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"Admission into professional course is not an achievement but an opportunity to hone one's professional skills and one must not let it pass by"
-Rephrased from the words of **Hon'ble Dr. Zakir Husain, former President of India**

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डॉ. विजय श्रीवास्तव

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The Paradox of '*Jus Ad Bellum*' and '*Jus in Bello'* in Modern World: Justifications of Just War vs. Forced Intervention

Mr. Richimoni Proma

ABSTRACT

'Jus ad bellum' is a concept of international Law which gives permission to resort to war in extraordinary circumstances. Use of force is never appreciated in International Law but 'jus ad bellum' is an exception to that. The legality to use force is only permitted if a sovereign state fears of severe attack by other state .In 21st century, the term 'war' in jus ad bellum concept is replaced by words like 'military intervention' or 'armed conflict'. Whatever may be the word, the devastating effects of war is much more serious than ever before. In modern warfare, weapons and warfare technology are more powerful in destroying human lives ,infrastructures and environment and thus create a long term damage. Though 'jus ad bellum' should be the 'last resort' but now it is seen to be used for 'justifying the warfare' in any case. The war can be only justified if it is done for the sake of self-defense or when one state already in warfare asks another to send help or it is legitimate under Article 51 of UN Charter. However, jus ad bello, on the other hand, is the law of war which determines the conduct among conflicting parties during the war. Jus ad bello emerges from the start of war and remain till the end of war. War may be just or unjust, legitimate or illegitimate but jus ad bello requires the war parties to follow the law of war to minimize destruction for humanitarian reasons. However, recent conflicts like Russia-Ukraine war, Iraq War, Afghanistan War, Syrian war, Lybia intervention, Yemeni civil war reflect the requirement of revisiting the concept of jus ad bellum to stop such inhuman destruction in the guise of 'just war'. This paper is going to explore modern day warfare in relation with jus ad bellum and jus ad bello and focus on reconstructing the concepts to minimize abuse.

***Keywords**:* jus ad bellum, jus ad bello, just war, human rights, conflict

An Intro to the Realm of Just War Theory

The "just war" notion serves as the foundation for the concepts of "*Jus Ad Bellum*" and "*Jus in Bello.*" The origins of the traditional just war doctrine can be found in Saint Augustine's teachings, who believed that if war was beginning to restore the peace, it was justifiable. The thesis was later refined and rebuilt by a number of authors, including Thomas Aquinas, Francis De Vitoria, Hugo Grotius, and others. A war can be referred to as a "just war" if it is waged in defense of territory and a legitimate government issues the declaration of war. Albert the Great's view on just war was if 'natural slaves' refused to be subjected or rebelled then war could be just against them. In 21st century, the idea of natural slavery is no longer applicable but developed countries often try to place them in a 'superior position' and thus still create relevancy to the idea. Thomas Aquinas was more relied on the 'just cause' to validate war. He referred a just war would be fought for legitimate cause, not for power or wealth. Cicero asserted that just war must be declared openly and should have 'just cause'.

Hugo De Grotius in *De Jure Belli ac Pacis (*1625,On the Law of War and Peace) declared a just war legitimate where there is imminent danger and force is needed to be used according to necessity and proportion. However, Vitoria on the other hand emphasized on having 'good reason' to initiate war and also to make sure that war does not let to begin any new war in future.

However, the development in 'just war theory' somehow always wanted to incorporate 'morality' so that there is no unjust war in the world but in modern times we see the violations of the principles of just war theory in such extent that it scares the humankind. Gross violation of human rights makes us re-think about the laws of war.

The pertinence of '*Jus Ad Bellum'* in modern warfare

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The development in 'just war theory somehow always wanted to incorporate 'morality' so that there is no unjust war in the world but in modern times we see the violations of the principles of just war theory in such extent that it scares the humankind.

Jus ad bellum are the principles of waging a just war. Jus ad bellum sets conditions of war. These are-

1.**Just Cause**: The war must be fought for 'just cause'. A 'just cause' is enough to start a pre-emptive strike. A just cause is actually an ethical condition to begin a war. War can not be done only on the basis of 'glory' or 'wealth', rather a pre-emptive war may be done for self-defense like upholding sovereignty or invading an attack. Also, intervention in a situation of gross human rights violation is also justified in order to protect people. St. Augustine mentioned three just causes for war. According to him, war can be justified if it is done for defending pre-emptive attack, recapturing things already taken from particular nation and punishing people who are already responsible for doing wrongs. Now states engage in war by accusing other having possession of 'Weapons of mass destruction' which is often based on ill motive.

2. Legitimate Authority: A lawful body, such as a sovereign power that declares war in the open, must make the proclamation. War is unfair, and there is no justification for it if legitimate authority is not present. The justness of war in contemporary times, however, has been called into doubt by respectable authorities. A President declaring war without providing a legitimate and acceptable "just cause" is not sufficient justification for going to war. Today, any sovereign power may justify going to war by citing "national interest." Can a sovereign entity with rightful authority become so strong that it can instantly wipe out all of humanity? The ideals of just war are undermined when sovereign authority is used to declare war, even though just war requires considerably more requirements to be met before a war may be fought. Before a war may be waged, there are much more conditions that must be satisfied.

The 2003 U.S. invasion of Iraq, popularly known as the "Second Persian Gulf War," is a prime example of how a purportedly "legitimate authority" may start a contentious conflict that causes enormous harm. To protect their "national interest," the US launched an attack on Iraq on March 20, 2003, which lasted until 2010. The US claimed that Iraq possessed WMD, which was false. The so-called "just war" that began with the declaration of "legitimate authority" on the wrong side of history resulted in the barbaric killing of at least 85,000 civilians and 4,700 coalition soldiers. As there several complex parties involved in the Syrian civil war, it is challenging to determine the ultimate "legitimate authority" that has the power to conduct war. Additionally, if we examine the terrorist organizations operating in the globe today, we find IS, Al-Qai'da, Al Shaabab, and the Baluchistan Liberation Army, whose "sovereignty" or "legitimate authority" is in doubt.

3.**Right intention**: Just war theory requires the idea of legitimate motives as an ethical prerequisite. Right intent reveals the context and motivation behind a war's justification. A war's morality largely depends on "the intention" of the side fighting it. Not only is right intention used in jus ad bellum, but it is also a crucial element of *'jus in bello'*.

With the appropriate intent, the objective is always to reduce casualties, so there are no additional assassinations, killings, or massacres. War should always be waged with the goal of preserving human rights and promoting the greater good. It is crucial to have the primary motto "righteous and just" when there is a war. It is difficult to demonstrate or evaluate proper intention since it involves complicated issues, and the majority of previous conflicts demonstrate that pre-emptive strikes frequently are not based on 'right purpose'. Right intention of waging a legitimate war is just an excuse to prove the 'innocence' of the guilty party." The 'intention' of the party conducting war is motivated by political, strategic, diplomatic, cultural, sociological, and economic factors.

The concept of "right intention" continues to be a crucial benchmark for assessing the moral implications of using force as the globe struggles with challenges of conflict and violence. In modern warfare, intention is often abused to get what particular 'legitimate authority' wants. Using the veil of protecting civilians from devastating situation, powerful sovereign entity often strike pre-emptive war. Such has been seen in 2011 in Libya intervention by NATO. The primary concern was to save civilians from destructive affect of warfare using ' Responsibility to protect" principle but critics argue that behind such intervention, strategically and diplomatic reasons like regime change was the main motto. It is also claimed that some military attacks such as attack on Gaddafi's hometown and attacks on government troops were made by NATO. Even after NATO's intervention to Libya, average of 150 airstrikes per day and killing were conducted which

has undermined NATO's duty of 'Responsibility to Protect.'

Again, in Syrian Civil war, the intention of Russia and Iran are questionable and it is presumed that they have bigger motivation to engage in war rather than humanitarian one. 'Operation Decisive Storm' is another example of intervention with questionable intention. Saudi-Arabia with coalition of nine other countries intervened in Yemen after getting a request from Yemeni President Abdrabbuh Mansur Hadi during Yemeni Civil War. Later, it was disclosed that The United States were in charge of providing logistic support. However, the intervention was largely criticized and the situation in Yemen turned into a massacre. Geo-political reasons play an important role to create the background of motive to wage war or intervene.

4. **Probability to success**: Any invasion or intervention should be reasonable and have a good likelihood of success. Never should an irrational invasion or intervention be attempted that has no prospect of success. War cannot be waged just for a nation's "glory" or "ego-satisfaction." A state cannot hope to win a war if it does not have adequate planning, personnel, weaponry, or an effective strategy. Only more deaths and destruction will result from it. The Gulf War, a well-known international conflict that began with the goal of seizing Kuwait's most valuable resource—its huge oil reserves—is an illustration of military intervention that has a chance of succeeding. As an example of an intervention with a chance of success that did in fact result in success, consider NATO's 1999 intervention in Kosovo. However, there is much discussion around this "humanitarian intervention," and it has been suggested that NATO's true motivations were "materialistic."

5. Proportionality: The just war theory's proportionality entails that harm should not exceed the desired result. In order to assess the amount of damage that will be done, there should be a clear plan on how much force should be employed. Such 'war' or 'intervention' should be avoided if the calculation is illogical in the sense that it will result in much more destruction and, on the other hand, won't produce much change. Any needless destruction must be avoided in accordance with the proportionality principle in order to cause the least amount of harm and prevent accidental harm to civilians or their property. A good understanding of military attack and potential harm to civilians is required. Principle of proportionality can be found in article 51 (5)(b), 57(2) (a) (iii) and (b) of Additional Protocol I, article 51 (3), 68 (1) of Geneva Convention (IV). The application of the principle can be seen from article 30 (1), 53 (1), 23 (4), 71 (1),26 (6),49 (3),117 of Geneva Convention (III).

Proportionality is crucial in situations where "intervention" is used to halt war crimes, crimes against humanity, or genocide. It is crucial that military "humanitarian" involvement does not result in a military nightmare for the defenseless civilians. Regrettably, pre-emptive strikes and other recent forms of warfare have not effectively adhered to this notion. One illustration of such is Russia's invasion of Ukraine. Allegations against Russia include forced deportations, large-scale deaths, and other IHL crimes; if true, Russia might be "termed" as a war criminal.

6.Last resort: The 'moral justification' for war is the doctrine of last resort. IHL only allows for the use of force when all other options, including diplomacy, communication, meetings, negotiations, and non-military activities, have failed and there is no other means to bring about the desired result. The idea of last resort actually serves as a symbol for the pursuit of peace. It makes sure that no conflict is started without careful consideration, and it tries to stop starting wars unnecessarily. An example of a non-military endeavor that was successful is the Iran Nuclear Deal from 2005. Although controversial, NATO's intervention in Kosovo might be used as an illustration of the principle of last resort. Economic pressure, such as embargoes and penalties, can occasionally be more productive than simple dialogue. War is actually a bitter truth which cannot be avoided. The ongoing Syrian Civil War serves as an illustration of how, even after all peaceful options have been explored, conflict may still erupt. The last resort principle seeks to reduce conflict, but it is unable to halt current or upcoming hostilities.

Modern-day '*Jus In Bello'* Tenets

'Jus in bello' is Latin for "justice in war." In actuality, it opens the book on acceptable behavior for warring parties. Jus in bello's two fundamental tenets are discrimination and proportionality. Another key aspect of jus in bello is the treatment of prisoners of war.

1. **Discrimination:** A clear distinction between combatants and non-combatants should be made. When interacting with citizens, conduct should be different.Combatants should be easily identified so that no civilians get hurt in warfare. Examples of discrimination are given below-

I. Military personnel vs. civilians: Article 48 of the Additional Protocol of Geneva Convention requires the parties to differentiate between military personnel and civilians so that no civilians are injured and it also put emphasize on distinguishing between military objects and civilian objects.

II.Military objects vs. civilian objects: Article 52 of The Additional Protocol clearly states that"Civilian objects shall not be the object of attack or of reprisals" and "attacks shall be limited strictly to military objectives."

2. Proportionality: Article 51 (5) (b) defines an indiscriminate attack as " an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."That means an attack without proportionality is an indiscriminate attack. Using civilians as protective shield is prohibited by Customary International law and Additional Protocol I and also falls under the principle of jus in bello.

Violation of *'Jus in Bello'* in modern warfare

Almost all of the recent wars reflect the non-observance of *'jus in bello*' principle. Infringements of fundamental rights are a common scenario of today's warfare. Technological advancement made wars more destructive. Weapons of mass destruction such as nuclear, biological, chemical arethreat to human civilization. Principle of discrimination and proportionality are severely breached in warfare. Gross human rights violations and significant civilian casualties were observed throughout the Ukraine-Russia conflict. The offenses are so serious that they qualify as "war crimes." Numerous international publications reported on random attacks on civilians, the devastation of hospitals, schools, and residential areas, sexual brutality, forced relocation, and torture. The core of this notion is ignored in the civil wars in Yemen, Syria, Gaza, and Nagorno-Karabakh, as well as the Rohingya issue in Myanmar. International humanitarian law becomes weak when it is time to apply *'Jus in Bello'* in real scenario.

Reconstructing the framework of '*jus ad bellum*' and '*jus in bello*' for minimizing future warfare destruction

It is imperative to update the antiquated "*jus ad bellum*" and "*jus in bello*" ideas in today's technologically advanced world of numerous obstacles and complications. The methods listed below can help develop a strong system to prevent future war.-

1.Reforming 'just cause' and 'legitimate authority' principle: The "just cause" and "legitimate authority" principles should be changed: Every jurisdiction should adhere to a uniform definition and criteria for what constitutes "just cause." Due to the speed of time, it is now crucial to define "just cause" to incorporate new developments like cyberterrorism, religious terrorism, and egregious human rights violations. 'Legitimate authority' is subject to the same rules. A state should be able to base its claim to legitimate authority on a set of standards

2.Strengthening conflict resolution measures worldwide: International humanitarian law always emphasize on prevention of conflicts. Diplomacy, negotiations, communications should be made more effective in order to avoid wars in future. Economic sanctions and embargo may be given to stop a country entering into war.

3.Adherence to principle of discrimination and proportionality: No attack should be made on civilians with purpose. Civilian objects must be protected and in violation of the principles of jus in bello, the punishment process should be made even more rigorous.

4. 'Human security and safety' over 'state sovereignty': The existing framework of jus ad bellum focuses more on state sovereignty rather than security and safety of its citizen. If people are not safeguarded, war cannot produce peace. Priority should be given to protecting human rights.

5.Rethinking the "probability to succeed" principle: Invasion should be avoided even if there is still a chance that it will succeed. The primary goal of alternative methods like discussions and diplomacy should be to prevent the disastrous effects of war.

6.Improving UN Security Council effectiveness: Accountability, openness, and responsibility must be established through this crucial change. As a crucial international body, the United Nations should take all necessary steps to uphold human rights.

Conclusion

Rebuilding the framework can help reduce wartime casualties, but concurrently, effective international and national actions need to be performed. To establish accountability, domestic laws should be changed so that the offenders are punished fairly.

Priority should be given to international diplomacy and conflict resolution. If we want to create a world that is peaceful, just, and developing, we should keep the phrase "never again" in our minds.

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REALIZATION OF AN UNENUMERATED RIGHT UNDER ARTICLE 21OF THE INDIAN CONSTITUTION

Dr. Sumithra R.

ABSTRACT

Art 21 of the Indian Constitution is a bundle of essential unenumerated Rights. The author is primarily focusing on the Right to Food which is one of the unenumerated Rights under Article 21 of the Constitution and is the basic right of every living organism, more so for the human beings. The same has been dealt with effervescently in the Universal Declaration of Human Rights-1948, International Covenant on Economic, Social and Cultural Rights-1966 and International Covenant on Civil and Political Rights, 1976. Thanks to the efforts of the United Nations which cast an obligation on every member nation to implement it effectively. But, this facet of the Right to life has not been expressly articulated in any of the provisions of the Constitution of any nation, which is the Grund norm of every nation. Article 47 of the Indian Constitution which falls under Directives Principles of State Policy (DPSP) mandates that the State shall work towards raising the level of nutrition and standard of living of its people. But, as it is evident, DPSP is not actionable per se.The Supreme Court of India in its various judgements beginning with Keshava Nand Bharati's case and till recently in PUCL vs Union of India has made an endeavor to guarantee the Right to Food which is a basic human Right and an unenumerated Right under Article 21 of the Indian Constitution. But, the enforcement of this basic human Right, suffers from many daunting issues and arduous challenges.This paper mainly deals with issues and Challenges faced by India in the implementationof the Right to Food.

Keywords*: article 21, constitution, human rights, right to food, unenumerated right*

Introduction

India has been quite successful in ensuring ample availability of food in the country, after meeting the consumption demand, surplus is being exported.But making the food available is only one aspect of food security, though an important one, the others are economic access to food and its absorption by people for better nourishment. It is here that India has faced its biggest challenge and paradox. The Union Cabinet's decision of December 23, 2022 that the "Central government will provide free foodgrains to about 81.35 crore beneficiaries" under the National Food Security Act (NFSA), 2013 for a year from January 1, 2023, implies that India has as many 813.5million poor who need to be fed for "free". India ranks at 75 among 109 countries (2011), indicating the extent of deficiency in terms of health, standards of living and education. 20% of Indian children under 5 years old were acutely malnourished and 48 % were stunted (chronically malnourished).

One of the surveys which was conducted in 2011 across 112 rural districts of India showed that 42 percent of children below the age of five years are underweight and 59 percent are stunted. All these estimates point to the existence of food insecurity at the micro-level in terms of either lack of economic access to food or lack of absorption of food for a healthy life.

Samani prapasahavonnbhaga, samaneyoktraysaha wo yunism, arahnabhimivabhite_: which means everyone has equal entitlement for the articles of food and water. The world should live with harmony, supporting each other like the spokes of a wheel of the chariot which is connected to the rim and hub.It is pertinent to note that the Right to food is not a modern concept but has been there from Vedic times and we can find a mention of it in Atharvana Veda. The NFSA basically strives to achieve Food Security.

Food Security

"Food security is a situation that prevails when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life".Food security can also be defined as "availability of adequate and basic food supplies at all times

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which supports the sustenance of steady expansion of food consumption and to offset fluctuations in production and prices". The notion of 'Food Security', has been continuously evolving which erstwhile focused on supply of the same which at present has metamorphized into a legal entitlement. Thosewho consume less than 2100 calories per day are construed to be food insecure people. Green Revolution was successful in augmenting the food production but did not result in substantial reduction in poverty and levels of malnutrition, it was realized that 'availability' does not assure 'access.In order to bridge this gap, in 1983, Food and Agricultural Organisation of UN expanded its concept of food security to encompassing both 'physical and economic access' to food supply, 'ensuring that all people have both physical and economic access at all times to the basic food that they need'. Hence Food security is nothing but the Right to Food which is a basic human Right.

Genesis of Right to Food

The Right to food is a Human Right derived from the International Covenant on Economic, Social and Cultural Rights (ICESCR),recognizing the "Right to an adequate standard of living, including adequate food," as well as the "fundamental right to be free from hunger". States have the obligation to "respect, protect and fulfil" that is, at the outset, the state must not deprive anyone of access to adequate food; secondly, it must protect everyone from being deprived of such access and thirdly, when anyone is in fact without adequate food the state must proactively create an enabling environment where people become self-reliant for food or where people are unable to do so, must ensure that it is provided.Every individual is a Rights-holder, fully eligible to claim that the state performs this duty. Thanks to the initiative of the Supreme Court which has reiterated in several of its decisions that the Right to Life guaranteed in Article 21 of the Constitution in principle includes the Right to food, clothing and shelter apart from other unenumerated Rights.

Judicial Response to Right to Food

The first case concerning specifically the Right to food that went up to the Supreme Court in 1986 was the case of Kishen Pattanaik vs State of Orissa, in which the petitioner wrote a letter to the Apex Court about the extreme poverty of the people of Kalahandi in Orissa where hundreds of people were dying due to starvation and where several people were forced to sell their children to make both ends meet.The letter implored that the State government ought to take immediate action. The court directed the state to take immediate action to better this deplorable state of the people in Kalahandi. In its judgment, the Supreme Court took a pro-government approach and directed the state to take macro level measures to address the starvation problem.

But none of these measures actually affected the immediate needs of the petitioner and even at this juncture the Supreme Court did not recognize the specific Right to Food.This was the first case specifically taking up the issue of starvation and lack of food. The justiciability of the specific Right to food as an integral Right under Article21 had never been articulated until Right to Food petition filed by People's Union for Civil Liberties (PUCL) vs Union of India.In 2001, despite the excess stock of food grains stored for different schemes and the official times of famine, people died of starvation in Rajasthan. The PUCL petitioned for implementation of the food schemes and also the Famine Code. In a span of 2 years, numerous interim orders were passed by the court, but with inadequate execution both by the national and state governments.In 2003, the court issued a robust judgment which noted that the Right to life was jeopardised due to the fiasco of various schemes. The Court deprecated the irony of the poor starving, when the granaries were overflowing and it declined to entertain any argument regarding the non-availability of food grains considering the severity of the status quo and ordered that all individuals without means of support (older persons, widows, disabled adults) are to be granted an Antyodaya Anna Yozana ration card for free grain and State governments should progressively implement the mid-day meal scheme in schools.

NFSA takes care of both the food and nutritional security of the people, marking a model transition in addressing the problem of food security welfare approach to Rights based approach. The rationale for the Act is derived from Article 47 of the Indian Constitution. The objective of the Act is "to provide for food and nutritional security by ensuring access to adequate quantity of quality food at a reasonable price to the people to enable them to lead a life with dignity".

In line with the stated objective, the Act provides a legal entitlement to receive food grains by persons belonging to priority households and general households identified under the Targeted Public Distribution System (TPDS), aiding both the majority rural population (75%) and the urban population (50%).

Contentious Issues in the Act

The Act provides for a Force Majeure (Act of God) clause under Section 52.This is an exemption for both Central and State Government for failure to supply food grains when such failure is either "directly or indirectly" on account of force majeure. It provides immunity to both the Centre and the States against any claim by beneficiaries entitled under this Act for loss, damage, or compensation arising out of failure of supply of food grains or meals in force majeure conditions which have been defined widely, including droughts and floods.

It is worthwhile to note that in these conditions of failure of market forces, volatility in prices, resultant distress is expected and at times like this the poor and vulnerable would depend on government to ensure their food security. While there may be exceptional circumstances warranting such an exception, such exceptions should be restricted to situations where all efforts fail…like in a situation where neither transportation by road nor by helicopter is possible. The Act gives a legal sanction to a highly centralized procurement and distribution model.

All guidelines and rules are stipulated by the Central government including the factors for identifying the priority households, criteria for their exclusion from the priority households, improvements in TPDS, the prices at which the local Government is required to sell the food grains to the entitled persons. It provides no scope for reforms by the State governments to suit their specific needs.

Section 40 of the NFSA allows State Governments to design their own schemes but it is rendered practically ineffective as it essentially imposes an obligation on the State Government to obtain food grains from Food Corporation of India only for TPDS. The Central government has limited its responsibility only to procure from the central pool and delivery to the State government for distribution through the TPDS.NFSA has given the existing PDS and procurement system a new lease of life in an “as is where is” condition despite its known and established ineffectiveness and leakages. The estimated leakages from the TPDS may be as high as 40 percent. The existing system of TPDS needs to be reformed for efficient delivery of food grains but the norms and types of reforms are to be decided by the Central Government.

Section 13 of NFSA stipulates that in case, the stipulated quantity of food grains and meals are not supplied of the entitled persons, they will be eligible to receive the food security allowance from the concerned State Government at such time and manner as stipulated by the Central Government. This entails that the State would have to provide the entire administrative back up for the disbursement of the food security allowance, which would then cost the State additionally. This would have large financial ramifications on the State Governments.The statute does not mandate that the allowance has to be suitable to enable the relevant entitled persons to obtain the food grains from the market. Since the entitlement is essentially to obtain the identified food grains at the subsidized prices, if Food Security Allowance is according to these prices which will be much lower than market prices, then this monetary support during distress conditions would be grossly insufficient to buy food grains from the market, defeating the very purpose of the NFSA.

Section 19(1) of the NFSA entitles the eldest woman who is not less than 18years of age, in every eligible household, to be the head of the household for the purpose of issue of ration cards. In the opinion of the legislators this provision empowers the women.If women empowerment can be a reality by merely compelling the ration cards to stand in the name of the women, then the state can mandate all documents to stand in the name of women which may result in the total emancipation of women. This provision is just a farce and far from reality as we live in a patriarchal society. The existing system of food grain management is characterized by the dominant presence of the government in all the basic aspects of marketing namely, procurement, storage, transport and distribution, with all these operations being bundled and carried out by the FCI.

Currently, FCI’s main function is to build the buffer stocks to meet any emergency, open market purchase/sales to stabilize domestic prices and provide food security requirements through sale of subsidized grain. It procures mainly wheat and rice, for the Central Pool at the Minimum Support Price announced by the Government and distributes it through the State managed PDS.Over the years we have experienced the evident inefficiencies in the operations of FCI through concentration of procurement operations to a handful of States and anever-increasing central pool of stocks. Periodic overstocking by the public sector has huge implications on the fiscal

side, apart from distorting the free functioning of food grain market.

Higher level of buffer stock carries the risk of higher wastage of food grains along with higher cost of maintaining the buffer owing to the ill equipped godowns of FCI. Before the execution of the Act, in-limine the state should have updated the godowns. Currently, FCI is facing an acute storage crisis with respect to the infrastructure to store the food grains as we have witnessed that FCI godowns are feeding the rodents more than feeding the hungry citizenry.The additional procurement as a result of NFSA will put enormous pressure on the existing infrastructure which is grossly inadequate to handle the current procurement norms. The modern silo storage and bulk handling is required for preservation of quality of food grains which at present not all FCI godowns have. Estimates show that the additional cost of storage infrastructure would be Rs. 2.500 to 8,500 crores depending upon whether the government invests in silos or traditional storage. Currently, the monetary cost of acquiring, storing and distributing food grains by the FCI is approximately 40% extra than the procurement price. Apart from imposing a huge additional cost to procure, store, transport and distribute grain, increasing public procurement strangulates the domestic grain market and creates artificial scarcity, pushing the prices of the grains further up in the open market.

The large-scale grain distribution to 2/3 of the country'spopulation of 1.2 billion implies enormous stocking of food grains and a wide distribution network entailing a huge financial burden on the already burdened fiscal system. The stated expenditure of Rs 1,20,000 crore annually in NFSA is merely the tip of the iceberg.To support the system and the welfare schemes, additional expenditure is needed for the envisaged administrative set up, scaling up of operations, enhancement of production, investments for storage, movement, processing and market infrastructure etc. The execution of the Act, robs the state exchequer to the tune of approximately Rs 1,50,000 Crores, which otherwise could be made use of for building and improving the infrastructure of the country thus benefiting the public at large than concentrating only on one section of the citizenry.

The question here is, can the state afford to invest this big amount in a venture which is not profiteering? NFSA also aims at improving the nutritional status of the population especially of women and children. But studies have depicted that the challenge of improving absorption lies in linking nutrition with health, education, and agriculture intervention.

Access to good sanitation facilities and women's literacy are strong influencers which affect malnutrition. Direct nutrition intervention through the Special Nutrition Program under the Integrated Child Development Scheme and the Mid Day Meals Scheme are currently in force to address the nutritional needs of children and women and would continue to be the channels through NFSA.Malnutrition is a multi-dimensional problem and needs a multi-pronged strategy. Women's education, access to clean drinking water, availability of hygienic sanitation facilities are the prime prerequisites for improved nutrition. Though the state has enacted this social legislation for providing food to the targeted public at subsidized prices, it is fraught with many challenges in its implementation.

The large population of our country is a major challenge. Apart from widening the coverage under TPDS, the legislation has entitled the eligible beneficiaries to get the stipulated food grains at highly subsidized prices.It also confers the rights on the women, children, and other Special Groups namely disaster and emergency affected persons, homeless, destitute and people living in starvation, to receive meals free of charge or at an affordable price. This is perhaps the biggest endeavor ever to allocate subsidized grain to realize food and nutritional security. It demands massive procurement of food grains and a bulky and shrewd distribution network entailing huge financial over heads.The Act has created a statutory entitlement for the eligible households and its obverse, a legal obligation on the government.Therefore, it is crucial to ensure the availability of adequate food grains with the state authorities to achieve the under lying obligation. Given the current trends in rates of growth in food grain production & yields, and the growing pressures on land & water in the wake of climate change, there is a possibility that food grain availability on sustainable basis becomes a constraint.

With 60 percent of India's farmland dependent on monsoon rains, drought years can slash production and force the country to import large quantities. As it is, the state procures 1/3 of the cereals production. Any rise in procurement will cast massive implications on the markets and would crowd out private sector operations with a consequent effect on open market prices thus burdening the middleclass families further.

It is pertinent to note that the average growth rate of food grain output has declined from 2.2 percent in 1990s to 1.8percentin2000s.Similarly,growthrateofyield of food grains has decreased from 2.4 per cent in 1990s to only 1.3 percent in 2000s, in this backdrop from where does the state plan to muster enough food grains to be distributed through the Public Distribution system? The food subsidy in coming years will inflate due to the rise in the population thus increasing the number of entitled beneficiaries and the need to keep raising the Minimum Support Price to cover the rising costs of production and to incentivize farmers to increase production.

Given its creaking infrastructure, leakages & inefficient governance, the existing food security set up for procurement, stocking and distribution has further accelerated the operative expense of the Scheme. Global experience on social security programs have made it evident that food coupons/vouchers, cash transfers are better alternatives than physical handling of food as handling charges are more onerous than the procurement cost of the food grains.It may be noted that this Act is enacted at such a time when internationally, conditional cash transfers rather than physical distribution of subsidized food, have been more effective in attaining the food and nutritional security which has been adopted successfully by many countries across the world. Brazil is a classic example of this - the Bolsa Familia program, world's principal conditional cash transfer program, has lifted more than 20 million Brazilians out of acute poverty and also promotes education & health care.

Conclusion

It is important that India learns from these social safety net experiences and evolves an innovative strategy that is based on more effective and appropriate policy instruments to enhance social and economic welfare. Conclusion It is imperative that India learns from the social safety net experiences across the world and evolves an innovative strategy that is based onmoreeffectiveand appropriatepolicyinstrumentstoenhance social and economic welfare.It is high time to revisit the foodgrains policy shifting from physical handling and distribution of foodgrains to cash transfers/food coupons/smart cards linking it with 'Aadhaar'.Thiswillbeinlinewithchangingconsumption patterns,willavoidtheneedto keep 80 million tonnes of stocks, help cut down the costs of storage and taxes on procurement, avoid duplication of beneficiaries and therefore be much more efficient and quicker in reaching the needy.Pilot projects in India that tested cash transfers/smarts cards systems, have shown drastic reduction in leakages as compared to the existing PDS, which is as high as 40 percent.AsIndiaisavastcountrywithdiverseculturea ndmultiplefoodhabits,itmay be left to individual states to devise their own systems of provision of food security. States whichhave surplusinterms ofproductionofcerealscouldmovestraightawayto cash transfers. Cities with a population of One million or more can also shift to cash transfers. States which are grain deficit may continue with the physical handlingof food grains. Only an optimum level of buffer stock needs to be maintained by FCI for contingencies.

Tryingtocorrectonesegmentofthiscomplicatedsyste mislikelyto endupinfailureor, at best, have limited success. While food grains are central to food security, diversifying demand patterns need to be appreciated for holistic approach to food and nutritional security. In the light of the issues raised above, the long-term viability of the envisioned strategy under NFSA needs to be prudently debated in national interest.Thestateinorderto effectivelyimplement thisAct, attheoutset it hasto energise the agriculturalsectorbyincentivizingitfurtheronwarfoo ting.Anythingcanbeartificially created but not the food grains. The state instead of trying to achieve the superficial contentment, should venture out strengthening our priority sector i.e. agriculture.

Prevention is better than cure should be our motto. The functions and duties of FCI needs to be redefined and should be limited to managing buffer stocks & welfare programs, price stabilization and imports, exports and market intervention for price stabilization and contingencies.In order to alleviate the efficacy and enable equitable distribution in the entire supply chain of procurement to delivery, there is a huge scope for private sector participation eitherbyitselforinPublicPrivatePartnershipmode.In creasingthecoverageandscope of the PDS will result in escalating operational stocks, which would strangulate food grain trade in the country. Attheend,theresearcherwouldliketonotethatthestat einsteadofattemptingto feedtheable-bodiedhealthyadults,shouldcreatemoreemploymen topportunities thus enabling every individual to earn their bread than waiting for the state to feedthem.Asthefamoussayinggoes "Give a man a fish and you feed him a day, but teach a man to fish and you feed him for

life".ThepresentRobinHoodpolicyofthestatei.e.'RobPetertopayPaul'shouldnotbe adhered to as the state is siphoning off major chunk of the funds from the state exchequer ortax payer's money to attain the spirit of this social legislation.International Covenant onEconomic, Social and Cultural Rights declares that when anyone isin fact without adequatefood, the state must proactively create an enabling environmentwherepeoplebecomeselfreliantforfoodorwherepeopleareunableto do so, must ensure that it is provided but has nowhere mandated that the state enmasse should provide cheap food at their doorstep.

"Creating a dependent-on-government-for-food economy is not the answer to our problem. Creating an independent-self-sustainingone is".

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Gender Parity in Employment Opportunities as a Human Right for Indian Woman: Challenges and Way Forward

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ABSTRACT

In the wake of liberalization, privatization and globalization women's status has not flourished despite numerous international and domestic women empowerment opportunities and safeguards. This research focuses on equal employment opportunities for women and how different elements affects her status. Government around the globe encourage gender diversity because markets have shrunk to one big global economy and the organizations are forced to match the ever increasing demand of global customers including the fairer sex. This research paper purposes to shed light on equal employment opportunities of Indian women in local and international companies and aims to understand whether modern companies apply gender equality as a human right affirmation and constitutional vision enshrined in International Declarations and Indian Constitution in the era of globalization.

The research tries to find out whether businesses at all levels ensure gender parity, and to explore the gender based pay-gap. The researcher relies on research based on exploratory, interview and sampling method. The research further tries to study why women have not been able to get benefit of equal opportunities in employment in the fast paced globalization era, though today women are earning, educated to a larger extent and economically self-independent. The findings of the study is based on mixed study of qualitative literature and comparison with the quantitative collection of data. The research tries to suggest various tools and techniques in the modern era to attain equality in employment opportunities for women empowerment.

Women-roles have transformed from being a home-maker to the bread-winner with their male counterparts making a mark in the society. The need of the hour is total equality between the gender in the socio-economic-political space in order to command equality enshrined in Constitution and International Charters.

Keywords: globalization, gender parity, equal employment opportunity, constitutional vision, human rights, international commitment

Introduction

Equal Employment Opportunity (EEO) is prescribed under the principle of ensuring that there is no discrimination among individuals in employment opportunities. It provides for an equal, equitable and fair workplace, same opportunities and equal treatment for all irrespective of their genders, in the matters related to employment, hiring, promotion, compensation and various other beneficiary practices followed at employment. EEO is not only a set of laws or legislations and provisions against discrimination, harassment, bias, retaliation, prejudices, as well as equal pay for equal work, but also includes strong affirmative vision and plans to end the historical and age old centurial imbalances in employment and workplace for the marginalised fairer sex.

Specific provisions and enforcement mechanisms differ across the globe depending on the legal, cultural and socio-political-economic setup of the region, however the basic principle of EEO remains the same, i.e to create a positive work environment in which the individuals are weighted based on their qualifications, skills and abilities but not on their personal characteristics protecting them from discrimination based solely on gender.

The EEO significantly differs globally amongst the countries based on their circumstantial, situational and geo-political diversity. However, there are common provisions and unilateral principles enshrined in their efforts to promote equality in workplace opportunities such as anti-discriminatory law, equal pay for equal work, positive enablement, quota or reservation policies, accessibility and

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accommodation, maternity and family friendly policies, work life balance, training and education, accountability with transparency, participation and corporate social responsibility (CSR) etc.

The International LabourOrganisation (ILO), United Nations (UN) and United Nation Women (UN Women) through their various conventions, charters, conventions, and directions have made great efforts to encourage businesses and corporate houses to adopt and implement EEO. In spite of these guarantees there is no specific charter that directly addresses EEO, as the concept of EEO primarily comes under the jurisdiction of individual countries laws and legislations. The UN addressed the advancement of principle of equality and non-discrimination through the following documents:

i) **Universal Declaration of Human Rights (UDHR):** The UN General Assembly in 1948 adopted the UDHR with the core principle of enforcing equality and non-discrimination which lays the value of EEO.
ii) **International LabourOrganisation (ILO)**: A specialised agency of UN in the year 1919 recommended various labour rights including those towards promotion of EEO and prevention bais at the workplace.
iii) **Convention on the Elimination of all forms of Discrimination against Women (CEDAW):** Adopted in the year 1979, this convention addressed the core issues of discrimination and also includes the provisions which relates to the EEO and various other affirmative actions.

United Nations in 2020 recognized the Equal Pay International Coalition, which originated in the year 1996 as National Committee on Pay Equity formed to eradicate the discrimination in payment of wages on the basis of gender etc. International Equal Pay Day celebrated on 18th September raises awareness for equality in payment of wages, eradicate gender pay gap, uphold human rights and fight all forms biases in employment against the fairer sex.

The Indian Constitution has made specific positive provisions aimed to preventing discrimination at workplace and ensuring equality at workplace. The Preamble assures the dignity to every individual ensuring economic guarantee. The Right to Equality (Art 14-18), prohibits the State from any kind of discrimination among its citizens which is the foundation stone of EEO in India. More specifically, Art 15 prohibits State to make discrimination against citizen in the matter of employment and public employment which also includes grounds on the basis of sex. Equality of opportunity in public opportunity in Art. 16 mandates equality in the matter of public employment and prohibits discrimination on the basis of sex other than all the other grounds. Art. 15(3) empowers the State to make special laws for the protection of the women. To address the age old disadvantages faced by women, the Indian Constitution prescribes reservations and quotas in public employment and educational institutions as affirmative action of the State towards EEO.

Right to life and personal liberty under Art 21 which safeguards the right to life and personal liberty has been interpreted by the courts as a right to a dignified life which extends to EEO. The various Directive Principles of State Policy (DPSP) enshrined in Art 36-51 make provisions and encourages the State to promote equality in opportunities specifically for the vulnerable section of the society including women. Art. 39(d) ensures Equal pay for Equal Work, Art 41 ensures right to work, Art 42 maternity benefits, etc. The duty of every citizen to renounce any kind of practices derogatory to women is cherished under Art. 51 A (e).

To give effect to the constitutional mandate and in addition to the constitutional vision, Indian legislature has enacted various laws to implement EEO e.g. Equal Remuneration Act, Maternity Benefit Act, Right of Persons with disabilities Act, The Prevention of Sexual Harassment at Workplace, Minimum Wages Act, Labour Laws, Factories Act, etc. The EEO in India is aimed through reservations, affirmative actions and policies to address historical discrimination and promote the inclusion of marginalised women in the main streamline. The implementation of EEO in the diverse setup of India, more particularly, in the private sector remains a challenge; and the nature, cause and reason of which varies by states and sectors.

Judicial interpretation of Equal Employment Opportunities Legislative and Constitutional Provisions in India

The judiciary in India has also played an important role in different aspects of EEO in the private sector in the limited scope of implementation of the Fundamental Rights, and the DPSP are enforceable only against the State and not the private sector. The Hon'ble Court on various occasions acted to protect the women's participation in the workplace by emphasizing the concept of work life variances. The Indian judiciary stressed on the fact that the social legislation must be purposively implemented rather than sticking around the literal boundaries. This view of the Apex Court is a step forward to bridge the gap

between law and the society and a stepping stone to give effect to the purpose of law in question rather than preventing its application. In a recent judgement the Supreme Court recognized that a typical family structure in India and observed that familiar structures may change but the maternity benefit prescribed under the Maternity Benefit Act shall be granted to the employee. The judgement suggested that the redefined familiar roles while extending employee benefits in the new societal setup e.g. a single household wanting to adopt a child. The employers must include the corporate social responsibility and strategy to help deliver equal opportunities and create a non-discriminatory workplace.

The Courts have expressed their views on the laws, e.g. The Factories Act, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, The Shop and Establishments Act, and mandated special security and other measures i.e. hygiene, sanitation and maternity facilities to hire women employees; especially during night time. This view of the Court taken to encourage women participation at the workplace.

In a recent PIL seeking directions to The State Government requiring them to extend '*period leave*' for women employees, the Court dismissed the plea of the Plaintiff and observed that any directive of this nature may discourage prospective employers from hiring women employees in jobs, and further expressed that there are other mandatory provisions wherein the employers are to undertake additional obligation and economic expense to hire a women e.g. various permission required to hire women in night shifts.

The Highest Court observed that history is replicate with examples where women have been denied their rights and entitlements towards fair and just opportunities at the work habitat. To overcome these biases based on their competence, abilities and performance they require a levelled equal environment.

The concept of Equal pay for Equal work enshrined under Art 39(d) of the Indian Constitution was recognized in the year 1987 by the Supreme Court in a landmark judgment of '*Audrey D'Costa*' and allowed the claim for equal remuneration for the lady stenographers at par with male stenos.

In the landmark judgment of '*Vishaka*' the Hon'ble Supreme Court mandated on the employer that the safety and security of women employee must be ensured by the employer at the workplace.

Equal Employment Opportunities: Findings, Challenges to Implementation and Suggestions, the Way Ahead towards Women's Empowerment

Findings

The findings of the research highlights phenomenal aspects of challenges faced by women claiming equal opportunity. These findings provide insight into the barriers to progress in gender equality at workplace. The specific findings has varied drastically from subject to subject based on their individual experiences and cases. Without citing the name of the employer as well as of the employees as these are matters of privacy, the research sheds light on some common challenges-

1) Gender Pay gap – The research study consistently reveals that women, on an average, are paid less in comparison to their male counterparts for their similar roles and responsibilities. It is found in the survey that gender based pay gap exists in Indian private sector irrespective of their economic scale of operation. A stark representation of inequality the gender pay gap can be traced in a recent study about women in the United States, which mentions the glaring gap that women in US have to work more than 15 months to earn what men earn in only 12 months.

2) Lack of Representation in Leadership- The questionnaire interview based research reveals that the Indian women are inadequately represented at senior leadership positions and the Board room of the companies. Almost 8 out of 10 women have faced feminism as a barrier in their career progression and biased in their promotional decision.

3) Work life Balance- The study finds that bringing in equilibrium in work and family responsibilities still remains a challenge for women working in the private sector. The interviewees expressed that they were denied access to family friendly work policies i.e maternity benefit, child care support, which hindered their career growth.

4) Sexual Harassment- The research tried to explore the prevalence of sexual harassment at workplace and also the effectiveness of the policies adopted by the companies for enforcing anti-harassment policies and harassment reporting mechanism. Most of the women remained silent on this aspect and preferred not to answer. The study concludes that the sexual harassment is still existing at large and the women are unaware of the harassment and anti-reporting mechanism.

5) Gender biased and Stereotypes- The study finds that a consensus bias impacting hiring, promotions, and leadership decisions exist at the work environment. It is adversely affecting the women's

opportunities to grab key leadership roles and reach decision making levels.

6) Mentorship and Networking - The access to mentorship and other networking opportunities which can enhance the women's career advancement are lacking at the present corporate setup.

7) Sector Specific Variations- The research shows that significant progress in promoting equal opportunity for women is there in some companies in comparison to the masses.

Conclusion

The research finds and highlights the multifaceted complex nature of the challenges to gender equality in the Indian private employment sector including MNC's. It is important to note that there is remarkable progress in compared to the historical background of working women in India, but the persistent barriers of masculine, patriarchal society, age old roles and biases continue to affect the career opportunity of modern working women in India. This research is instrumental in raising awareness, guiding policies and corporate strategies; and the need of gender equality in the workplace.

Suggestions and the Way Ahead

A workplace that values the gender diversity promotes and includes equal employment opportunities, benefits its resources as well as enriches its overall performance, competitiveness and presence in the private sector. It is not only the ethical business practice to promote fairness within the organisation but also a corporate social responsibility. The CSR and the equal employment opportunity are critical aspects of ethical business and share the goals of inclusivity, holistic growth, and fosters fairness. They are integral part of positive corporate culture contributing to social well-being and provides long term sustainability to the corporate.

In the present scenario, partnership and collaborations between the government, business houses and the civil societies can bring meaningful and visible progress in terms of EEO. A multidimensional approach which includes government, businesses and civil societies is suggested to enhance EEO in the private sector employment in India-

1. **Strict Updated Legal Framework and Strict Enforcement:** The Indian Legislatures since independence has enacted various laws to address the issue of gender bias at workplace. The forefathers of the Constitution of India have remarkably included inclusivity in the employment opportunities and excludes all sorts of discrimination towards the fairer sex. Although the Parliament of India by updating new provisions through amendments and also by enacting new legislations has done a remarkable achievement towards equal employment opportunities as well as the judiciary has also interpreted inclusion of private sector employment while deciding equal employment opportunities for women; Yet, in the modern era of fast paced technological advancement, globalisation, capitalism, there is a burning need to strengthen the anti-discrimination laws, rules, regulations and provisions. For effective enforcement of these laws, strict penalties for non-compliance must be ensured. In the fast changing global world, timely and regular review and update of these piece of legislations must be ensured. The Union Government have introduced and successfully passed from Lok-shabha reservation bill in the form of '*The Narishakti Vandan Adhiniyam*' on 20thSeptember, 2023, which itself is a striking beginning towards a Modern Feminist movement towards a better democratic setup, offering inclusive equal social, economic and political vision.

2. **Mandatory and Transparent Reporting:** The private sector companies shall be mandated to report their diversity and inclusion report for including feminine gender in their business metrics. To bring in transparency, accountability and also to encourage the companies, the aggregated data must be published and made available to the citizens of the country.

3. **Training and Awareness Programmes:** To foster a more inclusive workplace culture, awareness campaigns must be conducted in the organisations by the State governments. Training programmes must be conducted for the employees by the companies and for the management of the companies by the Government to promote gender sensitive work force development.

4. **Family Friendly Policies:** The private sector companies must be encouraged to implement family friendly policies i.e paid parental leave, on-site child care facilities, flexible work hours, day care facilities and medical facilities on site. These family friendly policies shall be made accessible to both men and women for a better understanding of challenges to traditional gender bias.

5. **Extended Affirmative Action**: Now is a time to extend the affirmative action policies as enshrined under the Constitution of India for the State, to the private sectors as much as possible and feasible in particular for the women. To monitor the progress in hiring and promotions etc. measurable targets may be set and monitored through timely reporting system such as Corporate Social Responsibility.

6. Skill Development: The collaboration between government bodies, corporates and educational institutions may be adopted to bridge the skill gap of the female employee and promote skill development at various levels of the organizations. The Government schemes and programs of skill development shall be planned to include women at workplace, promote all round growth and skill development for women to enhance their employability.

7. Prevention of Workplace Harassment: The anti-harassment policies must be adopted and implemented by the employers of private sectors, in compliance to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013. The government shall ensure robust implementation of the Act to ensure timely reporting and redressal of workplace harassment. The awareness among the employees about these policies and mechanism must be created to give them feeling of safety and security.

8. **Government Support:** The government must plan and implement to offer incentives and recognition for private employers who have done remarkable work towards taking Equality in Employment Opportunities to a remarkable level. There exists a need to form associations under the leadership of the government to develop sector specific work plans and guidelines to achieve EEO.

9. **Employee Resource and Self-Help Groups:** The formation of Employee Resource Groups may be encouraged with a focus on promoting diversity and gender inclusive work force development. These groups must be encouraged and strengthened in their efforts to create a more gender sensitive workforce.

10. **Measuring and Evaluating Progress:** The modern business world works on its own metrics and measures its success based on Key Performance Indicators. The progress of the EEO efforts by the organization must be measured in the organisation based on clear metrics and KPIs. There is a need of regular evaluation of the impact of the Equal Employment Opportunity and a way forward required adjustment in the strategies is needed.

The gender based EEO in the private sector is not an enforceable obligation on the employer but a social obligation and a strategic imperative that is aimed to enhance profitability, competitiveness, growth and long-term stability. By including the marginalized gender in the workforce and allowing them access to a safe, secure, clean, hygienic workplace for economic empowerment can thrive the business, empower the women, and contribute to an equitable purpose for a better society and prosperous future.

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Gender Equality in the Workplace: Challenges and Strategies for Women's Advancement

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ABSTRACT

Gender equality in the workplace is an enduring global issue with far-reaching social and economic implications. Women encounter numerous challenges in their pursuit of professional advancement. This abstract provides a concise overview of these challenges and outlines key strategies to promote gender equality and women's progress.Gender bias remains a pervasive issue, affecting hiring, promotions, and leadership opportunities. The persistent existence of the glass ceiling obstructs women's rise to top positions. Discriminatory practices, including wage disparities, persist in many industries. Unconscious biases perpetuate harmful stereotypes that undermine women's credibility and contributions. Fields like STEM continue to grapple with gender imbalance.To address these challenges, proactive strategies are imperative. Organizations must cultivate inclusive cultures that empower women to excel. Mentorship programs can provide guidance and networking opportunities. Promoting women's leadership initiatives and embracing gender diversity at all levels is crucial. Implementing equal pay policies and transparent promotion criteria is essential. Tackling unconscious bias through education and awareness is a vital step toward progress.In conclusion, achieving gender equality in the workplace is a fundamental goal that requires concerted efforts. By acknowledging and addressing these challenges, and by implementing the outlined strategies, we can create more equitable and prosperous workplaces that benefit individuals and society as a whole.

Keywords: gender equality, women's advancement, diversity, gender bias, empowerment, and gender stereotypes.

Introduction

The stark statistics from the World Bank's data shed a glaring light on the pervasive issue of gender inequality that persists globally. The numbers tell a story of women bearing a disproportionately heavy burden of poverty and disenfranchisement. Out of the 1.2 billion people living in poverty, a staggering 70% are women. This alarming disparity is indicative of the myriad challenges and obstacles women face in their quest for equality and empowerment.

Despite women contributing more than two-thirds of the world's total work hours, their earnings make up only a mere 10% of the world's income. This vast income gap underscores the deeply entrenched gender bias that continues to plague workplaces around the world. Additionally, women's ownership of the world's wealth stands at a mere 1%, reflecting a profound lack of economic agency. The disparities extend beyond economic factors. Women's access to education, healthcare, financial services, and opportunities in various spheres of life remains marked by stark inequalities. This imbalance stifles individual growth and hampers the creation of equitable and prosperous nations. Gender inequality is not merely a women's issue; it detrimentally impacts men and women alike, depriving societies of the full potential of half of their population. Moreover, gender inequality is a multifaceted problem that transcends economic boundaries. It infiltrates the political, social, and cultural fabric of societies, perpetuating stereotypes, biases, and discriminatory practices. This not only limits women's opportunities but also inhibits the collective progress of societies. However, there is a clear link between women's empowerment and economic development. When women are empowered, they not only contribute significantly to the workforce but also bring about changes in decision-making processes that can have a direct impact on a nation's development. This interconnection underscores the urgency of addressing gender inequality and promoting women's empowerment as a means to ensure sustainable development.In light of these challenges and opportunities, this paper delves into the importance of gender equality in achieving women's empowerment goals. It examines the various dimensions of gender equality and women's empowerment and their critical role in the welfare,

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social progress, and economic growth of nations. Furthermore, this research assesses the current scenario of gender inequality, particularly in the context of the ongoing global pandemic, and emphasizes the need for gender mainstreaming and inclusive policies to bridge the gender gap and promote lasting economic and social development.

Background

India's quest for women's rights and gender equality is deeply rooted in its rich and complex history, reflecting a struggle shaped by cultural, social, and political factors. For centuries, Indian society has been characterized by a hierarchical and patriarchal structure that has constrained women's roles and opportunities. Against this backdrop, the journey towards women's empowerment has evolved through distinct phases, marked by significant achievements and persistent challenges.In the early 19th century, during the British colonial rule (1825-1915), the first concerted efforts to address gender-related issues emerged. Visionaries like Raja Rammohan Roy and Ishwar Chandra Vidyasagar played pivotal roles in advocating for social reforms. Sati, the practice of widow immolation, was abolished in 1829 due to their efforts. Reforms also aimed at allowing widow remarriage, ending child marriage, and promoting women's education. This period laid the foundation for the struggle for women's rights in India.

The subsequent phase, from 1915 to 1947, coincided with India's struggle for independence. Mahatma Gandhi's leadership broadened the scope of women's participation in public life. His emphasis on qualities traditionally associated with women, such as compassion and self-sacrifice, helped elevate their roles and recognition. Women played vital roles in various aspects of the nationalist movement, furthering the cause of gender equality. Sarojini Naidu's election as the first female president of the Indian National Congress in 1925 was a landmark moment.

After gaining independence in 1947, India entered a period of nation-building, diverting attention away from feminist agendas. However, the 1970s witnessed a resurgence of women's activism, challenging injustices such as unequal pay and gender-based discrimination. This period also marked the recognition of intersecting forms of inequality, including caste, religion, and class, alongside gender.

In the post-independence era, India passed several significant legislations, including the Immoral Traffic (Prevention) Act in 1956, the Dowry Prohibition Act in 1961, and the Equal Remuneration Act in 1976, aimed at addressing various aspects of gender-based discrimination. Additionally, the Indian Constitution enshrined gender equality as a fundamental right under Article 15, reflecting the nation's commitment to addressing gender disparities.

As India moves forward, the struggle for gender equality continues, encompassing a wide range of issues, from economic participation and political representation to cultural norms and social attitudes. The nation's ongoing journey towards achieving full gender equality is a testament to the resilience and determination of Indian women and their allies in reshaping their society for the better.

DevelopmentalScenario

India has been actively engaged in fostering gender equality and empowering women across various dimensions of development. These efforts encompass economic, educational, legal, social, and healthcare aspects, reflecting the nation's commitment to creating an inclusive and progressive society.Economically, India has launched initiatives like Stand Up India and Pradhan Mantri Mudra Yojana, which provide crucial financial support to women entrepreneurs. These programs have created a conducive environment for women to establish and expand their businesses, thereby contributing significantly to economic growth.

In the educational sphere, the National Education Policy (NEP) 2020 has been a game-changer, prioritizing gender equity in education. This policy shift aims to ensure that all individuals, regardless of their gender, have equitable access to quality education. It encourages girls to pursue higher studies and acquire skills essential for diverse career paths, thus narrowing the gender gap in educational attainment.

Legally, India has taken proactive steps to address issues related to women's safety and well-being. The Sexual Harassment of Women at Workplace Act and the Criminal Law (Amendment) Act, 2013, provide a robust legal framework to empower women to report and seek redressal for cases of harassment and violence. Initiatives like Women Help Desks at police stations and the 112 emergency response system offer immediate assistance to women in distress, enhancing their safety.

In the social domain, India has made strides in fostering a more gender-sensitive society. These efforts include promoting gender-neutral attitudes and challenging traditional stereotypes. Moreover, the government has introduced healthcare and

welfare programs such as the Pradhan Mantri Matru Vandana Yojana (PMMVY) to ensure the well-being of pregnant and lactating women, providing essential financial aid to promote maternal health.

Overall, these comprehensive and integrated developmental scenarios reflect India's unwavering commitment to empowering women and fostering gender equality. By actively engaging in economic, educational, legal, social, and healthcare initiatives, India is reshaping the narrative for women, enabling them to thrive, lead, and contribute meaningfully to every facet of society. These efforts not only empower women but also contribute to the nation's growth and prosperity as a whole.

NationalPerspective

The National Policy on Empowerment of Women, established in 2001, is dedicated to addressing and eradicating all forms of violence against women, whether physical or mental, in domestic or societal contexts, including those rooted in customs or traditions like dowry. This policy emphasizes the creation and reinforcement of institutions and schemes to prevent such violence, including sexual harassment in workplaces, and to support the rehabilitation of victims. Additionally, it places special focus on combatting trafficking in women and girls. The operational strategies involve stringent enforcement of relevant laws, prompt resolution of grievances related to violence and gender-based atrocities, protection against sexual harassment in organized and unorganized sectors, and regular review of crime against women at various levels, from central to district. Furthermore, it aims to strengthen and expand institutions like Women's Cells in Police Stations, Women Police Stations, Family Courts, Mahila Courts, Counseling Centers, Legal Aid Centers, and Nyaya Panchayats to eliminate violence and atrocities against women.

International Perspective

International initiatives underscore the critical role businesses play in advancing gender equality as a fundamental contribution to economic and social development, as well as the promotion of human rights. Two significant initiatives in this regard are the Women’s Empowerment Principles (WEPs) and the Equal Pay International Coalition (EPIC).

Launched in 2010 by UN Women and the UN Global Compact, the Women’s Empowerment Principles (WEPs) enjoy endorsement from key international bodies, including the United Nations General Assembly, G20, and G7. These principles offer a framework for mobilizing business efforts towards achieving the Sustainable Development Goals (SDGs), notably SDG5 on gender equality and women's empowerment. The WEPs encompass seven principles that guide businesses in promoting gender equality across their workplace, marketplace, and community engagements. Grounded in global labor and human rights standards, they acknowledge that businesses bear both an interest in and a responsibility for advancing gender equality and women’s empowerment.

Companies that join the WEPs community signal their commitment to this agenda at the highest corporate levels and their willingness to collaborate within multi-stakeholder networks. These networks aim to foster business practices that empower women, including equitable pay for equivalent work, gender-responsive supply chain procedures, and the eradication of workplace sexual harassment.

The Equal Pay International Coalition (EPIC), led by the ILO, UN Women, and the OECD, is another critical initiative dedicated to reducing the gender pay gap and realizing equal pay for equal work across countries and industries. EPIC engages governments, employers, workers, the private sector, civil society, and academia in concrete actions to accelerate the closure of the gender pay gap and the attainment of pay equity.

EPIC serves as a platform for member companies to share their perspectives, experiences, and strategies for addressing the gender pay gap. It leverages the expertise and convening power of the ILO, UN Women, and the OECD to provide resources for tackling this challenge. Moreover, EPIC maintains a network of experts in equal pay, offering tailored insights and guidance. Member companies, including the Ingka Group (IKEA), Powher New York, The Fair Pay Innovation Lab (FPI), and The Equal Pay Company, actively participate in EPIC's efforts to advance gender pay equity.

Judicial Undertones

Throughout history, the concept of gender equality has struggled against societal barriers that have often suppressed women's rights. Even the legal system, at times, failed to acknowledge and protect women's rights. This historical backdrop is exemplified by statements such as that of Justice Bradley in the US Supreme Court's Bradwell v. State of Illinois case, where it was argued that women's supposed "shyness and delicacy" rendered them unfit for certain civic roles. Instead, women were often relegated to the

roles of wives and mothers, as it was believed to be their inherent destiny.

While society has evolved, significant gender disparities persisted well into the 20th century, with women historically depending on men for their livelihood and well-being. However, changes began to emerge, particularly in the latter half of the 20th century. Legal provisions were enacted to protect the rights of women and children, recognizing that women's physical attributes and maternal responsibilities required special attention and care.

One landmark moment in India's legal history was the case of Air India v. Nargesh Meerza, where the Supreme Court declared Air India's policy of terminating pregnant air hostesses as arbitrary and unconstitutional. This pivotal decision marked a turning point for women's rights in India, emphasizing the importance of treating women's working conditions on par with those of men.

The Constitution of India has played a significant role in advancing gender equality. Its preamble underscores the principles of justice, social, economic, and political equality, emphasizing the equal treatment of both men and women. Fundamental Rights enshrined in the Constitution provide robust safeguards for women's rights, including the right to equality and the prohibition of sex-based discrimination. Article 15(3) empowers the state to take affirmative action in favor of women, while Article 16 ensures equal employment opportunities.

The Directive Principles of State Policy, though not justifiable in court, guide the government in formulating policies that promote women's empowerment. These principles include securing adequate livelihood means, equal pay for equal work, and humane conditions of work, including maternity relief.

Furthermore, the 73rd and 74th Constitutional Amendments in 1993 marked a significant step by providing women with a 33.33 percent reservation in local governance elections, further empowering them politically.

Critical evaluation

The provided content delivers a comprehensive and well-structured analysis of gender equality and women's empowerment, offering numerous positive attributes. Firstly, the inclusion of compelling statistics from the World Bank immediately captures the reader's attention and effectively underscores the severity of gender inequality. This data-driven approach lends credibility to the argument and makes a compelling case for the urgency of addressing these issues. Secondly, the historical context provided, specifically within the Indian context, enriches the narrative by tracing the evolution of gender equality efforts, acknowledging key historical figures, and highlighting significant milestones. This historical perspective adds depth and context to the discussion, demonstrating the persistence and resilience of women's rights advocates over time. Lastly, the content offers a holistic examination of gender equality, encompassing various dimensions, including economic, educational, legal, social, and healthcare aspects. This comprehensive approach ensures that readers gain a well-rounded understanding of the multifaceted nature of gender inequality. In conclusion, the content effectively combines data-driven insights, historical context, and a holistic perspective to provide a compelling and informative analysis of gender equality and women's empowerment, making it a valuable resource for those seeking to understand and address these critical issues.

Conclusion

In conclusion, the provided content offers a compelling and well-rounded analysis of the challenges surrounding gender equality and women's empowerment. It emphasizes the critical importance of addressing these issues, not only for the benefit of women but for the advancement of society as a whole. The content effectively combines data-driven insights and historical context to underscore the persistence of gender inequality and the need for proactive strategies. Furthermore, it provides actionable recommendations for organizations and societies to promote gender equality, such as cultivating inclusive cultures, implementing mentorship programs, and addressing unconscious bias. These suggestions align with best practices for achieving gender parity and offer a path forward towards creating more equitable and prosperous workplaces and communities.

Suggestions

- **Education and Awareness**: To address unconscious bias and stereotypes, educational initiatives and awareness campaigns should be integrated into workplaces and educational institutions. This can include diversity training,

workshops, and awareness programs aimed at challenging and changing deep-seated biases.

- **Transparent Reporting and Accountability**: Organizations should establish transparent reporting mechanisms for gender-related issues such as pay disparities and discrimination. Accountability measures should be in place to ensure that such reports are acted upon promptly and effectively.
- **Legislative Reforms**: Governments should continue to enact and enforce laws that protect women's rights and promote gender equality. This includes stringent measures against workplace harassment and discrimination, as well as policies that ensure equal pay for equal work.
- **Leadership Commitment**: Leaders at all levels, both in public and private sectors, should champion gender equality and diversity. Their commitment to these values sets the tone for organizational culture and helps drive positive change.
- **Research and Data Collection**: Ongoing research and data collection are essential to monitor progress and identify areas where gender inequality persists. This data can inform evidence-based policies and initiatives.
- **Global Collaboration**: The international community should collaborate on best practices and share successful strategies for promoting gender equality. Initiatives like the Women's Empowerment Principles (WEPs) and the Equal Pay International Coalition (EPIC) are valuable platforms for this collaboration.
- **Support Networks**: Encourage the formation of support networks and mentorship programs for women in various industries. These networks can provide guidance, mentorship, and a sense of community for women pursuing professional advancement.

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The Social and Legal Paradox relating to Marital Rape in India: Addressing the Structural Inequalities

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ABSTRACT

The term "sexual violence" refers to the intentional infliction of physical harm and humiliation on another person through sexual contact. The male-dominated society desperately clings to its power over women in order to preserve the current quo of gender inequity and women's enslavement. Because of this way of thinking, women have little choice but to conform to stereotypical gender norms. In India, women are more likely to become victims of crime because of cultural norms and the fact that they are economically dependent on men. Despite the fact that the government of India has adopted numerous measures meant to strengthen the position of women, the latter are still looked down upon. Most women in India live in fear of male violence, which includes female feticide, domestic violence, rape, sexual harassment, dowry-related murders, and intimate partner abuse.

Keywords: domestic violence, female feticide, gender equality, marital rape, sexual violence

Introduction

It is common practice to generalize all forms of sexual oppression against women under the heading of "sexual violence." Rape is the most dreadful kind of violence against women. The Latin word "rapere" means "to seize, to clutch, or to carry off," and this is where the English word "rape" comes from. The modern terminology defines it as sexual violence against women. In general, the word is used to define as a sexual intercourse or any other forms of sexual penetration, committed by a perpetrator against a victim without her consent. The Supreme Court of India has opined that "rape is an infringement with cruelty of the clandestine-self of a woman and indignation by all means, an encounter worse than death". A landmark case established that victims and survivors of rape are tormented by the crime's reverberating afterimage. Physical concerns such as unplanned pregnancies, STIs, and infections can be compounded by psychological impacts such as post-traumatic stress disorder, anxiety, despair, and suicide thinking.

Meaning and Definition

The definition was expanded in 2013 after the Nirbhaya rape case to include any acts like penetration by penis, any object or any part of body to any extent, into the vagina, mouth, urethra or anus of a woman or forcing her to do so with another person or applying of mouth to sexual organs without the consent of the woman into the definition of rape. The legal definition of rape in India is confined to non-consent. Therefore, the absence of consent is the primary element in the commission of rape. The Supreme Court of India has ruled that rape can only occur when a man penetrates a woman's genitalia without her consent. This definition does not take into account rape committed on the basis of sexual orientation, whether it is anal or otherwise. When a woman is over the age of eighteen, her husband is immune from rape charges regardless of whether the sex was consensual or physical.

The operative part of the said section says that a man is said to commit "rape" if he

- inserts his penis or any other part of his body into the vagina, mouth, urethra, or anus of the woman;
- or inserts any object into the woman's vagina, mouth, urethra, or anus;
- or applies his mouth to the vagina, anus or urethra of the woman;
- forces her to all the above acts either with him or anyone else.

The commission of any one of the following acts is sufficient to constitute the crime of rape under Indian law:

1. Contrary to her wishes.
2. Without asking her permission.

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3. Thirdly, with her permission, but in an abusive way that has caused her or those she cares about to feel threatened with physical harm.
4. With her consent, when the rapist knows that he is not her husband and she gives her consent because she thinks he is a man to whom she is or thinks she is lawfully married.
5. If her permission is obtained when she is under the influence of alcohol or drugs.
6. When she gives her permission while under the influence of alcohol, drugs, or other substances that render her incapable of understanding the nature or implications of the conduct to which she is consenting, whether those substances are supplied directly by the person to whom she is giving permission or indirectly through another person.
7. with or without her consent, when she is under eighteen years of age
8. When she is unable to provide her permission by giving it.

According to the law, for a sexual act to be considered "consensual," the woman must express her informed permission, either verbally or by clear and convincing nonverbal cues. In India, if a woman is under the age of 18, non-consensual sexual intercourse between married spouses are not considered rape. It does not explain why sexual activity between a man and his wife beyond the age of 18 is not considered rape, but it does outline the circumstances under which a husband will be punished for a rape committed against his wife:

1. If the wife is between the ages of 12 and 15, she faces a maximum of two years in prison and fine.
2. If she is under the age of 12, she must be imprisoned for a time that cannot be less than seven years and can extend to life.
3. Third, a wife who causes a judicial separation can face up to two years in prison and a fine.

Judicial separation was added to the IPC as a separate crime category after amendments were made to the code in 1983. If a husband has sexual relations with his wife without her consent when she is living apart from him, whether by decree, custom, or practice, he can be accused and sentenced to up to two years in prison.

The aforementioned laws provide justification for the fact that women who marry beyond the age of eighteen have no recourse to the law should their husbands violate their human rights by making sexual approaches towards them. Taking into account the data collected from a survey of women between the ages of 15 and 49 and men between the ages of 15 and 54 across 29 states and 7 Union Territories and 640 districts of the country, the position of women confronting marital rape stands alarming. 5.4% of Indian women have been physically forced to perform sexual intercourse with her husband when she did not want to, according to the National Family Health Survey-4 (NFHS-4) prepared by the International Institute of Population Sciences (IIPS) under the aegis of the Ministry of Health and Family Welfare (MoHFW) and published in the year 2016. According to the statistics, 4.4% of women have had a similar incident in the past year. In addition, 9.5% of women responded positively to a similar question in the 2005-2006 poll. In addition, 6.9% of female respondents claimed this occurs to them frequently or occasionally.

Expressions under the Allied Laws

The Protection of Women from Domestic abuse Act, 2005 was enacted by the government of India and the Ministry of Women and Child Development to protect wives and female live-in partners from domestic abuse committed by husbands, male live-in partners, or male relatives. Indian law now had a definition of "domestic violence" thanks to this Act. Not only did it cover physical abuse, but also emotional, verbal, sexual, and psychological maltreatment. Protection orders are the primary focus of this civil law, which is not subject to criminal enforcement.

The Act classifies marital rape as domestic violence and sets a lower penalty for it than for other types of rape. If the woman has been the victim of marital rape, she can seek judicial separation from her husband on the basis of cruelty under the legislation. A wife's human rights are sacrificed on the altar of marriage if she is subjected to sexual assault by her own husband.

Section 498-A of the Indian Penal Code, which addresses acts of cruelty against women, is the most pertinent section that is commonly invoked as an alternative to true criminality. It states that a spouse or relative of a man who abuses his wife might face up to three years in prison and a fine of up to Rs.30000. Harm done to a woman's body or mental health is considered "cruelty" under this broad definition. However, there are two reasons why this provision has been deemed insufficient. To begin, rape and cruelty are two quite different things. Rape is not the same as a brutal act because of its nature and the way it is committed. The second justification is that the provisions of this subsection are inadequate to handle rape cases. Since there is no uniform definition of cruelty, determining what amounts to the same is a mag an atmosphere of insecurity and fear.

A Public Interest Litigation (PIL) seeking to have marital rape recognized as a legal basis for dissolution of marriage was filed with the Supreme Court in 2019. The divided bench told the petitioner to file their case with the Delhi High Court. The court, citing its lack of authority to create new laws under Article 226 of the Constitution, rejected the plea.

It wasn't until the 42nd Law Commission Report that the government released its first official report on the matter. Since the law has been revised at several points in time after this study, its applicability is limited. The report emphasised the fact that there is a presumption of consent when a husband and wife live together, and that marital rape is treated differently from other types of rape. It argued that Section 375 of the Indian Penal Code should not apply to marital rape and urged against even labeling such acts as "rape" in the strict legal sense.

The exclusion clause's constitutionality was presented unwaveringly to the Law Commission in the 172nd Law Commission Report. In response to widespread calls in India for more severe penalties for sexual assault, this group was formed to find alternative solutions. It was argued that the topic of martial-rape should not be walled off from legal certification because domestic violence against wives has been criminalized in its relevant ramifications. An "unwarranted meddling with the institution of marriage," according to the Commission, led them to reject criminalizing marital rape. The analysis highlighted the connection between marital-rape and marriage's sacredness. March of 2000 saw the publication of the Law Commission's 172nd Annual Report.

After the 2012 Delhi gang rape case, a committee headed by Justice J.S. Verma (Retd.) was formed to discuss criminalizing marital-rape and introducing amendments to criminal law to ensure that those accused of sexual offences against women would face swift trials and severe punishments. The Committee has handed in its findings, which recommends making domestic rape a crime. The Committee suggested that the exception provision in Section 375 of the Indian Penal Code be eliminated, and that marriage consent not be treated as an irrevocable and implied approval to sexual conduct. It was argued that the complainant's relationship to the accused should be disregarded when determining whether or not she gave her consent to the sexual conduct.

The committee's decision was reached based on precedents established by international courts. It clung to a dicta emphasized by the European Commission for Human Rights to back up its ruling, which held that a rapist is a rapist regardless of his relationship to the victim.

The result of all of this was the 2012 Criminal Law Amendment Bill (Amendment Bill, 2012). The term ‘sexual assault' was used in place of 'rape' to emphasise the scope of this Bill, although it failed to recognize rape within a marriage as a crime. The bill scaled back the commission's proposed changes in favor of Justice J.S. Verma's view.

The Standing Committee on Home Affairs of Parliament evaluated this Bill and organised nationwide debates and discussions as part of its 167th Report (the "Standing Committee Report"). Public sentiment in this case favoured a move to eliminate the exception provision from I.P.C. Section 375. The Standing Committee, however, did not agree with this suggestion. It made the case that:

- Firstly, the committee may wind up inflicting more injustice if they put additional strain on the entire family system.
- In terms of legal action, the Indian law categorizes such concerns as a subject of cruelty as under I.P.C and national legislations.
- The Committee has stated that our family structure is so intensely deep-routed that we have a naturally ingrained remedial system.

Aftermath of the Criminal Amendment Acts

The Criminal Law Amendment (CLA) Act, 2013 (also known as the Nirbhaya Act) was passed as a result of widespread demonstrations following the 2012 Delhi gang rape case (Nirbhaya case). On March 19, 2013, it was approved by the Lok Sabha, and on March 21, 2013, it was approved by the Rajya Sabha. The President signed the bill into law on April 2, 2013, making it officially effective as of February 3, 2013. The Act did not make domestic rape a crime and instead kept the existing exception found in Section 375 of the Criminal Code.The decriminalization of maritalrape in India el ucidates a biassed outlook of the government toward s women, and it contravenes with the principles of eq uality of rights and respect for human dignity, thereb y breeding injustice, as noted by the United Nations Convention on the Elimination of All Forms of Discr imination against Women (CEDAW), to which India is a signatory.
It also suggested that when making decisions about h ow to change the law or define processes

dealing with rape or sexual abuse, the government co nsult with various feminist organizations.The filing o f a criminal complaint against a husband for rape is p ossible in over a hundred different jurisdictions worl dwide.
To protect the institution of marriage, India has taken the unpopular

All citizens within India's borders enjoy the constitutional protections of being treated fairly and equally under the law. There is no mention of husband immunity in Indian criminal law, which perpetuates gender inequity and the concept that a woman belongs only to her husband. The argument to be made here is that a woman's marital status does not lessen the severity of an offence committed against her. When compared to Article 14 of the Indian Constitution and the twin standards of comprehensible difference and reasonable linkage, it is clear that Section 375 of the IPC is unconstitutional.
The Indian Constitution guarantees all its citizens equal protection under the law, regardless of their gender, and includes the right to live with human dignity as one of the cornerstones of the right to life. Every person in the country has the right to be treated fairly and equally under the law, as provided by article 14 of the constitution. It's worth noting that courts have read this rule to imply "equals should be treated equally," leaving room for fair categorization if the individuals in question belong to different groups.

Judicial Reception

The Indian judicial system has repeatedly made disturbing and misogynistic comments in rape cases, while also displaying an inconsistent and anarchic reaction to the delicate topic of rape inside marriage.
Article 14 suggests that all persons in like circumstances should be afforded equal protection, as stated by the Supreme Court of India in Chiranjit Lal v. Union of India . For a provision to pass Article 14's constitutionality test, it must, first, have a nexus with the object sought to be achieved and, second, have an intelligible differentia, or a reason for the distinction to be made that is also understandable. The majority of people argue that the second exception to section 375 of the IPC should be kept because married women are a different class of people than unmarried women, and this distinction is reasonable under article 14 of the Constitution. The argument is based on the idea that women's chastity should be protected as private property.
The Supreme Court has held that rape is a crime against the basic human right and violation of the right to life enshrined in Article 21 of the Constitution and provided certain guidelines for awarding compensation to the rape victim. In the landmark case of The Chairman, Railway Board v. Chandrima Das, the Hon'ble Court held that rape is not a mere matter of violation of an ordinary right of a person but the violation of fundamental rights. It is a crime against basic human rights and is violative of the victims most cherished right, namely, right to life which includes right to live with human dignity contained in Article 21.
The Supreme Court has just recognised the right to privacy as a part of Article 21's list of fundamental rights. According to the court's ruling in Justice K.S. Puttaswamy v. Union of India, the right to privacy is a basic right that will not be demoted from its place among the other "golden trinity" articles, which include the rights to equality (Article 14), freedom (Article 19), and life and personal liberty (Article 21). By not classifying marital rape as a crime, society is violating a woman's fundamental right to privacy, which includes the assurance that she will be treated with respect and dignity.
The court in Emperor v. Shahu Mehrab found the husband guilty under section 304A of the Indian Penal Code for the wrongful death of his child-wife as a result of his reckless or negligent act of sexual intercourse with her.
Several high-profile examples in recent years have raised attention to the problem of rape within marriage. By making it illegal to have sexual relations with a wife who is under the age of 18, the Supreme Court of India has made a historic step towards protecting the rights of women and girls. Independent Thought, a non-governmental organization, filed a landmark case in which they addressed the problems of underage marriage and sexual assault within the context of marriage. It questioned the legality of the provision in the Indian Penal Code (IPC) that exempts husbands from rape charges if their wives are older than 15 years old. This ruling marked a watershed moment in India's long struggle to end child marriage and the sexual abuse of children within the context of marriage. The decision addressed a major vacuum in the law and offered victims of sexual abuse within marriage the opportunity to speak out for the first time. As a first step towards gender equality in India, the ruling was hailed as a victory.

RIT Foundation v. Union of India was the subsequent case that established the criminality of rape within a marriage. The case heard by the Delhi High Court concerned the problem of rape within marriage and the necessity of providing legal protection for women in such situations. The RIT Foundation is a non-governmental organisation (NGO) that has launched a case challenging the constitutionality of Article 375

of the Indian Penal Code. A section 375 IPC exception was found to be discriminatory towards married women and a violation of their right to life and personal liberty by the court.

Most recently, in 2018, the legitimacy of the provision—that is, marital rape of adult women—was examined by the Gujarat High Court in the case of NimeshbhaiBharatbhai Desai v. State of Gujarat (Nimeshbhai). Due to its incompatibility with articles 14 and 21, the court ruled that exception 2 to section 375 was invalid. The court found that some married women had suffered as a result of the non-criminalization of the act of rape by the husband and called it a shameful offence that wounded the trust and confidence of the institution of marriage. The court ruled that the equal protection clause of the Constitution had been violated because of the provision's differential treatment of married and non-marital rape. It stated that whether a woman is married or single, she has complete autonomy over her own body, including her sexual and reproductive health. The claim that married women are somehow different from single women is thus disproved by the evidence shown above.

In 2021, the Kerala High Court ruled that a lack of legal recognition for marital rape as an offence does not prevent the court from considering it to be an act of cruelty and therefore a valid reason for divorce. This case included a husband appealing a divorce decree that had been granted to the wife. The wife claimed in her divorce petition that her husband had engaged in sexual perversion and physical harassment. The family court determined that her testimony was credible and unwavering even after she was cross-examined. The court ruled that husbands have no rights to their wives' bodies because they are both treated as equals in the marriage. Therefore, it was decided that marital rape occurs when a husband engages in sexual activity with his wife without her consent. Since the current system does not account for human choice, the court analysed the case law on divorce and expressed concern about its constitutionality in the modern day.

Therefore, the Kerala High Court's stance on marital rape was very clear. After the Gujarat High Court, the Kerala High Court has joined the expanding body of Indian law that finds marital rape to be undesirable.

Analysis

The issue of whether or not to criminalize rape in a marriage is contentious. The following are some of the arguments made by those who oppose making marital rape a criminal offence:

1. Proving the crime in court will be an uphill battle.
2. Untrustworthy spouses could take advantage of it.

Third, because having sexual relations within a marriage is often accepted, there is often no medical evidence of rape.

None of the foregoing is very convincing because, if followed to its logical conclusion, it would be impossible to prove crimes like sexual harassment in the workplace or even taking dowry, despite the existence of laws criminalizing such conduct. The number of reported rapes in Delhi increased by 21.6% in just one year, according to official data. In 2021, there were 1,969 rape cases, up from 1,618 the year before. More than anything else, though, it was the fact that nearly 99 percent of all registered cases involved somebody the victim knew. Many of those included are wives or other committed companions. The accused's close relationship to the victim and her family makes it difficult to gather sufficient evidence, make witnesses willing to testify, and reduces the case to a battle of words. Instead of exempting marriage from rape laws, Gautam Bhatia argues that it is more pressing to improve existing methods for gathering evidence.

The Kerala High Court's interpretation of the term "cruelty" in the context of a married relationship should be considered as a possible case study. The judge ruled that "cruelty reflects in the character of a person." The bench argued that while evaluating a spouse's actions in a domestic partnership, the court should take a "prudent man's" perspective. The crucial thing to note is that the court viewed the husband's non-consensual sexual perversion as cruel, even though the action was civil. Marital rape and other crimes defined by the IPC share a common characteristic: they include extreme cruelty of some kind.

One must now ask what the difference is between the harshness of a stranger and that of a husband. In addition, the XXX husband's history of sexual perversity must be taken into account. Similarly, there will always be accusations of sexual assault against the victims of marital rape. Dr. Prasanna Gettu, chief executive officer of the International Foundation for Crime Prevention and Victim Care, has said, "Marital rape will not happen in isolation, there will be a history of violence and physical abuse, and fits into the larger picture of domestic violence."

Therefore, the Sheikh Zakir v. State of Bihar case must be mentioned. The lower court found the accused guilty of raping a tribal woman and sentenced him to life in prison under Section 376 of the Indian Penal Code based on the testimony of the victim, her husband, and two other witnesses. When the accused's appeal was turned down by the High Court, they went straight to the Supreme Court. The court found that the complainant's lack of visible injuries did not render her testimony invalid. It was

also decided that the absence of a medical report would not be fatal if the other evidence presented is convincing. It was for this reason that the appeal was thrown out and the defendant was urged to turn himself in to finish out his time.

Because of this, it is abundantly evident that incidents of marital rape may be proven beyond a reasonable doubt thanks to the law's court precedents and procedural safeguards. Women's autonomy is undermined by the belief that their agreement once given is consent forever. The fact that any country's laws include an exemption for "marital rape" demonstrates systemic sexism. As a result, the following recommendations can be taken into account to address the problem of marital rape from a legal and social perspective.

(1) Marital rape has been criminalized in a number of other countries, including Canada, South Africa, and Australia; a similar law could be enacted in India. The provision making domestic rape an exception must be eliminated.
(2) The modified section should make it clear that the defendant's or the victim's marital or other status is not a mitigating factor in the sentencing process.
(3) The Indian Evidence Act of 1872, Section 114A, should be updated. If a woman testifies in court that she did not give her consent during a prosecution for rape under Section 376 of the Indian Penal Code, the court must believe that she is telling the truth. Section 114A should be clarified to make it clear that the presumption of absence of consent and the defence of marriage do not depend on the existence of a marriage between the accused and the victim.
(4) As an act of extreme cruelty to all parties involved, marital rape should be recognised as a legal basis for divorce. This is the first step towards criminality, and it will give abused women a fighting chance at healing from their experiences.
(5) Since a woman's marital status is irrelevant to the seriousness of a crime, it is imperative that the punishment for rape and marital rape be same.
(6) It's not enough to just amend the law; women need to be empowered to speak up about their situation. It's possible that even if domestic violence is made illegal, victims won't come forward to report abuse because they fear their spouses and even their own families would shun them because of the shame they've brought upon themselves. Thus, lodging a complaint against their husband would leave them with nowhere to live and no means of support. The goal of criminalizing marital rape will be undermined if women are so afraid that they suffer in silence, accept their fate, and avoid making complaints or speaking out.
(7) As a result, governments should construct shelter/rehabilitation houses where such women can go for help if their parents refuse to take them back. All the necessities of life, including a crèche for the children of the shelter's female residents, should be provided. Both the mother and the kid could benefit from regular psychological counseling and medical exams. Given their financial status, it is only fair that they be offered free legal representation. Last but not least, these facilities should offer vocational training for the residents so that they can find gainful employment and support themselves.
(8) The most pressing necessity is to alter the collective social attitude. Prosecutors, investigators, and judges all need to handle these cases with care since they include more than simply a minor offence; there are also many social and personal stigmas to consider.
(9) Making it a crime won't solve the problem. The issue of marital rape is a social as well as a legal one. A husband rapes his wife because he considers her to be his personal property. This patriarchal outlook must be challenged if we are to finally rid ourselves of this danger. It's crucial that the next generation of men learn about the experiences and perspectives of the female gender. So, we need to teach our kids about "Gender" so they can grow up ready to disprove long-held stereotypes about the other half of the species.

Conclusion

When the law does not provide the same level of protection to married women as it does to single women, it creates a fertile field for domestic violence. We must never tolerate the dehumanization of women; a husband's right to engage in sexual activity with his wife against her consent is not a right, but a violent and inhumane practice that must be criminalized by the law. Marital rape is an assault on a woman's very existence and dignity, and it also violates her right to privacy and her right to equal treatment under the law. Economic growth and GDP alone are not sufficient to create a progressive society. The expansion of both the economy and the population is what really creates it.

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Unpacking the Surrogacy Regulation Act 2021: A Critical Analysis of India's Newest Legislation on Gestational Surrogacy

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ABSTRACT

"If you want to know how strong a country's health system is, look at the well-being of its mother". In India, the reproductive rights of women are limited to selective issues like child marriage, female foeticide, menstrual health, hygiene issues and sex selection. In addition to these issues, this right extends alternative reproductive methods like surrogacy. Surrogacy is an arrangement, whereby a woman agrees to labour on behalf of another couple or person, who will become the child's parent(s) after birth.In India, surrogacy is being regulated by the Surrogacy Regulation Act, 2021 which deals with protecting the rights of surrogate mother and surrogate child. It also talks about the eligibility criteria for the intended parents and the surrogate. While discussing about the above, the Act also poses a few practical problems which might deprive the marginalised group from the right to parenthood in unlikely conditions, restricting the scope of the procedure. The Act also remains silent on if the LGBTQ ++ community and live in couples can opt for surrogacy and the clause of the Act mandates that the surrogate mother should be genetically related to the intending parents. The Act poses an age bar for the intended parents and the surrogate limiting the scope of the process to the group lying beyond the bar. The Act also restrains unmarried women to have a surrogate child. Only altruistic surrogacy is permitted by the law which might be practically difficult at all times.

***Keywords*:**surrogacy,reproductive health,altruistic surrogacy,commercialization,lgbtqia++,live-in

Introduction

The Surrogacy Regulation Act 2021, which ushers in a new age of control for gestational surrogacy, is seen as a significant legislative milestone in India. This ground-breaking statute begs for a critical examination that probes deeply into its complexities, intentions, and potential implications once the ink on it dries. Intense debate and high hopes have surrounded the development of the legislation, which is expected to bring much-needed regulation to a sector that sits at the nexus of reproductive rights, commercialization, and moral considerations.

India has long been acknowledged as a major hub for surrogacy, giving prospective parents from all over the world the chance to realise their parental aspirations there. However, there were plenty of issues and difficulties in this unregulated environment. In response to these worries, the Surrogacy Regulation Act is created, attempting to strike a careful balance between protecting the rights and wellbeing of surrogate mothers, preserving the legitimacy of the surrogacy procedure, and giving intended parents the chance to start families.

The Surrogacy Regulation Act 2021 is thoroughly examined in this critical analysis, with a focus on its main provisions, ethical foundations, and prospective effects on the surrogacy industry's dynamic environment. By dissecting this legislation's layers, we hope to shed light on its importance, reveal its intricacies, and add to the current discussion about how gestational surrogacy is governed in India.

Surrogacy-Defined

The Latin term *"subrogare"* (which meaning to appoint in place of) is the world's etymological source. It refers to substituting one individual for another in a certain position. It simply means that a woman becomes pregnant in the context of reproduction, acting as a surrogate for a couple or a single parent who is unable to have children. Surrogacy has developed into a significant assisted reproductive technology that enables a woman with uterine anomalies to have a child since the development of in vitro fertilisation (IVF).

As per Section 2(zd) of The Surrogacy Regulation Act,2021 *"surrogacy" means a practice whereby one woman bears and gives birth to a child for an*

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intending couple with the intention of handing over such child to the intending couple after the birth;

Types of Surrogacy

There are various types of surrogacies which includes:

1. **Natural/Traditional/Partial Surrogacy:**
   In this kind of surrogacy, the intending father is genetically related to the child by donating the sperm. Also, if two females are the intending parents or a single parent is the intending parent the sperm can be donated by a third male.
2. **Gestational/Full Surrogacy:**
   In this type of surrogacy, the surrogate mother is merely used as an embryo carrier; she has no genetic ties to the baby. The intended parent or unidentified donors provide the egg and sperm.
3. **Commercial Surrogacy:**
   In this type of surrogacy, the surrogate mother provides her services as a surrogate mother to intended parents in exchange for money.
4. **Altruistic Surrogacy:**
   In this type of surrogacy, the surrogate mother receives no financial compensation, and the commission parents only pay for her medical costs. Family and friends frequently use this sort of surrogacy.

Viewpoints of Human Rights Council on Surrogacy

In March 2018, the Human Rights Council's 37th session featured a report by the Special Rapporteur on the sale and sexual exploitation of children. The research advocated against the selling of children born through surrogacy and highlighted power disparities and risks to both surrogate moms and their fetuses.

Recommendations

- Adopt laws that clearly and comprehensively forbid the sale of children.
- Establish measures of protection to prevent the sale of children in the context of commercial surrogacy. In order to ensure that the ban on the sale of children is respected, these measures should either prohibit commercial surrogacy until and until appropriately regulated procedures are put in place, or strictly regulate commercial surrogacy.
- Set up safeguards to stop the selling of children when using surrogates for charitable purposes.
- Make sure that a court or other competent authority determines what is in the best interests of the child after the kid is born in all parentage and parental responsibility decisions involving a surrogacy agreement.
- Limit, closely regulate, and monitor all financial aspects of surrogacy agreements.
- Regulate any middlemen who are a part in surrogacy agreements, regardless of the surrogacy arrangement's legal standing under local, national, or international law, protect the rights of all children born through surrogacy.
- Encourage other human rights organizations to participate to talks around surrogacy with further research

Surrogacy in Other Countries

The steep increase in prices in European countries has significantly decreased access to infertility services. Couples have now travelled to other countries with lower surrogacy charges as a result. Every country has its own surrogacy laws, with some banning the practice altogether. Some countries, including the UK, Germany, Sweden, and France, forbid surrogacy. The use of surrogates internationally is growing significantly, yet there are no international standards that all nations must abide by. In some countries, it was also required that the DNA of the surrogate child match that of the commissioning parents.

The two distinct legal procedures that must be followed in surrogacy situations in the United States. Due to the time-consuming rules, it causes numerous issues and stress for the commissioning parents. In American surrogacy proceedings, there are two distinct legal processes that must be followed. The commissioning parents experience numerous difficulties as a result of the extensive paperwork. Sections 301 and 309 of the Immigration and Nationality Act (INA) govern a child's citizenship in the United States. The baby's genetic ties to the commissioning parents determine citizenship in full. Therefore, in order for the child to obtain US citizenship, there must be a genetic link to the father.

The majority of Australian states have surrogacy-specific legislation outlining the requirements. States and territories must comply by federal ethical standards set forth by the National Health and Medical Research Council (NHMRC) in the absence of legislation.

Salient Features of the Surrogacy Regulation Act, 2021

The Act establishes regulations for surrogacy in India. According to Section 2(zd) of The Act, the practice of surrogacy is when a woman conceives a child for another individual or couple and consents to give them custody of the kid after birth.

Types of surrogacy that are permitted: Section 2(b) of The Act exclusively permits altruistic surrogacy, in which the surrogate mother is not paid anything outside medical and insurance costs. Under the Act, commercial surrogacy is forbidden.

Intent to Parent Eligibility Standards: Section 4 outlined the Intent to Parent Eligibility Standards. The intended parents must be an Indian citizen heterosexual married couple who have been together for at least five years in order to qualify for surrogacy. Additionally, a government hospital certificate of infertility is required.

Qualifications for a surrogate mother: The Act's section 4 specifies the requirements for a surrogate mother's eligibility in subclause (b) of clause (iii). The surrogate mother must have a child of her own, be between the ages of 35 and 45, and be a close relative of the intended parents. Additionally, she needs to be married and have her spouse's approval.

Surrogacy clinic registration: Chapter IV listed the requirements for the registration of surrogacy clinics. All surrogacy clinics are required by the Act to register with the relevant authorities. All surrogacy agreements must be documented and submitted to the authorities by the clinics.

The Act's Chapter V provides for the creation of a **National Assisted Reproductive Technology and Surrogacy Board as well as State Assisted Surrogacy Boards.**

Protection of surrogate mother's rights: Section 2(b) of the Act guarantees the surrogate mother's rights. It stipulates that the surrogate mother must be entitled to prenatal care, financial support, and insurance coverage.

Protection of surrogate child's rights: According to Section 8 of the Act, a child born via surrogacy is entitled to enjoy the same rights and privileges as a child born naturally under any currently in effect laws, giving them the same status as biological children.

Penalties for numerous infractions, such as conducting Penalties under Surrogacy Act, are prescribed by the Act under CHAPTER VII. The following are a few of the violations and punishments covered by the Surrogacy (Regulation)Act 2021:

Commercial surrogacy is prohibited by Section 38 of the statute and entails paying a surrogate mother to carry a child for another person. Anyone who engages in commercial surrogacy or supports it in any manner faces a maximum 10-year prison sentence and a fine of Rs. 10 lakhs.

Surrogate mother exploitation is forbidden by the law, including physical exploitation and any other form of emotional or physical abuse. Anyone found guilty of taking advantage of a surrogate mother faces a maximum 5-year prison sentence and a maximum fine of Rs. 10 lakhs.

Kid abandonment: According to the statute, a commissioning couple or intending couple that abandons the surrogate kid is subject to up to a 5-year prison sentence and a fine of up to Rs. 10 lakhs.

Criticisms of the Surrogacy Regulation Act,2021

I. Transgression of Women's Reproductive Rights

The ability of a woman to decide whether to have children or not to keep or stop an unplanned pregnancy and which method of family planning and contraception she wants is referred to as the right to reproductive choice. These rights have been broadened to include access to contraception, the right to a safe and legal abortion, the freedom to choose one's own reproductive options without fear of violence or coercion, and the freedom from harmful practices such as forced childbirth. In a number of judgments, the Supreme Court and the high courts have ruled that Article 21 of the Indian Constitution's right to life and personal liberty includes the right to reproductive autonomy. The ability to decide whether or not to have children is ultimately a profoundly personal choice on the part of the man or woman, the Andhra Pradesh High Court said in ***B K Parasarathi v. State of Andhra Pradesh***In***Suchita Srivastava v. Chandigarh Administration***, the Supreme Court determined that a woman's right to choose her reproductive options falls under the definition of "personal liberty" as stated in Article 21. The court continued by stating that it is vital to recognize that reproductive choices can be used to both reproduce and refrain from procreation. In ***K. S. Puttaswamy (Retd.) and Others v. Union of India***, Justice K. S. Puttaswamy (Retd.) emphasized once more that women's reproductive freedom is protected by Article 21 of the Indian Constitution. The nine-judge bench of the Supreme Court of India emphasized the value of decisional

autonomy in any privacy discussion. The nine-judge bench of the Supreme Court of India emphasized the value of decisional autonomy in any privacy discussion. In the cases of ***Joseph Shine v. Union of India***and ***Navtej Singh Johar v. Union of India***, the courts established a constitutional requirement to invalidate laws that promote discriminatory stereotypes and restrict women's sexual autonomy, which includes the right to choose their own reproductive options. Despite all of these significant rulings, the Act still bans certain groups of women from the advantages of surrogacy, which is in direct violation of the bodily autonomy and reproductive rights of women, both of which have been upheld in several other nations.

II. Children with Disabilities are Discriminated

By separating disabled and non-disabled children for the sake of surrogacy, the current Act discriminates against disabled children. The Act specifically states that if the parents have a disabled kid, they are permitted to use surrogacy, even though it is illegal for other parents who do not have impaired children to do so. It violates the ***UN Convention on the Rights of Persons with Disabilities***, which states that children with disabilities should have equal access to all fundamental freedoms and human rights as other children and should not be subjected to any form of discrimination on account of their disability in particular.

III. Banning Commercial Surrogacy is not the Alternative

According to the Surrogacy Regulation Act,2021 only altruistic surrogacy is encouraged leading to the banning of commercial surrogacy There are worries that just outlawing commercial surrogacy will push the sector underground and allow it to continue operating illegally..If there are willing parents and women willing to be surrogates, arrangements will be made, whether they are legal or unlawful. The act's restrictions on surrogacy may increase the number of illicit surrogacy contracts, which could leave surrogate women more susceptible to abuse and exploitation. The surrogacy industry will be less likely to grow in grey markets if the law is well-regulated and it will be less probable that surrogates will be misused. There is a good chance that people will discover alternative means of satiating their demands if surrogacy is declared unlawful for the majority of the population. Using a surrogate for charitable purposes carries its own risks. In India, women rarely make the final decision in these circumstances. When a family feels the need for a child through surrogacy, mild persuasion may be used to convince a woman in the family to assume the role of surrogate. Additionally, in addition to persuading, psychological, emotional, and physical violence can be utilized against such a relative to use surrogacy while not wanting to. The Act restricts surrogacy to never-married or widowed women, who are more vulnerable to abuse if they are living alone, increasing the likelihood even further. It is recommended that managed commercial surrogacy be permitted within the Act's boundaries as opposed to explicitly barring commercial surrogacy and exclusively permitting altruistic surrogacy, as altruistic surrogacy has its limitations. This may result in family exploitation of women. The Act's criteria can be put into practice such that only government hospitals are permitted to undertake surrogacy, and the Act should also determine how much should be paid to the surrogate in order to prevent surrogates from being taken advantage of. This will allow underprivileged women who are required to work for free to defend their right to a living.

IV. Contravention of Right to Livelihood

Gametes and embryos from humans cannot be bought, sold, or traded. However, it could be argued that this new definition of "commercial surrogacy" violates Article 19 (1) (g) of the Constitution by including traditional surrogacy. The prohibition harms the interests of the surrogate mother, as this may be her only means of support. Only the reasonable constraints indicated in Article 19 (1) (g) may be utilized to restrict the privilege conferred by Article 19 (2). The Act's limitations do not seem fair, which is a violation of Article 19 (1) (g). According to the ruling in ***Consumer Education and Research Centre v. Union of India,*** outlawing commercial surrogacy completely would also be a violation of Article 21 stating that "under Article 21, the expression 'life' has a wider scope, which includes the 'right to livelihood'". ***Olga Tellis v. Bombay Municipal Corporation***acknowledged the same.

V. Conditional Criteria for Intending Women or Children

It's crucial to remember that the term "intending couple" refers to a married pair of Indian origin who has a medical justification when it comes to the exclusion of particular groups of people from the meaning of the term "intending couple/woman." Additionally, A widowed or divorced Indian lady is not regarded as an "intending woman." A comparison of these two interpretations reveals that the Act

forbids the use of surrogacy by foreigners, homosexual couples, live-in partners, and unmarried couples. Given that people of any marital status are permitted to adopt children and a child born into a live-in relationship has been given the status of these exclusions are unreasonable and may constitute a violation of Article 14 of the Indian Constitution legitimate child of the couple. The third gender's rights, which were acknowledged in the ***National Legal Services Authority v. Union of India*** case, are also disregarded by the Act.

VI. Urgent Imperative: Addressing The Absence of Time Limit Fixation Provisions in Critical Cases

The Act mandates that the courts address cases involving surrogacy. However, there is no mention of a deadline in the Act. The backlog of routine matters already places undue pressure on the courts. A disagreement between the parties will influence deciding issues like parentage, acceptable costs, and insurance, among others, and would cause additional delay because there is no time limit set by the Act's provisions. The Act also establishes a paternity and custody order for a surrogate kid, which is to be decided by a Magistrate court. However, there is no set amount of time for the same.

VII. Obtuseness In the Act

The Act makes no mention of the creation, supervision, or oversight of ART Bank. The Act mentions "appropriate authority," but the rules do not say who should be chosen to fill that position. No provision is made in the Act to make the surrogacy process public or to keep the surrogate's identity private. The Act specifies that a surrogate may only serve as a surrogate once in her lifetime, however, there are no restrictions on the number of embryo transfers that may be carried out to assist the surrogate in carrying the child. According to the Act, surrogate abortion is only permissible with the surrogate's written agreement. However, no mention of a deadline is made. The Act makes no mention of how long the intended parents' custody must be transferred. If the child is given away right away, which is not required by the Act, the child's right to nurse is also violated.

VIII. Exclusion of LGBTQ+ Community

The Act only permits a man and a woman alone who are lawfully married under Indian law to use surrogacy services and prevents LGBTQ+ Community Even though the Supreme Court overturned the criminalization of homosexuality under Section 377 of the Indian Penal Code in the case of ***Navtej Singh Johar versus Union of India,***Same-sex marriages are still illegal in India, preventing that subset of same-sex couples from being eligible under section 2(h) of the Act. The provision further emphasizes that a couple must consist of a man and a woman, restricting a heterosexual married couple. To promote equality in society, which every Indian citizen has a right to because of the fundamental freedoms guaranteed to them by the Indian Constitution, it is imperative to recognize the LGBTQ community. The Supreme Court had to address a surrogacy-related issue for the first time in the 2008 case of ***Baby Manji Yamada v. Union of India***. In that case, the court recognized surrogacy as a way to embrace parenthood and recognized that the parents might be either single parents or gay couples. The latter has been entirely refuted by the Act's implementation. Therefore, it is important to grant heterosexual couples, as well as homosexual couples and non-binary groups within the population, the status and privilege of having children.

IX. Issue Regarding the Age of The Surrogate Mother

The Surrogacy Regulation Act specifies the age of the surrogate mother as follows,

Section 4(b)(1)- no woman, other than an ever-married woman having a child of her own and between the age of 25 to 35 years on the day of implantation, shall be a surrogate mother or help in surrogacy by donating her egg or oocyte or otherwise;

As the act specifies that the surrogate mother should be between the age of 25 to 35 which stands as a drawback which can be criticised, though there might be lot of responses given when this has been raised as a issue in parliament while passing the bill of Surrogacy Regulation Act,2021 that the women's are medically fit only between the age of 25 to 35 to carry a baby medically, this issue can be viewed in two aspects one with concern to women that as the act specifies that the surrogate mother should be genetically related to the intending couple who want opt for surrogacy, now the problem finding near relative in the family between the age of 25 to 35 is a huge task and if so there are relatives exists they have to give their consent which could cannot guaranteed that always an relative will carry a baby through surrogacy. For example, if there is an orphan intending couple who want to get a baby through surrogacy then in such situation it is not possible for them to find an close relative where the fact states that the both intending couple is an orphan, the act failed to address on this issue, where here the right to

parenthood has been violated by the Act to an orphan intending couple. The second aspect of this problem is with regards to the rights of the LGBTQ++ whereas mentioned above it is normally difficult for a natural intending couple to find an near relative in either of their family between the said age by the Act but that is double time difficult for an Transgender because as the societal stigma of the transgender where many of the transgender have been shuttled out of their home and more than 75% of the transgender are away from their family & relatives as per the statistics. Understanding the struggles of the transgender also by many significant precedents one such as ***NALSA v. Union of India*** and also in ***Navtej Singh Johar v. Union of India*** where in all these precedents the Hon'ble Judiciary guaranteed the rights of the transgender one such is the right of their parenthood. Due their transformation they cannot be naturally be pregnant but instead they can go for surrogacy but as per the Act even that stands as a major implication for the transgender's where their right has been violated.

X. Consent Under Surrogacy

Altruistic and commercial surrogacy agreements are enforceable under the Indian Contract Act, 1872. The significance of unrestricted, unfettered consent is emphasised. In altruistic situations, consent is presumed to be free unless there is a claim of unfair bargaining power or coercive influence. A presumption of undue influence is created in commercial circumstances where the surrogate's blood or marriage relationship shows dominance, allowing the surrogate to withdraw from the contract.Surrogacy can alter a party's will to leave a child, as consent depends on understanding the nature and consequences of the act. Consent, indicated by intention, must be continuous in a long-term contract, as noted in the ***Re Baby M case***.*"under the contract, the natural mother is irrevocably committed before she knows the strength of her bond with her child. she never makes a totally voluntary, informed decision, for quite clearly any decision before the baby's birth is, in the most important sense, uninformed, and any decision after that, compelled by a pre-existing contractual commitment".* During the course of the pregnancy, surrogates may form strong attachments that cause them to have a "change of heart," which suggests they may not give their assent to actions that may have unknowable long-term effects.

Courts may use Section 16(3) of the Indian Contract Act,1872 in situations where it is deemed "unconscionable," particularly in surrogacy agreements. Procedural problems, strict terms, or low payment might all be indicators of this. However, it's important to avoid painting surrogacy as an unfair deal because this ignores charitable surrogacy arrangements and situations in which women want to become parents on their own or for no good reason.

Conclusion

The Surrogacy Regulation Act 2021 is a turning point in the gestational surrogacy industry's development in India. As we come to the end of our critical examination of this ground-breaking legislation, it is clear that this act represents a substantial advancement in addressing the numerous issues the surrogacy sector has to deal with. We have seen throughout our analysis of the Act how it attempts to achieve a careful balance. It strives to uphold the integrity of the surrogacy process, safeguard the rights and dignity of surrogate mothers, and provide intended parents with a route to parenthood. The Act aims to bring order to a previously uncontrolled industry with its eligibility requirements, surrogacy contracts, and regulatory framework for surrogacy clinics.This examination has however also highlighted some of the Act's complexity and moral conundrums. Whether the Act successfully struck a balance between the conflicting interests of autonomy and regulation, protection and commercialization, and the rights of surrogate mothers and intended parents, remains an open question. There is no doubt that the Surrogacy Regulation Act 2021 has sparked a crucial discussion about the nexus between business, ethics, and reproductive rights. The world will closely watch how India's big step towards surrogacy regulation affects people, families, and the surrogacy sector as a whole. In conclusion While the Act is a good attempt to address the problems of gestational surrogacy, it also highlights how difficult it is to navigate the area where reproductive rights and law meet. It is crucial to keep examining and discussing the intricacies as the Act's implementation progresses and its ramifications become clearer in order to guarantee that the rights and welfare of all parties are respected in the pursuit of morally and responsibly surrogate practises.

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Gender Justice at Work: Examining the Effectiveness of the Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013

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ABSTRACT

Gender equality in India remains an ongoing struggle, with progress made through legal reforms, but significant challenges persist in bridging the gender gap in various aspects of society, including education, employment, and social norms. It encompasses equitable access to resources, opportunities, participation in decision-making processes, and economic engagement. This comprehensive approach extends to the eradication of gender-based injustices, such as sex trafficking, feticide, sexual violence against women during armed conflicts, the gender pay disparity, and other oppressive practices, striving for global gender parity. In a nation like India, where women are revered as goddesses, the persistent prevalence of harassment, whether within their homes or workplaces, remains a concerning issue. It is true that Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 has its commendable objectives and provides a framework for addressing sexual harassment, it has faced its fair share of critiques. Critics argue that the POSH Act primarily focuses on women as victims and men as perpetrators, which oversimplifies the dynamics of harassment and may not adequately address cases where men face harassment. Additionally, the Act applies only to the formal sector, leaving a vast number of workers in the informal sector without protection. Another criticism is related to the effectiveness of Internal Complaints Committees (ICCs) in workplaces. ICCs are entrusted with the responsibility of addressing complaints, but their composition and functioning vary widely, potentially leading to biased or ineffective outcomes.There are concerns about the POSH Act's punitive measures, which some argue may inadvertently discourage organizations from creating a safe environment for open dialogue and prevention. Considering the above, this research paper delves into the pertinent provisions enshrined in the POSH Act and critique the same as regards gender discrimination prevention, the enforcement of gender equality, and specifically, the imperative issue of combating sexual harassment within the workplace.

***Keywords**:*gender equality, preventions, discrimination, sexual harassment, workplace

Introduction

Sexual harassment, gender inequality is a significant issue across the world. Gender inequality is the key element which stops the development of the women in the society. To tackle this problem our constitution has many provisions which help to make dreams of gender equality possible. Fundamental rights given in the constitution of India should be enforced in the society is such a way that not a single woman could face any type of discrimination. Today, however, we witness incidents like Nirbhaya, sexual assault at workplace, rape, stalking, etc. In our society, sexual harassment affects not only women but also people who identify as other genders. Sexual harassment can take place in different forms, all of which contribute to a hostile work environment. Examples include unwanted sexual advances, remarks with a sexual undertone, requests for sexual favors, and harassment or comments about a person's gender. The most typical perpetrator of sexual harassment is someone who has control over the victim, such as a boss, teacher, or an employer. In the case of *Vishaka and Others v. State of Rajasthan* AIR 1997 SC 3011, the Supreme Court of India gave sexual harassment a legal definition in India. Many women experience sexual harassment at some point in their lives, perhaps at work or when returning home. They are compelled to keep quite as they are afraid that if they fight against it then they will have to face even more worse crimes like assault, rape, acid attack, etc. This is state responsibility to protect the dignity of women at their workplace. The Prevention of Sexual Harassment Act for Women was created by Parliament in 2013 to safeguard against, prevent, and handle the issue of sexual harassment at work. However, the legal concept of sexual harassment as a crime has evolved along with society. Sexual

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harassment is becoming a crime that affects people of all genders. Furthermore, the wrongdoer has discovered means to avoid responsibility. This research paper aims to examine the development, applicability, and limitation of POSH Act, 2013.

Constitutional Perspectives on Gender Equality

There are numerous articles in our Indian Constitution, including Article 14,19 and 21 which intend to enforce gender equality in our country. Apart from this Article 51, Article 51A, Article 253 of Indian constitution also make provisions for improving gender justice. According to Article 14 of the constitution, "The State shall not deny to any person within the territory of India, equality before the law or the equal protection of the laws, on grounds of religion, race, caste, sex, or place of birth." If we interpret this article in terms of gender equality and justice, it does not necessarily imply that all genders should be treated similarly but rather that all genders' needs and aspirations should be valued equally. The Preamble, Fundamental Rights, and Fundamental Duties all express the fundamental principle of gender equality. But still women are facing trouble in achieving social, political, and economic equalities which the Constitution claims to provide them.

As per article 19 of the Constitution protection of 6 rights concerning to freedom are given to the citizens: Speech and expression, Assembly, Association, Movement, Residence, Profession is given to all people without discrimination on race, caste, gender, religion, etc. No one can be deprived of this right based on gender. As per article 21 of the Constitution, Protection of life and personal liberty is given to each person. "No one may be deprived of their life or personal liberty other than the procedure established by law." In contrast to the American Constitution, which guarantees due process of law, this expression suggested that the Constitution gave the legislature this phrase in determining the law. All citizens' fundamental rights to life, dignity, freedom of speech and expression, access to education, a healthy environment, etc. are guaranteed by this law. All the things that make life meaningful, whole, and worthwhile are included in this right. And when someone is sexually harassed his/her rights get violated which is given under article 21. Article 51A is incorporated by 42nd Constitutional Amendment 1976, under Fundamental Duties. Article 51A of the Constitution lists 11 fundamental duties. Article 51A(e) of the Indian Constitution states that it is the responsibility of every Indian citizen to uphold equality, respect for women's rights, and harmony among all Indians, regardless of their religious, linguistic, regional, or sectional affiliations.

Gender equality is particularly important at the workplace for a growing country. It is very necessary that fundamental rights are enforced at working place. To create effective measures to stop sexual harassment of working women at the workplace, there were no rules governing this area prior to today. Even though our constitution has given certain rights which can stop gender discrimination and help in stopping sexual harassment in our country but proper guidelines, law was required to establish gender equality and to get rid from sexual harassment.

Pre-Vishaka Scenario and step towards Vishaka Guidelines

Unwelcome sexual behavior is what is referred to as sexual harassment. No matter the country, whether it is a developed nation, a developing nation, or an undeveloped one, sexual harassment against women at the workplace is widespread. This is a global issue that has an adverse effect on both men and women. Women are more likely than any other gender to experience it. Harassment of a sexual nature might take the shape of unwanted sexual advances, requests for sexual favors, and other verbal or physical actions. In the *Vishaka* judgement Supreme Court of India gave "Vishaka guidelines" these guidelines form the basis for the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. According to the facts of this case Bhanwari Devi, was raped by five men after she attempted to stop child marriage in rural area of Rajasthan. And this led to filing of a petition by a non-governmental organization called Vishaka in response to the gang rape of a social worker in Rajasthan, India. As in result of this step taken by Vishaka organization "Vishaka Guidelines" were established by Hon'ble court.

Pre Vishaka-Scenario

As per Section 509 of Indian Penal Code ,1860 anyone who violates a woman's privacy or insults her modesty by saying something, acting in a way that could be seen by a woman, making a gesture that could be seen by a woman, or displaying something while intending for it to be seen by a woman is punishable by simple imprisonment for a term that may reach a year, paying a fine, or receiving both. But there was problem in this section, first problem is that as per this act there was no provision of complain committee, as per this act if a woman is sexually harassed, she must get a police station to file complain. And unfortunately, police station is not

most inviting place to go not even to women who had been sexually harassed and for this reason who were sexually harassed did register complain. Secondly these section does not give proper definition of "What exactly is Sexual Harassment?" That is why in pre-Vishaka era there was lack of provision that is why women did not feel safe in workplace. Presence of IPC section 354 and 509 did ensure that at least we have certain punishments, but it is not best law to get rid of sexual harassment. (Singh, 2012)

Vishaka Guidelines Against Sexual Harassment at Workplace

In the case of Vishaka and others vs State of Rajasthan and others, the Hon'ble Supreme Court issued guidelines. To ensure the prevention of sexual harassment of women, employers and other responsible individuals or organizations must abide by a set of standards. Employers and other accountable parties are required to take all necessary efforts to prevent or deter sexual harassment, as well as to set up the channels for its investigation, resolution, and prosecution. to put an end to sexual harassment at work.

Human rights are defined under Section 2(d) of the Protection of Human Rights Act of 1993. It is necessary and practical for employers at work sites as well as other responsible people or institutions to abide by certain rules because India's current civil and criminal laws do not adequately protect women from sexual harassment in the workplace and because it will take some time for such legislation to be enacted. It shall be the responsibility of the employer or other responsible parties in workplaces or other institutions to take all necessary precautions to prevent or deter the commission of acts of sexual harassment, as well as to provide the procedures for the resolution, settlement, or prosecution of such acts.

Supreme Court has defined Sexual Harassment as any "physical touch or conduct, any unpleasant taunt or misbehavior, showing of pornography asking any kind of sexual favors**."** (Vishaka and Ors v. State of Rajasthan, 1997)When performed in circumstances where the victim of the conduct reasonably believes they are connected to the victim's employment or work, whether she is paid on a salary, honorarium, or as a volunteer, whether in government, public, or private enterprise, any of these acts can be humiliating and may pose a health and safety risk. When a woman has cause to believe that opposing might hinder her ability to land a job or advance in her profession or when it creates a hostile work environment, for instance, it is discriminatory. There might be unfavorable effects if the victim objects to or refuses the action in question. It laid down some Preventive Steps. All employers or those in charge of the workplace, whether in the public or private sector, should take the appropriate procedures to prevent sexual harassment. They should carry out the following, without limiting the general applicability of this requirement:

1. It was decided that the workplace should be informed about, circulated among, and publicized regarding sexual harassment as outlined above.

2. Sexual harassment must be forbidden in the conduct and disciplinary policies of government and public sector organizations, and violators must face the necessary sanctions and punishments.

3. For private companies to comply with the Industrial Employment (Standing Orders) Act of 1946, steps should be taken to include the prohibitions in standing orders.

4. To further guarantee that there is no hostile environment against women at work and that no employee woman has reasonable grounds to feel she is disadvantaged in connection with her employment appropriate work conditions about work, leisure, health, and cleanliness should be given.

Further, every instance of harassment must be handled properly, which may entail criminal proceedings as well as disciplinary measures. The employer shall take the appropriate legal action by submitting a complaint with the appropriate authority when such behavior amounts to a specified offence under the Indian Penal Code or other legislation. Preventing victimization or discrimination of sexual harassment witnesses or victims should get special emphasis. Sexual harassment victims should be given the option to ask for their own transfer or that of the perpetrator. It also said that, when such behavior violates the applicable service rules' definition of "sexual harassment" in the workplace, the employer must take the appropriate disciplinary action in accordance with those rules. Further, Supreme Court stated that there should be time-bound and effective redressal of complaints and a robust mechanism should be in place at the workplace. As in most of the cases it takes immense courage at a part of women even though the women file a complaint the matter go so long and in that time period women lose their job also. And woman who was harassed they are the one who suffer the most it so it must be time bound

method. A complaints committee should exist, with a majority of its members being female and a female chairman of the committee. This was done with the goal that women would feel at ease reporting cases of sexual harassment because they do not feel at ease talking to male officers.

To prevent any potential pressure or influence from top levels, such a complaints committee should also include a third party, such as an NGO or other organization with experience in the area of sexual harassment. An annual report outlining the complaints received and the steps taken must be submitted by the Complaints Committee to the relevant government agency. In addition to reporting to the government department on whether the criteria have been met, the employers and the person in charge will also provide a report on the Complaints Committee's reports. Before this judgement, there was no such opportunity for employees to bring up the subject of sexual harassment. Sexual harassment complaints from employees may be brought up at workers meetings or in other suitable forums, and they must be openly discussed during employer-employee meetings. It was highlighted that, awareness of female employees' rights in this regard should be raised in particular by conspicuously publicizing the guidelines (and necessary laws when established on the subject) in an acceptable manner. When sexual harassment occurs due to the behavior of a third party or outsider, the employer and person in charge will take all necessary and reasonable steps to support the affected individual in terms of aid and preventative measures. Finally, that the Central/State Governments are urged to take appropriate action, such as passing legislation, to make sure that private sector employers follow the rules established by this directive.

Overview of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Approximately 20 years after the Supreme Court's ruling in *Vishaka* in 1997, the Indian Parliament passed The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which prohibits sexual harassment of women at work. This Act was passed to protect women from sexual harassment at work, to prevent and address complaints of sexual harassment, to deal with things associated with or incidental to those complaints, and to formalize Vishaka guidelines. While sexual harassment infringes on a woman's fundamental rights to equality under Articles 14 and 15 of the Indian Constitution, as well as her right to life and to live in dignity under Article 21, as well as her right to practice any profession or to engage in any occupation, trade, or business, which includes a right to a safe environment free from sexual harassment, all of these rights are violated by sexual harassment. Additionally, international conventions and instruments like the Convention on the Elimination of All Forms of Discrimination Against Women, which the Government of India ratified on June 25, 1993, recognize the protection against sexual harassment and the right to a job with dignity as fundamental human rights. Moreover, it is advisable to make plans for putting the Convention into effect to safeguard women against sexual harassment at work. There were no clear instructions on how to seek remedy for women who had been the targets of workplace sexual harassment in the past. With the aid of an internal or local committee set up in the workplace itself, this statute has given a woman who feels wronged a proper mechanism to address her complaint. A good part of the act is that it is much wider than the Vishaka Guidelines given by the supreme court. As In this framework it is mentioned that how the government should work and how the workplaces should interact, but the act is much more effective and wider which tells what the responsibility of the employer toward the employee is. And this deed additionally, this act does not discriminate based on a person's age, work position, or involvement in the unorganized sector. (Raju Ramachandran, 2000)

The POSH Act was enacted on 23rd April 2013 and is applicable in whole country including Jammu and Kashmir. It comprises of 8 parts and 30 sections. As per Section 2 (a) of this act **"**aggrieved woman" covers a broad variety of women, regardless of their age or employment position, and workplaces include both public and private locations as well as both the organized and unorganized sectors. A woman, who is employed or unemployed to a workplace (either at dwelling place or in an organization) can file a complaint to have been sexually harassed. It is not necessary for the aggrieved women to be employed by the organization to register a complaint. Even if she visits another workplace, she has the right to report sexual harassment to the organization's internal complaints committee. As there were numerous instances of women of a certain age being told by powerful authorities that they could not be harassed because of their age or their employment status, the law now stipulates that, women of all age groups and employment statuses can receive justice if they are sexually harassed. This section of the act is important as it gave the voice to those women who are working

at lower level and does not have prominent face at their workplace.

As per Section 2(b) of this act "domestic worker" refers to a woman who is engaged to perform domestic responsibilities for money, in cash or in kind, directly or through any agency, on a temporary or permanent, part-time, or full-time basis—but who is not a member of the employer's family. Domestic employees who live in or out of a home are both protected by the act and have the right to report sexual harassment that occurs at workplace. The definition excludes a household member's family, though. However, the family member of the home is not included in the definition. As per this act "respondent" refers to a person whom the aggrieved woman has made the complaint, it can be both employee or employer[6] and according to the definition given in this act (Section2f) "employee" refers to any person who is employed at a place of work on a regular, temporary, ad hoc, or daily wage basis, either directly or through a third party, such as a contractor, with or without the knowledge of the principal employer, whether for pay or not, and whether for work or not. As per Section 2g (i) of this Act, an "employer" is any of the following:

- the head of any department, organization, undertaking, establishment, enterprise, institution, office, branch, or unit of the appropriate government or a local authority, or any other officer that the appropriate government or the local authority may by an order specify in this regard.

- in any workplace not covered by subclause (i), any person responsible for the management, supervision, or control of the management, personnel, facilities, or resources.

The term "sexual harassment" as delineated in Section 2(n) of the pertinent legislation denotes a spectrum of unwelcome behaviors encompassing unwanted and unsolicited sexual advances, solicitations for sexual favors, sexually explicit comments, the exhibition of explicit content, as well as any other form of verbal or physical conduct with a sexual connotation that contributes to the creation of an intimidating or hostile environment. This range of objectionable actions spans from overt physical advancements to more subtle forms of harassment, including coercion—where individuals are compelled to engage in actions against their will. It can manifest as recurrent sexual "jokes," persistent requests for unwelcome dates, or continual sexually suggestive flirting, and may persist over time. Furthermore, sexual harassment can manifest as a singular incident involving inappropriate physical contact or fondling, or even escalate to the extreme of rape or sexual abuse. The occurrence of sexual harassment can be substantiated in the presence of one or more of the following circumstances: an implicit or explicit promise or threat of conferring favorable or detrimental treatment in relation to one's present or prospective employment; interference with an individual's ability to perform their job effectively; the establishment of a hostile, offensive, or intimidating work milieu; or subjecting the individual to humiliating treatment that poses risks to their health or safety.

According to Section 2(o) of the aforementioned legislation, the term "workplace" is precisely defined as any entity, organization, project, establishment, enterprise, institution, office, subsidiary, or division, regardless of whether it has received financial support from the government, the local administration, a government-owned company, a corporation, or a cooperative society. This definition extends to encompass private sector firms, undertakings, enterprises, institutions, establishments, societies, trusts, non-governmental organizations, units, or service providers involved in a diverse array of activities, including but not limited to business, professional services, industry, education, entertainment, healthcare, or financial services, encompassing production, distribution, sale, or delivery. Additionally, hospitals, nursing homes, sporting facilities, stadiums, sports complexes, and competitions, whether or not they are residential and utilized for sports, exercise, or other related pursuits, all fall under the ambit of this definition. Furthermore, any location that an employee frequents as part of their job responsibilities, inclusive of transportation provided by the employer for commuting purposes, is considered a workplace. Even dwellings or residences can be considered part of the workplace under certain conditions.

It is noteworthy that sexual harassment is not confined solely to the primary place of employment, as the Vishaka Guidelines originally focused on the conventional office setting. To address this deficiency, the concept of an "extended workplace" was incorporated into the Prevention of Sexual Harassment (POSH) Act. Consequently, the definition of a workplace also encompasses "any location visited by an employee as part of their employment duties, including transportation provided by the employer for commuting to and from the place of employment." (Sharma, 2020). Additionally, Section 2(p) of the legislation furnishes a definition for the "unorganized sector," which pertains to

enterprises owned by individuals or self-employed workers, engaged in the production or sale of goods or provision of services, where the workforce consists of less than ten employees. In essence, the notion of a workplace encapsulates any locale that an individual journeys to as part of their employment responsibilities, encompassing any transportation provided by their employer for such travel. This definition applies universally, encompassing both organized and unorganized sectors, and is pertinent to workplaces owned by Indian or foreign entities, provided they maintain a presence in India.

Complaint Procedure

According to Section 9 of this act, an aggrieved woman may report it within three months after the incident, and an investigation must take place within three months of the complaint being lodged. In addition, the harassed woman's legal successor or another appropriate party may file a complaint under this provision on her behalf if she is unable to do so due to physical or mental incapacity, death, or another circumstance. Conciliation is an alternate dispute resolution process in which parties discuss their disputes in front of the conciliator**.** Conciliation must take place between the respondent and aggrieved party by the internal or local committee, and report of the same must be sent to district court and copy of the same must be sent to both the parties. If unsuccessful, a probe of the complainant's section 11 complaint will be carried out.

The same authority as the civil court under Civil Procedure Code, 1908 will be given to the committee, and the matter must be resolved within 90 days. These committees must proceed according to the service laws if applicable to the respondent, or else the committee will forward the same to the police for filing a case under 509 IPC. The finding will be provided to both the parties and the aggrieved party shall be paid during the continuation of the case. According to Section 12 of this POSH act makes provision regarding several arrangements during the Inquiry. This provision ensures fearless environment to victims, during the pendency of an inquiry of a complaint, if the complaint may so request, respondent or the aggrieved woman may be shifted to a different place of employment, given leave for up to three months, or granted any other request that may be required by law. Additional leave is granted to aggrieved women.[7] After the completion of the inquiry within ten days the report of the same shall be provided to the district officer and the parties, if the committees find the accused to be guilty than action shall be taken in reference to the service rules applicable on him/to deduct any salary or wages as applicable on him and if the charges are proved against him then no action shall be taken against him.

The act provides for the provision of the false complaint, if it is found in the inquiry that the complaint filed is false and the document might have been forged or misleading. In such case the proceedings shall be conducted against the complaint according to the service laws applicable on her. Mental trauma, pain, suffering, emotional distress, loss of career opportunity, medical expenses, income, and financial status all these need to be considered while determining the sums to be paid to the aggrieved woman, by the Internal or Local Committee. Additionally, payments must be feasible as a lump sum. Within 90 days of order appeal should be made in tribunals or courts. Section 19 of this act gives some duties to the employer which need to be followed by the employer. Employer has to provide a safe working environment, Displaying of penal provision of sexual harassment, in regular intervals awareness program and organization of workshop should be held, providing facilities to internal and local communities, should help is maintaining the attendance of respondent and witnessing before the internal or local committee, providing information to the committees , if the women fails to file a complaint then support and aid should be given to her, initiating action under IPC if required, treating sexual harassment as a misconduct under the service rules and initiate action for such misconduct, report submission by the internal committee should be monitored timely. (Poonia, 2019)

Critical Analysis of POSH Act

In our society, sexual harassment is increasing rapidly, and it is awful when it goes unreported and unacknowledged for a variety of reasons. Every person in our nation has the right to personal safety as well as the right to a safe working environment. And in India, instances of workplace sexual harassment have grown more severe. Right to equality and right to life gets violated which is given under article 14, 15 and 21 of Indian Constitution. Insecure working environment is created and further undermines their confidence to compete in today's world. Every individual either it is male or female or any third gender can become a victim of sexual harassment and face social and mental trauma, but people often neglect the possibility of action against such activity. In addition to causing uncertainty and a nasty environment in working this gap in the system and the lack of humanity that people owe to one

another has allowed them to be purely self-centered and selfish. The POSH Act of 2013 was passed by the parliament and, while it undoubtedly protects women from sexual harassment in both the organized and unorganized sectors, but it still has several flaws. As this act is gender centric and contributes to women as the aggrieved, but, both men and women can be sexually harassed.

According to this act, men are not mentioned as a part of the aggrieved party, and also as suggested by the Justice Verma Committee Report (Verma, 2013), the law should apply to all government organizations, all public bodies, all panchayats, all establishments covered by the Factories Act of 1948 and the Industrial Disputes Act of 1947, as well as all private employers, police, the armed forces, agricultural workers, and female students and staff at all schools and educational institutions besides those already mentioned. Failures of the government and police were the primary causes of crime against women, according to the Justice Verma Committee. Women working in the informal sector suffers a lot as they are excluded in institutional from accessing POSH Act as no government body tracks the law's implementation. The act mentions that the respondent is a person, it does not mention, that the same can be female or transgender as well. The act provides clear-cut questions regarding who the victim should be, who can be the respondent, what the internal committee's duties and obligations will be, and what the institution will be if the requirements cannot be met. There is hesitation in listing all the locations and covering all working groups, including domestic workers and laborers. The issue that might arise during the act's execution is not mentioned in the act either. Hence, the act should be carefully examined, read, and clearly outlined to reduce the problems that arise when the requirements of the act are being put into practice.

Concluding Remarks

The paper underscores the pressing issue of the escalating occurrences of sexual harassment in India, emphasizing the imperative need for comprehensive intervention. Sexual harassment is a pervasive problem that affects individuals irrespective of their gender or identity. To combat this issue effectively, it is essential to comprehend the underlying factors contributing to its prevalence, which encompass gender discrimination, unequal power dynamics, the predisposition of perpetrators, and societal apathy. Beyond explicit acts, sexual harassment inflicts substantial mental trauma on victims. This article contends that it is now imperative to reject the culture of silence surrounding these cases, with victims taking a proactive stance in asserting their rights. Society, instead of stigmatizing victims, should support and empower them, with culpability resting squarely on the perpetrators. Despite India's historical commitment to safeguarding women's rights, there is a discernible gap in practice. Legislation alone is insufficient; its execution poses significant challenges. India, in its quest for gender equality, should strive for neutrality rather than inadvertently favoring one gender, as sexual harassment can affect anyone, irrespective of gender identity. The Sexual Harassment Act for Women, 2013, enacted based on the Vishaka guidelines from 1977, represents a pivotal step in protecting individuals from sexual harassment. However, its effective implementation remains a formidable challenge in India.

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Human Rights and Technology: New Challenges for Justice and Accountability in Perspective of India

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ABSTRACT

In the present study the complex relationship between human rights and technology concerning justice and accountability in India. It emphasizes the significance of human rights in guiding the accountable use of technology and the protection of citizens' fundamental rights. Paramount importance of safeguarding privacy and data protection in the face of extensive data collection and surveillance. Ensuring robust data protection laws becomes crucial to protect individuals' personal data from misuse and unauthorized access. this study also delves into the challenge of the digital divide, which can hinder marginalized populations' access to justice. Bridging this gap requires proactive measures to ensure that technological advancements benefit all citizens, regardless of their socio-economic background. The ethical implications of algorithms in decision-making processes highlight the need for transparency and equitableness to prevent prejudice and discrimination. Striking a balance between freedom of expression and countering online censorship and hate speech is crucial to uphold democratic values while maintaining a safe digital environment. The researcher emphasizes that significance of cybersecurity measures to protect against cyber threats and safeguard individual rights, including the right to privacy and due process. Ensuring the integrity of digital evidence in legal proceedings is vital to uphold justice. The accountability of technology companies and the ethical use of AI and biometric technologies are essential to protect user rights and privacy. Policymaking must be transparent and comprehensive, involving all stakeholders to craft legal and regulatory frameworks that uphold human rights principles.

***Keywords**:*justice and accountability, Human Rights, dignity, online harassment, privacy

Introduction

In the contemporary world, the intersection of human rights and technology has presented both opportunities and challenges, particularly concerning justice and accountability. As technology rapidly transforms societies, India finds itself at the crossroads of harnessing the potential of technology while safeguarding human rights in its pursuit of justice and accountability. This research delves into the crucial role of human rights in leveraging technology for advancing justice and accountability in the Indian context, examining the significance of upholding fundamental rights amidst the ever-evolving technological landscape. As technology permeates every aspect of our lives, its impact on human rights in the context of justice and accountability has become a pressing concern, especially in the perspective of India. Aims to explore the significance of human rights in utilizing technology for ensuring justice and accountability within the Indian context.

Human rights serve as the bedrock of any just and equitable society, providing the framework to protect the inherent dignity and freedoms of individuals. In the context of technology and justice, human rights play a pivotal role in guiding the ethical and responsible development and use of technological tools. Emphasizing the integration of human rights principles in technology-driven justice systems ensures that fairness, transparency, and impartiality are upheld in all aspects of the judicial process.

Human rights serve as the foundational principles that protect the inherent dignity, freedoms, and liberties of individuals. They create a framework for a just and equitable society, demanding that every person be treated with fairness, equality, and respect. When applied to the domain of technology, human rights become instrumental in shaping the manner in which technology is developed, deployed, and regulated to ensure accountability and safeguard justice for all citizens.Technological advancements can bridge the gap between citizens and the justice system by increasing accessibility and inclusivity. Online platforms and digital services can facilitate legal aid, virtual hearings, and the dissemination of

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legal information to remote and underserved communities.

The right to privacy is a fundamental human right enshrined in international and Indian laws. As technological advancements usher in an era of data-driven decision-making and surveillance, protecting individuals' privacy becomes paramount. Robust data protection measures, aligned with human rights principles, are essential to prevent unauthorized access, data breaches, and the misuse of personal information. Such protections ensure that individuals can trust technology to uphold their rights and promote accountability for any data-related violations.Freedom of expression is a cornerstone of democracy and human rights. Technology, particularly the internet and social media platforms, has revolutionized the way people communicate and exercise this right. However, this realm has also witnessed challenges, such as online censorship and content regulation. Study has immense importance in the contemporary landscape of technology-driven societies. India continues to embrace digital transformation, it becomes crucial to critically examine the implications of technological advancements on human rights, justice, and accountability. Understanding the value of human rights in leveraging technology for justice and accountability can help in shaping policies, legal frameworks, and ethical guidelines that strike a balance between innovation and safeguarding fundamental rights.By analyzing the impact of technology on various aspects of justice, such as access, fairness, and due process, the research provides insights into how technology can be harnessed to promote human rights rather than infringe upon them.

Review of related literature

Smith, J., & Johnson, R., (2020). examines the implications of AI technologies in criminal justice systems, discussing their potential to enhance efficiency, but also raising concerns about bias, fairness, and accountability in decision-making processes.

Gupta, S., & Patel, R. (2019). This study explores the significance of data privacy and protection in the context of technology-driven governance and justice systems, emphasizing the need for robust legal frameworks to safeguard human rights.

Sharma, K., & Singh, A. (2018). The research investigates the role of technology, particularly e-courts, in improving access to justice in India. The study highlights the potential of technology to bridge the justice gap, especially in rural and remote areas.

Kumar, A., & Das, P. (2022). This article examines the ethical dilemmas arising from the use of AI in law enforcement, including issues of bias, transparency, and accountability. It calls for a balanced approach that respects human rights while leveraging technology.

Patel, S., & Shah, N. (2020). This research explores the tensions between cybersecurity measures and human rights protection in the context of India. It emphasizes the need to strike a balance between national security and individual privacy.

Menon, R., & Joshi, P. (2021). This comparative analysis examines how different countries, including India, address the right to privacy in the digital age. It discusses the legal and policy implications for technology and accountability.

Human Rights

Human rights refer to the inalienable rights and freedoms that all individuals possess by virtue of being human. These rights are universal, indivisible, and interrelated, and they are recognized and protected by national and international laws, treaties, and conventions. Human rights encompass a broad spectrum of civil, political, economic, social, and cultural rights, which are essential for human dignity, equality, and well-being. They serve as a moral and legal framework, ensuring that every individual is entitled to basic rights and protections without discrimination. Human rights are fundamental and universally recognized idea that asserts the inherent value and dignity of every individual simply by virtue of being human. Human rights are considered to be inalienable, indivisible, and inherent to all human beings, regardless of their race, ethnicity, gender, nationality, religion, or any other characteristic.

Key elements of the concept of Human Rights

Universality: Human rights are applicable to all individuals, without discrimination. They are not contingent on citizenship or any other legal status and are meant to protect the rights of every human being worldwide.

Inalienability: Human rights cannot be taken away or transferred. They are inherent to each person by virtue of their humanity and cannot be forfeited, even in times of conflict or crisis.

Indivisibility: Human rights are interconnected and interdependent. The enjoyment of one right often depends on the realization of other rights. For example, the right to education is linked to the right to freedom of expression and information.

Equality and Non-discrimination: Human rights uphold the principle of equality, meaning that all individuals are entitled to the same rights and protections without discrimination of any kind.

Human Dignity: Human rights are founded on the belief that every person possesses inherent dignity and should be treated with respect and consideration.

State Responsibility: Governments and authorities have the primary responsibility to respect, protect, and fulfill human rights within their territories and jurisdiction. This includes ensuring that individuals are not subjected to human rights abuses by state actors or non-state actors.

International Framework: Human rights are protected and promoted through international agreements, treaties, and conventions. Notably, the Universal Declaration of Human Rights (UDHR) is a milestone document adopted by the United Nations General Assembly in 1948, setting out a comprehensive framework for human rights protection.

Some examples of human rights include the right to life, liberty, and security of person; the right to freedom of speech and expression; the right to education; the right to work and fair wages; the right to healthcare; the right to participate in government and free elections, among many others.

The protection and promotion of human rights are essential for fostering peaceful and just societies, safeguarding human dignity, and achieving sustainable development. Advocates and organizations around the world work to uphold human rights, raise awareness, and hold governments accountable for human rights violation.

Important provisions in Indian constitution related to Human Rights

Part III of the Indian Constitution guarantees fundamental rights to all citizens, ensuring that they are protected from arbitrary actions by the state. Some of the crucial provisions related to human rights under this part include:

Article 14: Right to Equality - Guarantees equality before the law and equal protection of the law to all individuals.

Article 15: Prohibition of Discrimination - Prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth.

Article 17: abolishes the practice of untouchability.

Article 19: Right to Freedom - Includes freedom of speech and expression, assembly, association, movement, and residence.

Article 21: Right to Life and Personal Liberty - Ensures the right to life and personal liberty, which has been interpreted expansively by the judiciary to include various other rights.

The Right to Education Act, 2009, was incorporated as Article 21A, ensuring free and compulsory education to all children between the ages of 6 and 14 years.

Article 22: Protection against Arrest and Detention - Provides safeguards against arbitrary arrest and detention.

Article 23: prohibits forced labor, emphasizing the importance of human dignity and labor rights.

Articles 29 and 30 protect the rights of minorities to preserve their distinct language, script, and culture, as well as the right to establish and administer educational institutions of their choice.

Article 32 grants individuals the right to approach the Supreme Court of India directly for the enforcement of their fundamental rights. It is considered the "heart and soul" of the Constitution and ensures that citizens have access to justice when their rights are violated.

The Directive Principles of State Policy provide guidelines to the state in formulating policies and laws. Many of these principles are aimed at promoting and protecting human rights. Some relevant principles include:

Article 38: Social Justice and Elimination of Inequalities

Article 39: Equal Justice and Free Legal Aid

Article 41: Right to Work, Education, and Public Assistance in Certain Cases

Article 46: Promotion of Educational and Economic Interests of Scheduled Castes, Scheduled Tribes, and Other Weaker Sections.

Part IVA (Article51A): lays down the fundamental duties of citizens. It emphasizes the importance of respecting and upholding the ideals of the Constitution and promoting harmony and the spirit of common brotherhood.

The Importance of Human Rights in Using Technology

In the context of using technology for justice and accountability in India, human rights play a crucial role in ensuring that technological advancements are utilized ethically and responsibly. The following points highlight the value and importance of human rights in this context:

1. Safeguarding Privacy and Data Protection: Human rights play a crucial role in protecting individuals' right to privacy in the context of technology. As technology advances, data collection and surveillance become more prevalent, raising concerns about potential privacy infringements. Human rights principles guide the development of data protection laws and policies, ensuring that individuals' personal data is handled responsibly, and they have control over their information. This safeguarding of privacy is essential in maintaining the trust of citizens in the use of technology for justice and accountability.

2. Preserving Freedom of Expression: Freedom of expression is a fundamental human right that empowers individuals to voice their opinions, participate in public discourse, and access information. Technology, particularly the internet and

social media, has amplified the reach and impact of freedom of expression. However, with this advancement comes the challenge of balancing free speech with combating hate speech, misinformation, and online harassment. Human rights principles guide the establishment of regulations that protect individuals' right to express themselves while addressing the potential misuse of technology for harmful purposes.

3. Ensuring Access to Justice and Legal Information: Technology can significantly enhance access to justice for individuals, especially in a vast and diverse country like India. Online legal resources, e-filing systems, and virtual courtrooms can bridge geographical barriers, making legal information and services more accessible. Human rights principles underscore the importance of equal access to justice, ensuring that technology is employed inclusively, benefiting all segments of society, including marginalized and vulnerable groups.

4. Combating Cybercrimes and Cybersecurity: As technology evolves, so do the threats of cybercrimes, requiring robust legal frameworks to address these challenges. Human rights principles guide the development of cybersecurity measures and laws, ensuring that investigations and prosecutions respect due process and protect individuals' rights. By integrating human rights in cybersecurity strategies, technology can be utilized to combat cybercrimes while safeguarding individual liberties.

5. Fostering Transparency and Accountability: Transparency and accountability are essential for building trust between citizens and public institutions. Technology can facilitate transparency through open data initiatives and digital governance. Upholding human rights principles of transparency and accountability ensures that technology is used responsibly by public institutions to promote ethical conduct and good governance.Human rights serve as a guiding framework in the utilization of technology for justice and accountability in India. By recognizing the importance of human rights in safeguarding privacy, preserving freedom of expression, ensuring access to justice, combating cybercrimes, and fostering transparency, India can navigate the challenges posed by technology and create an inclusive and accountable society. Integrating human rights principles into technological practices and policies paves the way for a just and equitable digital future.

Challenges to Safeguard Human Rights when Using Technology for Justice and Accountability in Perspective of India

The intersection of human rights and technology brings both opportunities and challenges, particularly concerning justice and accountability in India. While technology can enhance access to justice and improve accountability mechanisms, certain challenges must be addressed to safeguard human rights. The following are some of the challenges:

1. Privacy and Data Protection Concerns: Technology facilitates vast data collection and surveillance, there are concerns about potential privacy infringements. Ensuring robust data protection laws and mechanisms becomes crucial to protect individuals' personal data from misuse and unauthorized access.

2. Digital Divide and Access to Justice: Technology can enhance access to justice, the digital divide poses a significant challenge. Disparities in access to technology and digital literacy may hinder marginalized and remote populations from benefiting fully from technological advancements in justice delivery.

3. Algorithmic Bias and Discrimination: The use of algorithms in decision-making processes, such as in law enforcement and sentencing, can inadvertently perpetuate bias and discrimination. Ensuring fairness and transparency in algorithmic systems becomes essential to uphold human rights principles of equality and non-discrimination.

4. Freedom of Expression and Online Censorship: Technology provides an unprecedented platform for freedom of expression; it also brings challenges related to online censorship and content regulation. Striking a balance between preserving free speech and countering hate speech and misinformation poses a delicate challenge.

5. Misuse of Surveillance Technologies: The use of surveillance technologies for law enforcement and national security purposes may raise concerns about the erosion of privacy and potential misuse. Establishing clear guidelines and oversight mechanisms is crucial to prevent abuse of surveillance tools and protect human rights.

6. Cybersecurity Threats and Human Rights Implications: Cybersecurity threats, such as hacking and data breaches, can have significant human rights implications. Balancing security measures with respect for individual rights, such as the right to privacy and due process, becomes essential to protect the rights of individuals involved in legal cases.

7. Online Harassment and Cyberbullying: The digital realm has witnessed a rise in online harassment and cyberbullying, posing threats to individuals' safety and well-being. Addressing these challenges requires comprehensive legal and policy measures.

As technology continues to reshape justice and accountability in India, addressing these challenges is crucial to ensure the responsible and ethical use of

technology for the protection of human rights. By adopting proactive measures and establishing robust regulatory frameworks, India can leverage technology to promote justice, accountability, and human dignity while safeguarding individual rights.

Conclusion

The intertwining of human rights and technology in the context of justice and accountability presents both unprecedented opportunities and complex challenges in India. As technology continues to reshape the landscape of governance, law enforcement, and access to justice, it is essential to ensure that the protection of human rights remains at the forefront of these advancements.This study highlights the importance of human rights in guiding the ethical and responsible use of technology for justice and accountability. Safeguarding privacy and data protection becomes paramount in an era of extensive data collection and surveillance. Striking a balance between freedom of expression and countering online censorship and hate speech is essential to uphold democratic values while promoting a safe digital environment.

Moreover, the digital divide must be addressed to ensure that all citizens can benefit from technological advancements in justice delivery. The challenges posed by algorithmic bias and the potential misuse of surveillance technologies require thoughtful regulation and oversight to protect against discrimination and abuse. cybersecurity threats and the integrity of digital evidence demand robust measures to preserve individual rights and ensure fair legal proceedings. Accountability of technology companies and the ethical use of AI and biometric technologies are vital in protecting user rights and privacy.The study also emphasizes the need for transparent and inclusive policymaking, involving all stakeholders to craft legal and regulatory frameworks that uphold human rights principles. Strengthening corporate accountability and enhancing awareness about online harassment and cyberbullying can further protect citizens' safety and well-being in the digital space.

In conclusion, leveraging technology for justice and accountability in India while preserving human rights requires a delicate balance. By acknowledging and addressing the challenges, India can pave the way for a more just, inclusive, and accountable society in the digital age. Embracing human rights as a guiding principle will ensure that technological advancements serve as tools for empowerment, equal access to justice, and the protection of fundamental freedoms for all citizens.

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Balancing Act: Exploring Global Challenges and Strategies in Implementing Human Rights from an International Perspective

Dr. Rita Bansal

Abstract

Human Rights, as enshrined in various international conventions and declarations form the cornerstone of a just and equitable global society. However, the practical implementation of these rights encounters numerous challenges that stem from cultural differences, political considerations, economic disparities and the complexities of the global legal framework. The effective implementation of human rights across borders faces several key challenges such as discrimination, armed conflict, violence, poverty, global inequalities, impunity, democracy deficits, weak institutions, climate change, migration, cultural gaps, knowledge gaps, security concerns and extreme conflicts etc. Discrimination based on factors such as race, gender, religion or nationality remains a significant obstacle to the effective implementation of human rights. Conflict and violence disrupt societies and lead to widespread human rights violations. In regions affected by armed conflict, it becomes challenging to protect and promote human rights. Poverty and global inequalities create barriers to the realization of human rights. This research delves into the multifaceted realm of human rights implementation on a global scale. It addresses the challenges faced by nations in upholding and ensuring the realization of human rights and proposes solutions that can pave the way for a more effective and inclusive international framework. By examining diverse cultural, political and economic contexts, this study aims to contribute to the ongoing discourse on human rights and promote the development of practical strategies for their implementation.

***Keywords*:** human rights, challenges, international human rights, conventions, non-state actors

Introduction

The concept of human rights has deep historical roots, with its origins tracing back to ancient civilizations and philosophical traditions. However, the modern framework of international human rights emerged in response to the atrocities of World War II, the Holocaust and other widespread human rights abuses. The horrors of these events prompted the international community to develop mechanisms to prevent such atrocities from occurring in the future. As such the international community was compelled to establish a framework to protect and promote the inherent dignity and rights of all individuals. As a response to these atrocities, the United Nations (UN) was founded in 1945 with the primary objective of maintaining international peace and security and promoting human rights and social progress.

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, marked a pivotal moment in the establishment of a comprehensive framework for human rights protection and is termed as a cornerstone in the development of human rights in international arena. The UDHR articulated fundamental rights and freedoms to which all individuals are entitled, regardless of their nationality, ethnicity, gender, or other characteristics. The UDHR laid the foundation for subsequent international treaties and conventions that expanded and codified specific human rights, such as civil and political rights, economic and social rights, and the rights of marginalized groups. Following explains the significance of human rights in the international arena:

a) *Protection of Dignity and Equality*: Human rights are inherently linked to the dignity and worth of every human being. They emphasize that every individual possesses inherent rights simply by virtue of being human. By guaranteeing these rights, the international community aims to ensure that all people are treated with dignity, respect, and equality.
b) *Prevention of Atrocities*: One of the primary purposes of human rights in the international arena is

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to prevent the occurrence of atrocities and gross violations of human dignity. The horrors of World War II highlighted the urgent need to establish norms and mechanisms to prevent genocides, crimes against humanity, and other grave violations.

c) *International Peace and Security*: The promotion and protection of human rights are closely intertwined with the maintenance of international peace and security. Respect for human rights within states reduces the risk of internal conflicts, instability, and violence that can spill over into neighboring regions.

d) *Development and Well-being*: Economic, social, and cultural rights, such as the right to education, health, and work, contribute to the overall well-being and development of individuals and societies. Ensuring these rights can lead to poverty reduction, improved living standards, and sustainable growth.

e) *Rule of Law*: Human rights are intimately linked with the rule of law. They require governments to operate within a legal framework that upholds justice, fairness and accountability, ensuring that power is not abused.

f) *Global Norms and Standards*: Human rights provide a universal framework of norms and standards that guide the behavior of states and other actors in the international arena. This common framework fosters a shared understanding of ethical and moral principles that transcend cultural and national differences.

g) *Accountability and Justice*: Human rights play a crucial role in holding individuals, governments, and other entities accountable for their actions. International human rights law provides mechanisms for addressing violations and seeking justice for victims. Thus, states and non-state actors are held accountable for violations of human rights under international law. Mechanisms such as international courts and tribunals ensure that perpetrators are brought to justice.

h) *Empowerment and Participation*: Human rights empower individuals to participate in the decisions that affect their lives, both at the national and international levels. This empowerment enhances democratic governance and encourages active citizenship.

i) *Economic and Social Progress*: Socio-economic rights, such as the right to education, health and work are integral to human rights. Ensuring access to these rights contributes to poverty reduction and sustainable development.

j) *Cultural Exchange and Dialogue*: The recognition and protection of cultural rights, as part of human rights, encourage cross-cultural understanding, dialogue, and respect. This contributes to a more harmonious and inclusive global society.

k) *Diversity and Inclusion*: Human rights celebrate diversity and promote inclusivity. They prohibit discrimination based on factors such as race, gender, religion and sexual orientation, fostering societies that embrace differences.

l) *Humanitarian Action*: Human rights are foundational to humanitarian efforts. In times of crises, ensuring access to basic necessities and protecting vulnerable populations are guided by the principles of human rights.

m) *Soft Power and Diplomacy*: Countries that champion human rights can exert soft power by setting positive examples and influencing global norms. Human rights considerations often feature prominently in diplomatic relations and international negotiations.

n) *Strengthening International Cooperation*: Human rights issues often require international cooperation to address effectively. Shared concerns, such as climate change, health crises, and migration, necessitate collaborative efforts guided by human rights principles.

o) *Progressive Development*: The international human rights framework is not static; it evolves to address contemporary challenges. New issues, such as cyber rights and environmental rights, highlight the adaptability and relevance of human rights principles.

Human rights play a pivotal role in shaping the international landscape. They offer a moral foundation, a legal framework and a practical guide for fostering a world where justice, dignity and equality are central to human interactions, governance and international relations. The background and significance of human rights in the international arena are rooted in historical lessons and a commitment to preventing human suffering and promoting a world where all individuals are treated with dignity and respect. The evolution of international human rights norms and mechanisms continues to shape global interactions and efforts to create a just and equitable world for present and future generations.

Socio-economic disparities can limit access to education, healthcare and other basic rights. The culture of impunity, where perpetrators of human rights abuses go unpunished, undermines the effectiveness of human rights implementation. Lack of accountability can perpetuate human rights violations. Weak democratic institutions and governance deficits hinder the effective implementation of human rights. Lack of transparency, corruption and restrictions on freedom of expression and assembly can impede progress.

Inadequate institutional capacity and resources pose challenges to the implementation of human rights. Insufficient infrastructure, training and funding can limit the ability to protect and promote human rights. Climate change-induced migration and conflicts present new challenges to human rights implementation. Displacement and the strain on resources can lead to human rights violations. Differences in cultural norms and values can create challenges in implementing universal human rights standards. Additionally, a lack of awareness and understanding of human rights can hinder their effective implementation. Security threats and the prioritization of national security can sometimes overshadow human rights considerations. Balancing security needs with the protection of human rights can be a complex challenge. Widespread violence and conflicts also make it difficult to implement.

States prioritize their sovereignty and national interests, sometimes leading to reluctance in accepting international human rights standards that might be seen as interfering with domestic affairs. This can hinder co-operation and compliance with global human rights norms. Transnational human rights violations can occur due to a lack of accountability mechanisms. Perpetrators might evade justice, especially when they cross borders or have political protection, making it difficult to hold them accountable for their actions.

International law also lacks a comprehensive enforcement mechanism for human rights. While there are treaties and conventions, compliance depends largely on States' willingness to implement and enforce them in their domestic legal systems. Disparities in political, economic and military power among States can hinder effective implementation. Powerful States may be less likely to face consequences for human rights violations, while smaller or economically weaker States might struggle to exert influence on global human rights agendas. Some States might selectively implement certain human rights principles while disregarding others. This can be influenced by political expediency, economic interests or international alliances. May countries lack the resources and infrastructure needed to effectively promote and protect human rights. This can include limited funding for education, healthcare and legal systems which are essential for ensuring rights are upheld.

Apart from this, the inter-connectedness of economies, migration and communication can complicate human rights issues. Economic policies for example, can affect labour rights and economic disparities, which in turn impact other human rights. International bodies such as the United Nations face challenges in enforcing human rights due to their limited authority and dependence on member State co-operation. This can result in inconsistent responses to violations. Many individuals, especially in regions with limited access to education or information might not be aware of their rights. This lack of awareness can hinder grassroots movements and advocacy for human rights. Situations of political instability, armed conflict and civil unrest can make it extremely challenging to implement human rights protections. Violent situations often lead to widespread rights abuses. The movement of people across borders due to conflict, persecution or economic factors presents challenges in ensuring the protection of migrants' and refugees' human rights. They might face discrimination, exploitation and lack of legal recognition in host countries. Even the digital age has introduced new dimensions to human rights challenges, including issues related to online privacy, freedom of expression and surveillance, which can transcend borders and traditional legal frameworks. Addressing these challenges requires international co-operation, a commitment to human rights principles, diplomatic efforts, legal reforms and advocacy by civil society organizations and individuals. While progress has been made, there is still much work to be done to ensure that human rights are respected and upheld across borders.

Cultural Relativism v. Universality

Different cultures have varying interpretations of human rights, leading to debates about the universality versus cultural relativism of these rights. Some governments argue that certain rights might conflict with their cultural or religious beliefs, making implementation challenging. Cultural relativism is a concept in anthropology and philosophy that suggests that the values, beliefs and practices of a culture should be understood and evaluated within the context of that culture itself, rather than being judged based on the standards of another culture. In other words, it asserts that there are no universal or objective criteria for evaluating the superiority or inferiority of cultural practices. Cultural relativism recognizes the vast diversity of human cultures and societies, each with its own unique history, traditions and norms. It emphasizes the need to approach cultures with an open mind and avoid imposing one's own cultural values. It respects the autonomy of different cultures to determine their own values and practices. It acknowledges that what might be considered acceptable or unacceptable in one culture could be different in another.

Cultural relativism has important implications for discussions about human rights, as it raises questions about the universality of rights and the potential conflicts between cultural practices and human rights standards. While cultural relativism encourages understanding and sensitivity towards different cultures, it can also lead to ethical dilemmas when cultural practices are in direct conflict with universality recognized human rights principles.

The universality of human rights is a fundamental concept that asserts that certain rights and freedoms are inherent to all individuals, regardless of their nationality, culture, religion or other characteristics. The universality of human rights is rooted in the belief that every individual possesses inherent dignity and worth. This dignity provides the basis for rights that protect individuals from harm, ensure their well-being and promote their development. The idea of universality is enshrined in various international declarations, treaties and conventions such as the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948. These documents outline a set of core rights that are universally recognized and protected. The universality of human rights is supported by a global consensus that transcends cultural, political and ideological differences. While specific interpretations and implementations might vary, the fundamental principles of human rights are widely accepted. Universality helps protect individuals from abuses of power by governments, institutions or individuals. It establishes a moral and legal framework that can hold violators accountable for their actions. In essence, the universality of human rights is a foundational principle that underscores the importance of recognizing and safeguarding the inherent dignity and equality of all individuals. It serves as a guide for promoting justice, freedom and well-being across the world, even as societies grapple with the complexities of cultural differences and evolving global challenges.

Cultural relativism and universality represent two contrasting perspectives when it comes to evaluating and applying human rights standards. Striking a balance between respecting cultural diversity and upholding fundamental human rights is a challenge.

The clash between cultural relativism and the universality of human rights presents a complex ethical and practical dilemma, often leading to debates about the application of human rights standards in diverse cultural contexts. Cultural contexts significantly impact the interpretation and application of human rights standards. The diverse ways in which different societies understand and value human rights can lead to variations in how these rights are implemented, protected and respected. Cultural contexts can lead to varying interpretations of what constitutes a particular human right. For example, freedom of expression might be understood differently in societies where certain topics are considered taboo. In some cultures, collective rights might be given more emphasis than individual rights due to cultural norms that prioritize community over individualism. Cultural norms can influence the prioritization of individual rights versus collective rights. In some societies, collective well-being might be seen as more important than individual freedoms. For example, the tension between freedom of speech and laws prohibiting hate speech varies across cultures, as societies weigh the importance of individual expression against preventing harm to communities.

Similarly, cultural norms related to gender roles and family structures can affect the interpretation of gender-related human rights. Traditional gender roles might lead to discrimination and unequal treatment. For example, gender-based violence, such as honour killings, might be rationalized within certain cultural contexts, making it challenging to implement women's rights. Socio-economic factors and cultural contexts influence the realization of economic and social rights, such as the right to education, healthcare and adequate housing. For example, different cultures have varied expectations about the role of the State in providing social services, which affects the implementation of economic and social rights. Cultural and religious beliefs can shape the interpretation of freedom of religion. Some societies might restrict certain religious practices that conflict with prevailing cultural norms. For example, restrictions on religious attire or religious practices that are deemed incompatible with cultural traditions can limit the exercise of freedom of religion. Cultural attitudes towards sexuality and gender identity affect the recognition and protection of LGBTQ+ rights. For example, in societies where homosexuality is culturally taboo, LGBTQ+ individuals might face discrimination and violence, making it challenging to implement their rights.

Even,traditional and customary practices can either align with or contradict human rights standards, complicating their application. For example, customary laws might discriminate against women's inheritance rights, leading to conflicts between cultural norms and human rights principles. Indigenous cultures often have distinct relationships

with land, resources and governance systems. Recognizing indigenous rights might involve acknowledging these cultural differences. For example, balancing indigenous land rights with broader development goals requires sensitivity to cultural and historical contexts. Cultural norms can also influence how justice is sought and delivered. Informal justice systems might operate parallel to formal legal systems. For example, in some societies, traditional dispute resolution mechanisms might offer quicker and culturally relevant solutions but could overlook certain human rights.

Strategies for reconciling cultural diversity

Reconciling cultural diversity with the fundamental principles of human rights requires a delicate balance between respecting cultural contexts and upholding universal human rights. Some of the detailed strategies for achieving this reconciliation are:

a) *Education and Awareness*:

Strategy: Promote education and awareness about human rights within diverse cultural communities. This involves explaining the importance of core human rights principles and their relevance to individual and collective well-being.

Impact: By fostering understanding about the universality of certain rights, individuals and communities can make informed decisions while respecting their cultural heritage.

b) *Dialogue and Consultation*:

Strategy: Facilitate open and respectful dialogues between human rights advocates, cultural leaders, and community members. Engage in consultations to understand cultural practices and concerns.

Impact: Involving cultural communities in discussions about human rights can lead to nuanced solutions that accommodate both cultural diversity and universal rights.

c) *Contextual Adaptation:*

Strategy: Tailor the implementation and interpretation of human rights to local cultural contexts where appropriate. Modify approaches to align with cultural norms while preserving the essence of the rights.

Impact: This strategy ensures that human rights are relevant and accessible to diverse populations without imposing alien concepts.

d) *Positive Cultural Integration*:

Strategy: Identify and integrate cultural practices that align with human rights values. Highlight positive aspects of cultural heritage that can complement and support universal rights.

Impact: This approach encourages the harmonious coexistence of cultural practices that promote dignity, equality, and individual freedoms.

e) *Grassroots Initiatives*:

Strategy: Empower local communities to identify areas where cultural practices might conflict with human rights. Encourage grassroots movements to drive cultural change from within.

Impact: When communities take ownership of aligning their practices with human rights, the changes are more likely to be sustainable and well-accepted.

f) *Human Rights Education in Schools*:

Strategy: Integrate human rights education into school curricula to expose young minds to universal values from an early age. Use culturally sensitive teaching materials.

Impact: This strategy helps cultivate a generation that values human rights while understanding the importance of cultural diversity.

g) *Cultural Sensitivity in Advocacy*:

Strategy: Approach human rights advocacy with cultural sensitivity. Understand that certain rights might be interpreted differently across cultures, and frame advocacy messages accordingly.

Impact: Culturally sensitive advocacy is more likely to resonate with communities and lead to greater acceptance of human rights principles.

h) *Local Ownership of Development Projects*:

Strategy: Engage local communities in the planning and implementation of development projects. Respect traditional knowledge and practices that contribute to sustainable development.

Impact: Empowering communities to shape their own development agenda ensures that human rights are integrated within cultural contexts.

i) *Legal Harmonization*:

Strategy: Work toward harmonizing local laws and practices with international human rights standards. Identify areas where local laws might need to evolve to align with universal principles.

Impact: Legal harmonization bridges gaps between cultural practices and human rights, ensuring consistency and protection for all individuals.

j) *International Collaboration*:

Strategy: Foster international cooperation to address human rights violations that arise from cultural practices. Engage with governments, organizations, and experts to find solutions.

Impact: Addressing cross-border human rights challenges requires collective efforts that consider cultural diversity and shared values.

Thus, reconciling cultural diversity with the fundamental principles of human rights involves a multifaceted approach that includes education, dialogue, adaption and collaboration. It requires respecting cultural differences while advocating for the core values of human dignity, equality and freedom. Striking this balance is essential for creating a world where human rights are upheld while respecting the richness of cultural heritage.

Legal and Political Barriers

The enforcement of human rights treaties and agreements can be impeded by various legal and political obstacles. While these treaties set out the framework for protecting and promoting human rights, several challenges often arise that hinder their effective implementation. Here are some key legal and political obstacles:

a) *Lack of Domestic Implementation*:

Obstacle: Many countries fail to translate international human rights obligations into domestic laws and policies.

Impact: Without local legal frameworks, individuals lack mechanisms to seek remedies for human rights violations, leading to a gap between international commitments and on-the-ground protection.

b) *Limited Accountability Mechanisms*:

Obstacle: Some treaties lack robust mechanisms for monitoring compliance and holding states accountable for violations.

Impact: Without effective oversight and enforcement mechanisms, states may disregard their obligations, undermining the credibility of human rights treaties.

c) *Weak Judicial Systems*:

Obstacle: Inadequate judicial infrastructure, lack of independence, and corruption in some countries' legal systems can impede individuals' access to justice. Impact: Citizens may be discouraged from seeking redress for rights violations due to a lack of trust in the judicial system.

d) *Political Interference*: Obstacle: Political pressures and interests can influence the interpretation and enforcement of human rights treaties. Impact: Governments might prioritize political alliances and national interests over human rights commitments, leading to selective implementation or even non-compliance.

e) *Resource Constraints*: Obstacle: Limited financial and human resources can hinder the implementation of human rights obligations, especially in developing countries. Impact: Inadequate resources might prevent states from adequately addressing issues like poverty alleviation, healthcare, and education, which are essential for realizing rights.

f) *State Sovereignty Concerns*: Obstacle: Some governments resist external scrutiny and intervention, citing concerns about sovereignty. Impact: States may reject international oversight, impeding efforts to address human rights violations through international mechanisms.

g) *Lack of Public Awareness*:

Obstacle: Many individuals may not be aware of their rights or the mechanisms available for seeking redress.

Impact: A lack of awareness can hinder individuals from advocating for their rights or reporting violations.

h) *Cultural Relativism*:

Obstacle: Differing cultural interpretations of human rights can lead to resistance to certain rights, particularly those seen as conflicting with cultural norms.

Impact: Cultural relativism can be used as a justification to limit the scope of human rights, especially in relation to issues like gender equality and LGBTQ+ rights.

i) *Non-Ratification or Reservations*:

Obstacle: Some states may not ratify certain treaties, or they might attach reservations that limit the scope of their obligations.

Impact: This can lead to gaps in protection and inconsistent implementation of human rights standards.

j) *Lack of International Cooperation*:

Obstacle: Weak international cooperation or conflicts between states can hinder effective implementation of human rights treaties.

Impact: Cross-border issues like migration, human trafficking, and environmental degradation require collaborative efforts, but political disputes can impede cooperation.

Addressing these obstacles requires a combination of efforts, including raising awareness, strengthening domestic legal systems, enhancing accountability mechanisms, promoting transparency, and encouraging international cooperation. Overcoming these challenges is crucial for ensuring that human rights treaties and agreements have meaningful impact and contribute to a more just and equitable world.

Case studies

Some of the case studies that illustrate instances where State sovereignty has challenged the implementation of international human rights norms are:

a) China and Tibet

Case: China's control over Tibet has been a contentious issue for decades. China claims Tibet as an integral part of its territory and exercises significant control over its political, cultural, and religious affairs.

Human Rights Challenge: The Tibetan population has raised concerns about cultural and religious repression, limitations on freedom of expression, and restrictions on movement. International human rights organizations and governments have criticized China's treatment of Tibetans.

State Sovereignty Impact: China's stance on Tibet emphasizes its sovereignty and non-interference in its internal affairs. The Chinese government argues that outsiders should not intervene in what it considers domestic matters, challenging international efforts to address human rights violations.

b) Saudi Arabia and Women's Rights

Case: Saudi Arabia has long been criticized for its treatment of women, particularly with regard to restrictions on driving, dress codes, and male guardianship laws.

Human Rights Challenge: These practices are seen as discriminatory and in violation of international human rights principles, particularly those related to gender equality and individual autonomy.

State Sovereignty Impact: Saudi Arabia has invoked its cultural and religious norms as reasons for these restrictions. The Saudi government has resisted external pressure to reform these practices, arguing that they are in line with its interpretation of Islamic law and are matters of domestic policy.

c) Myanmar and the Rohingya Crisis

Case: The Rohingya crisis in Myanmar involves the persecution and displacement of the Rohingya ethnic minority. The Myanmar government has been accused of widespread human rights abuses, including ethnic cleansing and genocide.

Human Rights Challenge: The Rohingya have faced violence, displacement, and denial of citizenship, leading to a refugee crisis in neighboring countries.

State Sovereignty Impact: Myanmar has been resistant to international intervention, asserting that the situation is an internal matter. The government's denial of allegations and its reluctance to allow international investigations or humanitarian access highlight challenges in addressing such crises when state sovereignty is prioritized.

d) Russia and LGBTQ+ Rights

Case: Russia's treatment of LGBTQ+ individuals has drawn international attention. The country has passed laws banning "propaganda of nontraditional sexual relationships among minors," leading to discrimination and violence against LGBTQ+ people.

Human Rights Challenge: These laws are criticized for violating freedom of expression and promoting discrimination. LGBTQ+ individuals face risks to their safety and well-being.

State Sovereignty Impact: Russia has defended these laws as aligned with its cultural and traditional values. The government rejects international criticism, framing it as interference in its domestic affairs.

e) *Syria and the Civil War*:

Case: The Syrian civil war, ongoing since 2011, has involved widespread human rights abuses, including indiscriminate attacks on civilians, torture, and displacement.

Human Rights Challenge: Numerous reports from international organizations and NGOs document severe violations of human rights and humanitarian law by both government forces and non-state actors.

State Sovereignty Impact: The Syrian government has argued that the conflict is an internal matter and resisted international intervention, invoking sovereignty to reject foreign interference. This has impeded concerted international efforts to address the humanitarian crisis and hold perpetrators accountable.

f) *North Korea and Human Rights Abuses*:

Case: North Korea is known for its repressive regime, characterized by severe restrictions on freedom of expression, forced labor camps, and a lack of basic freedoms.

Human Rights Challenge: International organizations and defectors have provided evidence of systematic human rights abuses, including extrajudicial killings and torture.

State Sovereignty Impact: North Korea's government has maintained that its actions are consistent with its sovereignty and have rebuffed calls for external investigation. The insular nature of the regime and limited access for international observers complicate efforts to verify the extent of abuses.

g) *Sudan and Darfur Conflict*:

Case: The conflict in Darfur, Sudan, which began in the early 2000s, has resulted in widespread violence, displacement, and human rights violations.

Human Rights Challenge: Both government forces and armed groups have been accused of committing war crimes, including targeting civilians and using rape as a weapon of war.

State Sovereignty Impact: The Sudanese government initially rejected claims of abuses and attributed the conflict to internal disputes. It resisted international intervention, asserting its sovereignty over the region and limiting access for humanitarian organizations and investigators.

h) *Venezuela and Political Repression*:

Case: Venezuela has faced criticism for its deteriorating human rights situation, including restrictions on freedom of speech, allegations of torture, and erosion of democratic institutions.

Human Rights Challenge: Reports from international bodies and civil society organizations have raised concerns about a lack of accountability for human rights abuses.

State Sovereignty Impact: The Venezuelan government has labeled international criticism as interference in its internal affairs and has withdrawn from international human rights mechanisms. This stance has hindered efforts to address the crisis.

These case studies demonstrate how State sovereignty, while a foundational principle of international relations, can at times challenge the effective implementation of international human rights norms. While sovereignty is a cornerstone of international relations, it can sometimes be used to shield human rights violations from external scrutiny or intervention. The tension between the principle of sovereignty and the responsibility to protect human rights remains a significant challenge in global politics.

Suggestions for strengthening international legal mechanisms

Strengthening international legal mechanisms to ensure compliance with human rights treaties and agreements requires a multifaceted approach that addresses both legal and political challenges. Here are some suggestions:

a) *Strengthen Monitoring and Reporting*:

- Enhance the capacity and resources of international human rights monitoring bodies, such as treaty bodies and special rapporteurs, to conduct thorough and timely assessments of states' compliance.

- Encourage states to submit comprehensive and accurate reports on their human rights

situations, ensuring transparency and accountability.

b) *Strengthen Accountability Mechanisms*:

- Establish stronger enforcement mechanisms, such as a specialized international human rights court, to adjudicate cases of systematic human rights violations.
- Facilitate the establishment of hybrid or mixed courts that combine international and domestic legal expertise to ensure impartiality and legitimacy.

c) *Strengthen Universal Ratification*:

- Encourage all states to ratify core human rights treaties and remove reservations that undermine the effectiveness of these treaties.
- Develop incentives for ratification, such as technical assistance and capacity-building support for states with limited resources.

d) *Strengthen National Implementation*:

- Promote the adoption of domestic legislation that aligns with international human rights obligations, ensuring that states' legal frameworks are in line with their commitments.
- Provide technical assistance and training to build the capacity of legal professionals, judges, and law enforcement agencies to effectively apply human rights standards domestically.

e) *Strengthen Non-State Actor Accountability*:

- Develop legal mechanisms to hold non-state actors, such as corporations, armed groups, and private security contractors, accountable for human rights violations they commit.
- Encourage states to adopt legislation that ensures the extraterritorial application of their human rights obligations to non-state actors operating within their jurisdiction.

f) *Strengthen Diplomatic Pressure*:

- Use diplomatic channels to exert pressure on states that consistently violate human rights obligations, emphasizing the international community's shared commitment to human rights.
- Develop a coordinated approach among like-minded states to collectively address non-compliance cases and raise awareness about violations.

g) *Strengthen Treaty Enforcement*:

- Consider implementing "naming and shaming" mechanisms that publicly highlight states that fail to comply with their human rights obligations.
- Develop sanctions mechanisms that target individuals responsible for human rights abuses and limit their ability to travel, access financial assets, or engage in international transactions.

h) *Strengthen Civil Society Engagement*:

- Support and protect civil society organizations, human rights defenders, and journalists who play a crucial role in monitoring and reporting on human rights violations.
- Facilitate collaboration between civil society organizations, international organizations, and states to collectively address compliance issues.

i) *Strengthen Economic and Trade Leverage*:

- Tie economic assistance, trade agreements, and international cooperation to a state's demonstrated commitment to human rights compliance.
- Condition economic benefits on measurable improvements in human rights practices.

j) *Strengthen International Awareness*:

- Raise public awareness about human rights violations through media, social networks, and other communication platforms to generate public pressure on non-compliant states.
- Engage celebrities, influencers, and cultural figures to champion human rights and spotlight non-compliance cases.

By implementing these suggestions, the international community can reinforce the mechanisms that hold states accountable for their human rights commitments and contribute to a more just and rights-respecting global order.

Socio-economic factors and Inequality

The correlation between socio-economic disparities and the violation of human rights is a complex and multifaceted relationship. It is essential to understand that socio-economic disparities can contribute to and exacerbate human rights violations in various ways. Socio-economic disparities often result in unequal access to basic necessities such as food, clean water, housing, and healthcare. When individuals or groups are denied these essential resources due to their socio-economic status, it can be considered a violation of their right to an adequate standard of living (recognized in Article 25 of the Universal Declaration of Human Rights). Socio-economic disparities can limit access to quality education. Denying individuals, the opportunity to receive a proper education can hinder their ability to access better economic opportunities in the future. This is a violation of the right to education (recognized in Article 26 of the Universal Declaration of Human Rights).

Unequal access to employment opportunities and fair working conditions is a significant concern in socio-economically disparate societies. Exploitative labor practices, low wages, and lack of job security can violate individuals' labor rights, as outlined in international human rights standards. Socio-economic disparities can intersect with other forms of discrimination, such as race, gender, or ethnicity. These intersecting factors can lead to marginalized groups facing multiple layers of discrimination and deprivation, which violates their rights to equality and non-discrimination (recognized in Article 2 of the Universal Declaration of Human Rights). In many cases, socio-economic disparities can limit the ability of disadvantaged groups to participate in the political process. This can occur through barriers to voting, lack of access to information, or limited resources for political engagement. Such limitations can infringe upon individuals' political rights, including the right to participate in government (recognized in Article 21 of the Universal Declaration of Human Rights). Unequal access to healthcare can result in disparities in health outcomes. Denying individuals medical care or subjecting them to substandard healthcare based on their socio-economic status violates their right to health (recognized in Article 25 of the Universal Declaration of Human Rights).

Socio-economic disparities can lead to forced evictions and homelessness for vulnerable populations. These actions violate the right to adequate housing (recognized in Article 25 of the Universal Declaration of Human Rights). Persistent poverty and extreme economic inequality are often closely linked to socio-economic disparities. These issues can contribute to a cycle of deprivation that traps individuals and communities in conditions of poverty, making it difficult for them to enjoy their full range of human rights. Socio-economic disparities can result in social exclusion and isolation, further isolating marginalized groups from the benefits of society and limiting their ability to participate fully in social, cultural, and economic life.

Thus, socio-economic disparities can both directly and indirectly contribute to the violation of various human rights, including economic, social, cultural, civil, and political rights. Addressing these disparities and promoting economic and social justice is essential for ensuring the protection and realization of human rights for all individuals, regardless of their socio-economic status. International human rights frameworks, such as the Universal Declaration of Human Rights and various treaties and conventions, provide a foundation for addressing these issues and promoting greater equity and equality in societies around the world.

Role of Non-State Actors

The roles played by non-state actors, including corporations and non-governmental organizations (NGOs), in either hindering or facilitating the implementation of human rights are complex and multifaceted. Non-state actors can have a significant impact on human rights, both positively and negatively, depending on their actions and motivations. Some corporations voluntarily adopt and enforce labor standards that promote workers' rights, fair wages, safe working conditions, and non-discrimination. They may also support employees' freedom of association and collective bargaining. Many companies engage in corporate social responsibility (CSR) activities that contribute to human rights, such as philanthropy, community development, and environmental sustainability efforts. Corporations are increasingly aware of their supply chain's impact on human rights. Some work to eliminate child labor, forced labor, and other abuses from their supply chains.

Some companies engage in exploitative labor practices, including low wages, unsafe working conditions, and long working hours, often in pursuit of profit maximization. Corporations can contribute to environmental degradation, which can harm communities and impact the right to a healthy environment and the right to health. Companies that source minerals from conflict zones may indirectly support armed groups responsible for human rights abuses. Tech companies, for example, may infringe

on individuals' privacy rights by collecting and misusing personal data.

NGOs play a vital role in raising awareness about human rights violations, advocating for policy changes, and pressuring governments and corporations to respect and protect human rights. Some NGOs directly provide essential services, such as healthcare, education, and legal aid, which can help marginalized populations access their rights. NGOs often monitor human rights conditions, document violations, and report on them to the international community, which can lead to pressure for change.

While NGOs generally have good intentions, some may lack transparency, accountability or oversight, leading to misuse of funds or ineffectiveness in their human rights efforts. NGOs may take partisan positions or engage in political activism that hinders collaboration with governments or other stakeholders in addressing human rights issues. Some NGOs may struggle to have a tangible impact on human rights due to limited resources, inefficiencies or a lack of expertise in certain area. Non-state actors, including corporations and NGOs, wield significant influence over the implementation of human rights. Their roles can vary widely, and while many make positive contributions, others can hinder progress. Ensuring that non-state actors uphold human rights requires a combination of legal frameworks, ethical practices, accountability mechanisms, and public awareness. Collaborative efforts between governments, civil society, and businesses are crucial for promoting human rights and addressing violations effectively.

The power dynamics between states and non-state entities, such as multinational corporations, non-governmental organizations (NGOs), and international organizations, play a crucial role in the implementation of human rights from an international perspective. These dynamics present various challenges that impact the protection and promotion of human rights globally. Multinational corporations often possess significant economic and political power, sometimes rivaling that of smaller states. This asymmetry can make it challenging for states to regulate and hold corporations accountable for human rights violations, especially when corporations operate across multiple countries. States generally have more formal authority and resources than NGOs, which can create an imbalance in negotiations and collaborations on human rights issues. States may sometimes view NGOs as challenging their sovereignty.

The international legal framework for holding corporations accountable for human rights abuses is less developed than that for states. While there have been efforts to establish guidelines and principles, there is no comprehensive global treaty governing corporate human rights responsibilities. While NGOs often serve as advocates for human rights, they may not always be held accountable for their actions or decisions. Some argue that greater accountability mechanisms for NGOs are necessary to ensure their effectiveness.

States traditionally assert their sovereignty over domestic affairs and may resist international human rights standards that they perceive as encroaching on their sovereignty. This tension can hinder the implementation of global human rights norms. International human rights standards, including treaties and conventions, often challenge states' practices and policies, leading to conflicts between states and international bodies responsible for monitoring and enforcing human rights. States often prioritize economic interests, including trade and investment, which can conflict with human rights objectives. States may be hesitant to impose sanctions or regulations on powerful corporations if it could harm economic relations. Multinational corporations may prioritize profit over human rights concerns, leading to exploitative labor practices, environmental degradation, or complicity in human rights abuses in pursuit of business interests. The multitude of actors involved in human rights, including states, international organizations, NGOs, and corporations, can lead to fragmentation of authority and responsibility. This can result in overlapping mandates, competition for resources, and coordination challenges. Even when international agreements exist, there may be inadequate enforcement mechanisms to ensure compliance. This can limit the effectiveness of international human rights initiatives.

States may form alliances based on political or economic interests that prioritize their own objectives over human rights concerns. This can lead to diplomatic pressure being exerted to protect violators or to obstruct human rights investigations. States and international organizations may selectively address human rights violations based on geopolitical considerations, which can undermine the universality and consistency of human rights protection. Addressing these challenges requires ongoing efforts to strike a balance between state sovereignty and international human rights standards, strengthening mechanisms for corporate accountability, and fostering collaboration between states, non-state

entities, and civil society. The development and enforcement of robust international norms, along with increased transparency and accountability mechanisms, are essential for promoting and protecting human rights on a global scale.

Enhancing the positive impact of non-state actors on human rights realization is crucial for promoting and protecting human rights globally. Non-state actors, which can include NGOs, corporations, civil society organizations, and individuals, can play a significant role in advancing human rights. Some strategies to maximize their positive impact are:

1. *Education and Awareness*: Raise awareness among non-state actors about human rights issues and their role in promoting and protecting them and also provide training and resources on human rights principles, standards and best practices.

2. *Collaboration*: Foster partnerships and collaborations between non-state actors, including NGOs, civil society, businesses and governments to address human rights challenges collectively and also encourage cross-sector initiatives and dialogues.

3. *Advocacy and Lobbying*: Support non-state actors in advocating for human rights at local, national and international levels and encourage lobbying efforts to influence policy and legislative changes that protect and promote human rights.

4. *Transparency and Accountability*: Promote transparency within non-state actors, including businesses, by encouraging them to disclose their human rights practices and impacts and establish mechanisms for accountability, such as human rights reporting and grievance mechanisms for affected individuals or communities.

5. *Codes of Conduct and Voluntary Initiatives*: Encourage non-state actors to adopt codes of conduct or voluntary initiatives that commit them to respect and protect human rights and also promote adherence to international standards and guidelines, such as the U.N. Guiding Principles on Business and Human Rights.

6. *Corporate Social Responsibility (CSR):* Support businesses in integrating human rights into their CSR strategies and practices and also engage with companies to ensure responsible business conduct, ethical sourcing and labour rights.

7. *Capacity Building:* Provide capacity-building support to non-state actors, especially smaller organizations and communities, to enable them to engage effectively in human rights activities.

8. *Legal Frameworks and Enforcement*: Advocate for stronger legal frameworks that hold non-state actors accountable for human rights violations and also encourage governments to enforce laws and regulations that protect human rights in the context of non-state actors' activities.

9. *Media and Public Opinion*: Utilize media and public opinion to highlight human rights issues and hold non-state actors accountable and also encourage responsible journalism and reporting on human rights abuses.

10. *Community Engagement*: Empower affected communities to engage with non-state actors and advocate for their rights and also ensure that the voices of marginalized and vulnerable groups are heard and considered.

11. *International Mechanisms*: Engage with international human rights bodies and mechanisms, such as the United Nations and regional organizations, to report on human rights violations and seek redress.

12. *Monitoring and Reporting*: Establish independent monitoring mechanisms to assess non-state actors' compliance with human rights standards and also encourage the reporting of human rights violations and abuses to appropriate authorities.

13. *Incentives and Recognition*: Recognize and reward non-state actors that demonstrate a strong commitment to human rights through awards, certifications or public recognition.

By implementing these strategies, non-state actors can become more effective advocates for human rights, contributing positively to the realization of these rights worldwide. Collaboration among various stakeholders, including governments, non-state actors and civil society, is key to achieving lasting improvements in human rights protection and promotion.

Technological Advancements and Human Rights

Technological developments have had a profound impact on the landscape of human rights implementation, both positively and negatively. Here

is an examination of how technology has shaped human rights implementation:

Positive Impacts

1. *Information Dissemination and Awareness*: Technology, especially the internet and social media, has enabled the rapid dissemination of information about human rights abuses and violations worldwide. Human rights organizations and activists can raise awareness of violations, mobilize support, and share real-time updates, helping to hold perpetrators accountable.

2. *Documentation and Evidence Gathering*: Digital technology allows for the easy documentation of human rights abuses through photos, videos, and audio recordings. These forms of evidence can be crucial in legal proceedings and investigations.

3. *Global Advocacy and Networking*: Digital platforms facilitate global advocacy efforts by connecting human rights organizations, activists, and supporters across borders. Online networks enable the sharing of best practices and strategies for promoting human rights.

4. *Crowdsourcing and Reporting*: Technology platforms have allowed for crowdsourced human rights reporting, where individuals can report violations, document evidence, and share their experiences. This enhances the monitoring of human rights conditions in real-time.

5. *Access to Information*: Technology has expanded access to information, enabling individuals to access legal documents, treaties, and reports related to human rights. This empowers people to know their rights and demand accountability from governments and institutions.

6. *Secure Communication and Privacy Tools*: Encryption and secure communication tools protect activists and dissidents from surveillance and cyberattacks, allowing them to communicate safely and organize effectively.

7. *Artificial Intelligence and Data Analysis*: AI can analyze vast datasets to identify patterns of human rights abuses, helping organizations target their efforts more effectively. Predictive analytics can help anticipate potential human rights crises.

Negative Impacts

1. *Surveillance and Privacy Concerns*: Governments and authoritarian regimes can use technology for mass surveillance, stifling free speech, and infringing on privacy rights. Surveillance technologies like facial recognition can be used to target activists and dissidents.

2. *Digital Divide*: Not everyone has equal access to technology, leading to a digital divide that can limit marginalized groups' ability to exercise their rights online. Lack of access to the internet or technology can impede advocacy efforts.

3. *Online Harassment and Threats*: Technology has facilitated online harassment and threats against human rights defenders and marginalized groups, especially women and minority communities. These threats can deter activism and limit freedom of expression.

4. *Misinformation and Disinformation*: Technology can spread false information and disinformation, undermining the credibility of human rights reporting and advocacy efforts. Governments may also use disinformation to discredit human rights organizations.

5. *Cyberattacks and Hacking*: Human rights organizations and activists are vulnerable to cyberattacks, data breaches, and hacking attempts that can compromise their work and safety.

6. *Ethical Concerns*: The use of emerging technologies like autonomous weapons and AI for surveillance raises ethical questions about their impact on human rights.

Thus, technological developments have transformed the landscape of human rights implementation, offering new tools for advocacy, awareness and documentation. However, they also present challenges related to surveillance, privacy and misinformation. To maximize the positive impacts of technology on human right, it is crucial to strike a balance between harnessing its benefits and addressing its negative consequences through robust legal frameworks and ethical considerations.

Suggestions and Recommendations

Implementing human rights on a global scale is a complex challenge that requires international co-operation and a multifaceted approach such as:

Challenges

1. *Diverse Legal and Cultural Contexts*:

   Challenge: Different countries have diverse legal systems, cultural norms, and interpretations of human rights, making universal implementation challenging.

   Strategy: Promote dialogue and cooperation to develop common understandings of human rights while respecting cultural diversity.

2. *Lack of Enforcement Mechanisms*:

   Challenge: International human rights treaties and conventions often lack robust enforcement mechanisms, making it difficult to hold violators accountable.

   Strategy: Strengthen international and regional mechanisms for monitoring, reporting, and enforcing human rights, including through sanctions and international courts.

3. *State Sovereignty and Non-Interference*:

   Challenge: The principle of state sovereignty can hinder international intervention in cases of severe human rights abuses.

   Strategy: Develop a consensus on the responsibility to protect (R2P) and establish clear guidelines for international intervention when states fail to protect their citizens from gross violations.

4. *Economic and Social Rights*:

   Challenge: Economic, social, and cultural rights often receive less attention and are more challenging to implement than civil and political rights.

   Strategy: Prioritize the fulfillment of economic and social rights through targeted development initiatives, poverty reduction, and access to education, healthcare, and clean water.

5. *Non-State Actors*:

   Challenge: Human rights abuses by non-state actors, such as corporations and armed groups, can be challenging to address through traditional state-centric approaches.

   Strategy: Develop and strengthen legal frameworks and mechanisms for holding non-state actors accountable for human rights violations.

6. *Digital Rights and Technology*:

   Challenge: Rapid technological advancements raise new human rights challenges, such as digital privacy violations and surveillance.

   Strategy: Develop international norms and agreements on digital rights and privacy protection, and hold technology companies accountable for human rights abuses.

7. *Global Inequality*:

   Challenge: Disparities in wealth, resources, and power create a global environment where some countries and populations have more influence than others.

   Strategy: Promote economic and political reforms that reduce global inequality and ensure marginalized communities have a voice in international human rights discussions.

Strategies

1. *International Treaties and Conventions*: Ratify and implement international human rights treaties and conventions and encourage all states to do the same.

2. *Capacity Building*: Provide technical assistance and capacity-building support to countries with weaker human rights institutions to strengthen their ability to implement and monitor human rights.

3. *Education and Advocacy*: Raise awareness about human rights through education and advocacy programs to ensure that people understand their rights and can demand their enforcement.

4. *Partnerships and Diplomacy*: Foster international partnerships, coalitions, and diplomatic efforts to address specific human rights issues and hold violators accountable.

5. *Civil Society Engagement*: Support and protect civil society organizations and human rights defenders to play a vital role in monitoring and advocating for human rights.

6. *Sanctions and Accountability*: Impose targeted sanctions and hold individuals and entities

accountable for human rights abuses through international tribunals and courts.

7. *Multilateral Institutions*: Strengthen and reform international institutions like the United Nations and regional organizations to enhance their capacity to address human rights issues effectively.

8. *Early Warning Systems*: Develop and implement early warning systems to detect and prevent potential human rights crises before they escalate.

9. *Data and Monitoring*: Invest in data collection, analysis, and monitoring mechanisms to assess the impact of policies and interventions on human rights.

10. *Public Diplomacy*: Engage in public diplomacy campaigns to build support for human rights and foster a culture of respect for human rights at the global level.

Implementing human rights on a global scale is an ongoing process that requires the commitment of States, international organizations, civil society and individuals. It involves both long-term systemic changes and targeted efforts to address specific human rights violations.

Conclusion

The implementation of human rights on a global scale presents a set of formidable challenges, stemming from the diverse legal, cultural, and political contexts of nations, the limitations of international enforcement mechanisms, and the evolving landscape of human rights in the digital age. However, the imperative to protect and promote human rights remains undiminished, and there are effective strategies that can be pursued from an international perspective. While challenges persist, the ongoing commitment of states, international organizations, civil society, and individuals to the cause of human rights is essential for advancing the global human rights agenda. As technology continues to shape the landscape of human rights implementation, it is imperative that international efforts remain adaptable, innovative, and responsive to emerging challenges, ensuring that the fundamental rights and dignity of all individuals are protected and upheld across the globe. Ultimately, the pursuit of human rights is a shared responsibility that transcends borders and ideologies, and it is through collective action that we can build a more equitable and humane world for future generations.

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Forced Displacement and Human Rights: A Study of International Law and Case Laws

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ABSTRACT

Forced displacement is a serious violation of human rights that affects millions of people worldwide. This thesis examines the legal framework surrounding forced displacement, with a particular focus on international human rights law. Through an analysis of relevant case laws, this study seeks to identify the key legal principles that should guide the protection of displaced persons' human rights. The study also examines the gaps in the current legal framework and proposes possible solutions to address these shortcomings. Forced displacement, also known as forced migration, is a widespread and persistent issue affecting millions of people worldwide. It occurs when individuals or groups are compelled to leave their homes or places of habitual residence due to persecution, conflict, natural disasters, or other factors that threaten their safety or well-being. Forced displacement is often accompanied by a host of human rights violations, including violations of the right to life, liberty, security, and freedom from discrimination.

Keywords:displacement, human rights, refugee law, non-refoulement, internally displaced persons (IDPs)

Introduction

International human rights law provides a framework for protecting the rights of displaced persons and ensuring that they are treated with dignity and respect. The United Nations Refugee Convention, adopted in 1951, is the primary international instrument governing the protection of refugees and their rights (United Nations High Commissioner for Refugees. (2019). Global Trends: Forced Displacement in 2018).

In addition to the Refugee Convention, international human rights law provides a range of protections for internally displaced persons (IDPs) who are forced to flee their homes but remain 10 within their own countries. The Guiding Principles on Internal Displacement, adopted by the UN in 1998, outline the rights of IDPs, including the right to protection from arbitrary displacement. The Refugee Convention and its 1967 Protocol established the legal framework for refugee protection, including: -

The principle of non -refoulement, which prohibits states from returning refugees to their country of origin if they face a risk of persecution. The Convention also recognizes the right of refugees to access basic human rights, such as education, housing, and health care, and obligates states to provide them with legal status, documentation, and assistance.

Despite these legal protections, forced displacement remains a pressing global challenge, with millions of people displaced each year due to conflict, natural disasters, and other factors. Human rights abuses, including sexual and gender-based violence, forced labor, and exploitation, are common among displaced populations, and many faces significant barriers to accessing legal protection and assistance. Case law from international human rights tribunals, including the International Criminal Court.

(ICC) and regional human rights courts such as the European Court of Human Rights and the Inter-American Court of Human Rights, has played an important role in shaping the legal framework for forced displacement and holding states accountability for human rights violations against displaced populations. These courts have issued landmark decisions on issues such as the rights of refugees to access education, and the responsibility of states to provide reparations to displaced persons for human rights violations.

Forced displacement is a complex and multifaceted issue that poses significant challenges to the

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protection of human rights. While international human rights law provides a framework for addressing forced displacement and protecting the rights of displaced persons, implementation and enforcement remain major challenges. Ongoing efforts to strengthen legal protections and improve access to justice for displaced populations are crucial for addressing this pressing global challenge.

Background Information on Forced Displacement

Forced displacement can take different forms, such as internal displacement, cross-border displacement, and statelessness. It is a complex and multifaceted issue that has significant humanitarian, social, economic, and political implications.

According to the United Nations High Commissioner for Refugees (UNHCR), there were 82.4million forcibly displaced people worldwide by the end of 2020. Of these, 48 million were internally displaced, 26.4 million were refugees, and 4.1 million were asylum seekers. This represents a staggering increase of 4% compared to the previous year, despite the COVID-19 pandemic and the closure of many borders. The countries with the highest number of forcibly displaced people are Syria, Venezuela, Afghanistan, South Sudan, and Myanmar. (United Nations. (2020). Guiding Principles on Internal Displacement).

Forced displacement has serious consequences for the human rights of affected individuals and communities. Displaced persons are often subjected to discrimination, violence, exploitation, and marginalization, and are denied access to basic services and opportunities. They face challenges in accessing education, healthcare, employment, and housing, and may suffer from mental health issues and trauma. Displacement also has gendered impacts, as women, children, and marginalized groups are particularly vulnerable to violence and exploitation.

Legal Framework of Forced Displacement

Definition and causes of forced displacement International human rights law and forced displacement international refugee law and forced displacement Other relevant international legal instruments.

Definition and Causes of Forced Displacement

Forced displacement refers to the situation where individuals or groups are forced to leave their homes or places of habitual residence due to a range of factors, including conflict, persecution, human rights violations, environmental disasters, and development projects. Forced displacement can take various forms, including internal displacement within a country's borders, cross-border displacement, and refugee movements.

International Human Rights Law and Forced Displacement

International human rights law sets out the rights and protections afforded to all individuals,including those who have been forcibly displaced. The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) affirm the right to freedom from arbitrary displacement, the right to a nationality, the right to freedom of movement 19 within one's own country, and the right to seek asylum from persecution.

The Guiding Principles on Internal Displacement, adopted by the United Nations General Assembly in 1998, provide further guidance on the protection and assistance of internally displaced persons (IDPs). (Office of the United Nations High Commissioner for Human Rights. (2018). Protecting Economic, Social and Cultural Rights in the Context of Forced Displacement: An Introductory Guide).

International Refugee Law and Forced Displacement

International refugee law provides specific protections for individuals who have been forced to flee their homes due to a well-founded fear of persecution on the basis of their race, religion, nationality, political opinion, or membership in a particular social group. The 1951 Refugee Convention and its 1967 Protocol define who is a refugee, and outline the rights and obligationsof states towards refugees, including the principle of non-refoulement, which prohibits the return of refugees to a country where they may face persecution. (International Council on Human Rights Policy. (2016). Protection against Refoulement: Nonerodable and Essential).

Other Relevant International Legal Instruments

The International Covenant on Economic, Social, and Cultural Rights (ICESCR), which affirms the right to adequate housing and the right to work, among other economic and social rights that are essential for the protection and well-being of displaced persons.

The Convention on the Rights of the Child (CRC), which recognizes the particular vulnerabilities of children who are forced to flee their homes, and outlines their right to protection, education, and other forms of support.

The Kampala Convention, which specifically addresses the protection and assistance of IDPs in Africa, and requires states to take measures to prevent and respond to internal displacement.

The Paris Agreement, which recognizes the linkages between climate change and forced displacement and emphasizes the need for countries to take action to address the adverse impacts of climate change on vulnerable communities.

Protection of Human Rights in Cases of Forced Displacement

Right to life and security Right to freedom of movement and residence Right to work and education Right to non-discrimination and equality Right to health and basic needs

The protection of human rights is crucial in cases of forced displacement, where individuals may face a range of threats to their safety, security, and well-being. Some of the key human rights that must be upheld in situations of forced displacement include:

Right to Life and Security

Individuals who have been forcibly displaced have a fundamental right to life and security, and must be protected from threats such as violence, persecution, and arbitrary detention. States and other actors must take measures to ensure the physical safety and security of displaced persons, including through the provision of adequate shelter, protection services, and access to justice.

Right to Freedom of Movement and Residence

Forced displacement often involves the restriction of individuals' freedom of movement and residence, both within their own country and across borders. The right to freedom of movement and residence is enshrined in international human rights law, and states have an obligation to ensure that displaced persons are able to move freely and choose their place of residence. Any restrictions on these rights must be necessary, proportionate, and non-discriminatory.

Right to Work and Education

Forced displacement can have significant impacts on individuals' ability to access employment and education, which are essential for their long-term well-being and integration into their new communities. Displaced persons have the right to work and to access education, and states and other actors must take measures to facilitate their access to these rights, including through vocational training, job placement services, and educational support.

Right to Non-discrimination and Equality

Displaced persons are often among the most vulnerable members of society and may face discrimination and marginalization based on factors such as their race, ethnicity, gender, or nationality. States and other actors must ensure that displaced persons are not subject to discrimination and must take measures to promote equality and non-discrimination in all aspects of their lives.

Right to Health and Basic Needs: Displaced persons have the right to access basic necessities such as food, water, shelter, and medical care. States and other actors must take measures to ensure that these needs are met, including through the provision of humanitarian assistance, health services, and other forms of support. Displaced persons must also be able to access essential medicines and medical care, including mental health care, without discrimination or barriers.

Case Studies of Forced Displacement and Human Rights Violations

Rohingya crisis in Myanmar Syrian refugee crisis Palestinian displacement and occupation Colombian displacement due to armed conflict
Forced displacement is a global phenomenon that affects millions of people, with significant human rights implications. Here are some case studies that illustrate the challenges faced by displaced persons and the human rights violations that can occur in these situations:

Rohingya Crisis in Myanmar

The Rohingya people, a Muslim minority in Myanmar, have faced decades of persecution and discrimination, with the government denying them citizenship and subjecting them to restrictions on their freedom of movement, access to healthcare, education, and employment. Since 2017, over 740,000 Rohingya have fled to neighboring Bangladesh, following a brutal military crackdown that the United Nations has described as ethnic cleansing. The Rohingya face significant challenges in accessing basic necessities such as food, water, shelter, and healthcare, and continue to face discrimination and marginalization.

Syrian Refugee Crisis

The Syrian conflict, which began in 2011, has resulted in one of the largest refugee crises in modern history, with over 6 million Syrians displaced within their own country and over 6 million forced to flee to neighboring countries. Syrian refugees face a range of human rights challenges, including limited access to basic necessities, restrictions on their freedom of movement, and discrimination and marginalization in host communities.

Palestinian Displacement and Occupation

The ongoing Israeli-Palestinian conflict has resulted in the displacement of millions of Palestinians from their homes and lands, with many forced to live in refugee camps for generations. The Israeli occupation of Palestinian territories has resulted in significant human rights violations, including restrictions on freedom of movement, access to healthcare, education, and employment, and the forced displacement of Palestinians from their homes.

Colombian Displacement due to Armed Conflict

The Colombian armed conflict, which began in the 1960s, has resulted in the displacement of over 7 million people, many of whom have been forced to flee their homes due to violence and threats from armed groups.

Gaps in the Legal Framework and Possible Solutions

Inadequate protection of economic, social and cultural rights Inconsistent application of the principle of non-refoulement Limited access to justice and remedies Need for a comprehensive legal framework for internally displaced persons (IDPs) Proposal for a new legal instrument on forced displacement and human rights.

Inadequate protection of economic, social and cultural rights

Many refugees and internally displaced persons (IDPs) face significant challenges in accessing their economic, social, and cultural rights. These rights include the right to work, education, health, and adequate housing. The legal framework governing refugees and IDPs often fails to adequately protect these rights, leaving them vulnerable to discrimination and exploitation.

Possible solutions

a) Strengthening the legal framework: The legal framework should be revised and strengthened to ensure that economic, social, and cultural rights are fully protected. This can include the adoption of international treaties and guidelines, as well as the development of national laws and policies.

b) Capacity building: Governments, civil society organizations, and other stakeholders should be provided with the necessary skills and resources to effectively protect and promote economic, social, and cultural rights.

c) Monitoring and reporting: There should be regular monitoring and reporting on the implementation of economic, social, and cultural rights for refugees and IDPs. This can help to identify gaps in protection and ensure that appropriate action is taken.

Inconsistent application of the principle of non-refoulement

Non-refoulement is a fundamental principle of international refugee law, which prohibits the return of refugees to a country where they may face persecution or other serious harm. However, in practice, this principle is not always applied consistently, leaving refugees at risk of forced return.

Possible solutions

a) Strengthening the legal framework: The legal framework should be revised and strengthened to ensure that the principle of non-refoulement is fully respected and applied consistently.

b) Capacity building: Governments, border officials, and other stakeholders should be provided with the necessary skills and resources to effectively implement the principle of nonrefoulement.

c) Monitoring and reporting: There should be regular monitoring and reporting on the implementation of the principle of non-refoulement, including any instances of forced return.

Limited access to justice and remedies

Refugees and IDPs often face significant barriers to accessing justice and remedies for human rights violations. This can include limited access to legal aid, discrimination in the justice system, and fear of reprisals.

Possible solutions

a) Strengthening the legal framework: The legal framework should be revised and strengthened to ensure that refugees and IDPs have access to effective remedies for human rights violations.

b) Capacity building: Governments, civil society organizations, and other stakeholders should be provided with the necessary skills and resources to effectively promote access to justice and remedies.

c) Awareness raising: Refugees and IDPs should be made aware of their rights and the available remedies for human rights violations.

Need for a comprehensive legal framework for IDPs

While there is a well-developed legal framework governing the protection of refugees, there is a significant gap in protection for IDPs. There is no international treaty specifically dedicated to the protection of IDPs, leaving them vulnerable to human rights violations and displacement.

Possible solutions

a) Adoption of a new legal instrument: A new legal instrument specifically dedicated to the protection of IDPs should be adopted at the international level.

b) Capacity building: Governments, civil society organizations, and other stakeholders should be provided with the necessary skills and resources to effectively implement the new legal instrument.

c) Monitoring and reporting: There should be regular monitoring and reporting on the implementation of the new legal instrument, including any instances of human rights violations against IDPs.

Proposal for a new legal instrument on forced displacement and human rights

A new legal instrument on forced displacement and human rights would provide a comprehensive framework for the protection and promotion of the rights of refugees and IDPs. This instrument could build on existing international human rights instruments and refugee law, and address the specific challenges faced by those who are forcibly displaced.

Possibility of Including New Legal Provisions

Protection from forced displacement: The legal instrument could establish a framework for preventing forced displacement, including measures to address the root causes of displacement, and to protect individuals and communities from the threat of forced displacement. Protection of refugees and IDPs: The legal instrument could provide specific protections for refugees and IDPs, including the right to seek asylum, the principle of non-refoulement, and access to economic, social, and cultural rights.

Access to justice and remedies: The legal instrument could establish mechanisms for ensuring that refugees and IDPs have access to justice and effective remedies for human rights violations.

Responsibility sharing: The legal instrument could establish a framework for sharing responsibility for the protection of refugees and IDPs, including through the provision of resources and support to countries hosting large numbers of displaced persons.

Monitoring and reporting: The legal instrument could establish a monitoring and reporting mechanism to ensure that the provisions of the instrument are being effectively implemented, and to identify gaps and challenges in the protection of forced migrants. (International Commission of Jurists. (2018). Access to Justice for Refugees and Migrants: A Human Rights Approach).

The development and adoption of a new legal instrument on forced displacement and human rights would require a significant commitment from the international community. However, such an instrument would provide a much-needed framework for protecting the rights of some of the world's most vulnerable populations, and for promoting more equitable and effective approaches to managing forced displacement.

Suggestions &Recommendations

This study has identified several areas for future research related to forced displacement and human rights. These include:

- Further exploration of the challenges faced by refugees and IDPs in accessing economic, social, and cultural rights, and the development of strategies for addressing these challenges.
- Examination of the factors that contribute to inconsistent implementation of the principle of nonrefoulement, and the development of strategies for improving implementation.

- Investigation of the barriers to access to justice and effective remedies for human rights violations faced by refugees and IDPs, and the development of strategies for overcoming these barriers.
- Exploration of the potential for a new legal instrument on forced displacement and human rights to provide a more effective framework for protecting the rights of refugees and IDPs.

Conclusion

This study has highlighted several key findings related to forced displacement and human rights.Forced displacement is a major human rights challenge that affects millions of people around the world. The legal framework governing refugees and IDPs is inadequate in many respects, leaving them vulnerable to human rights violations. There are significant gaps in the protection of economic, social, and cultural rights for refugees and IDPs. The principle of non-refoulement is not always applied consistently, leaving refugees at risk of forced return. Access to justice and remedies for human rights violations is limited for refugees and IDPs. The findings of this study have significant implications for policy and practice related to forced displacement and human rights. They highlight the need for greater attention to be paid to the protection of economic, social, and cultural rights for refugees and IDPs, as well as the need for more consistent implementation of the principle of non-refoulement. The study also emphasizes the importance of providing refugees and IDPs with access to justice and effective remedies for human rights violations, and the need for a comprehensive legal framework to address the full range of human rights challenges associated with forced displacement.

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Right to Die in India with Special Reference to Human Rights

Mr. Vibhanshu

ABSTRACT

The discussion of euthanasia (voluntarily assisted suicide) and the applicability of International human rights standards to that discussion are analyzed in the current research. One of the most challenging concerns for human rights is euthanasia because of its complicated ethical, legal, medical, and religious implications. Life may be challenging at times, but it remains a wonderful gift. Many people believe that we, as humans, should not have the ability to choose when we die or when we are born. However, other individuals believe that enduring a life of unhappiness is an obligation that we ought to let to terminate respectfully and peacefully. It is possible to legalize euthanasia, but only in specific situations. Each situation will require careful monitoring while taking the views of the patient, the relatives and the doctors, viewpoints into account. It will be fascinating to see how Indian culture reacts to this, as it is genuinely a life-or-death issue. In truth, a limited number of jurisdictions have established laws permitting voluntary euthanasia, and domestic courts in other nations are frequently asked to decide whether the interests at issue in reference to the right to die should be recognized. The practice of euthanasia has generated a lot of debate around the world. Latest occurrence in the Netherlands and England, where euthanasia is legal, make this argument more important than ever. As a result, many countries around the world are now debating whether to follow the Dutch model. In the recent Aruna Shanbaug case, our Supreme Court upheld passive euthanasia in India. The aim of the Research paper is an in-depth analysis of the need for euthanasia in India and the legal framework to support the right to die with dignity.

Keywords:human rights, passive euthanasia, right to die, voluntary euthanasia,vegetative state

Introduction

The phrase "right to die" refers to a series of discussions over whether it is appropriate to allow someone who needs life support or who is weak or has decreased capacity to pass away. It could imply that, in some instances, a terminally ill person who is nearing the end of their life should be permitted to take their own life. The expression "dying with dignity" is frequently used to convey the idea. When a law makes you live in excruciating agony and shame—when humanity is about the opportunity to live in dignity—something is obviously wrong with our civilization.

Who are we to extend the lifespan of someone who has decided to terminate their life quietly because they are suffering? It goes without saying that someone trying to end their life for the most insignificant of reasons shouldn't be allowed to do so, but an individual should be entitled to determine when he has endured enough suffering.

The extraordinary advancements in medical technology and research have attracted the public's attention. They have heightened awareness of issues influencing cultural norms and human conduct. Human rights, autonomy, and freedom of choice are being asserted more strongly as a result of these changes, which forces us to re-evaluate our society's values and medical ethics as well. The sacredness and indestructibility of life on earth, as well as the morality of the medical profession, are all under attack in today's society as it struggles with the realities of pain and suffering. It is true that extending life artificially when death is inevitable may cause undue suffering for both the sufferer and their loved ones. Modern technology has already caused enough people to be cast into a state of uncertainty between life and death. The term "prisoners of technology" refers to patients who have been in a prolonged vegetative state and are devoid of joy, feeling, or cognition.

The discussion over euthanasia has examined a variety of ideas, such as independence, the difference between killing and letting die (the idea of a purpose), easing suffering and pain, and the "slippery slope argument" or the arbitrary nature of the restrictions. "Living directives," often called

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"advance directives," have evolved with increased patient autonomy. Second, a sentence is usually added that one is the opposite of unnatural extension of life. Families and doctors both want the best for their loved ones, but they don't understand what their personal responsibilities are. With a few notable exceptions, the emphasis on patient autonomy has recently shifted, and it is now mandatory for doctors to be informed before undergoing medical surgery.

It is important to recognise that the euthanasia discussion cannot be understood just from a legal and scientific standpoint; ethical and religious considerations must also be taken into consideration, since society's boni mores could have a significant impact on the law. However, there is no certain solution to this problem. Over the years, there have been several miracles in the field of medicine. There is still hope as long as the suffering continues. And as long as there is hope, everything is possible. We could soon have remedies for diseases like AIDS and cancer thanks to recent technical advancements taking place everywhere in the world. Legalization, though, has a strong likelihood of being abused. Should a patient in a coma who is unable to make choices for themselves be allowed family members to do so? Family disputes over assets and finances are frequent at this period. Additionally, cold-blooded murder might be committed and not be caught. If voluntary euthanasia were made legal, involuntary euthanasia would start happening. In this crooked and avaricious society, everything is possible.

The issue of euthanasia has generated significant controversy across the world. Both the practise's proponents and detractors acknowledge the issues surrounding its legality, but none more so than the notion of a "slippery slope." The phrase "slippery slope" describes the concern that current laws and legal institutions would be unable to stop the deprivation of human autonomy and the loss of our right to life, putting underprivileged groups in society at a higher risk of involuntary euthanasia. The debate has acquired momentum as a result of recent euthanasia legalisation developments in the Netherlands and England. As a result, several countries all through the world are debating whether to adopt the Dutch model. In a recent decision in the Aruna Shanbaug case, the Hon'ble Supreme Court of India cleared the way for passive euthanasia in India. In countries like India, religious problems must be addressed before drawing such conclusions. Both the Bible and Islam forbid killing others, saying "Thou shalt not kill." Is our culture sophisticated enough to comprehend the ramifications? What if the physician just advised euthanasia to a member of the family? What if a doctor merely proposes euthanasia for a member of the family? What would happen if a physician just suggested euthanasia to a family member? There have been instances where doctors have been physically assaulted for not treating patients properly. Will the patients' family members be able to understand their anguish?

Meaning of Euthanasia

A particular sense of parenthood, such as joy and strong personal bonds, makes human life a valued asset; it is thus immoral to quickly terminate a human life, yet some people are unable to experience such a sense of motherhood. When life becomes a burden and causes intolerable anguish, the decision to live or die must be made. Euthanasia is a sensitive problem that should be handled in such a way that it not only meets the legal goals of a moral society, but also does not cause humans to lose trust in morality. "Wilful extermination or kindness killing refers to the deliberate end of a patient's life in such a circumstance by a demonstration or exclusion of clinical consideration." Wilful extermination, like other historical phrases, has diverse meanings depending on context. The antiquarian Suetonius depicted how the emperor Augustus, bitten the dust quickly and without agony in the arms of his significant other. Livin was antagonized with the assassination he desired. In the seventeenth century, Francis Bacon used the term "murder" in a therapeutic setting to mean a simple, easy, and pleasant death, nothing more than a doctor's job to alleviate the body's physical suffering. Bacon speaks of the term "external" which he means "the destruction of the willful of the external - the destruction of the idea of another world, which respects the order of the soul." This issue has been the subject of passionate debate for some time and is surrounded by serious ethical and practical issues.

Euthanasia is derived from the Greek word "euthanatos," which means "simple passing," with "eu" meaning "great or easy" and "thanatos" implying "death." The Oxford English Dictionary defines intentional elimination as "the painless killing of a patient suffering from an incurable infection or in an irreversible trance state." It is the cycle in which human life is completed by another in order to avoid the negative effects of a disease. Willful annihilation is the intentional killing of a dependent person for their purported benefit, whether by deed or oversight (if passing is not planned, it is not an example of willful extermination). According to the book Wrongdoing and Justice, killing is an expression of

death that provides relief from unpleasant or painful situations.

In England, the House of Lords Select Committee on Medical Ethics has defined euthanasia as "a conscious intervention carried out with the express purpose of destroying everyday life in order to relieve uncontrollable suffering". According to the Dutch Commission on Euthanasia (1985), it is "a purposeful end of life on a person's solicitation by another, in clinical phrasing, the dynamic and purposeful end of life on tolerant solicitation by a specialist."

According to the European Association of Palliative Care (EPAC) Ethics Task Force, "Medicalized killing of an individual beyond their agreement, whether non-voluntary (when the person is unable to consent) or involuntary (when the person is killed against their will), is not euthanasia: it is murder." As a result, euthanasia can only be performed on a voluntary basis. According to Black's Law Dictionary, euthanasia is "the act or practise of murdering or bringing about the death of a person who suffers from an incurable disease or condition, especially a painful one, for reasons of kindness." (8th edition), as per 2003 discussion.

Analysis of Indian Legal Jurisprudence on Euthanasia

The issue relating to euthanasia for the first time came into light in the case of ***State of Maharashtra v Maruti Sripati Dubal***. The court in this case ruled that the right to life included the right to die, and that Section 309 of the Indian Penal Code, which declared attempting suicide a criminal, was unconstitutional. According to the court, the basic rights have both good and negative aspects. It also distinguished between suicide and euthanasia, stating that the former comprises acts committed by the individual himself, whilst the latter refers to acts committed by a third party. Opposing this, in ***Chenna Jagdeshwar v Sate of AP***,according to the court, the right to die is not guaranteed by Article 21. In ***P. Rathinam v Union of India***, the court followed ***Maruti Dubal*** *case's* reasoning anddeclared that Article 21 includes the right not to be forced to live a life that is harmful, undesirable, or despised by someone. It also declared suicide attempts to be unpunishable, referring to the rule prohibiting them as "ultra-viruses." This was an extreme approach that could not last. The court in ***Gian Kaur v State of Punjab*** while overruling this judgment, stated that The Right to Life does not include the Right to die a non-natural death, and suicide is considered a criminal act. They found S.309 of the IPC, which renders attempted suicide a crime, to be constitutional. They argued that Article 21 is a natural right, whereas the right to terminate one's life by suicide is unnatural. According to the court, dignity rights under the same only exist until the 'natural' conclusion of life. They separated Euthanasia from suicide, claiming that the former entails terminating the life of someone who is already terminally sick or in a PVS.The Court stated that in euthanasia, the path of dying has already begun and it only accelerates this process of natural death and isn't producing an unnatural termination. As a result, they decided that the right to die in dignity of a patient whose "life is ebbing out" may be a foreshadowing of the right to a dignified life. So, in the *Gian Kaur* case, the court recognised the right to a dignified dying, particularly for incurably sick people, but they did not decide on euthanasia, whether active or passive. They were only concerned with the legality of anti-suicide legislation. So, this issue was again brought up in ***Aruna Ramchandra Shanbaug v Union of India***. ***Aruna Shanbaug*** was a nurse who had been the victim of sexual assault, after which she was unable to feel anything. The heinous act left her blind, deaf, crippled, and in a vegetative state for 42 years. A petition for her euthanasia was filed with the Supreme Court. The court issued a landmark decision legalising passive euthanasia. The court ruled that if the natural march of death had already begun or the patient was in a persistent vegetative condition, refusing medical care would not be considered an offence. Instead of addressing the right to die, the court addressed whether there is a compulsion to prolong life when the suffering is terminally sick. It outlined the following checks and precautions that must be followed to ensure that this assistance is not abused, namely prohibiting third parties from being engaged in decision-making.

1-The decision to not continue with aids that lengthen the patient's life must be undertaken by their lawful guardians, their partner, someone who is close to them,

2- The approval of the high court is mandatory as relatives might give approval to get inheritance benefits.

3- Two judges of the high court will take the call after taking assistance from a panel of three medical experts. The English case of Airedale has been one of the major cases that facilitated the benches to consider passive euthanasia in Indian framework. 48The aforementioned legal delivery had also been undertaken by the court in Airedale case cogitating the High Court to be 'parens patriae' and personally

examining every case for securing the paramount interest of the individual given euthanasia like a rational and reliable parent.

In ***Common Cause (A Regd. Society) v Union of India***, the Constitutional bench of the Hon'ble Supreme court performed an arduous undertaking of pronouncing Right to die with dignity as a fundamental right and a vital component of right to live a life of dignity as enshrined in Article 21. It established a comprehensive system for preserving the dignity of terminally sick patients and those in PVS with little hope of recovery, and in this course, it (1)- legalised advance medical directives (AMD) and health attorneys, and (2)- enacted guidelines to make passive euthanasia legal. This is the existing law regarding euthanasia until a legislative change is enacted. This court also looked at several inconsistencies in the Aruna Shanbaug case. The Constitutional court in *Common Cause* case expanded the scope of euthanasia allowed in the Aruna case by incorporating the concept of living wills, in which individuals can leave written instructions on the type of health care they would like to receive if they become unresponsive and incurably ill state. It is important to remember that only passive euthanasia has been permitted, which entails withholding life-prolonging procedures voluntarily, when the patient requests it or when he leaves a living will that provides for it, or involuntarily, when the patient is unconscious and this decision is made by his family, doctors, and close associates with the approval of the high court. Active euthanasia is distinct in that it entails the positive action of employing fatal medications to induce the purposeful death of an individual by direct intervention, which is not authorised. Around the world, jurisprudence has developed on passive euthanasia, and it has gained moral and legal legitimacy. This cannot be true about active euthanasia, as there is still considerable hesitancy and scepticism about it.

Constitutional Aspects of Dignity and Privacy that play a Role with Respect To Human Rights

According to ***Prof. Upendra Baxi***, respect for a person is predicated on the value of liberty and the ability to make choices, and a decent social system respects dignity by allowing settings to exercise unrestricted and informed choices. Even though the phrase "dignity" is not defined in the constitution or legislation, we may demonstrate how important it is for Article 21 by evaluating court decisions. To deprive a person of his dignity towards the end of his life is to deprive him of meaningful existence. A meaningful subsistence would entail an individual's ability to self-determination and independence in choosing their healthcare method. Respect for a person, particularly their ability to select how they must spend their lives, equates to self-autonomy or the right to govern oneself. It is the right against non-interference by others that grants a competent individual in his majority the right to make decisions for his being and body independent of the control or meddling of others. Individuals' right to self-rule and autonomy include the ability to choose whether and to what extent they are willing to submit to health treatments, to choose between alternative procedures, or to choose no procedure at all, as long as it is consistent with their personal desires and principles. Nonetheless, a fundamental question remains unresolved: whether Article 21's right to die is absolute or subject to reasonable restrictions. Given that this right includes the option of ending one's life, the conditions surrounding the concept of 'dignity' must be clearly explained. Without specific reference to acceptable limits impacting this right, the constitutional court's noble goal in forwarding this verdict may be rendered ineffectual.

In ***Justice K.S. Puttaswammy v Union of India***, the Constitutional Court that included Nine Hon'ble Judges, held privacy to be a fundamental segment of right to life that also recognizes a person's right to refuse health treatments that prolong lifespan. Here, Hon'ble Shri Justice Chelameshwar stated that "force feeding of particular individuals by the Government raises alarms for privacy. A person's right to deny healthcare that prolongs his existence or ends the same is a liberty that comes within the preview of privacy". Article 21 ensures private rights, and whether or not someone are in PVS or are bedridden, unconscious to the point where they are unable to eat on their own, change clothing, or even use the restroom is something to consider. These are the kinds of things that no one wants to rely on others for.

Classification of Euthanasia

Euthanasia may be classified as follows:

(1) Active or Positive
(2) Passive or Negative (also known as letting-die)
- Voluntary
- Involuntary
- Non-Voluntary

Active or Positive

Active euthanasia is killing a person without causing pain for human reasons. Killing (without their consent) other than terminally ill people suffering

from chronic or life-threatening diseases by administering lethal drugs or reducing pain. Many supporters of active euthanasia consider euthanasia by violent means such as shooting or strangulation to be "mercy killings" and therefore do not believe that these methods of death are appropriate.

Passive or Negative

Euthanasia is categorized as either passive or negative when an unwell individual dies as a result of his or her refusal to undergo life-sustaining therapy. Disconnecting a critically ill patient's life-sustaining equipment, for example, results in the patient's death. The physicians in "passive euthanasia" are not intentionally causing someone's death; they are just not protecting him. According to the Supreme Court, the major distinction between active and passive euthanasia is that active euthanasia entails doing something to bring the afflicted person's life to end, whereas passive euthanasia involves doing nothing to save the patient's life.

Voluntary

It is characterized as assisted suicide when euthanasia is administered with the explicit decision and agreement of the sick individual. This is known as voluntary euthanasia. "Voluntary euthanasia is primarily concerned with a terminally ill patient's right to choose a choice that serves his or her best interests as well as the interests of others."

Involuntary

Involuntary euthanasia happens when a patient is murdered without having expressed a desire to do so: it refers to cases in which a competent patient's life is ended against the patient's will, which is clearly euthanasia but cannot be murder.

Non-Voluntary

It refers to the death of someone who is unable to make an informed decision to die, such as a vegetative patient. In the instance of non-voluntary euthanasia, the patient has not left a living will or made any prior directives because he may not have had the opportunity to do so, or because he could not have imagined such an incident or occurrence In the case of involuntary euthanasia, family members usually make the choice.

It is created when the person being killed expresses a wish not to be killed. Voluntary euthanasia occurs when a person is killed without their consent or desire. Involuntary euthanasia. When a person is slain despite expressing a desire not to be killed, this is referred to as involuntary euthanasia. When someone provides a person with the knowledge, guidance, and resources to construct his or her own life. It's about physician-assisted suicide. Physician-assisted suicide occurs when a doctor aids another person in killing himself or herself. Euthanasia by action is defined as the intentional killing of a person by performing a specified action, such as administering a lethal injection. Euthanasia by omission refers to the intentional infliction of death by failing to provide needed and routine care, such as meals and liquids. There is no necessity for euthanasia unless death was intentionally induced by what was done or did not happen. Finally, some medical procedures known as "passive euthanasia" are not called euthanasia because they do not intend to end your life. These actions include not starting treatment that does not benefit the patient, stopping treatment that is found to be unsafe, too severe or unwanted, and providing life-threatening high-dose opioids when necessary. When done properly, all of these are considered part of good and legitimate medical practice.

Euthanasia can be done in two ways: taking steps to end a person's life, giving a lethal injection, or not doing what is necessary to keep a living person alive. (It seems we can't keep the feeding tube).

"Emergency" medical treatment: No euthanasia if the patient dies due to refusal of emergency or expensive treatment.

Euthanasia and Pain Relief: Although medication can accelerate the death of the patient, giving pain relief is not euthanasia. The doctor's goal is not to kill the patient, but to relieve the pain, and that's it. The doctrine of double effect is a term used to describe this idea. The doctrine of double effect can be stated as follows:

According to the concept of double effect, it is morally acceptable to do something that has a morally repugnant effect if the negative effect is not intended. Even if you know it can have negative results. This idea is used to justify a doctor's choice to treat a person's disease to reduce unpleasant symptoms, even if it could lead to the patient's death.

Because the doctor's intention is not to kill the patient; Conversely, an unintended consequence of a good outcome in reducing patient pain is patient death.

Many clinicians use this method to justify prescribing high dosages of drugs like morphine to treat pain in

terminally ill patients, despite the fact that the therapies may delay death.

The idea of double effect is influenced by a number of factors.

The idea cannot be used if the good result is reached independently of the bad result: if the bad result is used to get the good result, the concept cannot be applied. The idea of double exposure is that the only way to relieve the patient's pain is not to kill him. If I give a dose of a drug that is likely to kill the patient but is higher than what is needed to relieve the discomfort, the reaction must be proportional to the problem. The doctrine of double effect prevents me from explaining my actions.

The activity must be situationally suitable (a): I must also deliver the proper therapy to the patient. It is meaningless to say that I gave the patient a lethal dose of painkillers with the intention of treating their vomiting symptoms if the medication has no effect on vomiting.

In order for the move to be right, I must also supply the appropriate prescription for the patient's symptoms; (b) it is useless to declare that I gave a patient a lethal dose of opioids to ease their pain feelings if the patient was actually suffering from dyspnoea.

The patient's condition must be life-threatening: If I administered a patient a deadly quantity of painkillers and they recovered from their illness or injuries if I hadn't, it is useless to claim that I intended to lessen their suffering. Even if there were no other way to ease their suffering, this would still be true.

Why do people want Euthanasia?

The cost of euthanasia is a financial consideration for those considering it. Grieving people care about their families because they don't want to be a financial or emotional burden. Some argue that euthanasia will allow patients to die before the costs of prolonging life become too great to overcome emotional distress or distress to family members. Others argue that the exorbitant cost of euthanasia to prolong life will allow them to die without damaging or emotionally draining their families. One of the saddest reasons for euthanasia is that it shows our society's failure to deal with real problems.

Euthanasia raises many ethical issues:

• Is it permissible to end the life of a terminally ill person in great pain?

• Under what circumstances, if any, is euthanasia appropriate?

• Is there a difference between killing and letting someone die?

This debate is based on different views about the meaning and value of human existence.

Physical problems such as constipation, nausea and vomiting, snoring, snoring and swallowing can really shorten the life expectancy of a person with the disease.

Depression, fear of losing control or status, feelings of being a burden, or dislike of dependence are some of the psychological reasons people consider euthanasia. Doctors in some countries seem to practice euthanasia. But most of these incidents go unreported for fear of legal and criminal consequences. In such cases, euthanasia is likely to be misused and punished. Do people have to go through a tough legal battle every time a euthanasia situation arises? It is clear that legal intervention is needed to resolve this misunderstanding.

As a result, the legislature must enact appropriate statutory legislation to address this. If passive euthanasia is allowed, regulating the procedure may be one precaution in place to stop medical professionals from going beyond the scope of what is permissible. The medical industry should be shielded from legal repercussions, and many patients wish to die with dignity. These are the two arguments in favor of this idea.

Distinction Between Active and Passive Euthanasia (Assisted Suicide and Withdrawal Of Life Sustaining Treatment)

A delicate line can be drawn between "assisting suicide" and "withdrawing life-sustaining treatment" based on reason and purpose. For example, when life-sustaining therapy is withheld or withdrawn, the underlying illness is the cause of death.

In contrast, assisted suicide happens when a patient is murdered by drugs, which is unlawful.

It is the patient's constitutional right to refuse (deny or withdraw) unwanted medical treatment, artificial food and water, and even death. The court compared the idea of the "right to die" (not recognized in the India-Gian Kaur case) with the constitutional right to privacy and the general right to informed consent.

There are variety of methods for euthanasia.

Lethal injection- Deadly injection or a lethal injection is a typical procedure that includes injecting a deadly dose of a drug, such as a known toxin, KCI, or other.

Asphyxiation- Carbon monoxide is the most often used asphyxiating gas (CO). Nerve poisons like as sarin and tabun, among others, are used in trace doses to assure death. One of the ways is Dr. Jnck Kevorkian's killing machine. (mercitron, thanatron). Dr. Death is another moniker for him. It's a one-of-a-kind manner for someone to pass away.

Euthanasia and Suicide

Suicide and euthanasia are not interchangeable terms. They're two distinct actions. As a result, a difference should be established between euthanasia and suicide. According to the dictionary, suicide is defined as "intentionally killing oneself." Suicide is defined as "intentionally ending life by suicide for various reasons, often associated with depression, such as disappointment in life, failing exams, or difficulty finding a good job."

Euthanasia is the intentional, intentional termination of another person's life by direct intervention or withholding of life-prolonging measures or resources, either at the express or implied request of that person, or in the absence of such consent. Forced euthanasia, or killing someone who wants to live, is a euphemism for killing.

Criminal law in India is based on the Roman principle "Actus non facitreum nisi men sat rea" which states that an act is not illegal unless it is done without intention or negligenceApplying the maxim above in the case of euthanasia, it can be said that the defendant is not responsible for all crimes because he consented to the death of the victim. Why is the question of whether contracting to kill someone absolves the sin important?

Euthanasia is not a crime if you replied yes to this question. In contrast, Indian law is quite explicit in this aspect. Anyone can argue that providing assent absolves a man of guilt, or he can use the argument "volenti non fit injuria." In its explanation, the Indian Penal Code's consent law is exceedingly extensive and leaves no space for complicity. Under Article 87 of the Indian Penal Code, 1860, consent cannot be used as a defense to death or grievous bodily harm.

According to Lodha J, "suicide is the intentional killing or destruction of another person without the assistance of another". However, euthanasia, often called euthanasia, refers to the work of another human being to end someone's life. Finally, euthanasia is different from suicide, and attempts to euthanize are not covered by Section 309. Legally and practically, the two concepts are different.

Whatever the circumstances, euthanasia, sometimes known as mercy killing, is homicide. Euthanasia, on the other hand, is the employment of a human person to end someone's life. Euthanasia is murder, and it is punishable by death unless specifically prohibited by law. A mercy-killing attempt is not, by definition, a suicide attempt.

Euthanasiaand Rightto Die

The ethical or institutional right of an individual or institution to end one's own life is referred to as the right to die. The law generally means that people suffering from such life-threatening conditions must be assisted to stop or commit suicide, and must be denied life-prolonging treatment if their suffering is prolonged to another degree. The right to die is often associated with the belief that one should dispose of one's body and life as one wishes.

In modern parlance, the right to end life appears to have developed from the rights to privacy, autonomy, and self-determination. Today's genuine issue, on the other hand, can be classified into three categories:

That's what suicidal people do. Suicide is a crime, but the perpetrator cannot be prosecuted. On the other hand, attempted suicide is covered by the I.P.C. Section 309. However, it is not a statutory offense in some countries.

People who can articulate their desire to commit suicide but are unable to do it due to a medical condition require assistance.

People who are unable to agree to their own death owing to a physical or mental disability.

In terms of "the right to die," Strauss concludes that, while common law does not recognise the concept that the individual is dominus membrorumsuorum, as jurists we must aggressively advocate the individual's right to die. (Owner of his own bodilymembers). According to Elizabeth Ogg, "No one chooses to be born and therefore has no right to die. "Given that no one chooses to be born, the right to life can be denied.

On the other hand, the author stated that euthanasia should be allowed, citing the example of relatives or family members of patients who signed or signed a statement asking them to stop treatment in the hospital., but the institution refused. In many cases, the patient suffers tremendously because the dying process is postponed needlessly. "As long as the rights of others are not harmed," Sprung adds, "the right to die is an intrinsic component of our freedom to govern our destinies."

"In India, euthanasia is punishable under sub-section (1) of section 300 of the Indian Penal Code." Voluntary and involuntary euthanasia Under the provisions of Section 92 of the Indian Penal Code, 1860, Euthanasia is also prohibited by Regulation 6.7 of the Medical Council of India (Professional Conduct, Ethics and Morals) Regulations. suicide

should probably remain illegal because most people who attempt it do not have full control of their faculties or are being treated for one or more mental illnesses and others who oppose their efforts. The state should then do everything possible to prevent people from committing suicide, and while suicide should remain illegal, the only exception should be made for the terminally ill. There is a strong argument that the right to die should be banned primarily because of the confusion it would cause if legalized. "

Passive Euthanasia in the Context of Article 21 of the Constitution

The discussion must be limited to the question of whether euthanasia is permissible within the purview and scope of Article 21. According to Article 21: -

"21. Protection of life and personal liberty. —No person shall be deprived of his life or personal liberty except according to procedure established by law."

The concept of freedom and the realization of the traits connected with that freedom are what are meant by the words "liberty" and "life," respectively. They are inextricably related to one another. Life embraces change and mobility because liberty compels people to do so. Life did not intend to exist without liberty since it would likely be a pointless struggle for survival. No basic right may be said to be absolute, but any restrictions placed on freedom must be justified. Individual liberty helps one grow intellectually and exhibit their uniqueness.While she or he may not be able to reign over others, they each have control over their own bodies and minds. The freedom to control one's body and intellect develops a person's faculties. It aids in their development. Roscoe Pound eloquently said in one of his talks: -

"…Even if we think socially, we must also consider personal interests and the greatest claim a person can make: the right to assert his uniqueness and the freedom to use the will and the mind that God has given him. However, we must keep in mind that this is the life of a free-willing human. We must emphasize the communal interest in the moral and social life of the individual."

This Court has interpreted "life" in the broadest sense possible. In ***Board of Trustees of the Port of Bombay v. DilipkumarRaghavendranath Nadkarni and others***, the Court has ruled that the word "life" refers to more than just an animal existence or a journey through life. The term "life" has a much broader definition, so when a departmental investigation's findings are likely to negatively impact a person's reputation or way of life, some of the finer civilised traditions that make life worthwhile would be in jeopardy. Only laws with inherent fair procedures can protect these values.

In ***Maneka Gandhi v. Union of India and another***, Krishna Iyer J.,according to him, life and liberty are the first among equals among the major secured rights, possessing a universal meaning essential to a good human order and safeguarded by constitutional armour. When freedom under Article 21 is considered in a condensed perspective, a number of additional liberties immediately vanish. In conclusion, personal freedom contributes to the value of the human being. Travel makes freedom valuable. The ability to develop personally via "life," advance professionally, relocate to new surroundings, and connect with reality gives our time on earth a true satisfaction – Not a story told by a fool full of sound and fury that means nothing, but a magnificent frenzy sweeping between heaven and earth. Article 21 is based on the human spirit. Other liberties become locked in the absence of freedom.

Right of self-determination and individual autonomy

After addressing the subject of the right to self-determination and individual autonomy, which is covered by Article 21 of the Constitution, it is important to discuss the right to accelerate the process of dying a natural death that is stopped with the use of new inventive technology.

According to John Rawls, the liberal understanding of autonomy places a strong emphasis on choice, and self-determination is seen as a right that may be exercised by making choices. unique autonomy, often known as the right to self-determination, is the respect for each and every unique human person, especially with regard to his or her freedom to decide how to conduct his or her life. A competent adult has the right to make decisions about his or her own life and body free from outside influence and intervention thanks to the right against non-interference. Lord Hoffman, in ***Reeves v. Commissioner of Police of the Metropolis*** has quantified: -

"*Autonomy means that every individual is sovereign over himself and cannot be denied the right to certain kinds of behaviour, even if intended to cause his own death*."

In ***Aruna Shanbaug*** (supra),according to this Court, autonomy refers to the right to self-determination, which gives the informed patient the freedom to decide how he will be treated. The patient must be

capable of making judgements and choices in order to be independent. In the event that he is unable to make decisions for himself, his preferences as indicated in a Living Will or as conveyed by replacement decision-makers (also known as "substituted judgement") are to be honoured. The surrogate is supposed to act in the patient's best interests or to reflect what the patient may have decided if the patient had the mental capacity to do so. A surrogate operating in the patient's best interest is expected to make decisions based only on what is right for the patient, without regard to their own beliefs, motivations, or other factors.

This means that all people with the capacity to consent have the general right to refuse medical treatment and self-determination, according to research on common law and the legal rights of terminally ill patients in different countries.

The Court may, however, add a warning that, provided they are satisfied that the patient's illness is incurable and there is no chance of his being cured, doctors will be bound by the choice of self-determination made by a terminally ill patient who is receiving a protracted medical treatment or is maintaining their life-on-life support. Any other factor cannot pass for being in the patient's best interests.

In the recent nine-Judge Bench decision in ***K.S. Puttaswamy and another v. Union of India and others***, the reaffirmation of dignity as a part of the aforementioned basic right. Human dignity is indescribable. It could occasionally defy description. Some people would perceive it as existing in an abstract universe, and some people might even perversely interpret it as a sign of egotism or exaggerated eccentricity. This emotion can have its origins in utter cynicism. But the fact that life without dignity is like an unheard sound is what counts most. The voice of dignity is audible, natural, and human. It is a fusion of thinking and sensation, and as was previously said, it merits respect even in the case of a deceased individual who is just referred to as a "body."

In ***Gian Kaur*** (supra), the Constitution Bench suggests a quickening of the already-started process of dying, and this indicator, as seen by us, leaves possibility for growth. In the aforementioned case, the Court's main focus was on the issue of the constitutionality of Sections 306 and 309 of the IPC. The Court was aware that the discussion around euthanasia was not pertinent to its decision regarding the issue at hand. The "right to die with dignity" is included in the "right to live with dignity" because, according to the Court, the word "life" in Article 21 has been interpreted to mean life with human dignity. Furthermore, the "right to live with human dignity" would imply that such a right would exist until the end of natural life, which would entail the right to live a dignified life until the point of death, including the right to a dignified method of passing away. The Court said that the aforementioned category of circumstances may fall under the purview of "right to die with dignity" while referring to the scenario of a dying man who is terminally sick or in a chronic vegetative condition and may be authorised to end it by a premature extinction of his life, as a part of the right to live with dignity when death resulting from the termination of natural life is certain, imminent, and the process of natural death has already begun. In these situations, life is not being put out of commission; rather, the process of natural death is being hastened to its conclusion. The conclusion of this explanation is that, according to Article 21 of the Constitution, a dying person who is terminally ill or in a persistent vegetative condition can choose to have his life end prematurely.If such option is provided by Article 21, no legislation is required to implement that basic right or, more specifically, his inherent human right. That right cannot, in fact, be unrestricted; rather, it must be subject to legislative constraints that must be fair and serve the interests of the public as a whole. We must be clear in the context of the situation at hand that a dying individual who is terminally sick or in a chronic vegetative state has the right to die with dignity, only passive euthanasia would fall within the definition of Article 21 and not active euthanasia, which is defined as euthanasia in which the treating physician or another individual takes proactive measures. This is so since one of the fundamental components of Article 21 is the right to a dignified death. The idea deserves to be realised; the notion deserves to be put into effect. It needs to be looked at from a number of perspectives, including legality, social and ethical ethics, and medical principles.

The only reason of saying this is to emphasise how important it is for the law to keep up with emerging ideas and take into account how society is changing. The legal interpretation process must be used to meet the needs of the present. It has to be seen, though, how much power and support can be derived from the Constitution to carry out the evolving philosophy and make it a reality. Unless they completely violate the constitution or the constitutional interpretation fails to take into account such dynamism, the court must interpret the constitution in order to fulfil the immediate demands.As previously mentioned, the

Constitution Bench in ***Gian Kaur*** distinguished between the acceleration of a natural death that has already started and aiding in or attempting suicide. Authorities, as noted by other jurisdictions, have noted the difference between lethal injection or certain drugs that cause a painless death, and do not provide life-prolonging treatment in cases where the process of death has not yet begun. Reversal or withdrawal of treatment given to the patient because there is absolutely no chance of saving life. For further clarification, the second part is classified under the category of informed consent and error authorization, while the first part is an act of excess.

If certain protections are followed, an omission of this sort will not subject the offender to criminal prosecution. The idea behind it is to prevent life from being prolonged in cases where the patient's condition cannot be cured and he under no circumstances would have preferred to be in such a humiliating position. The phrase "no cure" must be interpreted to indicate that the patient either continues to experience the same level of agony and suffering or that, despite using contemporary medical technology, their death is postponed. It is a condition in which the patient is not even conscious that he is breathing, and the treating physicians and family members are fully aware that the medication is given simply to delay the patient's breath cycle. Artificial heartbeats are used to gauge life, and the sufferer is forced to endure this despicable condition. He is denied the dignity of life because he has no choice but to endure an unnecessary prolonged treatment, which unquestionably casts a shadow and impairs his right to live and die with dignity—a concept of preserved bodily autonomy and right to privacy. He is in a state of sorrow that no one ever wants to be in at this point since he has no memories from the past and no hopes for the future. Others might secretly believe that one cannot invite death, an inescapable reality of existence. To address this situation, the Court should interpret Article 21 more flexibly and clarify that the right to a dignified death should be facilitated if the person is in a vegetative state or just supported. by artificial means of prolonging life by delaying the inevitable process of death with dignity. The topic of choosing also enters at this point. Following this analysis, we are inclined to believe that this right would fall inside the purview of Article 21 of the Constitution.

Legal Provisions on Euthanasia in India

We often encounter terminally ill patients, patients immobilized by severe injuries, and patients who are completely dependent on others for their daily lives. such people are not in good condition. An intelligent, prudent individual would believe that choosing death over an agonizing existence would be the best course. Physical and psychological decline occur quickly, but relief from such suffering takes more time. In these situations, people defend euthanasia. Every now and again, a case for legalizing it is made. However, for the government or legislature, it is not an easy process. The misuse of euthanasia is the most concerning disadvantage of legalizing it.

A person possesses fundamental human rights from the time of conception until the moment of birth. The term "right to life" refers to a person's fundamental right to life, notably the right not to be slain by another person. But if someone has the right to live, does that mean they also have the right to die, or is that even a question? The Indian Courts had varying viewpoints in response to this question.

In the landmark case of ***State of Maharashtra v. MarutiSripati Dubal***, whereby the Apex Court declared that Articles 14 and 21 of the Constitution are violated by Section 309 of the Indian Penal Code, which deals with punishment for people found guilty of attempting suicide. Accordingly, the Court decided that Article 21 of the Indian Constitution's "right to life" also "includes right to die."

However,in***ChennaJagadesswarv.StateofAndhra Pradesh***, according to the Andhra Pradesh High Court, Article 21 of the Constitution does not include the right to life as a basic right.

In 1994, the Supreme Court of India in the case of P. Ratinam v. The Union of India states that the "Right to Life" guaranteed by Article 21 of the Constitution "includes" or "Right to Death". The right to end one's life. The Supreme Court also held that suicide attempts have neither positive nor negative effects on society, and that suicide is neither morally nor legally wrong.

But again, in a historic decision made by a bench of five judges in ***GianKaurv.StateofPunjab***,declared that the "Right to life" does not encompass the "Right to die," overturning the P. Rathinam case. Protection of Life does not cover extinction of life. It is important to distinguish between the "Right to die" and a natural, dignified death that shortens one's normal life expectancy. Additionally, the Court ruled that section 309 of the IPC's prohibition on suicide attempts does not violate articles 14 or 21 of the Constitution.

The IPC's Section 309 has been the subject of much debate. Learned persons made a number of attempts to get the section declared invalid. The Law Commission has previously advocated for its abolition. Even though a measure to abolish it was introduced in parliament, it was never enacted or put into law.

However, the Union Government has recently decided to remove the aforementioned clause from the Indian Penal Code in order to decriminalize it. The Law Commission of India's suggestion has received the backing of 18 state governments and 4 union territories. When it comes to respecting the preferences of the parties involved, we might say it is a positive move.

The legalization of euthanasia or the right to die has been one of the contentious subjects in recent years. Euthanasia is contentious because it entails the intentional taking of human life. When a patient has a terminal illness, they are frequently in excruciating agony as their condition slowly becomes worse until they pass away. For some patients, this is so terrifying that they would prefer take their own lives than endure the torment. Therefore, the debate is on whether individuals should be assisted in taking their own lives or should be left to endure the agony of a terminal condition.

Euthanasia literally translates to "good death" from two Ancient Greek words: "eu" for "good" and "thanatos" for "death." It is an act or practice to end the life of a person by injection or by ceasing extraordinary medical care in order to relieve him of excruciating anguish if they have a terminal illness or are in an incurable situation. Euthanasia is defined as the purposeful killing of a person whose life is deemed to be not worth living by an act or omission. It is sometimes referred to as "Mercy Killing," which is an act when a person who is suffering from a difficult existence and is either in an unrecoverable state or has no prospect of survival ends his life in a painless way. It is an easy, painless, and compassionate death. It entails arranging for someone's death in order to prevent or put an end to their misery or suffering, particularly if they have an incurable illness.

According to the Oxford Dictionary, it is the painless end of life when a patient is terminally ill or in an irreversible coma.

It is "a deliberate intervention under-taken with the express intention of ending life to relieve intractable suffering," according to the House of Lords Select Committee on Medical Ethics. Euthanasia can therefore be defined as the purposeful and intentional death of a human being by a direct action, such as a fatal injection, or by forgoing even the most basic medical treatment or by turning off the life support system of the person so as to relieve them of an agonizing life.

It basically aims to hasten a handicapped persons or a terminally sick patient's death. It is done so that the patient can pass away gently during his or her final days. Instead of continuing to experience excruciating anguish, such a sufferer would die in peace.

Euthanasia's primary goal is to guarantee a less painful death for a person who would pass away after enduring a lot of agony. The practice of euthanasia allows a person to live and die with dignity. The need for the patient's mental well-being prompts the decision to carry out euthanasia. In the simplest terms, it refers to sending a person to a painless death when they have a terminal illness or when their physical or mental impairment has rendered their existence meaningless or hopeless.

The Supreme Court, in Gian Kaur v. State of Punjab, had occasion to discuss the issues of suicide, incurable disease, assisted suicide, provocation to suicide, withdrawal of life-sustaining treatment. As the Supreme Court has referred to certain provisions of the Indian Penal Code, 1860 in that regard.

Thus, 'attempt to commit suicide' is an offence which mayresultin imprisonment (for aterm which may extend to oneyear) or withfineor withboth.

While dealing with section 309, it is necessary to refer totwo important decisions of the Supreme Court of India where, inthe first case in ***P. Rathinam v. Union of India***, a two-judgeBenchoftheSupremeCourtstruckdownsection309asunconstitutional and in the second case in ***Gian Kaur v. State ofPunjab***,a Constitution Bench overruled the earlier judgmentanduphеldthevalidityofsection309.

Article 21 of the Indian Constitution, which states that no one may be deprived of their life or personal liberty other than in accordance with the legal process, was construed in both judgements. In all instances, it was decided that section 309 did not violate article 21 of the Indian

Constitution.

The Hon'ble Supreme Court of India made it plain in ***Gian Kaur's*** case that "Euthanasia" and "Assisted Suicide" are illegal in India and that the IPC, 1860's provisions apply to these activities. But the real question is whether Gian Kaur's case deals with "withdrawal of life support" either directly or indirectly?

Thankfully, there are some pertinent comments in the case of Gian Kaur that address the issue of withdrawing life support in the context of section 306 (abetment of suicide). In a case involving the "abetment" of suicide that was brought before the Supreme Court, the ruling of the Houseof Lords in ***Airedale N.H.S. Trust v. Blandm***, was cited. The Supreme Court made the following distinction between euthanasia and the removal of life support:

The case of Airedale involved the physician's removal of artificial life-prolonging treatments. Even if it is not required to discuss cases involving euthanasia or physician-assisted suicide, a brief mention of the Bar ruling may be made.

The sanctity of the lifestyle, which is the concern of the state, is declared absent from the perspective of the patient in a persistent vegetative state. It is an important difference between whether a doctor chooses to give, treat, or care that can prolong or extend the patient's life, for example, by giving a lethal drug to end the patient's life, or not. in such cases it is shown as follows:

Their Lordships quoted the following passage fromAirdale:

"But it is not legal for the doctor to medicine the patient to ensure his death, or the humane desire to end his suffering, no matter how great the suffering. Therefore, euthanasia is not legal in common law."

- The Supreme Court and the House of Lords held that under PVS it was acceptable to "withdraw life support" from a patient because it was not in the patient's interest to initiate or merely continue "operational measures". Although euthanasia can only be legalized by law, it is "life extension". The court also stated that the state's concern about the principle of "sanctity of life" is "not absolute."

• Another point raised in the Gian Kaur case is whether the "right to die" with dignity under Article 21 is part of the "right to life" with dignity. The court observed:

In the setting of a terminally sick dying man or in a PVS, the topic of whether he may be allowed to end it by a premature extinction of his life under given circumstances may come up. When death due to termination of natural life is foreseeable and impending and the process of natural death has started, a group of instances may come under the purview of the "right to die" with dignity as a part of the "right to live" with dignity.

The aforementioned sections make it obvious that the Supreme Court agreed with the House of Lords' declaration of law in the Airedale case that "euthanasia," or the act of murdering a patient painlessly for the purpose of easing his suffering from an incurable illness, is illegal and may only be approved by the legislature. If not, it is illegal. The term "assisted suicide" refers to a situation in which a patient in agony asks a doctor to help him end his life by giving him medication. Law does not permit this either.

However, when a patient is terminally ill or in a persistent vegetative state (PVS), it is acceptable to prematurely end his life in those situations by withholding or withdrawing life support as long as natural death is certain and imminent and the process of dying naturally has already begun. This is allowed under the right to live with dignity.
Thus, there is a crucial difference between cases in which,

(a) A physician determines that treatment or case may prolong or prolong life, and where the physician makes a decision, for example, to administer a lethal drug actively to end the patient. Life permits the former but not the latter.
(b) Sections 87, 88 and 92 of the Indian Penal Code, 1860 Penal Code are also relevant.

How the Law Commission of India viewed Passive Euthanasia

The Law Commission of India in its 196th report recommended passive euthanasia for both competent and incompetent terminally ill persons. When treating an incapacitated patient, the attending physician must consult with three board-certified medical experts before notifying the patient (if conscious) and other family members. After that, he must wait 15 days before stopping medical care, including the removal of life support equipment. This 15-day window was

planned to give the patient (if conscious), their loved ones, or their guardian the opportunity to file an original petition with the High Court asking for a declaration that the hospital's or doctor's proposed act—withholding medical treatments—is legal or illegal. The High Court will subsequently issue a binding final ruling that will shield the physician or hospital from any civil or criminal culpability and be binding on all parties involved. The Supreme Court has approved (non-voluntary) passive euthanasia under the conditions outlined in the ruling in the case of Aruna. The Supreme Court took a different stance in the area of safeguards than did the Law Commission. In Aruna's case, the Supreme Court decided that in order to care for incompetent patients, the doctor or hospital personnel caring for the patient must first acquire explicit authorization from the High Court. When such a request is made, the High Court should consult a committee of three specialists, chosen from one it had assembled after consulting with medical authorities. The High Court should render its decision based on the report and after taking into consideration the preferences of the relatives or the next-door neighbour. "The above procedure should be followed throughout India until Parliament makes legislation on this subject," was stated at paragraph 135 of the ruling.

Withdrawal of Life Saving Device

It should be emphasized that although the Supreme Court in the Gian Kaur case cited the House of Lords' opinion in the Airedale case with approbation, it did not make it clear who has the authority to decide whether life support should be stopped in the situation of an incompetent individual, such as a person in a coma or PVS. Due to the high number of cases in which people enter comas (as a result of accidents or other causes) or become incapable of giving consent for other reasons, the question of who should give consent for withdrawing life support has been recurrent in India. Due to the unfortunate low level of ethics to which our society has fallen, its raw and pervasive commercialization, and the rampant corruption, this is a very important question in India. As a result, the Court must exercise extreme caution to prevent dishonest people who want to inherit someone else's property from having him eliminated through unethical means.

Following this declaration, the two-judge bench discussed the idea of brain death and other topics, such as the removal of life support from a patient in PVS, and made the following ruling:

"In our opinion, there is always a risk in our country that this may be abused by some dishonest people who want to inherit or otherwise grab the property of the patient if we leave it solely to the patient's relatives, the doctors, or the next friend to decide whether to withdraw the life support of an incompetent person. We cannot deny the possibility that bad people, with the help of some bad doctors, can make evidence that there is no chance of recovery, given the low moral standards prevalent in our society today, as well as rampant trade and corruption. There are several doctors. While many physicians are honorable, there are those who will do anything for money (The Doctor's Dilemma by George Bernard Shaw). Our society has been completely commercialized. Therefore, we must take precautions to prevent abuse (as in Coma by Robin Cook). In our opinion, we cannot leave it entirely up to the attending doctors' judgement as to whether or not to discontinue life support, even while giving great weight to their wishes and also giving due weight to the opinions of the parents, spouse, other close relatives, or next friend of the incompetent patient. According to Lord Keith's ruling in the Airedale case 5, we agree that the concurrence of the Supreme Court should be sought in this matter. This is done to protect the patient, doctor, family and close relatives, as well as the comfort of the patient's family and the community. This is also consistent with the concept of parens patriae, a well-known legal theory. The capacity to maintain life artificially is a relatively new phenomena, according to Lord Browne-Wilkinson. The additional legal concerns it creates might not have a satisfactory solution under existing law.

The learned Law Lord believes there is no question that the Parliament, not the courts, should determine the larger problems brought up by instances of this sort. He noted that recent advances in medical knowledge had profoundly altered what death means. In medicine, stopping the heartbeat or breathing is no longer considered to be death since, with the use of a ventilator, lungs that would normally cease breathing on their own may be forced to continue breathing artificially, keeping the heartbeat alive. As a result, mechanical feeding can keep patients like Anthony Bland alive who would have otherwise died from their inability to swallow food. According to Lord Browne Wilkinson, this has caused the medical community to redefine death in terms of brain stem death, or the passing away of the area of the brain without which the body cannot operate at all without aid. He said that if judges strive to create new legislation to govern the novel circumstances, the legislation they create would reflect their opinions on

the fundamental ethical issues, on which there is a genuine range of viewpoints. He went on to say that when a case raises new moral and social issues, it is not the court's responsibility to create new legal norms or to determine whether a person's life would be in the best interest of a particular person. is in danger.

For the aforementioned reasons, the learned Law Lord noted that it is essential that the moral, social, and legal issues raised by the current case be addressed by the Parliament. Only in the event that the Parliament does not take action, the judge's law will be forced to answer each new question as it is raised.

According to Lord Browne-Wilkinson, the court's role in these situations is to decide a specific case in conformity with the law as it is, not to create new legislation outlining a new procedure. He asserted that the Parliament should establish universal legal norms that apply to the removal of life support equipment and address the larger issues that such a situation brings. He argued that as the nasogastric tube itself accomplishes nothing without food being delivered via it, its removal in the current case could not be justified as a deliberate act that caused death. Since the tube cannot support life on its own, removing it does not result in death. As a result, removing the tube would not be the actus reus of murder because it would not have been the cause of death.

Accordingly, Lord Browne-Wilkinson noted that artificial feeding arrangements for mentally competent adults would violate the law without the patient's consent, as a mentally competent patient can refuse the life support system at any time. they agree to continue.

He also observed that the House of Lords in ***West Berkshire Health Authority*****case** A doctor may legally treat a patient who is unable to agree to treatment if it is in the patient's best interests to do so, according to a principle based on the notion of necessity. According to the experienced Law Lord, the proper response to the current situation relies on how far it is legal to continue invading Anthony Bland's physical integrity without his agreement. In order to ascertain the scope of the aforementioned right, Lord Browne-Wilkinson noted that it can be inferred from West Berkshire Health Authority (supra), in which both Lord Brandon of Oakbrook and Lord Goff made it clear that the right to administer invasive medical treatment is wholly dependent upon such treatment being in the patient's best interests. In addition, a doctor's decision regarding whether to continue invasive treatment is in the patient's best interests must be evaluated with reference to other in *Bolam*.

Several derivatives/versions have developed throughout time to deal with the difficulties and intricacies related to an instrument as complicated as an advance directive. A living will is known as "Will to Live" was developed by the National Right to Life Committee (NRLC) in the United States as a way to protect the lives of patients who want to continue receiving treatment and not decline life-sustaining care. Such a proactive statement becomes even more important in situations where it is difficult to ascertain the patient's wishes and when courts order the cessation of life-sustaining measures when they believe that the patient's life is not worth.

Active euthanasia and passive euthanasia are different, because the first involves active action, while the second refers to the withdrawal of life-saving procedures or the withholding of medical treatment intended to prolong life artificially.

In active euthanasia, specific actions are taken to end the patient's life, while in passive living euthanasia, no action is required to save the patient's life. Due to this distinction, the majority of nations have made passive euthanasia acceptable under specified conditions and protections, either through legislation or judicial interpretation.

Conclusion

It appears that more people are speaking out and writing against euthanasia than for it. This is obvious since most people would rather live than die. The issue of euthanasia is contentious because it questions established moral and philosophical principles. Due to the tremendous resistance put out by medical societies, religious groups, and politicians in various legal systems, questioning the basis of the state and particularly how we manage concerns of death and life, legalising euthanasia looks to be an illusionary campaign. They rely on the notion that life is sacrosanct. Death must be included into our broader concept of life, not seen as a distinct process. Instead of asking if we should make death more comfortable, the issue must be whether there is anything we can do to make life better. Life must be the one thing on which we concentrate, and we must work to make it better. Our actions should be guided by our empathy and human understanding with the objective of ensuring that everyone lives and dies with dignity. The ethic of humanity forbids it in any other way.

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आधुनिक शिक्षा प्रणाली की वर्तमान स्थिति : एक विश्लेषण

डॉ. विजय श्रीवास्तव

परिचय

भारत में ज्ञान देने की एक लंबी परंपरा रही है। गुरुकुल प्राचीन भारत में एक प्रकार का शिक्षण संस्थान था जिसमें शिष्य (छात्र) उसी निवास में रहते थे जहाँ गुरु रहते थे। विश्व की सबसे प्रारंभिक विश्वविद्यालय शिक्षा प्रणाली नालंदा थी। दुनिया भर के छात्र भारत की ज्ञान प्रणालियों की ओर आकर्षित हुए। ज्ञान प्रणाली की कई शाखाओं की उत्पत्ति भारत में हुई। प्राचीन भारत में शिक्षा को एक उच्च गुण माना जाता था। उस समय यूरोप में जो पुनर्जागरण और वैज्ञानिक चिंतन हुआ, वह भारत में नहीं हुआ। अंग्रेजों ने उस समय तक भारतीय मामलों पर नियंत्रण कर लिया था और विभिन्न एजेंडा स्थापित कर चुके थे। शिक्षा के मामले में ब्रिटिश भारत को अभी एक लंबा रास्ता तय करना है। वहीं दूसरी ओर अंग्रेजों ने आधुनिक शिक्षा प्रणाली विकसित की जो आज भी भारत में उपयोग की जाती है। उन्होंने देश की पूर्व शिक्षा प्रणालियों को बदलने के लिए अंग्रेजी–आधारित पद्धतियों का इस्तेमाल किया।

स्वतंत्रता के बाद से भारत की शैक्षिक प्रणाली की संरचना (Structure of India's Educational System since Freedom) भारत में शिक्षा के तीन चरण हैंरू बेसिक, सेकेंडरी और हायर एजुकेशन। संविधान निर्माताओं ने संविधान ने छह मौलिक अधिकार दिए। भारत के स्वतंत्र होने के बाद, मौलिक अधिकारों में एक शिक्षा का अधिकार और जोड़ा गया था। इसने 6 से 14 वर्ष की आयु तक के प्रत्येक बच्चे के लिए निःशुल्क शिक्षा की अनुमति दी। यह भारतीय संविधान के अनुच्छेद 21 **A** (**Article 21A**) द्वारा गारंटीकृत है। सर्वशिक्षा अभियान (**Sarva Shiksha Abhiyan – SSA**) सभी बच्चों को प्रारंभिक शिक्षा उपलब्ध कराने का प्रयास करता है। माध्यमिक विद्यालय के छात्रों की आयु 14 से 18 वर्ष के बीच होती है। सरकार ने राष्ट्रीय माध्यमिक शिक्षा अभियान के माध्यम से सर्वशिक्षा अभियान को माध्यमिक शिक्षा तक विस्तारित किया है। भारत में उच्च शिक्षा के तीन चरण स्नातक, परास्नातक और स्नातकोत्तर (एमफिलध्पीएचडी) हैं। राष्ट्रीय उच्चतर शिक्षा अभियान (**Rashtriya Uchchatar Shiksha Abhiyan – RUSA)** एक सरकार द्वारा प्रायोजित कार्यक्रम है जो देश भर के उच्च शिक्षा संस्थानों को रणनीतिक वित्त पोषण प्रदान करता है।

भारतीय संविधान के शैक्षिक प्रावधान क्या हैं?

राज्य के नीति निर्देशक सिद्धांतों (**Directive Principles of State Policy – DPSP**) के अनुच्छेद 45 (**Article 45**) में कहा गया है कि सरकार को संविधान की स्थापना के 10 वर्षों के भीतर चौदह वर्ष की आयु तक सभी बच्चों को मुफ्त और अनिवार्य शिक्षा प्रदान करनी चाहिए।

किन्तु इसके साकार नहीं होने पर 2002 के 86वें संविधान संशोधन अधिनियम ने अनुच्छेद 21– A (Article 21-A) को अधिनियमित किया।

एक मार्गदर्शक सिद्धांत होने के बजाय, इसने बुनियादी शिक्षा को मौलिक अधिकार का दर्जा दिया।

अनुच्छेद 45 (**Article 45**) में अब छह साल से कम उम्र के बच्चों के लिए प्रारंभिक बचपन की देखभाल और शिक्षा शामिल है।

मुफ्त और अनिवार्य शिक्षा का अधिकार अधिनियम 2009 निम्नलिखित मापदंड स्थापित करता है :

अनुच्छेद 21– **A (Article 21-A)** को लागू करने के लिए संसद ने शिक्षा का अधिकार अधिनियम पारित किया।

इस अधिनियम ने सर्व शिक्षा अभियान को लागू करने के लिए आवश्यक कानूनी समर्थन प्रदान किया।

सामाजिक सुरक्षा प्रशासन (Social Security Administration – SSA) एक संघीय कार्यक्रम है जो प्राथमिक शिक्षा के समयबद्ध सार्वभौमिकरण का आश्वासन देता है।

आधुनिक शिक्षा प्रणाली की वर्तमान स्थिति

जैसा कि पहले कहा गया था, ब्रिटिश औपनिवेशिक प्रशासन ने भारत की आधुनिक शिक्षा प्रणाली को लागू किया।

कई आयोगों ने पूरे औपनिवेशिक काल में भारतीय शिक्षा प्रणाली की नींव रखी, जिसमें मैकाले मिनट और वुड डिस्पैच, साथ ही सैडलर आयोग और 1904 की भारतीय शिक्षा नीति शामिल है। 1948–49 में राधाकृष्णन ने विश्वविद्यालय शिक्षा आयोग (University Education Commission – UEC) का गठन किया।

प्रोफेसर एवं निदेशक, आईपीईएम लॉ अकादमी, गाजियाबाद, यूपी

इसने स्वतंत्र भारत की शिक्षा प्रणाली को नवगठित संप्रभु राष्ट्र की जरूरतों और आकांक्षाओं के अनुकूल बनाने के लिए आकार दिया।यह भारतीय शिक्षा प्रणाली की मूल्य प्रणाली का प्रतिनिधित्व करता है। प्रारम्भ में भारतीय शिक्षा प्रणाली पूरी तरह से ब्रिटिश सरकार के हितों को प्राप्त करने पर केंद्रित थी।

उदाहरण के लिए, मैकालेवाद ने शिक्षा के माध्यम से देशी संस्कृति को ब्रिटिश संस्कृति के साथ जानबूझकर बदलने पर जोर दिया।

नई शिक्षा नीति 2023 (एनईपी)

भारत सरकार की नई शिक्षा नीति को एनईपी कहा जाता है। 1986 में मसौदा तैयार होने के बाद इसे आखिरी बार 1992 में संशोधित किया गया था। मोदी के नेतृत्व वाली भाजपा सरकार ने अपने चुनाव घोषणापत्र में शिक्षा क्षेत्र में बदलाव लाने के लिए एक नई शिक्षा नीति या एनईपी बनाने की कसम खाई थी। जुलाई 2020 में, भारत के केंद्रीय मंत्रिमंडल ने स्कूल से कॉलेज स्तर तक भारतीय शिक्षा प्रणाली में आधुनिक सुधार लाने के उद्देश्य से नई राष्ट्रीय शिक्षा नीति (एनईपी) को मंजूरी दी। यह नीति भारत को श्वैश्विक ज्ञान महाशक्तिश बनाने की विचारधारा पर आधारित है। इसके अलावा, 2020 में एनईपी की शुरुआत के साथ ही मानव संसाधन विकास मंत्रालय का नाम बदलकर शिक्षा मंत्रालय कर दिया गया।

नई राष्ट्रीय शिक्षा नीति पहुंच, समानता, गुणवत्ता, सामर्थ्य और जवाबदेही के स्तंभों पर आधारित है। इसका उद्देश्य स्कूल और कॉलेज दोनों शिक्षा को अधिक समग्र, बहु–विषयक और लचीला बनाना है, जो सतत विकास के लिए 2020 के एजेंडे के अनुरूप है।

नई राष्ट्रीय शिक्षा नीति (एनईपी) की आवश्यकता

2020 में नई राष्ट्रीय शिक्षा नीति के आने तक, भारतीय शिक्षा प्रणाली में कई खामियाँ थीं। अवधारणाओं को समझने की तुलना में याद रखने को अधिक प्राथमिकता दी गई। इसके अलावा, कई बोर्डों की मौजूदगी भी एक बड़ा मुद्दा था. प्रत्येक बोर्ड में अलग–अलग कौशल के लिए अलग–अलग सीखने की विधियाँ थीं, और फिर प्रत्येक छात्र को एक ही मानकीकृत बोर्ड परीक्षा देनी होती थी।

इसके अलावा, पिछले वर्षों में, पारंपरिक विषयों को सीखने या उनमें महारत हासिल करने पर अधिक जोर दिया गया था और व्यावसायिक कौशल विकसित करने पर कम। नई शिक्षा नीति में भारतीय शिक्षा प्रणाली की सभी कमियों और सीमाओं का ध्यान रखा गया है। इसके अलावा, नीति का उद्देश्य व्यावसायिक और औपचारिक शिक्षा के बीच अंतर को पाटना है।

स्वतंत्रता के बाद भारतीय शिक्षा प्रणाली में परिवर्तन

1948 – पहला आयोग, विश्वविद्यालय शिक्षा आयोग, स्थापित किया गया
1952 – माध्यमिक शिक्षा आयोग की स्थापना की गई
1964–1966 – भारतीय शिक्षा आयोग की शुरुआत की गई
1968 – पहली राष्ट्रीय शिक्षा नीति आयी 1986 – एक नई नीति बनाई गई
1992 – पिछली शिक्षा नीति में संशोधन किया गया
2005 – 1986 की शिक्षा नीति में पुनः संशोधन किया गया
2020 – नई राष्ट्रीय शिक्षा नीति (एनईपी) कैबिनेट द्वारा पारित की गई

एनईपी किसने बनाया?

पूर्व इसरो प्रमुख के कस्तूरीरंगन के नेतृत्व में विशेषज्ञों के एक पैनल ने भारतीय शिक्षा प्रणाली में आने वाली कठिनाइयों और समायोजन पर चर्चा की, जिसमें स्कूल से लेकर कॉलेज से लेकर भर्ती तक सब कुछ शामिल था। ये प्रस्ताव एकत्र किए गए और फिर मंत्रालय ने उन्हें मंजूरी दे दी ।

नई राष्ट्रीय शिक्षा नीति 2023

नई राष्ट्रीय शिक्षा नीति 2023रू नई राष्ट्रीय शिक्षा नीति भारत में शिक्षा प्रणाली में क्रांतिकारी से कम नहीं है। हमारी शिक्षा नीति द्वारा 34 वर्षों तक समान मानदंडों का पालन करने के बाद, शिक्षा मंत्रालय (जिसे पहले एमएचआरडी के नाम से जाना जाता था) ने 29 जुलाई 2020 को इसमें कुछ गंभीर संशोधन किए। इस नई राष्ट्रीय शिक्षा नीति को हाल ही में 2023 में भारत सरकार द्वारा अनुमोदित किया गया था। , यह प्रश्न उठना स्वाभाविक है कि "यह नई राष्ट्रीय शिक्षा नीति वास्तव में क्या है?" लोगों के मन में आ रहा होगा. हमारा लेख उन्हें इस प्रश्न का उत्तर प्रदान करने के लिए यहां है। यहां हम नई राष्ट्रीय शिक्षा नीति के सभी प्रमुख पहलुओं पर चर्चा करेंगे। इसके अलावा, हम एनईपी 5+3+3+4 संरचना को पूरी तरह से समझाएंगे। अतः जो छात्र सरकार की इस शिक्षा नीति को समझना चाहते हैं।

नई शिक्षा नीति 2023 की महत्वपूर्ण बातें

एनईपी 2023 के अनुसार शिक्षा नीति में सभी प्रमुख सुधारों की सूची निम्नलिखित है।

- कला, विज्ञान, शैक्षणिक, व्यावसायिक, पाठ्यचर्या और पाठ्येतर धाराओं के विषयों के बीच कोई महत्वपूर्ण अंतर नहीं होगा।

- बुनियादी साक्षरता और संख्यात्मकता पर अतिरिक्त जोर दिया जाएगा।

- 5+3+3+4 मॉडल के साथ 10+2 संरचना का प्रतिस्थापन।

- किसी भी राज्य में पढ़ने वाले छात्रों पर राज्य भाषा नहीं थोपी जाएगी।

- छात्रों को दो बार बोर्ड परीक्षा देने की अनुमति.

- सरकार शिक्षा पर देश की जीडीपी का 1.7% के बजाय 6% खर्च करेगी।

- लिंग समावेशन निधि पूर्ण रूप से स्थापित की जाएगी।

• सरकार प्रतिभाशाली बच्चों को उचित शिक्षा प्रदान करने के लिए अतिरिक्त प्रयास करेगी

• यूजी पाठ्यक्रम 4 साल के लिए होंगे।

• शिक्षक पद के लिए आवेदन करने की न्यूनतम योग्यता 4 साल का एकीकृत बी.एड कोर्स होगा।

• एचईआई में प्रवेश के लिए एक सामान्य प्रवेश परीक्षा की शुरुआत होगी।

• एचईआई में प्रवेश के लिए एक सामान्य प्रवेश परीक्षा की शुरुआत होगी।

• मास्टर ऑफ फिलॉसफी पाठ्यक्रम अब शिक्षा प्रणाली का हिस्सा नहीं होगा।

• छात्र माध्यमिक विद्यालय में कला, शिल्प, व्यावसायिक कौशल और शारीरिक शिक्षा जैसे विभिन्न विषयों का चयन करने में सक्षम होंगे।

• बोर्ड परीक्षाओं के लिए मानक संस्था PARAKH (प्रदर्शन मूल्यांकन, समीक्षा और समग्र विकास के लिए ज्ञान का विश्लेषण) द्वारा निर्धारित किए जाएंगे।

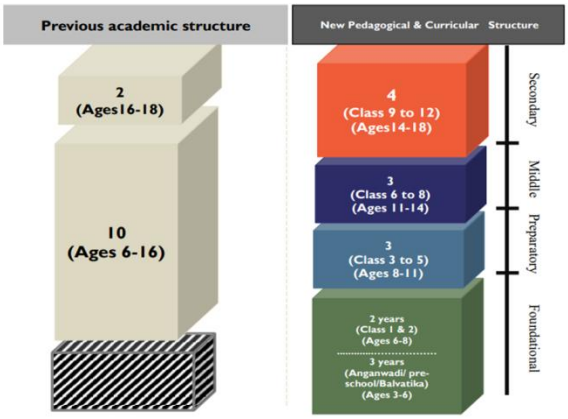
• सरकार भारत के साहित्य और अन्य शास्त्रीय भाषाओं को स्कूलों में पाठ्यक्रम का हिस्सा बनाएगी।

• छात्रों के लिए परीक्षाएँ प्रत्येक शैक्षणिक वर्ष के बजाय केवल कक्षा 2, 5वीं और 8वीं में आयोजित की जाएंगी।

एनईपी 5+3+3+4 संरचना क्या है?

एनईपी 2023 में सबसे ध्यान खींचने वाला संशोधन 10+2 संरचना को 5+3+3+4 संरचना से बदलना है। हमारी शिक्षा प्रणाली में 10+2 बहुत लंबे समय से प्रचलित है। इसलिए, उस प्रणाली में पूर्ण परिवर्तन छात्रों के लिए थोड़ा उलझन भरा हो सकता है। नीचे हम 5+3+3+4 संरचना का अर्थ समझाने का प्रयास करेंगे और यह कैसे पुरानी 10+2 संरचना से पूरी तरह अलग है।

नए शैक्षणिक और परिपत्र ढांचे में सरकार ने छात्रों की स्कूली शिक्षा को चार भागों में विभाजित किया है। ये चार भाग हैं माध्यमिक, मध्य, प्रारंभिक और मूलभूत। स्कूली शिक्षा के ये चार चरण छात्रों के स्कूली जीवन में शैक्षिक विकास के महत्वपूर्ण हिस्से होंगे। विद्यार्थियों की स्कूली शिक्षा में इन चारों चरणों का उपविभाजन इस प्रकार किया जाएगा



5+3+3+4 संरचना

छात्रों के लिए स्कूली शिक्षा का पहला चरण फाउंडेशन स्टेज है। इसमें 5 साल तक छात्रों की शुरुआती ग्रूमिंग की जाएगी। ये 5 साल आंगनवाड़ीध्प्री–प्राइमरीध्बालवाटिका और पहली और दूसरी कक्षा के 3 साल होंगे।दूसरा चरण प्रारंभिक चरण होगा। यह स्कूली शिक्षा चरण भी 3 साल तक चलेगा। कक्षा 3, 4 और 5वीं मध्य और माध्यमिक चरणों की नींव रखेंगी। स्कूली शिक्षा का तीसरा चरण मिडिल स्कूल चरण होगा। इसमें कक्षा 6वीं से 8वीं तक. ये तीन वर्ष छात्रों को उनके स्कूली जीवन के अंतिम चरण यानी माध्यमिक चरण के लिए तैयार करेंगे। छात्रों के लिए स्कूली जीवन का अंतिम चरण माध्यमिक चरण होगा, इसमें छात्रों को अपनी माध्यमिक शिक्षा पूरी करने के लिए 2 साल के बजाय कक्षा 9वीं से 12वीं तक पूरे चार साल का समय मिलेगा।

5+3+3+4 संरचना का महत्व

सरकार का लक्ष्य 5+3+3+4 संरचना के माध्यम से छात्रों के संज्ञानात्मक–विकास चरण पर अधिक जोर देना है। इस संरचना के माध्यम से, सरकार छात्रों के लाभ के लिए उनके स्कूली शिक्षा चरणों को बेहतर बनाएगी। 10+2 संरचना के विपरीत, 5+3+3+4 संरचना छात्रों के आधार को मूलभूत चरण से माध्यमिक चरण तक मजबूत करेगी। यह नया ढांचा छात्रों को शिक्षा के अधिकार का पूरा उपयोग करने में भी मदद करेगा। चूंकि संरचना 6 से 14 के बजाय 3 से 18 वर्ष की आयु को कवर करती है। इस वजह से, छात्रों को उनके स्कूली जीवन की शुरुआत में सहायता मिलेगी।

इन सबके अलावा, यह संरचना छात्र प्रतिधारण दर को काफी हद तक बढ़ाने में उपयोगी होगी। इस संरचना के कार्यान्वयन के साथ, अधिक छात्र अपने संपूर्ण स्कूली जीवन के लिए अपने संबंधित स्कूलों में रहेंगे। संक्षेप में, यह नई संरचना छात्रों के लिए हर संभव तरीके से फायदेमंद होगी। इसके अलावा, इस संरचना के साथ उच्च साक्षरता दर ही हमारे देश के भविष्य की बेहतरी के लिए काम करेगी।

शिक्षकों पर एनईपी का प्रभाव

एनईपी से न केवल छात्र प्रभावित होंगे, बल्कि यह शिक्षकों और शिक्षण विधियों को भी प्रभावित करेगा। एनईपी 2023 के

अनुसार, किसी स्कूल में शिक्षक बनने के लिए आपके पास बीएड की डिग्री होनी चाहिए। इसमें ध्यान खींचने वाली बात यह है कि यह ठ.म्क कोर्स अनिवार्य रूप से 4 साल का इंटीग्रेटेड कोर्स होना चाहिए। इस नीति के कारण, केवल सक्षम शिक्षक ही स्कूलों में शामिल होंगे और इससे निश्चित रूप से छात्रों के भविष्य को सही रास्ते पर ढालने में मदद मिलेगी।

यूजी और उच्च शिक्षा के लिए एनईपी 2023

जो छात्र यूजी और उच्च शिक्षा प्राप्त करेंगे, वे भी एनईपी 2023 से प्रभावित होंगे। नीति के अनुसार, यूजी डिग्री की अवधि चार साल होगी और ये डिग्री बहु–विषयक, समग्र और लचीली होंगी। इसके अलावा, छात्रों को डिग्री कोर्स से बाहर निकलने का विकल्प चुनने के लिए कई मौके दिए जाएंगे। उदाहरण के लिए, छात्रों को 1 साल का वोकेशनल या प्रोफेशनल फील्ड कोर्स पूरा करने पर सर्टिफिकेट मिलेगा। वहीं, उन्हें 2 साल के बाद डिप्लोमा और 3 साल के बाद बैचलर की डिग्री मिलेगी।

पीजी पाठ्यक्रमों के लिए, पाठ्यक्रम की अवधि 1 से 2 वर्ष तक सीमित होगी। साथ ही, मास्टर ऑफ फिलॉसफी कार्यक्रम अब सुलभ नहीं होंगे। इस नीति में कॉलेज स्तर की शिक्षा के लिए सबसे महत्वाकांक्षी निर्णय यह है कि आने वाले 15 वर्षों में कॉलेज संबद्धता प्रणाली को पूरी तरह से समाप्त कर दिया जाएगा। इसके अलावा, कानूनी और चिकित्सा पाठ्यक्रमों को छोड़कर सभी उच्च शिक्षा पाठ्यक्रमों की निगरानी के लिए एक नया निकाय होगा।

मातृभाषा या क्षेत्रीय भाषा में शिक्षण के लिए एनईपी 2023

एनईपी में सबसे महत्वपूर्ण सुधारों में से एक यह है कि छात्रों को 5वीं कक्षा तक अपनी मातृभाषा या क्षेत्रीय भाषा में पढ़ाई करने को मिलेगी। साथ ही सरकार ने यह भी कहा है कि वे इस सीमा को 8वीं कक्षा तक भी बढ़ा सकते हैं. अपनी मातृभाषा में पढ़ाई करने से छात्र आसानी से समझ सकेंगे कि शिक्षक उन्हें क्या पढ़ा रहे हैं। साथ ही इस नीति से छात्रों को अपनी भाषा के बारे में भी अधिक जानकारी मिलेगी।

राष्ट्रीय शिक्षा नीति 2023 डिजिटल समावेशन

प्रौद्योगिकी की प्रगति के साथ, शिक्षण के डिजिटल तरीके हाल ही में स्कूली शिक्षा का हिस्सा बन गए हैं। आइए एनईपी 2023 के माध्यम से शिक्षा की बेहतरी के लिए सरकार द्वारा अपनाए जाने वाले डिजिटल दृष्टिकोण पर एक नजर डालें।

सरकार NETF (नेशनल एजुकेशनल टेक्नोलॉजी फोरम) की स्थापना करेगी। यह फोरम विभिन्न स्कूलों में डिजिटल शिक्षण विधियों से संबंधित नए और अनूठे विचार प्रदान करके उन्हें उन्नत करने का काम करेगा।

डिजिटल शिक्षा के लिए और अधिक संसाधन विकसित करने के लिए सरकार एक नई इकाई शुरू करेगी जो पूरे देश में काम करेगी। प्रौद्योगिकी का एकीकरण होगा जो कक्षा में विभिन्न प्रक्रियाओं को बढ़ाएगा

निष्कर्ष

एनईपी ने भारत में नई शिक्षा प्रणाली को पंख दिए हैं। कुछ बड़े शिक्षा सुधार प्रस्तुत किए गए हैं और कार्यान्वयन के अधीन हैं। ये छात्रों के शिक्षा को समझने के तरीके में चमत्कार करेंगे। जानिए एनईपी 2023 से 2023 ने छात्रों को कैसे फायदा पहुंचाया है।छात्रों को रटने की बजाय समस्या–समाधान और आलोचनात्मक सोच वाले दृष्टिकोण विकसित करने की ओर स्थानांतरित करता है। व्यापक मूल्यांकन सुधार छात्रों में व्यावहारिक ज्ञान को गहरे स्तर तक विकसित करने की प्रथा के निर्माण की दिशा में काम करते हैंनीति के समग्र दृष्टिकोण ने सामाजिक और आर्थिक रूप से वंचित छात्रों के बीच की बाधा को तोड़ दिया है, जिससे वे शिक्षा की मुख्यधारा में आ गए हैं।बहुभाषी दृष्टिकोण छात्रों, राष्ट्र के भविष्य के स्तंभों को वैश्विक मंच पर अधिक जिम्मेदार, प्रस्तुत करने योग्य और सम्मानजनक बनाता है।

साल में दो बार बोर्ड परीक्षा आयोजित करने से बोझ बढ़ सकता है, लेकिन इससे अवधारणाएं स्पष्ट होंगी, प्रतिस्पर्धी रवैया बनेगा और छात्रों को अच्छा प्रदर्शन करने का उचित मौका मिलेगा। यह उन छात्रों के लिए महत्वपूर्ण है जो शिक्षाविदों में कम रुचि रखते हैं।सुधार समानता को बढ़ावा देने के लिए काम करते हैं, इस प्रकार एक ऐसे राष्ट्र को बढ़ावा देते हैं जहां हर बच्चे को उनकी पृष्ठभूमि की परवाह किए बिना शिक्षा तक पूरी पहुंच होछात्रों को अब वैश्विक मंच पर शिक्षा के वर्तमान रुझानों की आवश्यकताओं के अनुसार तैयार किया जा रहा है। वैश्विक दर्शकों को ध्यान में रखते हुए हमारे बच्चों में उच्च प्रतिस्पर्धात्मक बढ़त और भावना होगी।