulsory military service[1]. When the discussion being held is on the topic of serving your nation, many people back off due to various reasons which might be personal, religious, etcetera.

6.1.1. Indian Constitution on Mandatory Military Training -

In our 76-year-old country, India, there has never been a conscription law. A clause exists in Article 23 of the Indian Constitution which has the power to allow the Union Government to mandate conscription only for reasons such as securing the nation's interest[2]. India is a Democratic country and by stipulating 'mandatory military service' people might protest against being compelled to serve the nation and hence, violating the policy of 'freedom to choose'.

6.1.2. Countries with Conscription Laws -

- Russia-

Already famous for its exploitation of conscripted soldiers, the conscription law of Russia stems from the Soviet era. It has also been evident from the conflict between Russia and Ukraine that Russia uses poorly-trained soldiers in military wars.

Russian law asserts that physically-abled men aged 18 to 27 must perform military service for a period of 12 years. However, the Russian Constitution also lets a man choose a non-military form of national service due to his 'conviction or religious beliefs.

6.1.3. Mandatory military service: a blessing or a boon?

Advantages -

- Uniting the people of the country-

Citizenship can be considered a team sport. A single individual cannot protect his/her land, it is the sense of love, compassion, and respect for your land which drives the soldiers to protect their land. With mandatory military training, the same mindset will be created inside the young energetic citizens of our country, matching their goals and emotions and hence, uniting the people of the country in a true sense.

- A price for the peace-

A country is just a piece of land without its people, but people are not everything it requires to execute administration and let prosperity flow throughout your country. It also requires proper functioning and the administrative structure which is laid out by the government. An integral part of it is the task

[1] BW BUSINESS WORLD, https://www.businessworld.in/article/Idea-Of-Compulsory-Military-Service-For-Our-Youth/27-01-2021-370432/

[2] EITHER/VIEW, https://eitherview.com/should-military-service-be-mandatory-for-indians/#:~:text=India%20has%20never%20had%20any%20conscription%20laws%2C%20and,loophole%20has%20not%20been%20implemented%20by%20India%20yet

of paying a price. For example, every citizen pays tax and the tax is further used for the welfare of your country hence, it is a price for peace. Compulsory military service is also one such example, in this case, you put aside everything and prioritize the nation and protect your country so that commoners can have a peaceful life. Besides, you also have a great experience and it always provides you with some knowledge that will never go to waste and will eventually lead to your personal success and overall character development.

- Creates a level of commonality between the masses-

The establishment of a 'compulsory military service' law will eventually lead to the provision of a common ground with which a common identity can be created by the government and hence, uniting the people so that even in the most intense debate, there will always be a common ground leading to some sort of compromise.

- The duty for development and maintenance

Once a piece of land is acquired, it has to be maintained by the people. There are many responsibilities of the military on a national level, and completing their duty is one of the key factors which revolve around the prosperity of a nation. Mandating compulsory military service is a way of making every citizen perform a serious national duty.

- Strong defense

The policy of mandatory military service will minimize the chances of a shortage of soldiers in the army. This will make it a huge challenge for foreign troops to invade a country. The diversity of our nation also plays a key role here as people from different backgrounds and their numerous valuable skills will be contributed towards the defense of our nation.

- Acquirement of various skills

When it comes to serving in the military for some time, it is not just about picking up a gun and firing it toward the enemy. The military teaches several valuable lessons which are way beyond the fields of artillery. Some of these include responsibility, leadership, patience, bravery, and discipline. All these skills will be helpful to every soldier as he progresses in life.

- You are not serving for free

There is a very good salary for every person performing military service for a while. In the United States of America, a lieutenant earns up to 36000 US dollars for a service of one year.

Disadvantages-

- Everyone does not agree with the idea of mandatory military service-

The idea of compulsory military service for some time may clash with a person's personal or religious opinions. Some people are not bothered enough about their country and do not consider their country precious enough to put their life on the line for it. Up to five lakh men have violated the conscription law in the United States of America[3].

- Violation of personal freedom and democracy

The concept of personal freedom involves the right to make decisions in your life by your own will. The policy of compulsory military service for a period of time is violating the idea of freedom as the people are being compelled to perform a certain task and putting their lives at risk for a service that they do not even want to perform.

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[3] Keith Miller, *19 Advantages and Disadvantages of Compulsory Military Service*, FUTURE OF WORKING https://futureofworking.com/6-advantages-and-disadvantages-of-compulsory-military-service/

- Interference with the professional career of an individual

Every human being has career goals that he wants to achieve before attaining a certain age. It is not necessary that his goals will lie in the field of military and if they do not then that for that period of time when he is compelled to perform military service for his nation feels like a halt in his career. In this case, the policy of compulsory military service is nothing but a barrier between him and his goals in life.

6.2. **Impact of mandatory military service policy: -**

Boosting the national security-
Conscription ensures the provision of a large number of soldiers with diverse skills thus, leading to the strengthening of the nation.

Infusing discipline-
Military service provides confidence, a bold personality, strong discipline, and physical fitness. If all these are acquired by every person, the nation will grow in its true sense.

Unity in diversity-
When soldiers from different states of domicile, having different cultures and skills, are united to perform a common duty and all of them have the same cause, the unity is highly impactful.

Costly for the government-
As there will be a larger number of soldiers serving, the cost of the maintenance of troops will be quite heavy for the government if the country adopts the policy of conscription.

Risking your life-
Military service can be horrifying as you never know when a war can take place, the tragedy, harm, and loss of lives caused by wars cannot be handled well by humans.

6.3. **Does India really need conscription?**

India definitely needs to at least consider the idea of applying the policy of mandatory military service as there is a shortage of people in the Indian armed forces. The Indian Army has a shortage of seven thousand officers and twenty thousand soldiers[4].
We also cannot neglect the fact that every one out of sixteen women and one out of twenty five men suffers from obesity in India[5].
The policy of compulsory military service is a prominent way to solve the problem revolving around the shortage of army personnel as well as the physical training provided will also play a key role in improving the fitness structure of India.

6.4. **Conclusion and Suggestions: -**

Conscription violates very basic rights which a human being possesses but if necessary, it is very impactful to change the structure of a country in numerous ways and if executed properly it can make a country grow in its true sense.

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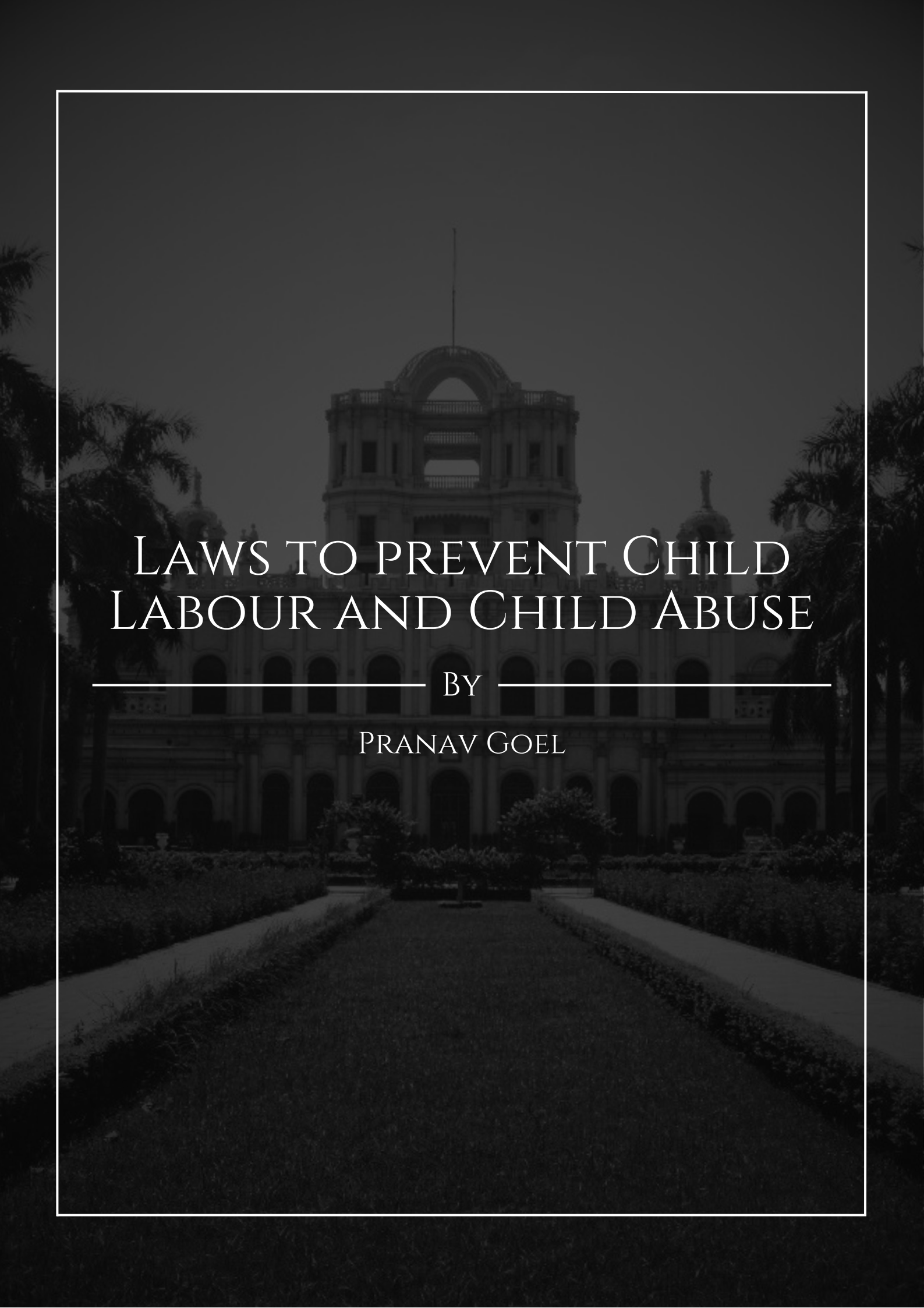
[4] Aakanksha Ahire, Will India Make Military Service Compulsory For The Youth?, YOUTH INCORPORATED https://youthincmag.com/will-india-make-military-service-compulsory-for-the-youth

[5] THE PRINT https://theprint.in/health/indians-are-growing-fatter-and-the-problem-is-biggest-for-wealthy-women-shows-nfhs-data/1350501/



Laws to prevent Child Labour and Child Abuse

By

Pranav Goel

7.1 **Introduction:**

The child labor problem continues to be a concern before the country. The government has been adopting different proactive initiatives to combat this issue. However, given the scale and nature of the problem and the fact that it is essentially a socio-economic problem inseparably linked to poverty and illiteracy, a concerted effort from all segments of society is required to make a dent in the situation[1].

"Child," according to the definition provided by the Child Labour (Prohibition and Regulation) Act 1986, is a person who has not yet reached the age of fourteen. A child of such vulnerable age is anticipated to study, play, and be relaxed about his life. However, to be an attribute of nature, aspirations hardly meet actuality. Children, by either choice or coercion, are employed to work in extreme environments and surroundings, which becomes an imminent danger to their life. Child labour contributes to inadequate development and poor mental and physical development, resulting in retarded growth of children.

Children are susceptible and need affection, care, shelter, and protection from their guardians for proper growth and development. Abuses against these delicate beings often ruin their infancy, resulting in an inability to achieve their maximum mental and physical potential. Though the abuse of children has existed for a long time, contemporary societies either continue to live in ignorance or have been snail-paced in acknowledging them as issues[2].

India has various laws to safeguard children, and child protection is widely recognized as a vital component of societal development. The issue is in executing the legislation owing to poor human resource capability on the ground and quality preventive and rehabilitation initiatives. Consequently, millions of children are vulnerable to violence, exploitation, and abuse[3].

7.2 **Child Labour**

There is no clear definition of child labour, as it is a broad term encompassing many diverse situations. According to The Child Labour (Prohibition and Regulation) Act of 1986, "child" means a person who has not completed his fourteenth year of age[4]. The Child Labour (Prohibition and Regulation) Amendment Act, 2016 is *"An Act to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto*[5]*"*.

Child labour is interpreted differently by UNICEF. According to UNICEF, a child is involved in child labour activities if he/she is between the ages of 5 and 11, he or she did at least one hour of economic activity or at least 28 hours of domestic work per week, and between the ages of 12 and 14, he or she did at least 14 hours of economic activity or at least 42 hours of economic activity and domestic work per week.

International Labour Organisation (ILO) interprets the term "child labour" as work that deprives children of their childhood, potential, and dignity, which harms physical and mental development. It refers to labour that is psychologically, physically, socially, or ethically unsafe, detrimental to children, and interferes with their education.

[1] "About Child Labour." https://labour.gov.in/childlabour/about-child-labour

[2] "Child Abuse A Social Evil in Indian Perspective" https://journals.lww.com/jfmpc/Fulltext/2021/10010/Child_abuse__A_social_evil_in_Indian_perspective.19.aspx

[3] "Protecting India'S Children from Violence, Abuse and Exploitation."https://www.unicef.org/india/what-we-do/child-protection"

[4] "Child Labour (Prohibition and Regulation) Act 1986." https://labour.gov.in/sites/default/files/act_2.pdf

[5] "The Child Labour (Prohibition and Regulation) Amendment Act, 2016." https://labour.gov.in/sites/default/files/the_child_labour_prohibition_and_regulation_amendment_act_2016_0.pdf

7.2.1 Causes of Child Labour

Many factors contribute to child labour and exploitation, such as overpopulation, illiteracy, poverty, societal norms tolerating them, lack of opportunities for individuals of all ages to find decent work, migration, and emergencies. These elements are not just the cause but also a result of social imbalances amplified by prejudice.

- Overpopulation: The country's population outnumbers the available work possibilities. India is an overcrowded nation. Poverty, illiteracy, and other issues have arisen due to overpopulation. Most Indians are illiterate, and a significant portion are below the poverty line, unable to afford their daily necessities. The impoverished families have many children but no means to support them; therefore, the children are the primary victims.
- Illiteracy: One of the most significant factors is illiteracy. If a child cannot get an education owing to financial or societal constraints, they are more likely to choose wage labour and family support.
- Poverty and Cheap labour: Due to poverty, unemployment, and underemployment are also very high, and parents are compelled to have their children labour for money and work on low wages. Children must support themselves and their families and provide a living to survive the financial crisis and poverty. Because labour wages are low, parents have no choice but to let their children work to supplement their family income.
- Professional requirements: Some industries, such as the bangle industries, require delicate and gentle hands instead of rough ones. As a result, they choose children rather than adults for such employment.
- No space for alternatives: A lack of suitable options, such as affordable schools and high-quality education, is a primary contributing factor that drives children into hazardous jobs, according to the International Labour Organisation (ILO). Children are compelled to work because they are unsatisfied and cannot make a living.
- Social causes: Child labour is primarily caused by India's social and economic backwardness. Socially illiterate parents do not send their children to school. As an outcome, their children have to work.

7.2.2 Types of Child Labour

Child labour is typically classified into many categories, which are as follows:

- Forced labour: is "any work or service exacted from any person under the threat of any penalties and for which the said person has not willingly offered himself." Slavery and practices akin to slavery and bonded labour or debt bondage are all examples of forced labour. “Bonded labour” is a practice in which employers issue high-interest loans to employees who work for low wages to repay the debt[6].
- Domestic Child Labour: It refers to circumstances in which children below the relevant age limit undertake domestic work (for minimum wage, full-time non-hazardous job) in dangerous settings or a slavery-like situation. In India, 74% of child domestic workers are believed to be between the ages of 12 and 16.
- Industrial child labour: In India, children below the legal age of 18 are most commonly employed in the manufacturing industry. Such enterprises occasionally operate out of households, making it difficult for the government to act appropriately. The unorganized sector is one of India's largest and most visible employers of children.

[6] "Child Labour and Forced Labour in India” https://www.drishtiias.com/daily-news-analysis/child-labour-and-forced-labour-in-india

- Child Trafficking: Is the buying and selling of minors for employment or sexual exploitation.

7.3 **Child labour laws in India:-**

Child labour is an issue on which the Union Government and state governments can pass legislation. At both levels, a variety of legislative efforts have been initiated. The following are the critical national legislative developments:

- The Child Labour (Prohibition and Regulation) Act of 1986: Forbids the employment of children under the age of 14 in hazardous activities specified by the law. The list was enlarged further in 2006 and 2008.
- The Juvenile Justice (Care and Protection of Children) Act, 2000: *"Whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment keeps him in bondage and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine*[7]*"*.
- The Factories Act of 1948: States that no child under the age of fourteen shall be compelled or permitted to work in any factory.
- The Mines Act of 1952: Restricts the employment of children under the age of 18 in excavations where labour to look for and extract minerals are performed. It makes it illegal for anyone under the age of eighteen to be present in any area of a mine above ground where any operation linked with or incidental to any mining operation is taking place.
- The Right of Children to Free and Compulsory Education Act of 2009: The law compels all children aged 6 to 14 to receive free and compulsory education.
- Article 24 in The Constitution Of India 1949: *" Prohibition of employment of children in factories, etc. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment* [8]*"*.

7.3.1 National policies and programs pertaining to child labour:

- Child Labour (Prohibition and Regulation) Amendment Rules, 2017
- National Plan of Action for Children, 2005
- National Child Labour Policy
- Right to Education Act of 2009
- Sarva Shiksha Abhiyan
- Integrated Child Protection Scheme
- Midday Meal Scheme
- National Family Benefit Scheme
- Rashtriya Swasthya Bima Yojana
- Balika Samridhi Yojana

7.4 **Reforms required to stop child labour:**

Child labour is a heinous crime that deprives children of their youth. Despite government initiatives and strict regulations, this social evil persists. Child labour hinders the development and growth of children and the social and economic development of an entire nation. As a result, we must band together and aim our efforts to put an end to child labour. Here are a few solutions to stop child labour:

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[7] "Section 26 in The Juvenile Justice (Care and Protection of Children) Act, 2000."https://indiankanoon.org/doc/366554/#:~:text=%E2%80%94Whoever%20ostensibly%20procures%20a%20juvenile,also%20be%20liable%20to%20fine.

[8] "Article 24 in The Constitution Of India 1949 https://indiankanoon.org/doc/1540780/

- Poverty eradication: Child labour is associated with poverty. Poverty eradication programs are mainly a result of the growing disparity between the wealthy and the poor. The development process should include people experiencing poverty and those in need. Policies that are favorable to people with low incomes and inclusive must be designed and implemented with strong political will[9].
- Educating and raising awareness: Educating individuals, particularly company owners and employers. Discuss the impact of child labour on children's mental and physical health and how it can damage their future. Inform them about the laws and the consequences as well.
- Cooperation by community: There is a need to increase public awareness of the importance of community action to support school enrolment to reduce child labour. Schooling fosters a kid's cognitive, emotional, and social growth, and child labor frequently harms schooling. We must create an environment in which the community refuses to accept child labour in any form. Raising awareness among disadvantaged parents is vital for them to become willing to make the sacrifices required to ensure that their children obtain an education.

7.5 **Child Abuse**

Child abuse can be described as any act, failure, or neglect by anyone, adult or kid, that severely threatens a child's life and development and results in long-term physical and psycho-social effects on his or her health and well-being. It could be a current or potential situation. Sexual, physical, emotional, or psychological maltreatment or exploitation causes harm to a child's survival, dignity, growth, and socialization. It is a serious and prevalent problem that usually manifests through familiar avenues such as parents, relatives, and caretakers.

Child abuse is a global problem that has long been ignored and undervalued in all its manifestations and expressions. It is also quite common in India, deeply ingrained in social, economic, and cultural practices. Various governments and nongovernmental organizations have tackled the issue, but it has yet to gain widespread acceptance among the general public. Its denial is as visible as its actuality.
Child abuse can occur in households, schools, foster care institutions, playgrounds, workplaces, and even online via social networking sites. Its effects are often long-lasting and impede the child's growth, rendering the child unproductive as a national asset.

It is, therefore, necessary to take an integrated approach to the study of Child Abuse and its impact on the lives of children, analyzing current statistics of abuse in the country, outlining various constitutional and legal provisions for children, illuminating multiple policies and programs implemented by the government, and finally addressing reformative measures that can be taken to provide a better future for the next generation[10].

7.5.1 Types of Child Abuse:

- Physical Child Abuse: Physical child abuse usually results from a confrontation or encounter under the direction of a parent or another person in a position of power or authority. The resulting injuries are deemed abuse regardless of whether the activity was intended to inflict harm. The physical consequences of abuse or neglect can range from mild (bruises or cuts) to severe (broken bones, haemorrhage, death). Specific injuries, such as rib fractures or femoral fractures in newborns who are not yet walking, may raise suspicions of child physical abuse, even though such injuries are only observed in a small percentage of children who are physically abused.

[9] "Child Labour Laws in India." Ipleaders.in, 16 Aug. 2022, https://blog.ipleaders.in/laws-related-child-labour-india/#:~:text=The%20Factories%20Act%20of%201948,14%20years%20in%20any%20factory.

[10] "Child Abuse in India – An Analysis. "https://indiathink.org/Child-Abuse-in-India-An-Analysis-by-Amisha-u-Pathak.pdf

- Emotional Child Abuse: Emotional abuse is frequently recognized as a pattern of behavior that interferes with the child's emotional development, which makes it extremely difficult to prove. The absence of proof in cases of child emotional abuse is a crucial obstacle to the current Child Protection System. Emotional abuse is virtually always present when other types of abuse are detected in a child. Physical and mental abuse have similar emotional impacts on children and have been connected to childhood unhappiness, low self-compassion, and negative habitual thoughts. According to some studies, excessive stress levels from child maltreatment may create anatomical and functional alterations inside the brain, resulting in emotional and social abnormalities. Children who have been abused may grow up with insecurities, low self-esteem, and a lack of growth. Many abused children struggle with trust, social disengagement, academic challenges, and building relationships.
- Sexual Child Abuse: The World Health Organisation defines child sexual abuse as the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent, or for which the child is not fully developed and cannot give consent, or that violates societal laws or social taboos[11].
- Neglect: This is an abuse in which a child is denied proper food, clothes, housing, oversight, healthcare, and education. Neglect also causes damage to children, although it is more about being inactive and not doing anything than the primary sorts of abuse, which are more active.

7.6 **Child Abuse Laws in India:**

- Article 14 of the Indian Constitution guarantees that every citizen - man, woman, and child - is equal before the law.
- Article 15 of the Constitution prohibits discrimination and allows the state to establish particular arrangements for women and children.
- Article 21A requires the state to provide free and compulsory education to children aged 6 to 14.
- Article 23 prohibits human trafficking and forced labour.
- Article 24 prohibits child labour and the employment of children under the age of 14 in factories, mines, or other hazardous work environments.
- Article 39(e) of the constitution requires the state to ensure that workers' health and strength and the young age of children are not mistreated.
- Article 39(f) of the constitution requires the state to provide children with opportunities and facilities for healthy development. It directs the state to ensure that children grow up in a free and respectable environment and that their childhood and youth are safeguarded from exploitation against moral and material abandonment.
- Article 45 of the constitution states that the state is responsible for providing early childhood care and education to all children until they reach the age of six.
- Article 51A-(k) of the constitution establishes a fundamental duty of citizens, directing parents or guardians to offer educational opportunities for their child/ward between the ages of 6 and 14 years.
- The Protection of Child Rights Act of 2005 established the National Commission for the Protection of Child Rights in 2007. The National Commission for Protection of Child Rights (NCPCR) is an authorized organization that works under the Ministry of Women and Child Development, Government of India, and is the primary organization responsible for preserving children's rights, raising awareness about child abuse in all forms, and providing children with proper redressal and rehabilitation in cases of infringement of their rights.

[11] "Child Sexual Abuse In India." https://www.childlineindia.org/a/issues/sexual-abuse

- The Protection of Children from Sexual Offences Act of 2012 was enacted as a special law designed to tackle incidents of child abuse, sexual assault, sexual harassment, and other similar offenses. The act calls for forming special courts to first put children's needs and interests first. It also aims to establish child-friendly processes for investigating crimes. The POCSO Cell was established to monitor the NCPCR's implementation of the Protection of Children from Sexual Offences Act 2012.

7.6.1 National policies and programs pertaining to child abuse:

- National Policy for Children 1974
- National Policy on Education 1986
- National Policy on Child Labour 1987
- National Charter for Children 2003
- National Plan of Action for Children 2005

7.7 **Reforms required to stop Child Abuse in India:**

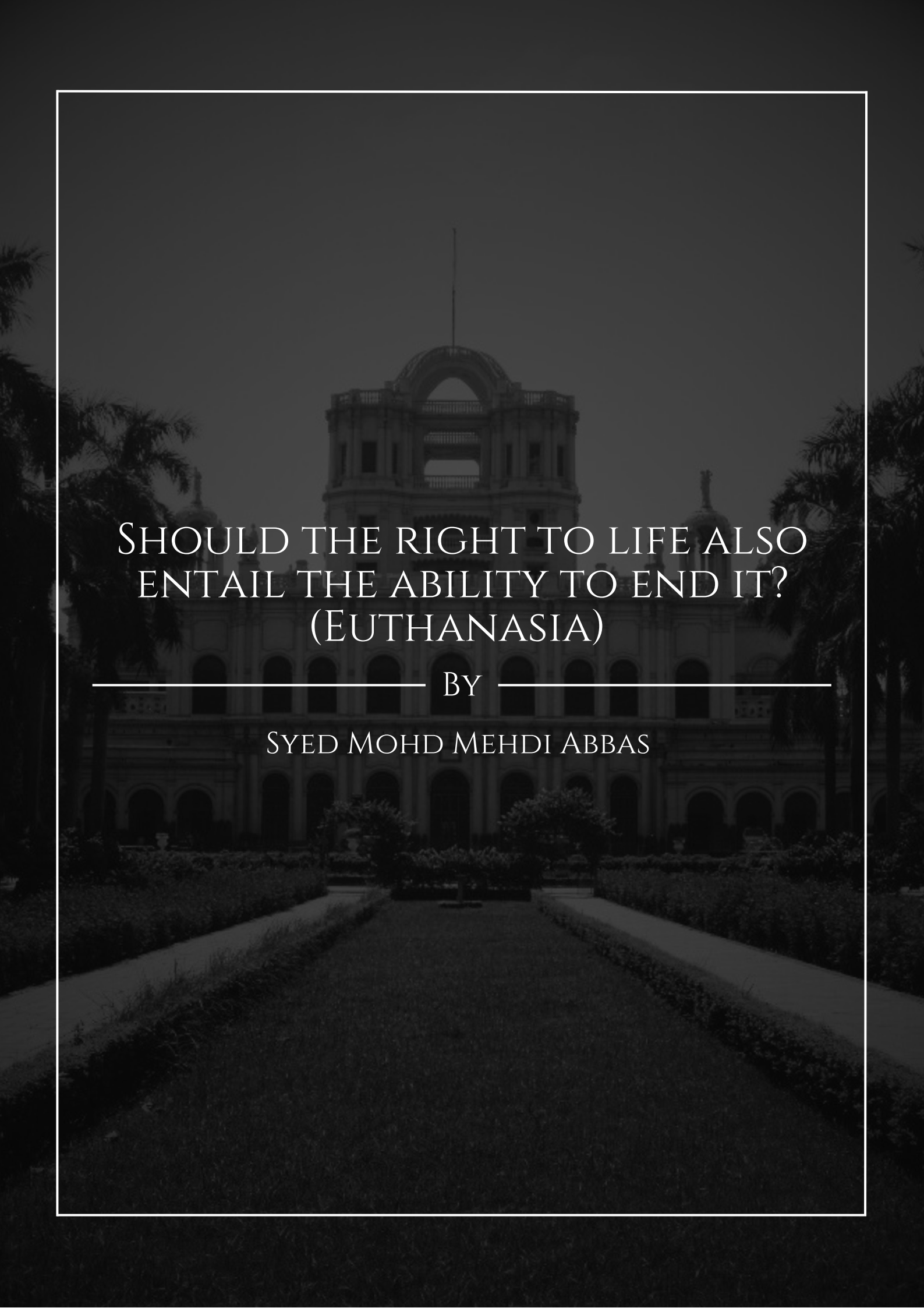
Child abuse is a serious issue with many long-term consequences for victims. It is harmful to the individual, society, the economy, and the nation as a whole. As a result, many actions must be taken in the direction of reforms and prevention in the existing legal and social infrastructure.

- Poverty Eradication: Governments should make efforts to improve the economic situation of families, as poverty has been identified as one of the critical causes of child abuse.
- Policies should be enforced more strictly: The laws prohibiting child labour should be sufficiently enforced. Institutions such as the NCPCR should broaden their reach and strive towards policy implementation at the bottom level.
- Educating and raising awareness: Governmental and non-governmental groups, including educational institutions, should conduct larger-scale educational events and seminars. The government should establish student organizations in both private and public schools to raise awareness of child abuse, government regulations, and the POCSO Act 2012. Vigilant parents can teach their children self-protective techniques, such as distinguishing between good and bad touch and emergency procedures in cases of abuse[12].

7.7 **Conclusion and Suggestions: -**

India can combat child labour and child abuse if awareness regarding the adverse effects of child labour and child abuse is pushed throughout the country and stringent enforcement of current laws is carried out. People need to comprehend that child abuse exists and may occur anywhere. Citizens must become more aware of their rights and less oblivious to the abuse around them. Every individual has to acknowledge the importance of children growing and learning, as they are the ones who will create the nation's future.

[12] "Child Abuse in India – An Analysis."
https://indiathink.org/Child-Abuse-in-India-An-Analysis-by-Amisha-u-Pathak.pdf



Should the right to life also entail the ability to end it? (Euthanasia)

By

Syed Mohd Mehdi Abbas

8.1. **Introduction: -**

Euthanasia, or the act of intentionally ending a person's life to relieve their pain and suffering, is a highly controversial topic around the world. In India, the debate on euthanasia is particularly complex, as it involves not only legal and medical considerations but also cultural, religious, and ethical issues. One of the main questions that arise in this debate is whether the right to life also entails the ability to end it. This article aims to explore this question in the Indian context, by examining the relevant provisions of the Constitution of India and the legal precedents set by the Indian judiciary.

8.2. **History Of Article 21: -**

Article 21 of the Constitution of India guarantees the right to life and personal liberty to every citizen of India. The history of Article 21 can be traced back to the drafting of the Constitution by the Constituent Assembly of India between 1946 and 1949.

The concept of the right to life and personal liberty was not new to India and had been enshrined in various legal and religious texts over the centuries. The Constituent Assembly of India recognized the importance of this right and included it as a fundamental right in the Constitution[1].

During the debates in the Constituent Assembly, there were differing views on the scope and content of the right to life and personal liberty. Some members argued that it should be limited to protection against arbitrary deprivation of life or personal liberty by the state, while others felt that it should encompass a broader range of rights, including the right to live with dignity, the right to privacy, and the right to a clean environment.

Ultimately, the Constituent Assembly decided to include a wide range of freedoms under the right to life and personal liberty, which have since been interpreted and expanded by the Indian judiciary in numerous landmark judgments.

Over the years, Article 21 has become one of the most important and widely invoked provisions of the Indian Constitution. It has been used to protect the rights of individuals against a range of state actions, including arbitrary arrests, custodial violence, and the denial of necessities such as food, water, and healthcare.

8.3. **The Psychological Perspective of Euthanasia: -**

Euthanasia is a complex issue with various ethical, legal, and moral considerations. From a mental aspect, euthanasia involves assessing the mental state of the patient, including their capacity to make an informed decision about their end-of-life care.

One of the key concerns in euthanasia is ensuring that the patient is making a voluntary and well-informed decision to end their life. This requires a thorough evaluation of the patient's mental state, including their ability to understand their medical condition, the nature of the proposed treatment or palliative care, and the consequences of their decision. The mental health evaluation should also assess whether the patient is under any undue influence or pressure from family members or healthcare professionals[2].

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[1] History of Article 21
https://indiankanoon.org/doc/1199182/

[2] Arguments for and against euthanasia
https://www.bbc.co.uk/bitesize/guides/zhbqf4j/revision/8

It is essential to consider the patient's mental health history, including any diagnoses of depression, anxiety, or other mental health conditions that could impact their decision-making capacity. If the patient is found to have a mental health condition that impairs their ability to make informed decisions, then the patient may not be considered a suitable candidate for euthanasia. Furthermore, it is crucial to ensure that the patient is not experiencing any undue emotional distress or coercion that may influence their decision to opt for euthanasia. This involves providing comprehensive counselling and support services to the patient and their family members to ensure that they have a clear understanding of the implications of their decision. In conclusion, the mental aspect of euthanasia is a critical consideration that requires a thorough evaluation of the patient's decision-making capacity, mental health history, and emotional well-being. It is essential to ensure that the patient is making a voluntary and well-informed decision that is free from any undue influence or coercion[3].

8.4. **Significance Of Euthanasia in India: -**

Euthanasia is a controversial topic in India, and it has been the subject of debate and discussion for many years. Currently, active euthanasia or physician-assisted suicide is illegal in India, and passive euthanasia is legal in certain circumstances.

The significance of euthanasia in India lies in the ethical and moral questions it raises. Proponents of euthanasia argue that it is a compassionate way to end the suffering of terminally ill patients who have no hope of recovery. They also argue that it is a way to respect the autonomy and dignity of the patient, who should have the right to decide when and how to end their own life[4].

Opponents of euthanasia, on the other hand, argue that it is morally wrong to take a life, even if the person is suffering. They also argue that there is a risk of abuse and that vulnerable individuals, such as the elderly or disabled, may be coerced into choosing euthanasia.

The significance of euthanasia in India is also related to the legal and constitutional issues it raises. The right to life and the right to die with dignity are fundamental rights protected by the Indian Constitution, and the debate over euthanasia centres on how to balance these rights with other considerations, such as the sanctity of life and the duty of the state to protect its citizens[5].

In 2018, the Supreme Court of India upheld the legality of passive euthanasia in a landmark judgement, allowing patients with incurable diseases to refuse medical treatment or have it withdrawn. The court also laid down guidelines and safeguards to ensure that the decision to end life is taken with full knowledge and understanding of the consequences and is not the result of coercion or pressure from others.

In conclusion, the significance of euthanasia in India lies in the ethical, moral, legal, and constitutional questions it raises. While the debate continues, the Supreme Court's judgment has provided clarity and guidance on the issue of passive euthanasia, and it remains to be seen if the law will evolve to allow active euthanasia or physician-assisted suicide in the future.

8.5. The Right to Life and Personal Liberty: -
Article 21 of the Constitution of India guarantees the right to life and personal liberty to every citizen of India. This right has been interpreted by the Indian judiciary to encompass a wide range of

[3] Mental aspect of euthanasia
https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8857436/

[4] Significance of Euthanasia in India, Raveena Singh, THE TIMES OF INDIA
https://timesofindia.indiatimes.com/readersblog/evileditor/euthanasia-5296/

[5] Legal status of Euthanasia in India
https://www.thehindu.com/news/national/euthanasia-and-beyond-on-the-supreme-courts-verdict/article56832689.ece

freedoms, including the right to live with dignity, the right to privacy, the right to health, and the right to a clean environment. The right to life is considered to be a fundamental right, which cannot be taken away by the state except by the procedure established by law.
The question of whether the right to life also entails the ability to end it is a difficult one to answer. On the one hand, the right to life implies that every individual has the right to live and to be protected from harm or injury. On the other hand, the right to life also implies that an individual has the right to choose how they want to live their life, and whether they want to continue living at all.

8.6. **The Aruna Shanbaug Judgment: -**

The debate on euthanasia in India was given a significant impetus by the landmark judgement of the Supreme Court in the Aruna Shanbaug case in 2011. Aruna Shanbaug was a nurse who had been in a vegetative state for over 30 years after being raped and strangled by a ward boy in the hospital where she worked. In 2009, a petition was filed in the Supreme Court seeking permission to withdraw her life support and allow her to die peacefully[6].

In its judgement, the Supreme Court held that passive euthanasia, or the withdrawal of life support, could be allowed in exceptional cases, where the patient was terminally ill or in a permanent vegetative state with no hope of recovery. The Court laid down detailed guidelines for the implementation of passive euthanasia, including the need for the formation of a medical board to examine the patient's condition, the requirement of informed consent from the patient or their close relative, and the need for judicial oversight.

The Aruna Shanbaug judgement was a significant milestone in the evolution of the law on euthanasia in India. It recognized the right of a patient to die with dignity and respect and provided a legal framework for the implementation of passive euthanasia. However, the judgement did not address the issue of active euthanasia, or the administration of a lethal substance to end a patient's life.

8.7. **Active Euthanasia and the Law**

Active euthanasia, which involves the deliberate administration of a lethal substance to end a patient's life, is currently illegal in India. Section 302 of the Indian Penal Code makes the act of intentionally causing someone's death a criminal offence, punishable with imprisonment or even the death penalty in some cases. However, there have been several instances of doctors or family members providing lethal injections to terminally ill patients, either out of compassion or at the patient's request[7].
The legality of active euthanasia in India remains a contentious issue. Supporters of active euthanasia argue that it provides a humane way of ending the suffering of terminally ill patients, who may be in constant pain and have no hope of recovery. They point out that active euthanasia is already legal in several countries around the world, including Belgium, the Netherlands, and Switzerland, and that India should follow suit.
Opponents of active euthanasia, on the other hand, argue that it violates the sanctity of life and undermines the medical profession's commitment to saving and preserving life. They also point out that there is a risk of abuse and coercion in the administration of euthanasia, especially in cases where the patient is not able to give informed consent[8].

[6] Aruna Ramchandra Shanbaug vs Union Of India & Ors on 7 March, 2011
https://indiankanoon.org/doc/235821/

[7] All you need to know about active euthanasia, Ansruta Debnath, Ipleaders.com
https://blog.ipleaders.in/all-you-need-to-know-about-active-euthanasia/

[8] Types of Euthanasia
https://www.verywellhealth.com/what-is-euthanasia-1132209

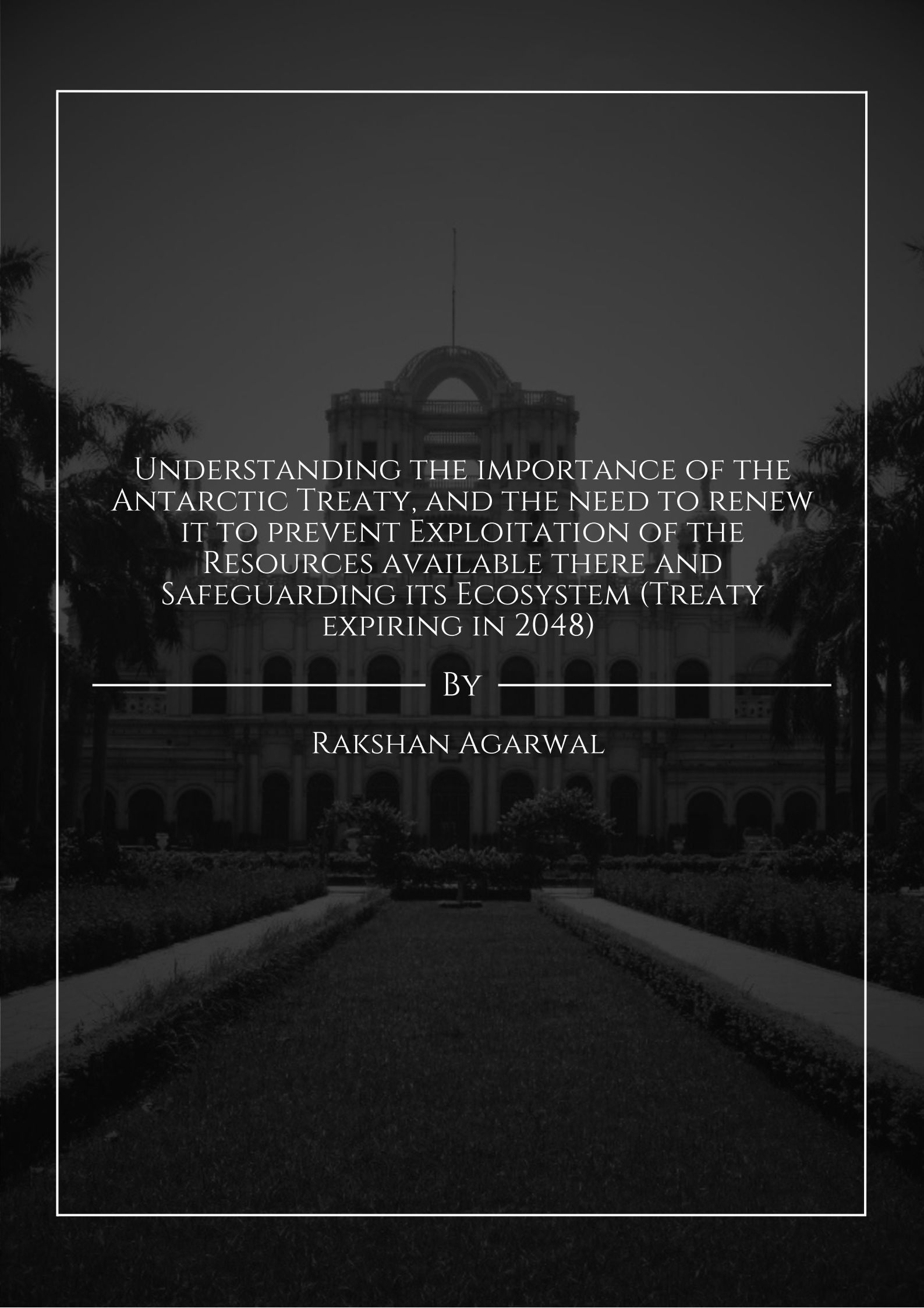
8.8. **The Draft Bill on Passive Euthanasia:-**

In 2016, the Ministry of Health and Family Welfare introduced the Draft Bill on Passive Euthanasia, which sought to provide a legal framework for the implementation of passive euthanasia in India. The Bill defined passive euthanasia as the withdrawal of life support and laid down detailed guidelines for the procedure to be followed. It also provided for the establishment of a National Euthanasia Committee to oversee the implementation of the law.
However, the Bill faced opposition from several quarters, including religious and ethnic groups, and was never passed into law. The debate on euthanasia in India remains unresolved, with proponents and opponents of euthanasia continuing to put forth their arguments[9].

8.9. **Conclusion and Suggestions:-**

The debate on euthanasia in India is complex and multifaceted, involving legal, medical, cultural, religious, and ethical considerations. The question of whether the right to life also entails the ability to end it is a difficult one to answer and requires a careful balancing of individual freedom and social responsibility. While the Supreme Court's judgement in the Aruna Shanbaug case recognized the right of a patient to die with dignity and provided a legal framework for the implementation of passive euthanasia, the issue of active euthanasia remains a contentious one. The Draft Bill on Passive Euthanasia introduced by the Ministry of Health and Family Welfare in 2016 was a step in the right direction, but its failure to become law highlights the need for a more robust and inclusive debate on the issue. In any case, any euthanasia decision should be guided by a deep sense of compassion, respect for human dignity, and a commitment to the principles of justice and fairness.

[9] Draft Bill by Centre Government on Passive Euthanasia
https://main.mohfw.gov.in/sites/default/files/2888343201462535027.pdf



Understanding the importance of the Antarctic Treaty, and the need to renew it to prevent Exploitation of the Resources available there and Safeguarding its Ecosystem (Treaty expiring in 2048)

By

Rakshan Agarwal

9.1. **Introduction: -**

The idea that a region such as the Arctic existed in the Southern Part of the Earth was first proposed by Greek Philosophers, who knew about the Arctic from various expeditions and voyages. They named the Arctic region after the constellation (The Great Bear) and called it 'Arktos'. Thus, Antarctica was named as 'Ant-Arktos', meaning 'opposite the bear'. The continent started to appear on world maps throughout the world, starting with Abraham Ortelius, who labelled it as "Terra Australis[1]".

The Atlantic Continent was first approached by Some very renowned European explorers, such as Ferdinand Magellan, and James Cook[2], however, who was the first person to sight the frozen continent is still controversial. Europeans then started to send expeditions, in the late 18th century, for the purpose of exploring the southernmost regions of the Earth, mainly for 2 major reasons: to make profits from carrying out commercial activity in those regions and to chart magnetic contours. The Britishers, along with the Americans, New Zealanders, French, and Australians, almost drove the fur seal, a native animal of the Antarctic Region, to extinction through their excessive hunting[3].

In the early 1900s, several countries had become quite invested in exploring the polar regions of the earth, to further their national interests, acquire more territory, and conduct scientific research in such places. During the First and Second World Wars, countries such as the U.S.A., Japan, U.S.S.R., Sweden, Belgium, Germany, etc. continued to lay territorial claims to different parts of Antarctica, not considering the fact that those parts had already been claimed by their exploratory parties. After the occupation of Adélie Land by the French[4], the Americans demanded for retaliatory actions, which resulted in the official position of the U.S.A. being announced by the Secretary of State, Charles Evans Hughes, in 1924:

"It is the opinion of this Department that the discovery of lands unknown to civilization, even when coupled with a formal taking of possession, does not support a valid claim of sovereignty, unless the discovery is followed by an actual settlement of the discovered country[5]*."*

The occurrence of World War II led to further conflict of interests, with Argentina and Chile increasing their activities to imply their ownership of different territories, and other countries building research stations to do the same. Even military violence occurred in the Antarctic Region on two occasions, both of which involved the countries of the United Kingdom, and Argentina[6]. During the 1950s, many nations had started to further their interests in Antarctica, some for commercial and scientific purposes, while mostly did it to further their political purposes and to strengthen their power and economic position on the world stage.

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[1] COOL ANTARCTICA
https://www.coolantarctica.com/Antarctica%20fact%20file/History/discovery-of-antarctica.php

[2] A. Grenfell Price, Captain James Cook's Discovery of the Antarctic Continent?, JSTOR
https://www.jstor.org/stable/213110#:~:text=James%20Cook%2C%20that%20he%20had,Islands)%20southeast%20of%20Cape%20Horn.

[3] BRITANNICA
https://www.britannica.com/place/Antarctica/Discovery-of-the-Antarctic-poles

[4] BRITANNICA
https://www.britannica.com/place/Adelie-Coast

[5] NATIONAL SCIENCE FOUNDATION (NSF)
https://www.nsf.gov/geo/opp/antarct/usaphist.jsp

[6] INTERNATIONAL COURT OF JUSTICE
https://www.icj-cij.org/case/26#:~:text=OVERVIEW%20OF%20THE%20CASE,and%20islands%20in%20the%20Antarctic

9.2. **International Geophysical Year and its Importance: -**

The International Council of Scientific Unions, now known as the International Science Council (ISC)[7], held the International Geophysical Year in 1957-58 to monitor and study various geophysical phenomena happening in the Antarctic Region. A total number of 12 countries participated in this program, some of which were Argentina, Chile, France, Japan, New Zealand, Norway, the United Kingdom, the USA, and the U.S.S.R.

The International Geophysical Year proved to be a very successful project, and it demonstrated that the countries were capable of working and cooperating with one another, thus, the Antarctic Treaty was formulated in 1959[8].

9.2.1 The Signing of The Antarctic Treaty and Its Objective -

After numerous countries realized that they could benefit the whole mankind by conducting peaceful scientific research on the Antarctic Region, they signed the Antarctic Treaty on 1st December, 1959 in Washington, D.C. The countries which were a party to this were 12 in total, namely - Argentina, Australia, Belgium, France, Japan, New Zealand, Chile, the United Kingdom, the U.S.A., South Africa, U.S.S.R., and Norway[9]. Although it is very short and concise, this treaty is very effective in maintaining peace and stability amongst its signatories. The treaty was ratified by the above-mentioned countries, and finally came into effect on 23rd June, 1961.
The objectives which this treaty seeks to attain are as follows -

- To demilitarise Antarctica
- To establish it as a zone free of any radioactive waste or nuclear tests
- To promote international scientific cooperation in Antarctica
- To set aside disputes related to territorial sovereignty

9.3. **Current Member Nations, Meetings, and other procedures: -**

After its signing in 1961, many more nations have come together and signed this treaty, including Brazil, Bulgaria, China, Czech Republic, Germany, India, Italy, Netherlands, Sweden, Ukraine, Austria, Belarus, Canada, Colombia, Pakistan, Papua New Guinea, Portugal, Romania, Switzerland, Turkey, and Venezuela.
Currently, there are 50 member nations of this treaty, and a meeting is almost held annually, however, since 1993, the number of these meetings has significantly increased. These 50 member nations represent about 2/3rd's of the World's total population. In these meetings, the operation and functions of this treaty are deliberated upon, and after their ratification, these decisions become binding upon the member nations. The 300 recommendations made during these meetings, along with the separate negotiated international agreements in force and the original terms of the treaty, provide for the rules governing all the activities in Antarctica, and they are collectively known as the 'Antarctic Treaty System' (ATS)[10]. Three negotiated international agreements are still in use, which are -

- Convention for the Conservation of Antarctic Seals (1972)
- Convention on the Conservation of Antarctic Marine Living Resources (1980)
- Protocol on Environmental Protection to the Antarctic Treaty (1991)

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[7] BRITANNICA
https://www.britannica.com/place/Antarctica/IGY-and-the-Antarctic-Treaty

[8] AUSTRALIAN ANTARCTIC PROGRAM
https://www.antarctica.gov.au/about-antarctica/history/exploration-and-expeditions/international-cooperation/

[9] NATIONAL SCIENCE FOUNDATION
https://www.nsf.gov/geo/opp/antarct/anttrty.jsp

[10] SCIENTIFIC COMMITTEE ON ANTARCTIC RESEARCH (SCAR)
https://www.scar.org/policy/antarctic-treaty-system/#:~:text=The%20Antarctic%20Treaty%20System%20is,Geophysical%20Year%20of%201957%2D58.

9.4. **Articles of the Treaty: -**

A number of 14 articles are laid down under this treaty, which have been agreed to by its member nations[11]. These articles are as follows -

ARTICLE I: Use for Peaceful Purposes

The continent of Antarctica shall be used for peaceful purposes only, and any kind of military activity, such as the testing of any weapon, establishment of military bases and fortifications, is strictly prohibited. However, the use of military personnel or equipment for research or other scientific or peaceful purposes shall be allowed.

ARTICLE II: Freedom of Scientific Investigation

The freedom of scientific investigation shall be allowed up to that extent which prevailed during the International Geophysical Year (IGY), though subjected to the current terms of the treaty.

ARTICLE III: International Scientific Cooperation

The parties to the treaty agree that, to the greatest extent feasible :

1. Information regarding the scientific programs in Antarctica will be exchanged to allow make the operations economical and efficient
2. Scientific personnel may be exchanged in Antarctica
3. Scientific results and observations shall be exchanged and made freely available.

Efforts will also be made to establish cooperative working relations with international agencies such as the 'United Nations', who may have a scientific or technical interest in Antarctica

ARTICLE IV: Territorial Sovereignty [12]

None of the terms in the current treaty shall be interpreted as -

1. A renunciation of previously asserted rights or claims to territorial sovereignty
2. A renunciation of any basis of claim to territorial sovereignty , which it may have as a result of its activities or the presence of its nationals
3. Prejudicing the position of a party in regard with the recognition or non-recognition of any other States

No new claim regarding the territorial sovereignty shall be made, or any previous claim may be enlarged, until the present treaty is in force.

ARTICLE V: Nuclear Activity

No Nuclear explosions shall occur in Antarctica, and the dumping of any kind of radioactive waste material shall also be prohibited.

ARTICLE VI: Geographical Coverage

The provisions of the present Treaty shall apply to the area south of 60° South Latitude, including all the ice shelves, however, any term of the present treaty shall not affect the rights of any State, in regard with the high seas within that area.

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[11] The Antarctic Treaty, Documents (ATSQ)
https://documents.ats.aq/keydocs/vol_1/vol1_2_AT_Antarctic_Treaty_e.pdf

[12] Martin Rydlo, *The Question of Territorial Sovereignty in Antarctica,* 2, 4 (2020)
http://www.munish.nl/pages/downloader?code=ga401&comcode=ga4&year=2020

ARTICLE VII: Inspections

The countries listed under Article IX shall have the authority to assign 'Observers' who may carry out any inspection, in order to promote the objectives and ensure the observance of the provisions of the present treaty.

Each observer appointed shall have the freedom to access any area of Antarctica at any time. These areas may include research stations, equipment, cargoes, or even personnel. These countries shall also have the authority to carry out aerial inspections of any area at any time. Each party will also be required to produce all information in advance in front of the other countries, which is regarding the expeditions being organised by it, the stations inhabited by its nationals, and military equipment or personnels being introduced into Antarctica.

ARTICLE VIII: Jurisdiction

The observers appointed as per the Paragraph 1 of Article VII and the scientific personnel exchanged under the Point (b) under Article III , along with any person(s) accompanying them, shall solely be subjected to the jurisdiction of the Contracting Party to which they belong.

In case of any dispute related to the jurisdiction to be exercised, the concerned parties will be required to immediately consult each other to reach a mutually acceptable solution.

ARTICLE IX: Treaty Meetings

The Contracting Parties, mentioned in the Preamble of the Treaty[13], shall meet at suitable times and places, for the purpose of interacting with each other and exchanging information, which are of common interests, and recommending further measures for more effective implementation of the objectives of the treaty.

Each Contracting Party, which has become a party to the current treaty by accession, has the right to appoint representatives to participate in the meetings, when that party shows its interests in conducting further research in Antarctica, such as the establishment of a new research station. Reports from the observers shall be transferred to these representatives in such meetings.
The measures mentioned in the Paragraph 1 of this article shall only be implemented when all the representatives of the Contracting Parties entitled to be present in such a meeting agree to those measures.

ARTICLE X: Activities contrary to the Treaty

Each of the Contracting Party has undertaken to exert all appropriate efforts, to the end that no activity done in the continent of Antarctica is contrary to the objectives and purposes of this treaty.

ARTICLE XI: Disputes between Parties

If any dispute arises between the Contracting Parties, they shall try to resolve the issue with any peaceful method, such as negotiation, conciliation, arbitration, mediation, judicial settlement etc.

[13] BRITISH ANTARCTIC SURVEY
https://www.bas.ac.uk/about/antarctica/the-antarctic-treaty/the-antarctic-treaty-1959/

If any such dispute remains unresolved, the matter shall then be taken to the International Court of Justice for its settlement.

ARTICLE XII: Modification and Duration

The present treaty can be amended or modified at any time, upon the unanimous agreement of all the Contracting Parties. This shall enter into force when all the parties have ratified it, and sent a notice to the depository Government. The treaty shall be up for review after 30 years from the date the treaty came into force.

ARTICLE XIII: Ratification and Entry into Force

The present treaty shall be up for ratification by the signatory states. The instruments of ratification and accession shall be deposited with the Government of the U.S.A., hereby designated as the 'Depository Government.' When this has been done, the present treaty shall then be enforced in these signatory states, along with those states who have submitted the instruments of accession.

ARTICLE XIV: Deposition

The present treaty, written in languages of English, French, Russian and Spanish, shall be deposited in the archives of the U.S.A., which shall then transmit duly certified copies to the Governments of the Signatory and Acceding States.

9.5. **Understanding the terms of the treaty, and how it prevents the exploitation of the resources available in Antarctica: -**

Antarctica is the most unique one out of the seven continents, and this is perhaps due to the fact that it is the only continent in the world which did not have a native human population[14], which enabled the natural resources deposited there to not be exploited for personal gains.

To prevent such exploitation, the Antarctic Treaty has created a number of specialized bodies, which assist it in fulfilling its objectives, such as the Scientific Committee on Antarctic Research (SCAR) and the Council of Managers of National Antarctic Programs (COMNAP). The Consultative Meetings also invite experts from the International Union for the Conservation of Nature, the United Nations Environment Program, and the Antarctic and Southern Ocean Coalition to receive their invaluable input.

As mentioned earlier, one of the main reasons for discovering Antarctica was to gain from it economically. Over the past few years, researchers have not found any conclusive proof of the minerals being present in Antarctica, but have suggested so based on the geological similarities it shares with mineral-rich provinces of South America, South Africa, and Australia[15]. These regions contain valuable metallic minerals such as gold, copper, and platinum, thus, it is estimated that these metals are present in abundance in Antarctica. However, deposits of antimony, chromium, copper, gold, lead, molybdenum, tin, uranium, and zinc have been found in such low quantities, that it has not been able to attract the attention of the countries wishing to exploit them, and one of the major reasons for this is the huge costs involved in polar operations. Some traces of oil, coal, and natural gas have also been discovered there.

[14] Diane Boudreau, Melissa McDaniel, Erin Sprout, Andrew Turgeon, *Antarctica,* NATIONAL GEOGRAPHIC - EDUCATION
https://education.nationalgeographic.org/resource/antarctica/

[15] N. A. Wright and P. L. Williams, Mineral Resource of Antarctica, GEOLOGICAL SURVEY CIRCULAR 705, 1, 3 (1975)
https://pubs.usgs.gov/circ/1974/0705/report.pdf

However, since 1976, the Antarctic Treaty has been preventing any kind of mining from happening on the Antarctic soil, as it is considered that such activities can seriously disturb the ecological balance, and thus cause huge environmental damage.

9.6. **Protection of the Environment and the Native Animals: -**

The Environmental Protocol, also known as the Madrid Protocol or The Protocol on Environmental Protection to the Antarctic Treaty, was agreed in 1991, and once it was ratified by 26 countries, it came into force in 1998.

Its significance is that it not only bans any mining activity to exploit the natural resources, but also conserves Antarctica's natural flora and fauna, with fishing happening under the regulations imposed by CCAMLR (The Commission for the Conservation of Antarctic Marine Living Resources, or Convention on the Conservation of Antarctic Marine Living Resources). This was immensely necessary to preserve the biodiversity of the frozen continent, as many activities are done by the explorers in the 1900s that led to the near extinction of animal species, such as the toothfish (Antarctic Cod), Fur Seals, Elephant Seals, Antarctic Krills, etc. Numerous measures have been taken to preserve such endangered species, such as the creation of Antarctic Specially Protected Areas (ASPAs) and Antarctic Specially Managed Areas (ASMAs), which have been effective till now in fulfilling its objectives.

9.6. **Conclusion and Suggestions: -**

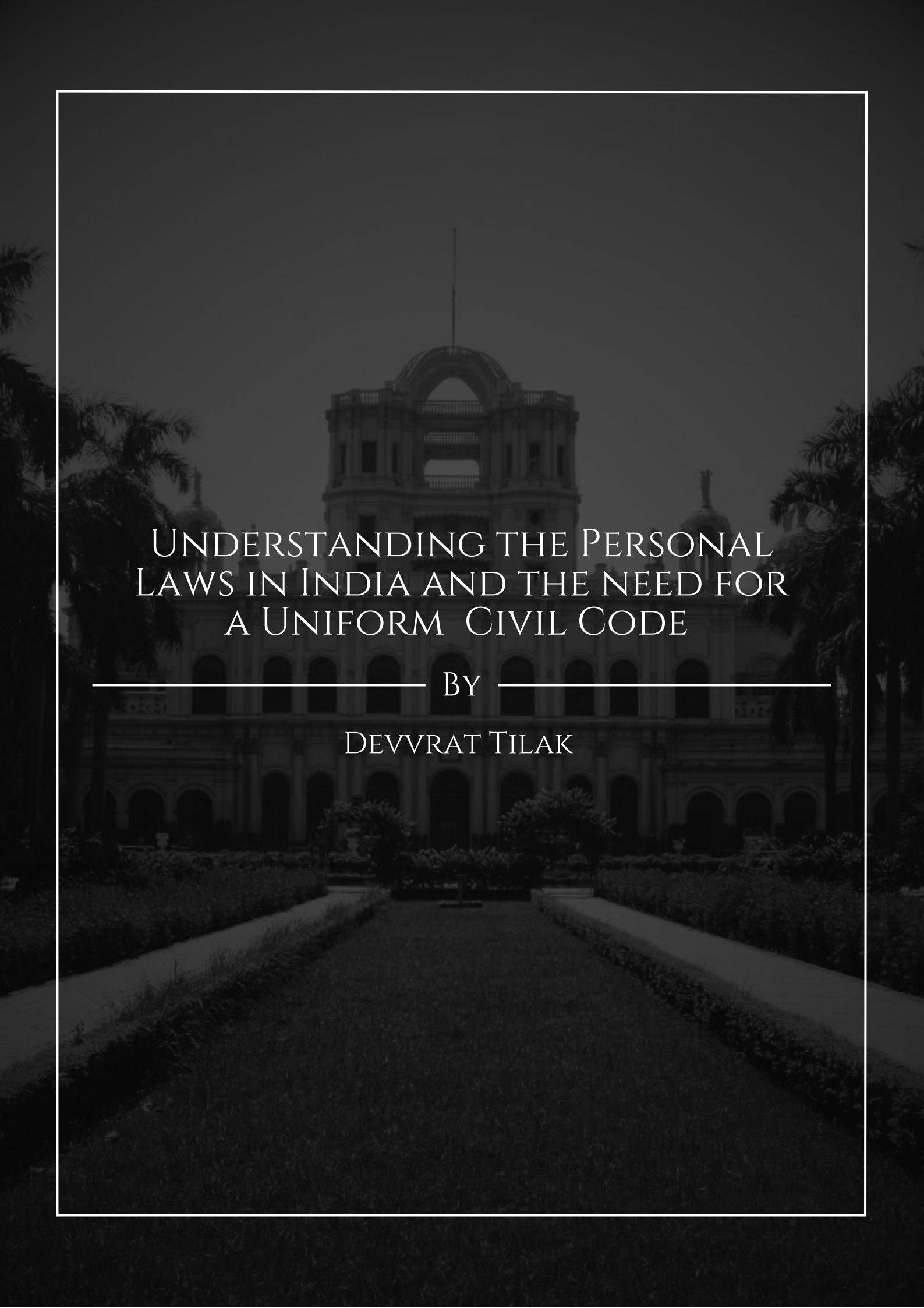
Although many people question the efficacy of the regulations imposed by the Antarctic Treaty, it has to be renewed in 2048, after its expiration.

There are numerous reasons to support the above statement:

- In the absence of the Treaty, the countries can start mining activities to strip off the mineral resources present there.
- Commercial Fishing could grow up to such an extent which would lead to several species of marine animals becoming extinct.
- The human population could significantly increase in Antarctica, leading to several climatic changes there, and also polluting it with hazardous materials such as plastic.
- No country has been able to claim territorial sovereignty over any part of the continent, due to the legal provisions created by the treaty. In the future, countries will start arguing amongst themselves about the same, which could lead to a full-fledged war.

Several provisions need to be updated[16], as the era in which the treaty was negotiated was significantly different from the world we today live in. Some countries may ask for increased participation, while some may want to start mining, but the main purpose of this treaty must not be forgotten when it is being renewed, which is that the continent of Antarctica is only to be used for 'peaceful scientific purposes', devoted towards the benefit of the whole human race.

[16] Donald Rothwell, The Antarctic Treaty is turning 60 years old. In a changed world, is it still fit for purpose?, DOWN TO EARTH
https://www.downtoearth.org.in/blog/climate-change/the-antarctic-treaty-is-turning-60-in-a-changed-world-is-it-still-fit-for-purpose--77606



Understanding the Personal Laws in India and the need for a Uniform Civil Code

By

Devvrat Tilak

10.1. **Introduction: -**

India is a diverse country with a rich history and culture it has multiple personal laws that govern various aspects of an individual's personal life, such as marriage, divorce, adoption, and inheritance. These personal laws are based on the religious beliefs and customs of different communities in India, and they have evolved to reflect the changing social and cultural dynamics of the country. These laws are made for different communities in the country.

10.2. **Current Personal Laws in India: -**

India has separate personal laws for different religious communities, such as Hindu, Muslim, Christian, and Parsi. These laws are based on religious texts and customs, and their interpretation has been controversial and debated. These laws are different for different communities. Let us take a closer look at each of these personal laws[1].

10.2.1 Hindu Personal Law: -

Hindu Personal Law in India governs the personal affairs of Hindus in the country, including marriage, divorce, adoption, and inheritance. It is based on the Hindu scriptures, including the Vedas, the Smritis, and the Puranas. The Hindu personal law comprises various acts such as the Hindu Marriage Act, of 1955[2], the Hindu Succession Act, of 1956[3], and the Hindu Minority and Guardianship Act, of 1956[4]. These laws govern personal matters such as marriage, divorce, succession, and guardianship among Hindus. However, they have been criticized for being patriarchal and discriminatory towards women. For example, the Hindu Marriage Act, 1955 allows for polygamy under certain circumstances and does not provide for equal property rights for women.

10.2.2 Muslim Personal Law: -

Muslim Personal Law in India governs the personal affairs of Muslims in the country, including marriage, divorce, maintenance, and inheritance. It is based on the Islamic Shariah law derived from the Quran and the Hadith. Muslim personal law is governed by the Muslim Personal Law (Shariat) Application Act, 1937[5]. Marriage is considered a contract in Islam religion, and the Muslim Personal Law recognizes the validity of the Nikahnama, which is a marriage contract signed by the bride and groom in the presence of witnesses. The law also recognizes the concept of polygamy, which allows a Muslim man to have multiple wives, subject to certain conditions. However, to do this, the man must obtain the permission of his existing wife/wives and prove that he has the financial resources to support multiple wives. This law governs personal matters such as marriage, divorce, and inheritance among Muslims. However, it has been criticized for being patriarchal and discriminatory towards women. For example, the law allows for triple talaq or instant divorce by the husband.

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[1] Lekshmi Parameswaran, History of Personal Laws in India https://www.google.co.in/url?sa=t&source=web&rct=j&url=https://www.ipf.org.in/encyc/2020/11/13/2_02_27_53_History-of-Personal-Laws-in-India-Papers_1.pdf&ved=2ahUKEwiGrKr8rsrAhWUslYBHXeqDvg4ChAWegQIIBAB&usg=AOvVaw1RoVZRzk8oB-YL_inNJUNa

[2] Hindu Marriage Act, 1955. https://www.indiacode.nic.in/bitstream/123456789/1560/1/A1955-25.pdf

[3] Hindu Succession Act, 1956. https://egazette.nic.in/WriteReadData/1956/E-2173-1956-0038-99150.pdf

[4] Hindu Minority and Guardianship Act, 1956. https://www.indiacode.nic.in/bitstream/123456789/1649/1/195632.pdf

[5] Muslim Personal Law (Shariat) Application Act, 1937. https://www.indiacode.nic.in/bitstream/123456789/2303/1/A1937-26.pdf

10.2.3. Christian Personal Law: -

The Indian Christian Marriage Act, 1872[6] governs personal matters such as marriage and divorce among Christians in India. However, it has been criticized for not providing equal property rights for women. The Christian Personal Law is a combination of the Indian Succession Act, 1925[7], and the Indian Divorce Act, 1869[8]. The Indian Succession Act governs the inheritance of property by Christians, while the Indian Divorce Act deals with the dissolution of marriage among Christians. All in all, the Christian Individual Regulation in India is a significant part of the country's general set of laws, overseeing the individual undertakings of Christians in the country. The law perceives the holy observance of marriage and accommodates the legitimate course of separation, legacy, reception, and upkeep. The law has gone through a few revisions over the course of the years to resolve issues connected with orientation balance and civil rights. Christian personal law also recognizes the concept of adoption and lays down the rules for the adoption of children by Christian parents. It is important to note that these laws are only applicable to Christians in India and not to members of other religions.

10.2.4. Parsi Personal Law: -

Parsi is a minority community in India which follows the Zoroastrian religion. The Parsi Marriage and Divorce Act, 1936[9]governs personal matters such as marriage and divorce among this community in India. The Parsi Marriage and Divorce Act provides for the regulation of Parsi marriages and divorces. It recognizes the concept of monogamy, which means that a Parsi can only have one spouse at a time. The law also provides for the registration of Parsi marriages, which is mandatory for all Parsi couples. However, it has been criticized for being patriarchal and discriminatory towards women. Under the Parsi Personal Law, marriage is considered a sacrament, and the act of marriage is considered to be a religious ceremony. Therefore, the marriage ceremony must be performed by Zoroastrian religious customs and practices. The Parsi personal law also recognizes the concept of adoption, and the Parsi Adoption and Maintenance Act, 1939, lays down the rules and regulations for the adoption of children by Parsi parents. The act also provides for the maintenance and upbringing of the adopted child.

10.3. **Limitations of Personal Laws: -**

The personal laws in India have several limitations, which have been highlighted by various scholars and activists. Firstly, these laws are based on religious texts and customs, which can be patriarchal and discriminatory towards women. For example, the Hindu Marriage Act, 1955 allows for polygamy under certain circumstances, while the Muslim Personal Law (Shariat) Application Act, 1937 allows for triple talaq or instant divorce by the husband. Secondly, personal laws create separate legal systems for different religious communities, which can lead to conflicting interpretations and judgments. This can result in unequal treatment of citizens based on their religion, which goes against the principle of equality enshrined in the Indian Constitution. Personal laws are often outdated and do not reflect the modern realities of society. For example, the Hindu Marriage Act, which was enacted in 1955, does not recognize the concept of live-in relationships, which are becoming increasingly common in India. These laws are also challenged in the courts on several occasions for being inconsistent with the fundamental rights enshrined in the Indian Constitution. Personal laws vary depending on the religion of the individual, which means that it lacks uniformity. This can lead to confusion and injustice, especially in cases where individuals of different religions are involved.

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[6] The Indian Christian Marriage Act, 1872
https://www.indiacode.nic.in/bitstream/123456789/2186/1/a1872-15.pdf

[7] Indian Succession Act, 1925
https://www.indiacode.nic.in/bitstream/123456789/2385/1/a1925-39.pdf

[8] Indian Divorce Act, 1869
https://www.indiacode.nic.in/bitstream/123456789/2280/1/A1869-04.pdf

[9] The Parsi Marriage and Divorce Act,1936.
https://www.indiacode.nic.in/bitstream/123456789/2476/1/a1936 3.pdfhttps://www.indiacode.nic.in/bitstream/123456789/2476/1/a1936 3.pdf

10.4. **Loopholes in Personal Laws: -**

Apart from the limitations mentioned above, there are several other loopholes in the personal laws in India. These loopholes can be exploited by individuals to manipulate the legal system in their favour.

For example, in Muslim Personal Law, the concept of 'Halala' allows a divorced woman to remarry her ex-husband only after marrying another man and getting divorced from him. This concept is often misused by men to manipulate and exploit women. Similarly, in Hindu personal law, the concept of 'Stridhan' or the woman's property has been misused to deny women their rightful share of the property[10].

While personal laws have been formulated to protect the rights of individuals belonging to different religions, they have several limitations that need to be addressed to ensure that they are in line with the principles of equality and justice to address these issues, the Indian government has introduced several reforms to the personal laws. For instance, the Hindu Marriage Act was amended in 1976 to make monogamy compulsory for Hindu men.

The Muslim Women (Protection of Rights on Divorce) Act, 1986[11], was introduced to provide Muslim women with certain rights in divorce cases, such as the right to maintenance but there has been a demand for a uniform civil code in India. It would provide a common set of laws for all citizens regardless of their religion. The idea has been controversial and in debate, with some arguing that it would be a threat to religious freedom, while others argue that it would promote gender equality and secularism.

10.5. **Need for a Uniform Civil Code: -**

The Uniform Civil Code or UCC is a common law which is said to replace personal laws. Unlike the personal laws which are different for different people depending upon the community to which they belong, it is the same for everyone in the country. UCC puts the old practices and customs of the religion aside and makes a fair decision for everyone. Currently, different communities in India are governed by their laws when it comes to marriage, divorce, adoption, inheritance, and other personal matters. However, this system has been criticized for perpetuating inequality and discrimination against certain communities, particularly women. The idea of a Uniform Civil Code was first introduced in the Indian Constitution under Article 44[12], which states that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." However, the implementation of the UCC has been a contentious issue, with some arguing that it goes against the principles of religious freedom and cultural diversity enshrined in the Constitution. The Indian Constitution, in its Directive Principles of State Policy, calls for the implementation of a UCC, but the government is hesitant to take a step towards the implementation of this law. Recently, Chief Ministers of many states like Uttarakhand, Uttar Pradesh etc. have called for a Uniform Civil Code.

[10] TANJA HERKLOTZ -Based Personal Laws in India from a Women's Rights Perspective: Context and some Recent Publications
https://www.rewi.hu-berlin.de/de/lf/ls/dnn/staff/th/religion-based-personal-laws-in-india-from-a-womens-rights-perspective-context-and-some-recent-publications/view

[11] The Muslim Women (Protection of Rights on Divorce) Act, 1986,
https://www.indiacode.nic.in/bitstream/123456789/15353/1/muslim_women_%28protection_of_rights_on_divorce%29_act%2C_1986.pdf

[12] Article 44 of The Indian Constitution.
https://www.legalserviceindia.com/legal/article-773-uniform-civil-code.html

The UCC is better than the personal laws in many ways: -

1. Provides Gender Equality – One of the major advantages of UCC is gender equality. It provides women the same rights men have regardless of their religion. It would help in providing the same pedestal as that of men and reduce discrimination against them
2. Secularism – The Uniform Civil Code would help the country to become secular by ensuring that this law applies to every citizen of the country regardless of the community and religion to which they belong.
3. Unification – Personal laws can create divisions and may lead to separatism, UCC being equal for all will help to promote unity in the country.
4. Smooth functioning of courts –Personal laws can be mind-boggling and challenging to explore, particularly for people who have a place with numerous networks or are hitched by a person of an alternate religion. A UCC would improve the overall set of laws and make it simpler for people to grasp their freedoms as well as limitations.
5. Updated Law –Personal laws are frequently obsolete and don't mirror the changing real factors of Indian culture. A UCC would guarantee that the law is by current qualities and practices, like live-in connections, surrogacy, and same-sex relationships.

10.6. **Conclusion and Suggestions: -**

Though the Uniform Civil Code might sound good but will face a lot of complications when it is to be implemented. Personal laws have evolved over centuries and have become an integral part of the country. The imposition of a UCC could disrupt social harmony and lead to inter-community tensions and conflicts. The UCC is a highly sensitive issue, some political parties, religious groups and highly influential people are against it by arguing that it will affect the religious freedom of the people which makes it difficult to implement it. India is a diverse country with multiple religions, customs, and traditions. Some argue that a UCC would undermine this diversity and force people to give up their cultural identity. To implement the UCC correctly proper planning is required. The implementation of a UCC should be done in a consultative and collaborative manner, considering the views of all stakeholders, and should be guided by the principles of justice and fairness.

This journal has been written over a period of several months, which is why some of the citations mentioned in the form of websites may not be accessible at the time of its release.

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