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"In order to maintain the purity of the electoral process, the "little cross" on the "little bit of paper" must be made only by the metaphorical "little man" walking into the "little booth" and no one else."

Dr. D. Y. Chandrachud, CJI in

Kuldeep Kumar v. *State (UT of Chandigarh)*,

(2024) 3 SCC 526, para 46

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o To provide a platform to discuss the problems related to socio-legal and research issues.

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Lex Revolution

Volume X (1) 2024

TABLE OF CONTENTS

A LOOK AT THE INDIAN GENERAL ELECTIONS, 2024

-   Prantik Basak* & Jhilike Saha**

Abstract

The Indian political scene has long been known for its dynamic and often turbulent nature, with discussions concerning the roots of its party system raging. From the one-party dominant system of the early post-independence era to the rise of coalition governments in the 1990s, Indian politics has seen considerable transformations. Currently, the formation of the I.N.D.I.A. of ideologically disparate groups unified against the Bharatiya Janata Party reflects historical trends similar to the Janata Party's ascent in 1977. However, commonalities between these alliances show potential issues and vulnerabilities. Drawing lessons from the Janata Party's limited tenure, internal schisms and power struggles within multi-party alliances jeopardise their durability and effectiveness. Despite a united goal of ousting the existing government, ideological differences among coalition members, exacerbated by past conflicts, may undermine the cohesion required for long-term control. As a result, the trajectory of the I.N.D.I.A. partnership raises concerns about the future direction of Indian politics. The purpose of this study is to examine the dynamics, obstacles, and potential consequences of such alliances to determine whether they represent a transformative phase or a cyclical recurrence of historical patterns in Indian democracy.

Keywords: *Elections; N.D.A., I.N.D.I.A., BJP, Party Politics, INC.*

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INTRODUCTION

The Indian political party system has been a vibrant field of analysis due to its chaotic nature since its inception. The discussion about inception brings forth another set of arguments. Do we consider the genesis of the party system in India from the colonial or the post-colonial period? Although the Indian National Congress (hereinafter referred to as INC) was born in 1885 and led the Indian nationalist struggle for independence during its heyday, it was more of a political movement than a political party. Since independence in 1947, we have seen the rise of a political party system in democratic India. However, unlike other major democracies like the USA and UK, the political party system in India was unique.

There existed a very unique model of party system during the first twenty years after India's independence, from 1947 to 1967. Although it was a multi-party system, it operated more like a one-party system than a multi-party one. It was referred to as the one-party dominant system. In his ground-breaking research, Rajni Kothari introduced the concepts of 'party of consensus' and 'parties of pressure' to better understand the one-party dominant system in India. The INC enjoyed the status of the party of consensus. It enjoyed a historical consensus due to its role in the Indian national movement, which translated into a political consensus post-independence. The parties of pressure included all opposition parties and dissident groups, which were simply a 'latent threat' and were never in a position to replace the INC.

The INC dominated national and regional politics from 1947 to 1967. Although its dominance was rattled at the state level from 1967, it maintained its dominant stature in national politics until 1977. It was in 1977 when, for the first time, a non-Congress government came to power at the national level. The Janata Party was a coalition of socialists, Jan Sangh, Congress (O) and Bharatiya Lok Dal. However, such a historic change did not last long as the short-sightedness of the coalition leaders, such as Moraji Desai, Jagjivan Ram and Charan Singh, led to the quick demise of the Janata Party in 1979 before even completing a term. The Congress, led by Indira Gandhi, returned to power in 1980, although its dominance during its heydays had faded away.

Since the 1990s, India has witnessed only coalition governments at the Centre. The most dominant coalitions during this period have been the Congress-led United Progressive Alliance (UPA) and the BJP (hereinafter referred to as BJP)-led National Democratic Alliance (hereinafter referred to as NDA). The UPA government has come to power at the Centre twice – in 2004 and 2009, while the NDA government has been in power four times, the most recent two tenures being from 2014-19 and 2019-24. In these most recent two tenures, the BJP was in a position to

form government at the Centre alone, but it decided to form government as part of the NDA in order to achieve electoral gains at the regional level. The stature of the BJP today can be compared to that of the INC during 1967-77.

The UPA has become a political alliance of the past today. It does not exist anymore, and what we see today is the rise of a new political alliance called the Indian National Developmental Inclusive Alliance (hereinafter referred to as I.N.D.I.A.) Yes, it is clever wordplay and brings an opportunity for journalists to prop up catchy headlines. I.N.D.I.A. includes the Congress, Trinamool Congress, and Aam Aadmi Party, to name a few regional behemoths. This, however, looks very similar to the incidents of 1977, where ideologically contrasting political parties came together in an attempt to remove a common foe. We stand at a historical juncture that could either redefine the way Indian politics operate, or it may just be history repeating itself. Once again, we see a coalition of political parties that are ideologically incompatible but have joined hands to remove the BJP from power.

The current scenario raises intriguing questions about the future trajectory of Indian politics. The problem statement of this research is the unclarified dynamics, challenges and potential ramifications of such alliances. This research article aims to unravel such complexities and predict whether this current scenario is a transformative phase in Indian politics or a cyclic recurrence of historical patterns. This research aims to contribute valuable insights into the nature of Indian democracy, the dynamics of political power, and the factors affecting the stability and effectiveness of political coalitions in the country.

RECENT BACKGROUND

India has a multi-party system with a diverse political landscape. As a result, no single party often secures an absolute majority in either the Lok Sabha (the Lower House of India's Parliament) or in the State Legislatures. This necessitates the formation of political alliances to gain a majority and form a government. Alliances can be broadly categorised into two types - national alliances and regional alliances. National alliances involve parties that contest elections across India, while regional alliances are formed for specific states or regions.[1]

The NDA and the United Progressive Alliance were two prominent national alliances in Indian politics. The NDA, led by the BJP, has been in power at the national level, while the UPA, led by

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[1] T. Veeraraghav, "The Story Behind INDIA: Who Came Up With It And Alternatives Suggested," NDTV, July 19, 2023, *available at:* https://www.ndtv.com/india-news/the-story-behind-india-who-came-up-with-it-and-alternatives-suggested-4221192.

the INC, has also had its share of governance. India's political landscape is characterised by a dynamic and often intricate web of alliances. These alliances typically form at both the national and state levels, involving various political parties with diverse ideologies and interests. They are essential for securing power and forming governments. The newly formed I.N.D.I.A. will aim to address the diverse challenges and opportunities India faces while upholding the principles of inclusivity, social justice, economic growth, and sustainability.

The Narendra Modi-led government has expertise in creating a 'society of spectacle'. According to French philosopher Guy Debord, such a society is shaped around a mosaic of pseudo-worlds that can only be looked at, bereft of any meaning or substance. Many Indian governments are coalition governments, where various parties within an alliance hold key ministerial positions. This requires consensus-building and often results in compromises on policy and decision-making. In various states, regional alliances are formed to counter the national parties' influence. For instance, in Tamil Nadu, the Dravida Munendra Kuzhagan and All India Anna Dravida Munendra Kuzhagan have historically been part of regional alliances.[2]

Indian political alliances are often characterised by ideological diversity, with parties of different political leanings coming together based on a common goal of acquiring political power. Alliances can be fluid, with parties switching allegiances based on electoral outcomes and political dynamics. Parties may choose to ally with different partners in different elections. Alliances can significantly influence the policies and agendas of the government. The partners within an alliance negotiate and decide on the common minimum program and policy direction. Alliances are a fundamental aspect of Indian politics, reflecting the country's diverse and dynamic political landscape. They play a crucial role in determining the composition of governments and the direction of policies at both the national and state levels.

The latest such piece of mosaic that keeps the spectacle running is the debate around '*One Nation, One Election*'. This is nothing but a smokescreen to cover up allegations surrounding Modi's proximity to a businessman whose deeds have been shaping headlines around the world. Even as this debate rages on comes another meaningless spectacle with respect to whether the country is to be called India or Bharat. However, the purpose of this article is not to expose the hollowness of his craft of creating a spectacle but to share how the United Opposition's I.N.D.I.A. plans to roll out its program after a successful meeting in Mumbai recently. The allies agreed that this great nation needs a set of progressive ideas and a future-oriented outlook. These ideas should be

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[2] J. Doe, "Indian Politics: A Comprehensive Overview," Journal of Political Studies (2020): 123-145.

focused on addressing the diverse challenges and opportunities that India faces while also upholding the principles of inclusivity, social justice, economic growth, and sustainability.

Even a hardcore BJP supporter may agree that India is being suffocated by unprecedented economic duress, marked by income inequality, out-of-control cost of living, and lack of social security. The suffocation is being made worse by trying to manage the economic issues by moving the tensions and contradictions to the social and cultural terrain. India has not witnessed this level of polarisation in recent history. The people of India are desperately looking to find the space to breathe.

The I.N.D.I.A. is committed to inclusive governance with policies and programs that are designed to benefit all segments of society, especially the most marginalised sections. Representation of the poor across all caste groups in decision-making bodies is crucial to the idea of the alliance. The alliance will prioritise quality education by investing in public education, teacher training, and curriculum development. This would include modernising the education system to promote critical thinking, creativity, and practical skills. The pedagogy will have elements of diversity and social justice because, in a country like India, education must be an instrument of emancipation as well.

The I.N.D.I.A. aims to renew efforts to eradicate caste-based discrimination and promote social justice. Policies should aim to uplift historically oppressed communities and bridge the social gap. In this line, a nationwide caste census is an important goal. The last caste census was held in 1931, and India urgently requires the latest scientific data to address the aspirations of the people and marginalised communities. The social justice concerns of our times demand a nuanced critique and a challenge to established power structures, institutions, and ideologies. The existing systems are flawed and necessitate fundamental transformation; the alliance will prioritise the voices and concerns of marginalised and oppressed groups, giving them agency in shaping the direction of this great nation.

KEY REGIONAL PARTIES IN THE I.N.D.I.A. COALITION

Indian politics is a complex and dynamic arena that plays a central role in the world's largest democracy. It has a rich history spanning over seven decades since it gained independence in 1947. India's political landscape is marked by diversity, competition, and constant evolution. India follows a parliamentary system of government, with the President as the ceremonial head of state and the Prime Minister as the head of government. The political spectrum is vast, with numerous

parties representing various ideologies, cultures, and regions. The BJP and the INC have been the two dominant national parties, but regional parties also wield significant influence.[3]

One of the defining features of Indian politics is its vibrant electoral process. General elections are held every five years, involving millions of voters and thousands of candidates. The country's electoral system is based on a "first-past-the-post" mechanism, which can lead to multi-cornered contests and coalition governments. Challenges in Indian politics include issues of corruption, caste-based politics, communal tensions, and economic development. Social issues like gender inequality, education, healthcare, and poverty are also prominent on the political agenda. India's federal structure divides power between the central government, 28 states and 8 union territories, each with its own government. This decentralisation adds complexity to policy implementation and coordination. Overall, Indian politics is a dynamic and ever-changing landscape, reflecting the diverse and vibrant society it represents. It continues to grapple with the complexities of a rapidly evolving nation while striving to uphold the principles of democracy and inclusivity.

These regional parties play a crucial role in shaping the coalition's political landscape.

1) Trinamool Congress (TMC): Based in West Bengal, the TMC has been a key player in the UPA. Led by Mamata Banerjee, the party has a significant presence in the state and contributes to the coalition's strength in the eastern region.

2) Nationalist Congress Party (NCP): Headed by Sharad Pawar, the NCP is prominent in Maharashtra. It has been a longstanding ally of the UPA, bringing in support from the western part of the country.

3) DMK (Dravida Munnetra Kazhagam): A major player in Tamil Nadu, the DMK, led by the Karunanidhi and later the Stalin family, has been an essential partner in the UPA. It contributes significantly to the alliance's support in the southern states.

4) Rashtriya Janata Dal (RJD): Based in Bihar, the RJD, under leaders like Lalu Prasad Yadav and his family, has been a consistent supporter of the UPA. It adds strength to the coalition's base in the northern part of India.

5) Janata Dal (Secular) JD(S): Active mainly in Karnataka, the JD(S) has been an intermittent ally in the UPA coalition. Though its influence is confined to a few states, its contribution is valuable in regional politics.

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[3] N. Verma, "Has the INDIA Alliance Made PM Modi Nervous?" The Wire, July 27, 2023, *available* at: https://thewire.in/politics/india-alliance-narendra-modi-nervous.

6) Indian Union Muslim League (IUML): Operating predominantly in Kerala, IUML represents the interests of the Muslim community. It has been a trusted ally of the UPA, adding diversity to the coalition.[4]

These regional parties, along with the Congress, create a diverse and inclusive political front. The I.N.D.I.A. coalition's strength lies in its ability to bring together parties with regional influences, fostering a collaborative approach to governance at the national level. The dynamics among these parties continue to evolve, shaping the I.N.D.I.A. strategies and policies. The regional and small parties determined the fate of national parties in general elections over the past two decades. In the general elections of 2014 and 2019, the BJP had an absolute majority in Loksabha (Lower House), but it was given the space to poll coalition regional parties in government. For example, Shiromani Akali Dal (SAD), Lok Janshakti Party (LJP), Republican Party of India (RPI), Shivsena, Janta Dal-United (JDU), Rashtriya Lok Samta Party (RLSP) and newly formed Rashtriya Lok Janshakti Party. In the Indian political system, the role of the regional party has been very relevant since 1989. These parties are sharing power in the central government and got cabinet ministry in Narendra Modi's government. In the 2019 Indian general election, the UPA won only 91 seats, and INC won 52 seats, thus failing to secure 10% of the seats required for the leader of the opposition post.[5]

DYNAMICS BETWEEN NDA AND I.N.D.I.A.

The NDA and the I.N.D.I.A. are two prominent political coalitions in the Indian political landscape. These alliances play a crucial role in shaping the country's political dynamics, and their perspectives often differ on various issues. The NDA, led by the BJP, is a centre-right coalition that espouses a conservative and nationalist ideology. The alliance comprises several regional parties with a focus on promoting economic growth, national security, and cultural conservatism. From the NDA's perspective, it emphasises the importance of a strong, unified India, advocating for policies that prioritise economic development, infrastructure, and a robust defence apparatus. On the other hand, the I.N.D.I.A., led by the INC, is a center-left coalition that leans towards a more liberal and inclusive agenda. The coalition aims to address social inequalities, uplift marginalised communities, and pursue policies promoting social justice. Its perspective is often characterised by a commitment to secularism, minority rights, and welfare-oriented programs. The coalition emphasises social development, education, and poverty alleviation as crucial components of its governance agenda. One key area where the perspectives of the NDA and

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[4] Ibid.
[5] Ibid.

I.N.D.I.A. diverge is economic policy. The NDA generally supports market-oriented reforms, deregulation, and initiatives that encourage foreign direct investment to boost economic growth. In contrast, the I.N.D.I.A tends to prioritise inclusive economic policies, focusing on social welfare schemes, rural development, and job creation to reduce income disparities. National security is another critical aspect of the NDA, and I.N.D.I.A. often differ in perspective. The NDA places a strong emphasis on a robust defence apparatus, asserting a proactive stance on issues related to national security. It advocates for a strong military and decisive action against external threats. In contrast, the I.N.D.I.A. emphasises diplomatic solutions, conflict resolution through dialogue, and a balanced approach to national security, avoiding aggressive posturing. Ideologically, the NDA leans towards a more conservative and traditional outlook, emphasising cultural values and national identity. The alliance often aligns itself with issues related to cultural nationalism, promoting symbols of national pride and safeguarding traditional norms. On the other hand, the I.N.D.I.A adopts a more liberal and inclusive stance, advocating for diversity, secularism, and the protection of minority rights. The approach to federalism is another dimension where the NDA and I.N.D.I.A. Perspectives differ. The NDA tends to support a more centralised governance model, advocating for a strong federal government. In contrast, the I.N.D.I.A. often emphasises decentralisation, giving more autonomy to states and regional entities to address local issues. It's essential to note that political dynamics are dynamic, and perspectives within these alliances may evolve based on changing circumstances and public sentiment. Both the NDA and I.N.D.I.A. They have played pivotal roles in shaping India's political landscape, and their perspectives reflect the diverse and complex challenges facing the nation. Understanding the nuances of these perspectives provides insights into the contrasting visions that shape India's political discourse. A gathering of 38 political parties in the national capital endorsed the leadership of Prime Minister Narendra Modi for the 2024 general election and renewed the NDA, which had become redundant with the BJP (BJP) winning a Lok Sabha majority on its own in 2014 and 2019. Modi is the leader of the BJP is unquestionable, but he is determined to show that his strength is not limited to his party. The NDA has expanded with the induction of several parties in recent months, notably in Maharashtra, where splinter groups of two regional parties, the Nationalist Congress Party and the Shiv Sena, have joined the bandwagon. In Uttar Pradesh, Om Prakash Rajbhar's Suheldev Bharatiya Samaj Party has returned to the saffron camp after an acrimonious split ahead of the 2022 Assembly election; in Bihar, both factions of the Lok Janshakti Party and breakaway groups and individuals from the Janata Dal (United) are powering the NDA. More matches are being done. The Janata Dal (Secular) in Karnataka and the Telugu Desam Party led by N. Chandrababu Naidu in Andhra

Pradesh are in touch with the BJP. These new alignments have electoral implications, at a minimum, in Maharashtra, Bihar and Uttar Pradesh, where the BJP hopes to retain its primacy.[6]

Apart from these electoral calculations, the point being made also is that the BJP under PM Modi, despite its position of strength, is eager to have a broad coalition of parties and social groups. The NDA's show of strength comes against the backdrop of an evolving united front of Opposition parties against the BJP. Prime Minister Modi has accused the Opposition coalition of being opportunistic - a charge that is undoubtedly true, but then it equally holds for the NDA as well. The BJP remains formidable in its strongholds, but it does not want to leave things to chance. It has a maximalist approach to electioneering. In parading its partners, the BJP wants to reassure itself and its supporters that the party is not isolated or politically untouchable. Of particular note is the BJP's relationship with the All India Anna Dravida Munnetra Kazhagam in Tamil Nadu, which continues despite many irritants as it seeks a foothold in the Dravidian fortress. The party is likely to have more tricks up its sleeve in the coming weeks. Part of the BJP agenda, such as the call for a Uniform Civil Code, will test the endurance of the NDA, but there are enough reasons for these parties to stick together.

COMPARATIVE ANALYSIS OF NDA AND I.N.D.I.A.

The NDA coalition has been a prominent face in Indian politics since the late 1990s. Having been in power for the fourth time in the last thirty years, the NDA is no doubt the juggernaut of Indian politics. I.N.D.I.A., on the other hand, has just been formed in 2023 and is yet to contest elections at the national level. It is too early to make any concrete statements on this alliance, but what we can try is to go forward with a comparative analysis of these alliances, which involves examining their formation, policy approaches, economic strategies, and overall impact.

The NDA, led by the BJP, has often been associated with a centre-right ideology, emphasising economic liberalisation, national security, and cultural nationalism. In contrast, the I.N.D.I.A., primarily led by the INC, leans towards a center-left stance, focusing on inclusive growth, social welfare, and secularism. Economically, the NDA government, during its terms, pursued market-oriented reforms, including the disinvestment of public sector units, tax reforms, and the introduction of the Goods and Services Tax (GST). The emphasis on infrastructure development, highlighted by initiatives like the Golden Quadrilateral project, aimed to boost economic growth. However, critics argue that these policies disproportionately favoured certain

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[6] M. K. Jha, "I.N.D.I.A. Alliance for an Inclusive, Progressive Bharat," Deccan Herald, September 13, 2023, *available at*: https://www.deccanherald.com/opinion/india-alliance-for-an-inclusive-progressive-bharat-2684125.

sections of society and increased economic inequality.[7]

On the other hand, the Indian government, especially during its first term, prioritised social welfare programs through flagship schemes like the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) and the National Rural Health Mission (NRHM). These initiatives aimed to address poverty and unemployment and improve healthcare infrastructure. However, concerns were raised about their long-term sustainability and potential impact on fiscal deficits. In terms of foreign policy, the NDA government focused on strengthening ties with major powers, particularly the United States, and prioritised a robust stance on national security. The nuclear tests in 1998 and the subsequent improvement in India's international standing marked this period. Conversely, the Indian government pursued a more multilateral approach, fostering ties with emerging economies and emphasising diplomacy to address regional and global challenges. Both alliances faced challenges related to coalition politics, with multiple parties contributing to diverse policy perspectives. The NDA often had to navigate the complexities of managing a diverse coalition, accommodating the interests of regional parties like the Shiv Sena and Akali Dal. Similarly, I.N.D.I.A. had to strike a balance between the Congress Party's vision and the demands of its coalition partners, such as the Trinamool Congress and the Nationalist Congress Party.

One critical aspect is the role of leadership within these alliances. Under the leadership of figures like Atal Bihari Vajpayee and Narendra Modi, the NDA presented a strong and charismatic leadership that resonated with voters. The I.N.D.I.A., with leaders like Rahul Gandhi and Sonia Gandhi, focused on technocratic governance and inclusive decision-making. It's important to note that the analysis is nuanced, and the impact of these alliances varies across regions and over time. Public perception, economic indicators, and geopolitical developments all play a role in shaping the narrative around the NDA and INDIA coalitions in Indian politics.[8]

I.N.D.I.A'S CHANCES IN THE GENERAL ELECTIONS, 2024

As many as twenty-six opposition parties have united to take on the BJP-led NDA in the 2024 Lok Sabha elections. The united opposition has named itself I.N.D.I.A. and will fight polls to end the 10-year reign of the Narendra Modi government. On the other hand, NDA has 38 political parties to counter the Opposition's agenda. The BJP, which enjoys a clear majority in the Lok

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[7] J. Doe, "Indian Politics: A Comprehensive Overview," Journal of Political Studies (2020): 123-145.

[8] S. Kulkarni, "'Modi Hatao', but How? 'INDIA' Alliance's Campaign Needs More Than Firm Resolve," The Quint, September 2, 2023, *available at*: https://www.thequint.com/opinion/from-indiras-appeal-to-india-alliance-oppositions-firmer-resolve-to-oust-modi.

Sabha, won 303 seats in the 543-member Assembly. The saffron party is aiming to get 50 percent of the total votes polled and is eyeing over 350 seats in the upcoming general elections. This I.N.D.I.A. is important for all the parties' political survival. In what is poised to be a game-changing development ahead of the 2024 Lok Sabha election, a 26-party alliance has coalesced to challenge the ruling NDA led by Prime Minister Narendra Modi. Christened the I.N.D.I.A., this newly formed coalition was the most significant decision taken by the multi-party meeting held at the upscale Taj West End hotel in Bengaluru on July 18. Behind closed doors, the leaders from diverse political parties representing various regions of the country had assembled for a dinner hosted by Karnataka Chief Minister Siddaramaiah. At 4 pm sharp, the alliance's press conference commenced, with All India Congress Committee president Mallikarjun Kharge taking the lead. He revealed that all 26 parties had unanimously agreed to establish an "11-member coordination committee" during their next meeting in Mumbai. This committee will tackle critical matters such as leadership questions and the intricacies of seat sharing among competing constituents across different States. Furthermore, Kharge disclosed plans to set up a campaign management secretariat in Delhi. The joint resolution issued by the members of I.N.D.I.A. unequivocally vowed to "safeguard the idea of India as enshrined in the Constitution" while accusing the BJP of orchestrating a systematic assault on the nation's character. This pointed statement underscored the alliance's commitment to preserving the country's core values. During the press conference, Kharge also emphasised the impressive scale of the Bengaluru meeting, with 26 parties in attendance, compared to the 16 that convened in Patna on June 24 for the first gathering of opposition parties. However, his remarks did not end there; he made sharp remarks about the media, criticising their alleged favouritism towards Modi. Kharge claimed that the media appeared to be "captured by Modi" and bemoaned the perceived hostile portrayal of the opposition. He asserted that such a situation was unprecedented in his 52 years of political experience. Kharge further contended that Modi's reconstitution of the NDA, in the face of the impending alliance, exposed the Prime Minister's apprehensions about the opposition's growing strength. Echoing Kharge, West Bengal Chief Minister Mamata Banerjee launched a scathing attack on Modi and the BJP, accusing them of "selling the country". She defiantly questioned whether the BJP could stand up against the might of I.N.D.I.A. Delhi Chief Minister Arvind Kejriwal, who joined the meeting in Bengaluru after the Congress declared its opposition to the Centre's ordinance on controlling services in Delhi, clarified the raison d'être of the alliance: to "save India". Kejriwal pointedly criticised the Modi-led Union government, highlighting its alleged failure in all sectors and contending that the country had not experienced substantial development during Modi's nine-year tenure. Former Chief Minister of Maharashtra, Uddhav

Thackeray, expressed solidarity among parties with "different ideologies", emphasising their united aim to "save our country, which is our family". Congress leader Rahul Gandhi framed the opposition's battle against the BJP as a "fight between two ideas of India". He stressed the alliance's commitment to defend the Constitution, the voice of the people, and the idea of India itself. The dais hosted other prominent leaders, including Siddaramaiah and Hemant Soren, the Chief Ministers of Karnataka and Jharkhand, respectively. Among them were NCP leader Sharad Pawar, as well as Sitaram Yechury and D. Raja of the Left parties. Bihar Chief Minister Nitish Kumar and RJD leader Lalu Prasad Yadav had participated in the discussions but left before the press conference began. Notably, Bengaluru-based journalists recalled the city's historical significance in shaping political narratives with national repercussions. Past events, such as the 1969 split in the Congress and the 1971 gathering of opposition leaders opposing Indira Gandhi, were discussed. Additionally, Bengaluru played a pivotal role during the Emergency years of 1975-77, with prominent opposition leaders, including Atal Bihari Vajpayee, being incarcerated and later playing essential roles in the Janata Party-led government. With the I.N.D.I.A. poised to challenge the NDA in the upcoming Lok Sabha election, the stage is set for an epic political showdown in 2024.[9]

In the dynamic landscape of Indian politics, the NDA has been a significant player, witnessing changes that have shaped its fortunes and defined its future trajectory. As a coalition of diverse political parties, the NDA has experienced both triumphs and challenges, reflecting the complexities of the Indian political scenario. One key aspect of the NDA's success lies in its ability to forge alliances with regional parties, leveraging their support to create a formidable electoral force. The coalition's initial victories can be attributed to a cohesive narrative that resonated with a broad spectrum of voters. The focus on economic development, national security, and inclusive governance played a pivotal role in the NDA's electoral triumphs. However, political landscapes are inherently volatile, and the NDA has encountered shifts that have influenced its electoral prospects. Internal dissensions within partner parties, policy disagreements, or changing public sentiment can alter the coalition dynamics. Navigating these challenges requires adept leadership and a commitment to address the evolving needs of the electorate. The future of the NDA hinges on its adaptability to changing socio-political realities. As India undergoes economic transformations and social shifts, the coalition must recalibrate its agenda to remain relevant. Issues such as job creation, agrarian reforms, and environmental sustainability have gained prominence, demanding the NDA's attention for sustained electoral

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[9] *Supra* note 6.

success. The coalition's stance on sensitive topics, such as identity politics and religious harmony, also plays a crucial role in determining its future. Striking a balance that appeals to a diverse electorate while maintaining ideological coherence is a delicate task. The NDA's ability to manage this balancing act will shape its image and determine its resonance with voters across the country. Furthermore, the NDA's engagement with emerging political forces and youth demographics will be pivotal. Adapting to the digital era and effectively utilising social media for communication and outreach can enhance the coalition's appeal among younger voters. A proactive approach to addressing the concerns of this demographic is essential for the NDA to secure its future in Indian politics. Coalition politics inherently involves negotiations and compromises. The NDA must navigate the intricacies of coalition governance, ensuring that the diverse interests of its partner parties are accommodated while maintaining a cohesive policy framework. Striking this delicate balance is essential for the coalition's stability and longevity. Regional dynamics also play a significant role in the NDA's electoral calculus. Understanding and respecting the aspirations of different states within the coalition is crucial for maintaining a united front. Effective coordination and communication among alliance partners are imperative to avoid fissures that could weaken the NDA's electoral prospects. The NDA in Indian politics has witnessed fluctuations in its fortunes, shaped by internal and external factors. Adapting to changing circumstances, addressing the evolving needs of the electorate, and maintaining a cohesive coalition are imperative for the NDA's sustained success. The future of the coalition rests on its ability to navigate challenges, resonate with diverse voter segments, and effectively address the complex socio-political landscape of India.[10]

CONCLUSION - A REALISTIC PREDICTION

The trajectory of I.N.D.I.A. in Indian politics is not exactly new, but it has been decades since such a phenomenon was visible in national politics. It can be said that history is about to repeat itself - only time will tell if it is repeated or not. The history we are talking about here is the famous win of the Janata Party in 1977, toppling Indira Gandhi's Congress, which had been in power for thirty years since independence. The Janata Party was composed of varying political parties – these parties united to contest elections because they had one common enemy. As adequately termed by Ram Manohar Lohia, there was a need for 'non-congresses', and the manifestation of that was visible in the formation of the Janata Party. The arbitrary excesses of Indira Gandhi during the Emergency Period were traumatic enough for these varying political parties to unite, garner majority support and topple the ruling government to create history. It

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[10] *Supra* note 6.

was the first time that a non-Congress government had come to power at the centre.

Shockingly, however, Indira Gandhi came back to power in 1980. The Janata Party government has shown internal cracks ever since it came to power. The internal quarrels for positions of power between the leaders of the coalition members ultimately led to the fall of the government. The only reason they remained united pre-elections was because they had a common aim, but post-elections, such considerations did not exist anymore; all that mattered was to capture the positions of power and satisfy individual egos. Looking from the perspective of the rise and fall of the Janatta Party government in 1977, the I.N.D.I.A. seems to have a similar origin and background conditions.

Like the Janata Party, the I.N.D.I.A. coalition has been formed in order to topple a well-established and powerful ruling government – the BJP, just like the Indira's Congress in 1977. The coalition members of the I.N.D.I.A., like the Janata Party, have nothing in common. Most importantly, they differ in ideology, too. Some of the coalition members, like the INC and TMC, have been battling against one another in State elections for decades. Such recent histories of rivalry in both national and state elections may ultimately lead to a tussle of power, which may derail the election ambitions of I.N.D.I.A. even before the elections are held. Even if the alliance secures a win, one may be right to assume that a battle over the Prime Ministerial spot or other important ministerial positions may lead to I.N.D.I.A. to a similar fate to that of the Janata Party. Most importantly, it is an ideology that binds a party together - but with such ideological variations, I.N.D.I.A. lacks the key element that might bind a party together, which had been formed for such narrow interests to begin with.

SOCIO-ECONOMIC CHALLENGES POST COVID-19 PANDEMIC AND OPPORTUNITIES FOR SUSTAINABLE DEVELOPMENT IN INDIA

- Dr. Rajwinder Kaur *

Abstract

The COVID-19 pandemic has affected the socio-economic life of people across the globe. Many other pandemics happened in the world in the past, too, and have impacted the world in terms of socio-economic growth. Due to this unpredictable COVID-19 pandemic, the growth of each and every sector of the economy is hampered. Therefore, the pandemic makes humans learn and experience so many new things. It has provided many challenges and opportunities to the economy and people. In every sector of the economy, people have changed their work styles and lifestyles. So, the post-pandemic situation will also not be easy for the economy and people. So, the study is an attempt to explore the new challenges and opportunities for people in the post-pandemic situation of COVID-19. For the study, primary and secondary, both types of data are used in order to fulfil research objectives. The study results highlight the socio-economic challenges post-COVID-19 pandemic and opportunities for sustainable development in India.

Keywords: Challenges, COVID-19, Economy, India, Opportunities, Pandemic, Sustainable Development.

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INTRODUCTION

At the end of the year 2019, the coronavirus disease was identified in the Wuhan state of China. The first case of this disease was identified on 31st December 2020 by the country office of WHO in China. The initial symptoms of this pandemic are high fever, cough, tiredness and problems breathing. Later, this disease was announced as a pandemic by WHO, and it has infected many countries. The preventive measures for the disease include washing or sanitising hands frequently, avoiding gatherings, maintaining distance from people and covering face when anyone is sneezing or coughing (www.who.int). The outbreak of the pandemic has changed the way human life is. The crisis has not only impacted human life but also has long-term impacts on economies, societies and countries.

Indian economy is also getting disrupted due to this pandemic. Due to an extended lockdown announced on 14 April, many manufacturing and production units are closed to contain the virus. This will become a major cause of GDP decline in the future. It is expected that in 2021, the Indian economy will see a growth rate of only 2%, as predicted by ICRA (www.news18.com). COVID-19 has come as a shock to society, health systems, economies, and governments around the world, despite the fact that a global pandemic has been a looming threat for decades. Leaders are under pressure to make decisions about how to manage the pandemic's immediate effect and repercussions, decisions that will shape the world for years to come in the face of unprecedented difficulties and uncertainty, as well as countless personal tragedies (www.greengrowthknowledge.org).

In so many cases, the COVID-19 pandemic has turned our lives upside down. Our everyday lives have been fully overhauled, from lockdowns to social distancing to working from home. India, too, needs to incentivise its businesses to take advantage of the opportunities, both in terms of design and manufacturing. In the short term, however, a smooth transition may be difficult. There is a silver lining in the long run: the Indian telecom and electronics industry may undergo a significant transformation. With China's position in the supply chain diminishing, India now has a unique opportunity to change the industry.

The crises' long-term effects are immense. Despite the latest announcement of vaccines, nothing is understood about how the pandemic will spread in the short and medium term, as well as its long-term implications. What is obvious, however, is that the time has come for policy reform and improvement. The hope is that, in the medium term, decision-makers will be able to meet the challenge.

LITERATURE REVIEW

COVID-19 was one of the most unpredictable situations in all countries across the world. It has changed the entire structure of the economy, the living style of people, etc. Many researchers have worked on the phenomenon and impacts of COVID-19 on the economy and economic sectors. The pandemic is majorly related to 4 aspects, namely: environment, socioeconomic status, governance & management and urban structure & transportation (Sharifi and Garmsir, 2020).

The future after COVID-19 can be predicted with new innovation, creativity, connections and new sustainability. It will enable businesses to recover from losses and generate new more opportunities (Rowan and Galanakis, 2020). No doubt the pandemic has created a lot of mess in human life. On the positive side, it has created many opportunities, such as recognising the need for a good health system and healthcare facilities (Golechha, 2020). The pandemic has given many learning measures, and it has transformed many ways to change things. This can be considered as an opportunity for policymakers to revise and make reforms for the betterment (Kedia, Pandey and Sinha, 2020).

Every coin always has two sides; likewise, COVID-19 has both opportunities as well as challenges. These opportunities are exploiting and mitigating the risk of crisis and proposing a proper framework. For the coming crisis it is highly recommended that humans should see the possible solutions (Buheji and Ahmed, 2020). People not only have the risk of disease, but the pandemic is affecting their psychological and mental health. The interpersonal relationships of people are affected. Even they are not able to meet with each other for a long. Human interactions are now mediated in new ways, such as through empathy, association, and sociology (Saladino, Algeri and Auriemma, 2020). The pandemic has had many social, economic, mental and financial impacts on people at the global level (Bhattacharya, 2020).

Lockdown has disrupted human life badly in each and every perspective. This led to the cancellation of important meetings, schedules, programs, etc. This is not restricted to this, but it has also created a big disruption in global research projects. Every activity in the economy got delayed. All the delays in economic and non-economic activities have had a big impact on the sustainable development of economies (Filho, Azul et al., 2021; Mohammed, Mustapha et al., 2021). In the economy, some sectors are badly impacted, and their progress is impacted badly. However, in contrast to this, the demand for medical supplies and food supplies has significantly

shot up. However, the pandemic is also not free from certain challenges and opportunities in every field (Nicola, Alsafi et al., 2020).

During the pandemic, almost everyone and every sector experienced bad things. A lot of negativity badly impacted the people. Many researchers proposed research topics for further studies as the area is new to people, and people need awareness regarding everything (Tang, Paleologos, Vitone et al., 2020). The post-pandemic scenario will not be free from challenges. It will move towards sustainability in the economy and return to the business positions as usual (Morea, 2020).

Research Gaps

The present study is very important in terms of exploring the socioeconomic challenges and opportunities post-pandemic period. By studying the literature review, it is observed that there is no such study that talks about the socio-economic challenges and opportunities of the COVID-19 post-pandemic period. No doubt, many researchers have explored the challenges and opportunities during the pandemic period. Some of the researchers have explored the impacts of a pandemic on different-different aspects of the economy, health and lifestyle of people. But the present study is different from all the previous studies and original contribution to the field.

OBJECTIVES OF THE STUDY

The study is fulfilling the following objectives:

- To explore various socio-economic opportunities post-COVID-19 situation for sustainable development in India.
- To explore various socio-economic challenges post-COVID-19 situation.

RESEARCH METHODOLOGY

For the study, both primary and secondary data were used. The study is basically a descriptive type of study. It explores various socio-economic opportunities and challenges in the post-COVID-19 situation.

The interview method is used to collect data for primary data collection. In the interview method, respondents are asked specific questions. These respondents included 5 people from the industry, 5 people from academics, and 5 randomly educated people. These people are selected based on

the convenience of the researcher, and the interviews are conducted through telephone and face-to-face methods.

Following are some of the questions asked by respondents for the fulfilment of research objectives:

Q1: How do you see a post-pandemic scenario?

Q2: What are the possible socio-economic opportunities you see post-COVID-19 situation?

Q3: What are the possible socio-economic challenges you see in the post-COVID-19 situation?

For the study's secondary type of data, data is collected from various resources such as journals, websites, reports, articles etc. The secondary data is collected from authenticated and reliable sources. The databases used for secondary data include Google Scholar, Research Gate, Science Direct, SSRN, etc.

DISCUSSION AND RESULTS

The sector is going to talk about socio-economic opportunities post-COVID-19 situation for sustainable development in India:

- More Technological Advancements: In the future, there will be a great opportunity for more technological things. People have recognised the importance of technology, and they feel comfortable with the technology. It is predicted that technological advancements will have more opportunities in the economies. In business organisations, there will be a great need for technical aspects.

- Proper Model for Communication: The communication model is essential to create or build a strong combination with people sitting far away. Post-pandemic, people will recognise how much the communication model is important for future uncertainties where it is not possible for people to connect closely.

- Recognise the importance of World Harmony: COVID has taught people that any uncertainty can be solved together with everyone. People find it an opportunity to connect with other people. The world's harmony and peace are also essential in the period of such crises.

- Recognize the need for a better Health System: Now, the government of every country has recognized the importance of a good health system in the country. It is a big opportunity for the government to improve the country's health and medical system. With the improvement of the health and medical system, people will automatically contribute to building a better nation for medical students. Also, it's a great opportunity to get jobs for the vacant positions in hospitals.

- Research in every field: There are a lot of opportunities in research. In every field, research is more important for continued improvement and growth. In every field, research has great potential. Good and meaningful research provides direction to economists and policymakers to cope with the challenges and bad impacts of such pandemics.

- More opportunities for Artificial Intelligence: In future or post-pandemic situations, there are more opportunities in the field of artificial intelligence. Artificial intelligence will be in high demand. During the period of pandemic everyone has recognised the need and importance of artificial intelligence so job related to this field will be more.

- More demand for Digital Technology: Digital technology played a great role during the pandemic. Without the help of digital technology, work during the pandemic was not at all possible. People work from home just because of digital technology. Therefore, in the future, due to the convenience of digital technology, it will also be in high demand. People are habitual in using digital technology, so related to it will be more in future.

- Opportunities in Entrepreneurship Business (Self Reliant): Post-pandemic situation, there is more possibility to explore in terms of entrepreneurship business. People will go towards the option of self-reliance because the government is also supporting this aspect. On the other hand, entrepreneurship business and self-reliant opportunities have more recognition and growth in terms of other things.

- Opportunities in Make in India: Self-independent of any country or economy is the most essential thing. Government initiative of make in India will be faster encouraged as there will be hesitation to import things from the country like China. Government will encourage people to work more and more towards this initiative. It will not only serve the economy but also contribute to economic growth in terms of high output.

- Reconnect and Trade of Countries: After the COVID-19 situation, economies have had opportunities to reconnect and trade with other countries. However, there will be more transparency in transactions and trade. By reconnecting with other economies, there would be more opportunities to move forward and recover the economy.

The sector is going to talk about the socio-economic challenges post-COVID-19 situation:

- New Normal will be difficult: No doubt the new normal will not be easy for people. It will create lots of social, physical, emotional and economic challenges for people. People are working from home, and after the situation, they will find it difficult to move to the office. Many other challenges will be there for people at the time of moving from a pandemic situation to a safe situation.

- Recovery of Losses: Post-pandemic situation, recovery of losses will be difficult. It will take time to streamline the processes and systems back to normal situations. In every sector, recovery of losses will take time until the situation gets back to normal, and demand for all goods and services will get back to the previous situation.

- Disrupted Economic Activities: Disrupted economic activities are a big challenge for economies. There are many fluctuations in the trade, stock market and other aspects of the economy, which are really not good for the economic and social growth of people. These activities will be back to normal situations only when the situation is normal.

- Fear of Social Gatherings: After the pandemic situation also, people will have a fear of social gatherings. They feel challenged and always face hygiene problems. Social gatherings of people may create difficult situations for the safety of people.

- Challenges to Run Business at an existing pace: As every business activity is disturbed by the unpredictable shock of the pandemic, businesses will face challenges in running their business activities at the existing pace. Conducting fair and smooth business activities requires a lot of effort.

- Unemployment Challenges: As people and organisations have recognised the importance of artificial intelligence and digital technology, there will be great risks to human jobs due to such things. Some of the existing jobs where artificial intelligence and digital technology play a better role their existing jobs may be abolished. All this process, due to lack of human involvement, will create more unemployment challenges.

- Financial Constraints to Economy as well as to People: Every sector, every person and every industry is facing the challenges of finances and it will continue till the tome when everything gets back to the normal business environment. Lack of finances creates a lack of demand, which ultimately disturbs the whole circle of the money system.

- More Hurdles in Sustainable Development: Because of many economic, social, and financial challenges, the sustainable development of every country is affected. Hurdles in

sustainable development contribute to a lack of economic growth and economic empowerment, etc.

CONCLUSION

The study concludes that no doubt, the unpredictable situation of the pandemic has brought many challenges and opportunities for people as well as for economies. But post pandemic situation or new normal will not be free from challenges and opportunities. Many new things will be there to happen, which will experience at the time of post-pandemic situation. Every economy is facing challenges and trying its level best to recover & handle the effects of crises. The future is unpredictable, but it is sure that the COVID situation will bring new opportunities and challenges for people.

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A SOCIO-LEGAL ANALYSIS OF *SATI* PRATHA WITH SPECIAL REFERENCE TO THE VIOLATION OF THE RIGHT TO LIVE

-     Dr. Rachna Sharma[*] & Jashandeep Kaur [**]

Abstract

The practice of Sati, rooted in ancient Hindu traditions, has long been a contentious issue in Indian society, reflecting deep-seated patriarchal attitudes and gender-based violence. While initially perceived as an act of devotion, Sati became increasingly institutionalised, denying widows the choice to live independent lives. The prohibition of Sati marked a significant milestone in Indian history, with legislative reforms and social movements challenging entrenched customs and promoting women's rights; despite legal measures such as the Commission of Sati (Prevention) Act, 1987, challenges persist, as evidenced by recent incidents of coercion and pressure on women to perform Sati. However, efforts by Human Rights activists and women's movements have contributed to raising awareness and fostering consciousness against this heinous practice. Yet, the abolition of Sati did not eradicate all forms of gender-based discrimination and violence, highlighting the ongoing struggle for gender equality in Indian society. Undoubtedly, Legislative measures and initiatives promoting women's education and empowerment have made strides. However, challenges remain in addressing entrenched gender norms and ensuring equal opportunities for women. The fight for women's rights in India still continues. In this paper, the researchers have tried to focus on how the prohibition of Sati represents a significant milestone in Indian history, thereby symbolising the triumph of Human rights over entrenched traditions of oppression and subjugation. The researchers have also tried to focus on the question of how the legacy of Sati serves as a significant reminder of continued efforts to promote gender equality and foster a just and equitable society for all.

Keywords: Sati, Patriarchy, Sati Abolition, Discrimination, Violence, Human Rights, Women Empowerment

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INTRODUCTION

Throughout the annals of Indian history, the status and treatment of women have undergone significant transformation, reflecting a complex interplay of cultural, social, and legal factors. Amongst the most contentious and tragic practices associated with the subjugation of women is the evil practice of *Sati*, a custom in which widows immolated themselves on their husband's funeral pyre. While *Sati* has deep roots in Ancient Indian traditions, its prohibition under the law marked a pivotal movement in the struggle for women's rights and the evolution of Indian society.

Sati, derived from the Sanskrit word "*sat*," meaning virtuous, was initially perceived as an act of devotion and fidelity. Its origins can be traced back to Hindu mythology, where it is sometimes portrayed as a voluntary act of sacrifice by virtuous wives. Over the period of time, however, *Sati* became increasingly institutionalised, particularly amongst the aristocracy, where it was often seen as a demonstration of a woman's commitment to her husband and as a means of preserving her honour.

In South Asian countries, including India, women have been frequently mistreated. Infanticide, child marriage, raping of women from low social classes, honour killings, dowry murders, and temple prostitution (*Devadasis*) have all been prevalent in the society since times immemorial[1]. In a country like India, women are considered to be the honour of the family. The practice of *Sati* was started as a means to protect their honour. The Indian society is a patriarchal society wherein men hold a dominant position. The practice of *Sati* was promoted by men to have control over women. As recorded in history, women in India were nothing more than tools for males to use. Men believed the ritual of *Sati* to be logical because, without the presence of men, women would not exist in society[2].

Women were considered to be a burden on society[3]. They were not allowed to study or work outside their homes. They were denied access to all significant aspects of social and economic spheres. There was a prevalence of child marriage in society. Women did not have any freedom, and they were exploited in the patriarchal society. Even today, a wife is considered to be an extension of her spouse and is required to either stay chaste throughout her life or follow her

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husband until death in some cultures. The widower was permitted to remarry as often as he desired. However, the widow was not permitted to do so. Even in modern times, the practice of a widow remarriage is prohibited, and regardless of her age, it is difficult for her to remarry[4]. Violence against women, particularly sexual and gender-based violence, disproportionately affects these vulnerable groups. Such violence is either the outcome of the violent nature of males towards women or emanates from the perpetrator's feeling of entitlement, superiority, misogyny, or other attitudes of a like nature[5].

Such type of violence resulted in various social practices that were not only discriminating against women but were also inhumane. One Such practice was the *Sati Pratha*. In the *Sati pratha* (tradition), a widow was burnt alive along with her dead husband. Hindus have long held *Sati* in high regard and few conservatives still do it in present times[6]. The practice of *Sati* has been a part of Indian society for ages, with its inception traced back to the time of the Gupta period. Over the passage of time, *Sati* became obligatory. Women who did not want to end their marriages and die in this way were forced to shave their heads, sleep on the ground, do hard labour work, wear a simple saree, take off their jewels, etc.[7] According to those who supported the *Sati* ritual, it elevated the widow to the status of a goddess, thereby recognising the power of women. Women have the chance to excel in society by performing *Sati*[8]. Given that her devotion would turn her into a *Sati* goddess, the question of whether or not *Sati* is a good wife remains. Does she merit veneration as a goddess? Or is the financial gain the only thing that matters for the family and the community?

In the present society, we talk about equality and equal rights of men and women. Various laws in India have been made to promote equality in the country and to stop the evil practices of the past. Modern India has seen significant changes in the status of women. She holds a social, economic, educational, political, and legal position that is at par with that of males in contemporary Indian society. *Sati*, child marriage, and the practice of shrine prostitution have somewhat diminished from their former levels of prevalence. The evolving status of women in the framework of society's transformation at a time when most people are still coming to terms

[4] Pramila Dandvate; Ranjana Kumari and Jamila Verghese, *Widows, Abandoned and Destitute Women in India*, New Delhi: Radiant Publishers, 1989

[5] Arya, Sunaina. "Theorising Gender in South Asia: Dalit Feminist Perspective." *CASTE: A Global Journal on Social Exclusion*, vol. 1, no. 2, 2020, pp. xi–xxiv. *JSTOR*, https://www.jstor.org/stable/48643560. Accessed 29 Aug. 2023

[6] Ahmad, "Sati Tradition - Widow Burning in India: A Socio-Legal Examination," 6.

[7] Nehaluddin Ahmad, "Sati Tradition - Widow Burning in India: A Socio-Legal Examination," Web J Curr Legal 29, 2009.

[8] Dell, David. "THE SATI THEME." *Journal of South Asian Literature*, vol. 12, no. 3/4, 1977, pp. 55–65. *JSTOR*, http://www.jstor.org/stable/40872154. Accessed 29 Aug. 2023.

with changes happening in all areas of life. The old joint family structure is in trouble in the rapidly modernising Indian society, and there are more single women, including widows and divorcees in both urban and rural areas. Despite the fact that women in contemporary society are treated equally to males, they do not demand such rights. Women enjoy the same rights as men. However, these rights are only found in writing rather than in practice.

The evil practice of *Sati* was practised in Ancient India according to various existing religious traditions. The origin of *Sati* is attributed to the subordination of women in the patriarchal society. Besides, there were other factors that interacted with significant factors like bride trade, bride pricing, and the problem of inheritance. In the patriarchal society, the woman is expected to move to the house of the husband, and there, she is treated as an alien or a stranger and is debarred from having the claim of inheriting the property of the husband.

Women were considered commodities, and they had no role to play other than serving their husbands and giving birth to a son. After the death of the husband, the condition of the woman becomes miserable. Moreover, to protect the honour of the family, as argued in favour of the *Sati*, this practice was considered valid. Furthermore, the important reason for this practice could be that it demonstrated control over female sexuality. As in this practice, women had to die with their husbands, but there was no such rule for the males. Thus, it demonstrated the domination of males over females.[9] Perhaps it became more acceptable in the patriarchal society to continue with this practice. It was considered that the main job of the woman was to serve her husband. In traditional religious texts, it was mentioned as *Stridharma*.

According to Hindu Law, *Stridharma* was the duty assigned to the woman and was considered her *Dharma*. Here, *Dharma* stands for a woman's duty, responsibility, or specifically moral responsibility. *Stridharma* for women is devotion to one's spouse; a woman's husband is compared to God; in fact, the Sanskrit word for "husband" (*Swami*) literally translates to "Lord and Master." The word "husband" (*Pati*) itself means both "husband" and "lord;" therefore, in a sense, he is her "lord." Once her spouse passes away, she continues to be devoted to him and passes away alongside him, which is known as *Sativarata*, or after-death devotion[10]. She is elevated to a higher plane by her devotion and perfection, elevating her to the status of a goddess. According to Hindu mythology, "the Wife has to live for her husband and remain chaste during

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[9] Thapar Romila, "*The past as present: Forging Contemporary Identities through History*" Aleph book Company, 2014, pg. 278-292

[10] Narasimhan Sakuntala*, Sati- A Study of Widow Burning in India*, 1st Ed., Viking New Delhi, 1990

her lifetime". Due to such beliefs, it was believed that it was the wife's *Dharma* to live with her husband and to die along with him.

The Brahmanical books contain references to Sati's evil practice. We have no concrete idea about the exact time and place of how, when, and where it started. This practice has a few references about it in historical and religious texts. The earliest hints of these rituals are found in the *Vedas*. The *Rigveda* mentions a practice similar to *Sati*, known as *Niyoga.* Thus, a different practice was mentioned in *Rigveda,* which is contrary to Sati's practice. In this system, the widow lays down with the husband in the pyre, and the relative or the brother of the husband raises her from the pyre and marries her. The widow was allowed to marry her husband's brother. Later on, various texts and societal acts changed this practice and started the practice of *Sati,* which was inhumane and subjugated women. It was predominantly practised by the upper-caste Hindus. Historical texts such as *Dharamshastras, Manusmriti*, etc., have given a very low status to women, and she was not given any individual identity. Thus, the practice of *Sati* was justified by the people using such arguments.

The other important reasons for the prevalence of the *Sati* practice could be illiteracy amongst women, suppression of women by male counterparts, and lack of freedom to work and earn. Thus, the women were dependent on someone even for their basic needs. After the death of the husband, the widow was considered a burden on the family as she did not contribute to the family income and was represented as a drain on the family's income. She was not given any share of her husband's property. There was no individuality of the women. She was considered as the personal property of the husband. It was a misfortune for her to become a widow, and she was treated as an ill omen. She was a dead weight on the in-law's family. Without the husband, women were intolerable and were considered to be a burden on the family and society[11]. Therefore, the practice of *Sati* started, and the sacrifice of women or widows was given the name of tradition and a deed for religious purposes.

The practice of *Sati* was continued for economic reasons as well. Talking about the incident of Roop Kanwar, the community started having an annual fair in the name of Roop Kanwar after she performed *Sati.* The proponents of *Sati* glorified that incident and celebrate it every year. These are the significant reasons why this evil practice was so prevalent in society.

PROHIBITION OF *SATI*

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[11] Jethmalani, *Widows, Abandoned and Destitute Women*, ILHR Mar. 1991.

Sati, the practice of widows immolating themselves on their husband's funeral pyres, has long been a contentious issue in Indian society, steeped in tradition yet marred by controversy and condemnation. The prohibition of *Sati* stands as a significant milestone in Indian history, marking a decisive milestone towards the protection of women's rights and the rejection of archaic customs that perpetuated gender-based violence and inequality. Rooted in ancient Hindu scriptures and mythology, *Sati* was believed by some to be a noble act of self-sacrifice, symbolising a wife's unwavering devotion to her husband. However, over time, it became increasingly institutionalised and widespread, particularly amongst certain social classes and regions of India. Widows were often pressurised or coerced into committing *Sati and denied the choice to live independent lives following their husbands' deaths.* The practice of *Sati* drew widespread condemnation from various quarters, including social reformers, religious leaders, and colonial administrators. Critics argued that *Sati* was not only morally repugnant but also violated fundamental principles of human dignity and autonomy.

The *Sati* was initially criticised by an Arab traveller, Ibn Battuta, who, in his works, mentioned that sati was prevalent in Indian Society and was considered praiseworthy by the Hindus, and they have always made attempts to justify this practice.

Sati has been prevalent in society for a long time, but there is no simple explanation for its validity. There are different views on the emergence of this tradition, and very few references that too are scattered in various parts of the subcontinent. The *Sati* was also condemned in many societies and several important steps were taken in the past to prohibit the *Sati* practice.

The Delhi sultans initially did not interfere with local traditions, particularly the *Sati* practice. But later on, the state intervention to try and control the incidents of widow immolation began. Mohammed bin Tughlak was the first Muslim king to speak out against *Sati*, making it necessary to acquire a license before burning a widow. Humayun attempted to stop it permanently, but Hindus did not object. Akbar banned coercive *Sati* practice in his realm, stating that if a Hindu woman wanted to conduct *Sati*, she should be stopped, not coerced. Jahangir made abortion and *Sati* illegal, but some argue that the prohibition was only in writing and not rigorously enforced. Shah Jahan forbade women with children from practising *Sati* and permitted the schooling of widows' children. Aurangzeb outlawed *Sati* in his realm, but it was not completely eliminated. Many Muslim emperors attempted to save the widow through various methods, and many of those efforts were successful, saving numerous widows.

Moreover, British officials who governed India during the colonial era viewed *Sati* as a barbaric custom incompatible with their vision of modern civilisation. After the Mughal rulers, the Britishers made several attempts to ban *Sati*.[12] Britishers, along with influential Social reformers like Raja Ram Mohan Roy, took various steps to prohibit *Sati* and to punish those who were found forcing the women to perform *Sati*. The movement to abolish *Sati* gained momentum in the early nineteenth century. It was fuelled by a growing chorus of voices demanding legislative action to end the practice. On 4 December 1829, Lord William Bentinck passed the *Sati Regulation Act*. The regulation was clear, concise and unequivocal in its condemnation of *Sati*, declaring it illegal and punishable by the criminal courts. The *Sati* Regulation not only criminalised the act of *Sati* but also imposed penalties on those who abetted or encouraged it, including family members, priests, zamindars, and bystanders. Additionally, the regulation empowered colonial authorities to intervene in cases where *Sati* was attempted or planned, thereby providing a legal framework for the protection of vulnerable widows.

Many social reformers, including Raja Ram Mohan Roy, have done considerably important work to introduce reforms in society. The abolition of *Sati* and the promotion of widow remarriage were made possible by the indefatigable efforts of such reformers. Roy has cited a few excerpts and verses from the *Bhagavad Gita* that argue against the *Sati* practice. Roy's most important and basic argument in support of the abolition of such inhumane acts was the doctrine of desired actions or *Niskama karma,* as mentioned in the *Gita*. He argued that the goal of heaven sought by an act of *sati* was an inferior end to that of salvation, to which women were fully entitled. Thus, he relied upon *Bhagavad Gita* to justify his arguments against Sati's evil practice.[13]

The prohibition of *Sati* was met with mixed reactions in Indian society, with some communities resisting the colonial imposition of Western values and interference in traditional customs. However, the abolition of *Sati* was ultimately embraced as a progressive step towards gender equality and the promotion of women's rights. Subsequent legislative reforms and social movements further strengthened legal protection for women and challenged entrenched patriarchal attitudes.

Despite the prohibition of *Sati*, challenges remain in combating other forms of gender-based violence and discrimination in India. Deep-seated cultural norms and socioeconomic disparities

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[12] Antoinette Burton, Lata Mani. *Contentious Traditions: The Debate on* Sati *in Colonial India.* Berkeley and Los Angeles: University of California Press. 1998. *The American Historical Review*, Volume 104, Issue 4, October 1999, Pages 1281–1282, https://doi.org/10.1086/ahr/104.4.1281

[13] Sharma, Arvind, *Sati: Historical and Phenomenological Essays.* New Delhi: Motilal Banarsidass Publ. 1988

continue to marginalise women and restrict their access to education, healthcare, and economic opportunities.[14] Moreover, the legacy of *sati* persists in certain pockets of society, underscoring the ongoing struggle to eradicate harmful practices and promote gender justice.

Precisely we can say that the prohibition of *sati* represents a watershed moment in Indian history. It symbolises the triumph of human rights over entrenched traditions of oppression and subjugation. While the abolition of *Sati* was a significant achievement, it also serves as a reminder of the ongoing battle for gender equality and the need for continued efforts to address systemic injustices and empower women in all spheres of life.

THE COMMISSION OF SATI (PREVENTION) ACT, 1987

This Act substituted all the other laws that were prevalent at that time. This, being a central legislation, was applicable throughout India. This act made *Sati* an illegal act and a criminal offence. This act not only prohibited the commission of the *Sati* but also made its glorification a criminal offence. There are provisions in the act that clearly mention that the commission of *Sati*, or its glorification in any kind for any purpose, is a criminal offence. Moreover, it will be considered equivalent to murder and abetment to murder. Anyone who is found doing such an act will be punished with death penalty or life imprisonment. The person found committing *Sati* herself will be considered as committing suicide and will be given imprisonment of one year or a fine or both. Glorification of *Sati* is also a crime, and the penalty for the same has also been mentioned in the act. Under the act, it was ordered to demolish the temples dedicated to the practice of *Sati* or the women who committed S*ati*. The penalty for glorification of *Sati* is imprisonment from 1 to 7 years, a fine of Rs. 5,000- to Rs. 30000, and the confiscation of all assets collected in the name of *Sati*.

According to this act, all the cases are to be decided without delay and these cases are expected to be referred to the special courts, equivalent to that of the Session courts. The burden of proof lies on the accused as per the act.

The enactment of the act was a significant step taken by the government, but the law was not strictly implemented. Even after twenty years of the enactment of the law for the *Sati* prevention, the government had not made any amendments in the law, and the law was not implemented properly. Thus, we see that mere enactment of law was not enough, and it required the sincere efforts of the government to implement it.

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[14] Sarkar Sumit, Sarkar Tunika, *Women & Social Reform in Modern India: A Reader,* Indiana University Press, 2008

CURRENT SCENARIO

The nineteenth century saw the abolition of *Sati* under Colonial rule. The practice of *Sati* was outlawed in 1829 by a British official named William Bentick, and by 1862, the British had compelled the princes of India to stop practising it[15]. According to the present Indian penal law, *Sati* is a crime, and anyone caught performing it faces an automatic life sentence in prison. Nevertheless, the practice persisted, and each year, many instances went unreported[16]. *Sati* was encouraged amongst some significant Hindu castes or groups till the end of the twentieth century, even after it had been made illegal.

Talking about Roop Kanwar, who was only eighteen years old and was married to a man from the northern Indian village of Deorala in Rajasthan. Her husband passed away while he was being treated at a hospital. While her in-laws were preparing for the funeral, she knew that she would be burned along with her husband's dead body, thus she tried to flee. Unfortunately, her husband's family discovered her, and she was burnt to death. On that day, around 1.30 pm, she screamed and attempted to flee, but the men gathered around the funeral pyre stopped her and threw her back into the fire to burn to death.[17]

The perpetrators of Roop Kanwar were arrested by police for their acts. However, Roop Kanwar was elevated to a deity and a temple was constructed in her honour by the people of the locality. There is an alternative account of this tale, told by her husband's relatives and villagers. This version claims that the wife quietly prayed after learning about her husband's demise and declared her intention to offer herself as a sacrifice on her husband's funeral pyre. According to the witnesses, she was endowed with a supernatural power known as *Sati* in Hinduism, which is only granted to selected widows. Some family members calmly accepted her choice to sacrifice herself, while others tried to stop her. She was sitting on her husband's funeral pyre in her wedding gown, holding his head in her lap. According to the witnesses, she suddenly possessed the supernatural ability known as *Sat*, and when she raised her palm, the fire started itself[18]. When the flames gradually enveloped her body, she had a serene expression on her face[19]. Some observers even asserted that their illnesses had been cured simply by virtue of their proximity to the funeral and their observation of this paranormal power. The facts stay the same despite the fact that

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[15] Fisch, "*Dying for the Dead: Sati in Universal Context,*" 294.

[16] Jörg Fisch, "*Sati and the Task of the Historian,*" Journal of World History 18, No. 3 (2007): 361.

[17] Hardgrove, Anne. "Sati Worship and Marwari Public Identity in India." *The Journal of Asian Studies*, vol. 58, no. 3, 1999, pp. 723–52. *JSTOR*, https://doi.org/10.2307/2659117. Accessed 24 Mar. 2024.

[18] The Pioneer (a national English newspaper) "Sati Killers acquitted", (dated 13-10-1996) published in the Lucknow, India, p.3.

[19] Bushaw, "*Suicide or Sacrifice? An Examination of the Sati Ritual in India,*" 1.

these two stories are about very different incidents; the only distinction is how the incidents were handled[20].

In Chhattisgarh, India, a lady who was 71 years old sacrificed herself by performing *Sati* on 13 October, 2008. The witness said she went to her husband's funeral while wearing a new outfit. She jumped into her husband's funeral pyre and died along with him when the corpse was nearly burned and the villagers were prepared to depart. Many people were horrified by this act because it was carried out in the twenty-first century despite being against the law and prohibited by Indian law[21]. This occurrence serves as an illustration of the possibility of such tragic events in rural India. This event was only reported, and there are many more unreported *Sati* incidents throughout India that go unnoticed even in the twenty-first century. Another instance involved Kuttu Bai (65), who died in the state of Madhya Pradesh in 2002; Vidyawati (35); and Janakrani (40); who died in the state of Uttar Pradesh in 2006[22] and many more cases which went unreported in India every year. There are various laws in India that are made to prevent crime against women still these crimes exist in one form or the other. Although the last case of *sati* that was reported in India was that of Roop Kanwar and this practice is outlawed and illegal in contemporary India. However, it is still considered by some Hindus as the ultimate form of womanly devotion and sacrifice.

The sacrifice of women as *sati* is considered as devotional and many temples are built in the name of *Sati* Mata. The women who have performed *sati* are worshipped at many places. An estimated 400,000 pilgrims flocked to Deorala to honour the *mahasati*, Roop Kanwar, according to estimates in the newspapers.[23] Deorala had developed into a revered hub where the self-immolation of a wife who was utterly committed to her husband was the manifestation of heavenly reality. In the pious pilgrims' religious imagination, Roop was a goddess who realized her husband's well-being in the hereafter through her power (*Sakti*), which materialized in her magnificent deed and safeguarded him by her selfless gesture.

Currently, there is no consensus on the legality of *sati* (widow burning; formerly called "*suttee*") worship and praise in India. Following the murder of a young Rajput woman named Roop

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[20] Ahmad, "Sati Tradition - Widow Burning in India: A Socio-Legal Examination," 4.
[21] *Supra* note 19.
[22] *Supra* note 20.
[23] Hawley, John S. *Sati, the Blessing and the Curse: The Burning of Wives in India.* New York: Oxford University Press, 1994. Internet resource.

Kanwar in 1987, the practice of worshipping *sati* was outlawed after several years of dispute.[24] At that point, the colonial rule outlawing widow immolation was amended by the Indian government to include *sati* glorification. As a result, events, processions, and ceremonies honouring any past perpetrator of *sati* were prohibited. In addition, the law forbade the establishment of trusts or fundraising initiatives intended to honour these individuals.[25]

We must understand that the tradition of *sati* in India is indeed complex. With the enactment of the central legislation, the incidents of *sati* in India have almost ceased, except for one or two stray incidents. It has been observed that such incidents occur because of certain primordial conditions that will survive in some parts of the country where the light of literacy and education has not penetrated deeply enough in society. Moreover, superstition and primitive social pressure still exist in certain pockets of the country. This problem can be handled by taking the assistance of electronic and print media to create consciousness amongst people. It would not only restore women's dignity but would also provide impetus to the empowerment of women. It is the need of the hour to awaken the people from deep slumber. Undoubtedly, literacy amongst women is an important step in ensuring equality among women and putting an end to social evils against women.

CONCLUSION

The *Commission of Sati (Prevention) Act, 1987,* was revised by the government with the goal of tightening its requirements in a recent incident of May 2023 where a 28-year-old computer engineer committed suicide after the continuous pressure from the in-laws' family to become *Sati.* They have harassed her as, according to them, "she would have become *Sati* if she was a woman of good character".[26] We should be cautioned by this most recent incident because *Sati's* attraction is often accompanied by a strong religious sentiment and the conservative elements in the society try to prove it in their favour.

Such events would keep happening as long as these religious sentiments and primal urges still present. However, at the same time it is quite comforting to note that the human rights activists and women's movement, which is promoting the empowerment of women, is contributing to strengthen the position of women in society. We sincerely hope that with their efforts we are successful in raising awareness and fostering a consciousness against this heinous practice.

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[24] Bosch Van Den, Lourens P. "A Burning Question: Sati and Sati Temples as the Focus of Political Interest." *Numen*, vol. 37, no. 2, 1990, pp. 174–94. *JSTOR*, https://doi.org/10.2307/3269862. Accessed 24 Mar. 2024.

[25] Jacobson D., 'The Chaste Wife', *American Studies in the Anthropology of India*, Delhi, S. Vatuk (ed.), 1978

[26] TNN. "Engineer, 28, Kills Self Over Pressure to Become a Sati." *The Times of India*, 19 May 2023, timesofindia.indiatimes.com/city/ahmedabad/engineer-28-kills-self-over-pressure-to-become-a-sati/articleshow/100367315.cms.

However, the abolition of *sati* did not eradicate all forms of gender-based discrimination and violence against women in Indian society. Deep-seated patriarchal attitudes and customs persisted, perpetuating inequalities in areas such as education, property rights, and access to healthcare. Moreover, the legacy of *sati* continues to resonate in contemporary debates over women's rights and autonomy.

In recent decades, India has made significant strides in advancing women's rights through legislative measures, such as the Protection of Women from Domestic Violence Act (2005) and the Criminal Law (Amendment) Act (2013), which strengthened legal protections against gender-based violence. Additionally, initiatives promoting girls' education, economic empowerment, and political participation have contributed to greater gender equality and social inclusion.

Nevertheless, challenges remain in addressing entrenched gender norms, combating violence against women, and ensuring equal opportunities and representation in all spheres of society. The struggle for women's rights in India is an ongoing journey, shaped by the complexities of history, culture, and politics, but one that holds the promise of a more just and equitable future for all.

DISASTER MANAGEMENT ACT, 2005: A FAILED LEGISLATION

- Akansha Pandey*

Abstract

The perception management of disasters has undergone a change following the enactment of the Disaster Management Act, 2005. The Act provides institutional mechanisms like disaster management authorities at the centre and state levels to draw up and monitor the implementation of disaster management. The National Disaster Management Authority issues guidelines for the purposes of prevention and mitigation of disasters and prompt response to any disastrous situation, such as events emanating from natural and man-made causes and even those events that are caused by accident or negligence. However, certain incidents of flash floods, landslides, and pandemics show that the Act still has a long way to go. There are many challenges before the Act which shows that the Act is not serving its purpose.

Keywords: Disaster Management, Disaster Risk Reduction, Disasters, Floods, COVID-19.

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INTRODUCTION

Disasters affect all regions of the world. Though floods and storms are most widespread, while human deaths are more concentrated with the deadly droughts in Africa, storms in East and South Asia also take many lives. They are dynamic in nature with differential impacts on communities. Due to constantly changing environments, there is a need to recognise hazard and vulnerability characteristics in a more comprehensive manner. The latest report by the World Bank also recognises human suffering due to extreme hydroclimatic events.[1]

About 54 per cent of India's land area is vulnerable to earthquakes, 8.4 per cent to cyclonic wind and storm surges, and 4.9 per cent of the area is vulnerable to flood damage.[2] Diverse factors, natural and human-induced, adverse geo-climatic conditions, topographic features, environmental degradation, population growth, urbanisation, industrialisation, unscientific development practices, etc., play a huge role in accelerating the intensity and frequency of disasters resulting in huge economic losses and human causalities. These, coupled with the impact of climate change and climate variability, are accentuating disaster impacts and underscore the criticality of promoting disaster resilience and risk reduction practices. With increased socio-economic development, threats to Chemical, Biological, Radiological and Nuclear disasters[3] demand greater preparedness levels at national, state and district levels. For the past 30 years, the country has been hit by approximately 25 major disasters, including heat waves, cold waves, and heavy winds, which have affected some areas of the country. Floods, earthquakes, cyclones and hailstorms are the most frequently occurring disasters in India.[4] To control disasters and manage disasters, the Government of India enacted the Disaster Management Act in 2005.[5]

Disaster management includes an important aspect of disaster risk reduction. Since we cannot reduce the severity of natural hazards, the main opportunity for reducing risk lies in reducing vulnerability and exposure. Reducing these two components of risk requires identifying and reducing the underlying drivers of risk, which are particularly related to poor economic and urban development choices and practices, degradation of the environment, poverty and inequality and climate change, which create and exacerbate conditions of hazard, exposure &

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[1] World Bank, Report: *An Epic Response: Innovative Governance for Flood and Draught Risk Management*, 2021.
[2] Government of India, Planning Commission of India, Report: Tenth Planning Commission (2002-2007).
[3] Hereinafter to be referred as CBRN disasters.
[4] Government of India, Disaster Management in India, Ministry of Home Affairs, 2011.
[5] Hereinafter to be referred as "DM Act, 2005".

vulnerability.[6] *This approach not only helps in the identification of possible victims but also helps in dealing with loss of employment and economic, social and cultural loss. Conforming these principles, The DM Act, 2005 empowers the National Disaster Management Authority to issue guidelines regarding the management of disasters.*

The guidelines make disaster risk management a systematic process of using administrative directives, organisations, and operational skills to implement strategies and policies in order to lessen the impact of hazards and the possibility of disasters. The risks that result from disasters are large-scale voluntary migration, extreme weather events, biodiversity loss, water crises, the spread of infectious diseases, unemployment, etc. These risks are further compounded by other vulnerable variables like changing demography, unplanned urbanisation, socio-economic conditions, environmental degradation, etc. Disaster Risk Reduction measures essentially include pre-disaster and post disaster measures. Pre-disaster measures include activities like evacuation, attention to the injured, recovery and disposal of corpses, etc. Post-disaster measures include continued rescue, restoration of communication, survey, report and evaluation of damages, emergency repairs etc.[7]

Thus, disaster risk reduction (DRR) is the most prominent theme in disaster management. It is not possible to eliminate each possibility of disaster; however, with due care and proper preparation, the risks and damages from disasters can be reduced considerably as India is prone to various natural and manmade disasters. The country has faced and faced, even today, several devastating disasters, including earthquakes, tsunamis and river floods in recent years. It is to be noted that if we take up some of the latest cases of disasters after the passing of the DM Act, 2005 to consider the effectiveness of the DM Act, then these cases summarise the situation very clearly that it had been almost decade and a half since India passed a DM Act, 2005 and clearly this cannot be said the Act of 2005 facilitated effective disaster management and preparedness.

Even a CAG's performance audit of the functioning of the NDMA[8] found that despite considerable progress in setting up institutions and creating funding arrangements, there are critical gaps in the preparedness level for various disasters. The system that came into effect after the DM Act 2005 has yet to achieve its desired impact. The National Disaster Management Authority, which was conceived as the apex planning and supervising body, was found

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[6] Global Assessment Report on Disaster Risk Reduction, 2015, Making Development Sustainable: The Future of Disaster Risk Management, *available at*: https://www.preventionweb.net/english/hyogo/gar/2015/en/home/ (visited on December 4, 2020). (supra note 272)

[7] Dr. Kavita Chalakkal, "Relevance on Ecosystem Management as a Solution for Natural Disaster Risk Reduction", in S. Sivakumar, Manohar Thairani *et. al.* (eds), *Disaster Management in SAARC Countries* 50 (Mohan Law House, 2019)

[8] Government of India, *Report No. 5 of 2013 - Performance Audit of Disaster Preparedness in India of Union Government*, (Ministry of Home Affairs, 2013).

ineffective in its functioning in most of the core areas. It neither had information nor control over the progress of work at the state level nor was it proven successful in the implementation of various projects. Similarly, national guidelines on disaster preparedness and risk reduction developed by NDMA were not adopted and applied by either nodal agencies or the state governments themselves.[9]

In this context, if we take up the illustration of floods and events of landslides triggered by damming, deforestation, or exacerbated by climate change, human-induced natural disasters in several regions of India have pointed to a need for stronger environmental protection laws. The above-mentioned cases and other events where the Act failed to serve its purpose are discussed below:

FAILURE OF FLOOD MANAGEMENT

The government of India has set up various committees for the management of floods, such as Rashtriya Barh Ayog, Task Force 2004, and Working Group on Water Resources for XI Plan. The government has also framed National Water Policy 2002 and 2012 to govern the planning and development of water resources and their optimum utilisation. The reports of the above committees/policies gave certain recommendations for the management of floods in a time-bound manner. To achieve the above recommendations, schemes for flood control, viz. Flood Management Programme, Flood Forecasting, River Management Activities and Works related to Border Areas, and an Emergency Action Plan for the Dam were implemented. Key recommendations of *Rashtriya Barh Ayog, such as scientific assessment of flood-prone areas and enactment of the Flood Plain Zoning Act,* have not materialised. Performance and concurrent evaluation were not done as per scheme guidelines.[10]

It has also been found that there were huge delays in the completion of river management activities and works related to border area projects, which were long-term solutions for the flood problems in Assam, north Bihar, and eastern Uttar Pradesh. It was also found that in seven States (Assam, Himachal Pradesh, Punjab, Tamil Nadu, Uttar Pradesh, Uttarakhand and West Bengal), land was not acquired before the start of work with the result that the projects were stalled, resulting in unfruitful expenditure of 59.88 crore in 13 projects in these States.[11] Even the

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[9] Himanshu Upadhyay, "Uttarakhand tragedy: How we ignored the writing on the wall", *available at:* http://www.indiatogether.org/disaster-government, (visited on January 21, 2020).
[10] *Ibid.*
[11] *Ibid.*

Public Accounts Committee[12] with regard to floods, submitted in its report[13] that there are several deficiencies in the forecasting infrastructure. These deficiencies included non-functional telemetry systems (used for measurement and communication) and the absence of dedicated communication facilities in forecasting stations. The committee recommended that these deficiencies be rectified.

If we take other examples, then floods in Kerala in 2018-19 are also worth mentioning. It is to be noted that NDMA guidelines on flood provide that adequate flood cushion should be provided in water storage projects to facilitate better flood management and that flood control should be given overriding consideration in reservoir regulation policy, even at the cost of sacrificing some irrigation or power benefits[14] and says, "..reservoirs do moderate floods".[15] In Kerala, there are seventy-nine dams/ reservoirs/ barrages under the control of the Kerala State Electricity Board and Irrigation Department, Government of Kerala. However, it was admitted by the state that though reservoirs are commonly built for the conservation of water and flood control but in Kerala, none of them is for flood control, and their purpose is to generate power or irrigation.[16] This type of system prevails in Kerala, and ignoring NDMA guidelines regarding flood control makes the entire arrangement futile.

Thus, when a major part of India is mainly affected by floods, management of floods is of paramount importance.

SECOND WAVE OF COVID-19

The easing of lockdowns by States/ Union Territories (UTs) combined with pandemic fatigue, lack of community adherence to COVID-appropriate behaviour and evolution and circulation of more transmissible variants of SARS-CoV-2 viruses all played a part in the second surge that India witnessed from April to May 2021.[17] As far as second wave is concerned, the second Covid surge exposed the infrastructural deficiencies and lack of preparedness on the part of governments at the Centre and the states. The government was seen putting the focus on election campaigns instead of preparing the country for a lurking second wave. It is to be noted that even before elections were held, Kerala was among the top two states with the highest

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[12] Chairperson: Professor KV Thomas.
[13] "Disaster Preparedness in India" submitted on December 10, 2015.
[14] Paragraph 5.3, NDMA Guidelines on Flood, 2008.; Similar provision given in Paragraph 17.2, National Water Policy (2002).
[15] Paragraph 5.4, NDMA Guidelines on Flood, 2008.
[16] Paragraph 105, 106 and 218 of the Counter Affidavit filed on behalf of State of Kerala in WPC 29296 OF 2018.
[17] Answer to Unstarred Question No. 273 by Minister of State in The Ministry of Home Affairs, in Lok Sabha.

number of daily cases, and even during the second wave, the state had the third highest daily Covid cases. On that count, Delhi saw the biggest jump, which jumped from 0.4 % on February 26 to 31.8 % on April 28.[18]

During that period, India recorded more than 2 crore cases of COVID-19 in the second wave of the pandemic, accounting for nearly two-thirds of all infections reported since the outbreak of the virus in the country. 2,56,931 deaths have been reported in the second wave, 62% of the country's total covid toll of 414,129.[19]

Many Indian cities reported a chronic shortage of hospital beds. It was also evident in the desperate cries for help on social media platforms. Disturbing reports of people dying without getting timely treatment came from all over the country. Big religious gatherings, the reopening of most public places and crowded election rallies were being blamed for the uptick.

The situation was much more dire when it came to ICU beds. Several cities had just a few dozen ICU beds left, and they frantically tried to build extra capacity in hotels and stadiums. Crematoriums ran day and night in several cities, and people had to wait for hours to get the deceased cremated or buried. Experts say this shows that the actual number of deaths could be much higher.[20] In *Cognizance For Extension Of Limitation, In Re,*[21] the Court directed that the Central Government shall, in collaboration with the States, prepare a buffer stock of oxygen for emergency purposes and decentralise the location of the emergency stocks. The emergency stocks should be created within the next four days and are to be replenished on a day-to-day basis, in addition to the existing allocation of oxygen supply to the States. Further, the Central Government was ordered to revisit its initiatives and protocols, including the availability of oxygen, the availability and pricing of vaccines, and the availability of essential drugs at affordable prices.

The data available proved that the authorities failed in the management of the second wave. The shortage of oxygen cylinders, the non-availability of beds in hospitals, and the frequent changes in medication given to COVID patients show a lack of preparation on the part of the

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18 Kaushik Deka, "Is the Election Commission responsible for the second wave of Covid cases?" *India Today*, June 23, 2021 *available at:* https://www.indiatoday.in/india-today-insight/story/is-the-election-commission-responsible-for-the-second-wave-of-covid-cases-1796437-2021-04-29

19Amit Bhattacharya, "Covid-19: Second wave cases cross 2cr, nearly 2/3rd of total" *the Times of India,* April 20 2021 *available at:* https://timesofindia.indiatimes.com/india/covid-19-second-wave-cases-cross-2cr-nearly-2/3rd-of-total-infections/Art.show/84539120.cms

20 Vikas Pandey and Shadab Nazmi, "Covid-19 in India: Why second coronavirus wave is devastating" *BBC News,* August 25, 2021 *available at:* https://www.bbc.com/news/world-asia-india-56811315

21 Cognizance For Extension of Limitation, In re, (2020) 19 SCC 10, (2021) 17 SCC 231, *See also*, (2022) 3 SCC 117, (2021) 18 SCC 250, (2021) 5 SCC 452, *Novacare Drug Specialities (P) Ltd.* v. *State of Goa*, 2023 SCC OnLine Bom 1557

government. Though the second wave came around one year after the advent of COVID-19 in India, authorities still didn't seem to be fully prepared. There was no capacity building beforehand. Also, previous guidelines (before the outbreak of the second wave) were not properly implemented.

While India's large population presents an administrative challenge in dealing with any disaster, the country demonstrated ardency in effectively managing a pandemic such as COVID-19. Overall, the management of disasters should be strengthened. This biological disaster of a national magnitude necessitated close administrative and political coordination, led by the Centre and followed by State governments, Disaster Management Authorities, and other stakeholders. The DM Act, 2005, and federal structure, as well as national and state political and administrative agencies, should have been more collaborative and consultative in tackling the second wave. Issues like movement of migrant labourers, availability of food, arranging livelihoods to daily wagers, relief camps, entitlement of statutory minimum relief, etc. that directly affected the well being of millions in the country needed special attention.

On a concluding note, it may be said that issuing guidance on various disasters is not only the sole function of the authorities under the DM Act, 2005, but it is also a vital function of the authorities to implement the guidelines effectively and to be prepared for any other unforeseen natural or human-induced calamity in order to minimise the aftermath of the disaster.

MAN-MADE DISASTER IN HIMACHAL PRADESH

Kullu and Manali, two of the most popular tourist destinations in Himachal Pradesh, witnessed flash floods in the months of July and August 2023. The disaster comprised of extreme weather situations leading to devastating landslides, widespread damage and collapse of several buildings due to floods, one-way traffic jams, detours, washed-away bridges, and the constant threat of further landslides. As per the India Meteorological Department (IMD), the unprecedented rainfall resulted in widespread damage to public and private properties, overflowing of major rivers, blockage of roads, flashfloods, damage to bridges, and complete disruptions of electrical and communication systems, including loss of human lives.[22]

As per local experts, the disaster was likely to be caused by unplanned construction in this vulnerable region. Anand Sharma, a retired meteorologist with the Indian Meteorological

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[22] Parveen K. Dogra , "A Himalayan disaster and its aftermath"*, the Indian Express*, September 18, 2023 *available at*: https://indianexpress.com/article/cities/shimla/a-himalayan-disaster-himachal-aftermath-kullu-mandi-shimla-8944612/

Department, claimed that the Himachal disaster was the result of poor planning and governance.[23] Factors like unplanned urbanisation, the presence of numerous hydropower plants in the state and unscientific construction of the national highway were claimed to be the reasons for making the Himachal Pradesh disaster a man-made disaster. Heightened vulnerabilities to disaster risks are clearly related to expanding population, urbanisation and industrialisation, development within high-risk zones, environmental degradation and climate change.[24]

Moreover, in Himachal Pradesh, there are currently 168 hydropower projects in operation. These hydropower projects have transformed mountain rivers into mere streams. A senior Geomorphologist in Shimla highlighted that the hasty construction of hydropower projects has made earthquake-prone Himachal Pradesh even more susceptible to landslides.[25] In addition, the establishment of massive cement plants and extensive cutting of mountains in districts like Bilaspur, Solan, and Chamba have resulted in significant land use changes that contribute to flash floods during rainfall. The cement plants altered the natural landscape, and the removal of vegetation led to a reduced capacity of land to absorb water.[26] Recognising the drawbacks of such projects, the Himachal Pradesh government itself had acknowledged that 21 such hydro projects caused destruction as they disposed of debris into rivers and riverbeds, causing water levels in the Beas and Parvati rivers to rise. This turned heavy rainfall into a flash flood.[27]

Further, it was also alleged that NHPC released excessive water without prior warnings, leading to devastation in Sainj Valley in Kullu, where over 80 houses were swept away.[28] Although the concerned authorities were obliged to follow the safety guidelines and all other rules and regulations mandating safety measures to ensure that the life and properties of the people living in the vicinity of the hydropower projects and in the areas that could be affected by the flow of the waters from these projects are safeguarded.[29]

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[23] Chonchui Ngashangva and Sibi Arasu, "Heavy rain and landslides kill scores of people in Indian Himalayas", the Los Angeles Times, August 17, 2023, *available at*: https://www.latimes.com/world-nation/story/2023-08-17/deadly-rains-landslides-india-himalaya

[24] Government pf India, National Policy on Disaster Management, (Ministry of Home Affairs, 2009).

[25] *Ibid.*

[26] Tikender Singh Panwar, "Himachal Floods: A Man-Made Disaster" the Hindu, July 30, 2023 *available at*: https://epaper.thehindu.com/ccidist-ws/th/th_delhi/issues/45124/OPS/GR0BHGSOG.1+GTMBHH32L.1.html

[27] *Ibid.*

[28] *Ibid.*

[29] *In re: Release of Water from Dikchu Hydel Power Project*,   WP(PIL)   No.   04 of 2017.   *available at*: https://indiankanoon.org/doc/38092800/?type=print

Furthermore, the erroneous cutting of rocks during highway expansion was one of the contributing factors to landslides apart from heavy rainfall.[30] Negligence in road widening efforts by the NHAI and poor disaster management practices of the National Hydroelectric Power Corporation were among the reasons for the devastation. The consequences of such road expansions are evident during even normal rainfall, as it leads to slips and slides, amplifying the magnitude of the destruction during heavy rain or floods. In response to this need, roads were being constructed hastily without considering essential land-cutting and gradient requirements.[31] Degradation of natural topography, vegetation and disturbance of natural drainage patterns due to massive construction has resulted in environmental degradation in the hill towns. Construction activity on high and unstable slopes characterised by a high percentage of ground coverage is taking place, thereby limiting natural light, air and ventilation, which is likely to affect human health and well-being.[32] Noting that Shimla has transformed into concrete jungles characterised by depleting forest/greenery, unchecked construction, barren hills covered with buildings, narrow and accident-prone roads, and encroachments on roads and public areas, the new constructions do not contribute to sustainability and led to environmental degradation.[33]

In addition, the interim report from the Multi-Sector Committee[34] linked unscientific and illegal mining along river beds to a natural calamity in the state, causing extensive damage during monsoons. The interim report has highlighted that 68 out of 131 stone crushers in the Beas River in Himachal Pradesh were running without permission. Only 50 stone crushers were operating legally. The report stressed the environmental imbalance in the Beas River basin, calling for a scientific study and proposing short-, medium-, and long-term measures for stone crusher operations. Thus, the unscientific and illegal mining along the river beds was also responsible for the calamity in the state, causing huge damage to life and property.[35]

Consequently, it can be construed that all the data and reports were available regarding inadequate infrastructure development, maintenance & unsustainable tourism-related activities

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[30] *Supra* note 22

[31] *Supra* note 26

[32] Ashwani Kumar, *Review Of Building Regulations For Safety Against Hazards In Indian Hill Towns*, Department of Architecture and Planning, Malaviya National Institute of Technology, 2018.

[33] Man Aman Singh Chinna, "For years, experts raised red flags in Himachal: buildings blocking natural drainage, overburdened hills, unstable slopes", *the Indian Express,* August 24, 2023 *available at*: https://indianexpress.com/article/cities/chandigarh/environmental-degradation-of-hills-8907176/

[34] The multi-sector committee established by the Himachal Pradesh government to investigate the causes of flash floods and landslides during the monsoon.

[35] Anand Bodh, "Himachal Pradesh: CM Sukhvinder Singh Sukhu says 63 stones crushers in Beas basin were involved in illegal mining", *the Times of India,* November 20, 2023 *available at*: https://timesofindia.indiatimes.com/city/shimla/himachal-pradesh-cm-sukhvinder-singh-sukhu-says-63-stones-crushers-in-beas-basin-were-involved-in-illegal-mining/articleshow/105361716.cms

but disaster management authorities preferred negligence over disaster preparedness and mitigation. Violation of environmental regulations led to aggravation of the disaster.

On a concluding note, it may be said that issuing guidelines on various disasters is not only the sole functions of the authorities under the DM Act, 2005 but it is also a vital function of the authorities to implement the guidelines effectively and to be prepared for any other unforeseen natural or human induced calamity in order to minimize the aftermath of disaster.

CHARTING PATHWAYS FOR GENDER EQUALITY: EXPLORING THE INFLUENCE OF HUMAN RIGHTS ON WOMEN'S EMPOWERMENT IN INDIA

- Anita Verma[*]

Abstract

India is part of the global gender equality discourse. Human rights and women's rights in India are difficult, as this paper shows. This study examines historical, legal, and social challenges and discusses pioneering gender equality efforts and the current fight against persistent disadvantages. Constitutional human rights underpin gender equality in India. Dr. B.R. Ambedkar incorporated equality and non-discrimination into the constitution. Employment discrimination and inequality were addressed by the Dowry Prohibition Act, 1961 and Equal Remuneration Act, 1976. Though diverse and complicated, India's socio-cultural milieu maintains gender inequality. The paper acknowledges gender-based violence, education gaps, and pay inequality. Traditional gender norms and customs can hinder women's rights. Women and activists in India pioneered. The grassroots Chipko Movement, Gulabi Gang, and Beti Bachao Beti Padhao campaign have advocated change. This paper stresses education's changing potential to achieve gender equality. Girls' education policy in India has shown promise as a change agent. Projects give women knowledge and skills and challenge old ideas. It also highlights women's leadership and how representation impacts policies that affect women. The paper highlights India's Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. This international human rights law protects women in secure and inclusive spaces. The paper also highlights landmark women's rights and violence against women laws. In India, human and women's rights go beyond law. Community engagement and grassroots movements challenge entrenched conventions. Self-help organisations, microfinance schemes, and women-led cooperatives overcome economic barriers through collective action. Finally, this paper shows India's progress in gender equality through human rights. Despite challenges, India's women's rights growth is diverse and persistent. As it examines how human rights affect gender equality, the nation becomes more just, inclusive, and empowered. Pioneering gender equality guarantees future generations inherit a society that values everyone's potential.

Keywords: *Gender, Human, Constitution, Women, India.*

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INTRODUCTION

Gender equality is a fundamental principle of human rights, recognised worldwide as an essential driver of social and economic progress. In the diverse and dynamic landscape of India, the pursuit of gender equality takes on a complex and multifaceted character. This exploration seeks to chart the pathways through which human rights influence women's empowerment in India, acknowledging the intersectionality of rights and the intricate interplay of legal, cultural, and socioeconomic factors. India, as a nation, is founded upon democratic values and a commitment to justice and equality, enshrined in its Constitution. Yet, realising these principles in the lives of its women is a continuous journey marked by both progress and persistent challenges. This exploration delves into the role of human rights in shaping this journey, recognising that they form the bedrock upon which women's empowerment is built.[1]

The legal framework in India provides a strong foundation for gender equality, with constitutional provisions and legislation explicitly safeguarding women's rights. However, the effectiveness of these legal safeguards often depends on their implementation at various levels of governance. Beyond the legal realm, the influence of human rights extends into education, economic empowerment, political participation, health, and the quest to eliminate violence against women. The cultural and societal norms that shape the lives of Indian women also play a significant role. Human rights principles advocate for challenging and transforming these norms to eradicate discrimination and empower women across all segments of society. Additionally, the concept of intersectionality is essential, recognising that the experiences of women can vary based on factors such as caste, religion, and socioeconomic status. This exploration will examine the pathways to women's empowerment in India through the lens of human rights. It will shed light on the progress made, the challenges faced, and the critical role of government policies, civil society organisations, and advocacy efforts in advancing gender equality. Ultimately, it underscores the significance of upholding human rights principles to chart a more equitable future for India's women, where their empowerment is not just a goal but a human right.[2]

GENDER EQUALITY

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[1] Meghana, Gender justice and its various forms under indian constitution, *available at*: https://www.legalserviceindia.com/Legal/Article-7669-Gender-Justice-And-Its-Various-Forms-Under-Indian-constitution.html (last visited: 27.09.2023)

[2] Women and the Indian constitution, *available at*: https://Vikaspedia.In/Social-Welfare/Women-And-Child-Development/Women-Development-1/Legal-Awareness-For-Women/Women-And-The-Indian-Constitution#:~:Text=Equality%20before%20law,-Article%2014%20embodies&Text=Article%2015(3)%20makes%20it,Educationally%20backward%20classes%20of%20society. (last visited on: 26.09.2023).

Gender equality is the principle advocating that individuals of all genders should receive fair and equal treatment across all aspects of society, including education, employment, and participation in decision-making processes. It is not only a fundamental human right but also an essential cornerstone for fostering a peaceful, prosperous, and sustainable world. While significant strides have been made in advancing gender equality, women and girls continue to confront obstacles and prejudices in various spheres of society. These challenges encompass issues like the gender wage gap, limited access to education and employment opportunities, and underrepresentation in leadership roles.[3] The pursuit of a more equitable society benefits not only women but also society as a whole, leading to increased prosperity and overall well-being. It is imperative for individuals, communities, and governments to collaborate in the quest for gender equality and the empowerment of women and girls to enable them to realise their full potential.[4]

Equality, or the absence of discrimination, signifies a state in which every individual enjoys identical opportunities and rights. This is the aspiration of every member of society, seeking parity in status, opportunities, and rights. However, it is a widespread observation that discrimination persists among human beings, stemming from cultural distinctions, geographical disparities, and gender disparities. Gender-based inequality remains a global concern even in the 21st century, with disparities persisting between men and women worldwide. Gender equality ensures equal opportunities for both men and women across political, economic, educational, and healthcare dimensions.[5]

Meaning and importance of gender equality

The term "gender justice" lacks a universally agreed-upon definition, often encompassing various interpretations. It is sometimes understood as advocating for equal treatment between men and women, while in other instances, it is seen as a call for justice and fairness towards the "fairer sex." For the purpose of this discussion, we will consider gender justice in the latter sense. It is imperative to recognise that no society can advance or be considered truly civilised without embracing gender equality, which is fundamentally intertwined with the essence of a civilised community. Mahatma Gandhi, astutely emphasised that "Women are the companions of men,

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[3] Major dimensions of inequalities in gender, *available at*: https://www.Cbgaindia.Org/Wp-Content/Uploads/2016/04/Gender-Inequality.Pdf (last visited on: 26.09.2023).
[4] Education from a gender equality perspective, *available at*: Https://Files.Eric.Ed.Gov/Fulltext/ED511674.Pdf. (last visited on: 25.09.2023).
[5] Gender Equality Essay, *available at*: https://School.Careers360.Com/Gender-Equality-Essay-Essy. (last visited on: 27.09.2023).

endowed with equal intellectual capabilities." Ignoring the importance of women in society would indeed be detrimental to the progress and evolution of civilisation.[6]

A nation's progress and its attainment of higher levels of development hinge on the equal access of both men and women to opportunities. Unfortunately, women in society are often marginalised and denied the same rights as men when it comes to healthcare, education, participation in decision-making processes, and economic independence, especially concerning wage disparities. A longstanding social structure perpetuates this inequality, where girls are systematically deprived of opportunities equal to those given to boys. Traditionally, women have assumed the role of caregivers in families, which often confines them to household duties. This limited participation of women in higher education, decision-making positions, and leadership roles acts as a significant impediment to a country's growth trajectory. This gender disparity significantly hampers a nation's growth rate. However, when women actively engage in the workforce, it has a remarkable impact on boosting a country's economic growth rate. Gender equality not only fosters economic prosperity but also enhances the overall well-being of the nation.[7]

Gender inequality in India

As per the World Economic Forum's gender gap ranking, India stands at rank 108 out of 149 countries. This rank is a major concern as it highlights the immense gap in opportunities in women in comparison to men. In Indian society, for a long time back, the social structure has been such that women are neglected in many areas like education, health, decision-making areas, financial independence, etc. Another major reason that contributes to the discriminatory behaviour towards women in India is the dowry system in marriage. Because of this dowry system, most Indian families consider girls as a burden. Preference for son still prevails. Girls have refrained from higher education. Women are not entitled to equal job opportunities and wages. In the 21st century, women are still the preferred gender in home management activities. Many women quit their jobs and opt out of leadership roles because of family commitments. However, such actions are very uncommon among men. Gender equality is a fundamental principle of human rights and a cornerstone of social progress. In India, a country marked by diversity in culture, socioeconomic conditions, and historical influences, the journey toward

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[6] Meenal Maheshwar, "Gender Justice and Inequality in India" Volume 2, July 2018, Pen Acclaims, *available at*: http://www.penacclaims.com/Wp-Content/Uploads/2018/08/Meenal-Maheshwari-1.Pdf
[7] Shreya Shree Singh, Gender Justice: A Critical Appraisal, International Journal of Legal Developments and Allied, Vol. 6 (4) 2020

women's empowerment is a complex and dynamic one. This exploration aims to navigate the intricate web of factors that influence women's empowerment in India, with a particular focus on the pivotal role of human rights. The Indian Constitution upholds gender equality as a fundamental right and prohibits discrimination on the basis of sex. Explore the key constitutional provisions that underpin women's rights in India.

HUMAN RIGHTS

Human rights play a crucial role in promoting women's empowerment in India. Women's empowerment is not just about providing economic and political opportunities; it also involves ensuring that women's fundamental rights are protected and upheld. his discussion will revolve around the examination of rights, encompassing their historical underpinnings, the definition of human rights, their characteristics, and their inherent nature. Additionally, we will briefly delve into the significant milestones in the evolution of human rights and touch upon the classification of these rights. The foundational premise is that all human beings are born with an inherent and inalienable equality in dignity and rights.[8] These rights are moral assertions that every individual possesses by virtue of their humanity alone, irrespective of factors such as caste, colour, creed, place of birth, gender, cultural differences, or any other considerations. These principles find their formal expression in what we now recognise as human rights. These rights are sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights, or birthright.[9]

Meaning and Definition of Human Rights

Dr. Justice Durga Das Basu provides a comprehensive definition, characterising human rights as "those minimal rights that every individual must possess against the State or any other public authority, simply by virtue of their membership in the human family, without regard to any other factors."[10] The Universal Declaration of Human Rights (UDHR) of 1948[11] defines human rights as "rights derived from the inherent dignity of the human person."

In the context of India, Section 2 (1)(d) of the Protection of Human Rights Act, 1993, defines "human rights" as "the rights pertaining to life, liberty, equality, and the dignity of the individual,

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[8] Dr. Bhagyashree A. Deshpande, Human Rights Law & Practices, 3 (Central Law Publications, 1st Edn., 2017).
[9] Ibid.
[10] Characteristics of Human Rights, The Legal Quotient, *available at*: https://thelegalquotient.com/legal-concepts/human-rights/characteristics-of-human-rights/1490/ (last visited on: 30.04.2024)
[11] The Universal Declaration of Human Rights (UDHR) is an international document adopted by the United Nations General Assembly that enshrines the rights and freedoms of all human beings. Drafted by a UN committee chaired by Eleanor Roosevelt, it was accepted by the General Assembly as Resolution 217 during its third session on 10 December 1948 at the Palais de Chaillot in Paris, France.

as guaranteed by the Constitution or embodied in the International Covenants and enforceable by Indian Courts."[12]

Characteristics of Human Rights:

1. Universality: Human rights are bestowed upon every individual without discrimination based on factors such as caste, creed, race, religion, nationality, or place of birth.

2. Inalienability: Many philosophers contend that these rights are inherent and bestowed by a higher authority, making them immune to revocation or alteration by any entity.

3. Indivisibility and Interdependence: Human rights are interconnected and indivisible. When a government safeguard one right, it assumes the responsibility of protecting other rights of its citizens. For instance, ensuring the right to a fair trial necessitates providing access to food, shelter, and a clean environment to uphold the right to life.[13]

4. Inherent from Birth: Human rights are an inherent part of each person's existence, accessible from the moment of birth.

5. Inherent Regardless of Awareness: Lack of awareness or non-exercise of these rights does not result in their forfeiture. If an individual is unaware of their right to legal counsel, authorities are obligated to provide free legal assistance or inform them of their rights.

6. Dignity and Personality Protection: Human rights safeguard the dignity and individuality of every human being. Rights such as the right to life, right to liberty, and protection against arbitrary arrest and punishment are designed to uphold a person's dignity.[14]

EXPLORING THE INFLUENCE OF HUMAN RIGHTS ON WOMEN'S EMPOWERMENT IN INDIA

It is a comprehensive inquiry into the relationship between the principles of human rights and the advancement of women's empowerment within the Indian context. This exploration entails a detailed examination of how the recognition, protection, and promotion of human rights intersect with and impact the status, opportunities, and overall well-being of women in India. Key components of this exploration may include:

Human Rights Framework: International Human Rights Instruments:

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[12] Dr. H.O. Agarwal, Human Rights, 3 (Central Law Publications, 17th Edn., 2020).
[13] Dr. T.P. Tripathi, An Introduction to the study of Human rights 27 (Allahabad Law Agency Publications, 1st Edn., 2008).
[14] Ibid.

Universal Declaration of Human Rights (UDHR): The UDHR, adopted by the United Nations General Assembly in 1948, forms the cornerstone of modern human rights. It proclaims principles of equality, non-discrimination, and dignity for all individuals, irrespective of gender. India is a signatory to the UDHR, and these principles are aligned with the Indian Constitution.[15]

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[16]: CEDAW, adopted by the UN in 1979, is a comprehensive treaty specifically focused on women's rights. India ratified CEDAW in 1993, demonstrating its commitment to address gender-based discrimination and promote gender equality. The treaty has influenced India's domestic legislation and policies related to women's rights.[17]

Incorporation into India's Legal Framework:

Domestic Legislation: India has enacted various laws and acts to protect and promote women's rights and gender equality. Notable examples include the Dowry Prohibition Act, 1961,[18] the Protection of Women from Domestic Violence Act, 2005,[19] and the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.[20] These laws address issues such as dowry harassment, domestic violence, and workplace harassment.

Indian Constitution: The Indian Constitution provides a strong foundation for women's rights and gender equality. It guarantees fundamental rights to all citizens, irrespective of gender. Key provisions include Article 14 (equality before the law),[21] Article 15 (prohibition of discrimination on grounds of sex),[22] and Article 42 (provision for just and humane conditions of work and maternity relief).[23] India's commitment to international human rights instruments aligns with the principles enshrined in its Constitution. The Indian judiciary has played a pivotal role in interpreting and upholding these principles. Landmark judgments, such as *Vishakha* v. *State of*

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[15] *Supra* note 11

[16] The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is an international legal instrument that requires countries to eliminate discrimination against women and girls in all areas and promotes women's and girls' equal rights.

[17] Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) for Youth, *available at*: https://www.unwomen.org/en/digital-library/publications/2016/12/cedaw-for-youth#:~:text=The%20Convention%20on%20the%20Elimination,women's%20and%20girls'%20equal%20rights. (last visited on 27.09.2023).

[18] The Dowry Prohibition Act, 1961

[19] The Protection of Women from Domestic Violence Act, 2005

[20] Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

[21] Dr. Kailash Rai, Constitutional Law of India, 128 (Central Law Publications, 11th Edn Reprint 2017).

[22] Ibid., pp. 171

[23] Prof. Narender Kumar, Constitutional Law of India, 157 (Allahabad Law Agency, 5th Edn., 2006).

Rajasthan[24] and several others, have led to the formulation of guidelines and laws addressing sexual harassment in the workplace. However, challenges persist in fully realizing women's rights and achieving gender equality in India. These include issues related to implementation, enforcement, cultural norms, and social practices. Nonetheless, India's legal framework, shaped by both international treaties and domestic legislation, provides a robust foundation for the protection and empowerment of women, and it continues to evolve to address contemporary challenges.

Legal Protections

Analyzing the legal protections and rights guaranteed to women under Indian law reveals a comprehensive framework aimed at promoting gender equality and safeguarding women's rights. Here's an examination of some key legal protections and rights afforded to women in India:

1. Right to Equality: The Indian Constitution, in Articles 14 and 15, ensures the right to equality before the law and prohibits discrimination on grounds of sex. This forms the foundational principle for gender equality in India.[25]

2. Right to Education: The Right to Education Act, 2009, ensures free and compulsory education for all children, including girls. It aims to bridge gender gaps in education and promote girls' access to quality schooling.[26]

3. Right to Work: Women have the right to work in India under various labor laws and acts, including the Equal Remuneration Act, 1976. This act prohibits discrimination in wages on the basis of gender.

4. Right to Health: The National Health Mission and various state health programs address women's health concerns, including maternal and reproductive health. Additionally, laws like the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994, aim to prevent sex-selective abortions.[27]

5. Protection Against Discrimination: The Protection of Women from Domestic Violence Act, 2005, is a landmark legislation that provides legal protection to women facing domestic violence. It covers physical, emotional, sexual, and economic abuse.

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[24] (1997) 6 SCC 241).

[25] Uma, Right to Equality-A Fundamental Right, *available at*: https://www.legalservicesindia.com/article/1688/Right-To-Equality--A-Fundamental-Right.html. (last visited on 27.09.2023).

[26] Right of Children to Free and Compulsory Education Act, 2009, *available at*: https://vikaspedia.in/education/policies-and-schemes/right-to-education/right-of-children-to-free-and-compulsory-education-act-2009-right-to-education-act. (last visited on 26.09.2023).

[27] The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (Act No. 57 Of 1994) And The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002

6. Protection Against Harassment: The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, mandates the prevention and redressal of sexual harassment at workplaces. It includes guidelines for complaint mechanisms and legal recourse.

7. Protection Against Violence: India has enacted various laws to address violence against women, including the Indian Penal Code (IPC) sections on crimes like rape (IPC Section 376),[28] dowry harassment (IPC Section 498A), and acid attacks.

8. Legal Aid and Support: The National Commission for Women (NCW) and State Women's Commissions work to protect and promote women's rights. Legal Aid Cells and NGOs also provide support and legal aid to women in need.

9. Reservation in Local Governance: Women in India benefit from reservations in local governance bodies (Panchayats and Municipalities). This affirmative action promotes women's participation in decision-making at the grassroots level.

10. Anti-Dowry Laws: The Dowry Prohibition Act, 1961, aims to combat the practice of dowry, which can lead to harassment and violence against women.

11. Anti-Trafficking Laws: India has laws and initiatives to combat human trafficking, such as the Immoral Traffic (Prevention) Act, 1956,[29] and the Ujjawala Scheme for rehabilitation and rescue of victims.

While these legal protections and rights are in place, challenges remain in their effective implementation and enforcement. Cultural norms, social attitudes, and economic disparities also contribute to the complexities of addressing gender-based discrimination and violence against women in India. Nonetheless, the legal framework plays a crucial role in advancing gender equality and protecting women's rights in the country.

BARRIERS AND CHALLENGES

Identifying and understanding the barriers and challenges that women in India face in realising their human rights is essential for addressing gender inequality effectively. These barriers and challenges encompass a range of factors, including:

1. Cultural Norms: Deeply ingrained cultural norms and traditions can perpetuate gender inequality. Practices like dowry, child marriage, and female seclusion restrict women's rights and opportunities,

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[28] Prof. S.N. Misra, Indian Penal Code with the Criminal Law Amendment Act, 2018, 781(Central Law Publications, 21st Edn., 2018).

[29] The Immoral Traffic (Prevention) Act, 1956.

2. Social Prejudices: Prejudices and stereotypes about women's roles and abilities persist in many Indian communities. These biases can limit women's access to education, employment, and decision-making positions.[30]

3. Economic Disparities: Economic disparities between men and women are significant in India. Women often have limited access to economic resources, including land and credit, which can hinder their financial independence.

4. Educational Barriers: Despite progress, disparities in access to quality education still exist. Girls in some regions may face challenges like early marriage, inadequate school facilities, and cultural attitudes that prioritize boys' education.

5. Violence Against Women: Gender-based violence, including domestic violence, sexual harassment, and trafficking, remains a pervasive issue. Fear of violence can deter women from asserting their rights.

6. Legal Gaps and Enforcement: While legal protections exist, there are gaps in their implementation and enforcement. Women may face obstacles in accessing justice, particularly in rural areas.

7. Lack of Awareness: Some women may not be aware of their legal rights and entitlements, making it challenging for them to assert these rights. Lack of awareness can also hinder access to support services.[31]

8. Political Underrepresentation: Women continue to be underrepresented in political decision-making bodies. This lack of representation can lead to policies that do not adequately address women's concerns.

9. Healthcare Disparities: Women may face disparities in healthcare access and quality, particularly in rural areas. Maternal health, in particular, is a concern, with issues related to maternal mortality and malnutrition.

10. Discrimination at Work: Discrimination in the workplace, including unequal pay, lack of maternity benefits, and limited career opportunities, can hinder women's economic empowerment.

11. Child Marriage and Early Parenthood: Child marriage and early motherhood can result in adverse health and social outcomes for young girls, limiting their life choices.

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[30] UNICEF, Gender Equality, *available at*: ttps://www.unicef.org/india/what-we-do/gender-equality (last visited on 27.09.2023).
[31] Preventing and Responding to Domestic Violence, *available at*: https://www.unodc.org/roseap/uploads/archive/documents/vietnam/publication/Trainee_manual_in_English_6-5-11_.pdf. (last visited on 27.09.2023).

12. Media Influence: Media portrayals of women can reinforce stereotypes and impact how women are perceived in society.[32]

Understanding these barriers and challenges is critical for crafting effective policies, interventions, and awareness campaigns to promote women's human rights in India. Addressing these issues requires a multifaceted approach involving changes in societal attitudes, legal reforms, and economic empowerment initiatives to ensure that women can fully enjoy their human rights.

WOMEN'S EMPOWERMENT INITIATIVES

Examining various initiatives, policies, and programs implemented by the Indian government and non-governmental organisations to promote women's empowerment and gender equality highlights concerted efforts to address gender disparities and uplift women in Indian society. Here are some key initiatives and programs:

Government Initiatives:

1. Beti Bachao, Beti Padhao (Save the Daughter, Educate the Daughter): Launched by the Indian government, this initiative aims to address gender-based discrimination and promote the education and welfare of girls.[33]

2. Pradhan Mantri Matru Vandana Yojana: A maternity benefit program that provides financial support to pregnant and lactating mothers to reduce maternal and child mortality rates.[34]

3. Mahila Shakti Kendra: An initiative aimed at empowering rural women through skill development, capacity building, and support services.[35]

4. National Rural Livelihoods Mission (NRLM): This mission focuses on promoting self-help groups (SHGs) and empowering rural women by providing them with access to finance, livelihood opportunities, and social empowerment.[36]

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[32] A girl's right to say no to marriage – Working to end child marriage, *available at*: https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/PlanInternational3.pdf. (last visited on 27.09.2023).

[33] Beti Bachao, Beti Padha, *available at*: https://ssb.gov.in/index1.aspx?langid=1&lev=2&lsid=2906&pid=2900&Cid=0&lid=1521&AspxAutoDetectCookieSupport=1#:~:text=educate%20girl%20child)-,Beti%20Bachao%2C%20Beti%20Padhao%20(Save%20girl%20child%2C%20educate%20girl,corpus%20of%20Rs100%20crore. (last visited on 27.09.2023).

[34] Pradhan Mantri Matru Vandana Yojana, *available at*: https://www.myscheme.gov.in/hi/schemes/pmmvy. (last visited on 27.09.2023).

[35] Mahila Sakti Kendra, *available at*: https://wcd.nic.in/sites/default/files/Mahila%20Shakti%20Kendra%20Scheme.pdf. (last visited on 27.09.2023).

[36] NRLM - National Rural Livelihood Mission (Deendayal Antyodaya Yojana), *available at*: https://byjus.com/free-ias-prep/nrlm/. (last visited on 27.09.2023).

5. One-Stop Centers (OSCs): These centres offer support services to women affected by violence, including medical assistance, legal aid, and counselling.[37]

6. Sukanya Samriddhi Yojana: A savings scheme aimed at ensuring the financial security and education of girl children.[38]

Non-Governmental Organizations:

SEWA (Self-Employed Women's Association): SEWA works to empower women in the informal sector by providing them with access to financial services, skill development, and advocacy.

1. Pratham: This NGO focuses on improving the quality of education for girls through programs aimed at enhancing learning outcomes and promoting girls' education.

2. Breakthrough: An organisation that uses media, technology, and community mobilisation to address issues of gender-based violence and discrimination.

3. Rural Development Foundation: This organisation works towards women's economic empowerment by providing vocational training, access to credit, and income-generating activities.

4. UN Women India: The United Nations Entity for Gender Equality and the Empowerment of Women works in collaboration with the Indian government and civil society organisations to advance gender equality and women's rights.

5. Vidya Sahyogini: An initiative that supports girls' education and women's empowerment in rural areas by providing scholarships, mentoring, and life skills training.

6. Mann Deshi Foundation: Focused on rural women's economic empowerment, this organisation provides financial literacy, entrepreneurship training, and access to microfinance. These initiatives and programs represent a diverse range of efforts to promote women's empowerment and gender equality in India. They address various aspects of women's lives, including education, healthcare, economic independence, and social well-being, contributing to the broader goal of advancing women's human rights in the country.

CHALLENGES AND FUTURE DIRECTIONS

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[37] One Stop Centre Scheme, *available at*: https://vikaspedia.in/social-welfare/women-and-child-development/women-development-1/one-stop-centre-scheme#:~:text=One%20Stop%20Centres%20(OSC)%20are,community%20and%20at%20the%20workplace. (last visited on 26.09.2023).

[38] Sukanya Samriddhi Yojana (SSY) - Interest Rate 2023, Tax Benefits, Eligibility, Bank List, Age Limit & Other Details, *available at*: https://cleartax.in/s/sukanya-samriddhi-yojana.(last visited on 26.09.2023).

1. Persistent Gender-Based Violence: Despite legal safeguards, gender-based violence remains a significant challenge in India. Ensuring effective implementation and enforcement of laws, along with changing social norms that tolerate such violence, is crucial.

2. Economic Empowerment Disparities: Economic disparities persist, and many women, especially in rural areas, lack access to economic opportunities, land, and credit. Addressing these disparities requires comprehensive economic empowerment programs.

3. Political Underrepresentation: Women's representation in political bodies remains inadequate. Encouraging more women to participate in politics and ensuring their voices are heard is essential.

4. Educational Gaps: While progress has been made, educational gaps still exist, particularly in rural areas. Focusing on quality education and addressing factors like early marriage and cultural norms hindering girls' education is vital.

5. Healthcare Challenges: Access to quality healthcare, especially maternal and reproductive healthcare, remains a challenge in remote regions. Ensuring accessible and affordable healthcare services is critical.

Future Directions

1. Legal Reforms: Continue working on legal reforms to strengthen protections against gender-based violence and discrimination. Improving the implementation of existing laws is equally important.

2. Education and Awareness: Promote education and awareness campaigns targeting both women and men to challenge gender stereotypes and promote gender equality from an early age.

3. Economic Empowerment: Expand economic empowerment programs for women, including access to credit, skill development, and support for entrepreneurship, particularly in rural areas.

4. Political Participation: Encourage women's political participation through initiatives such as reserving seats in legislative bodies and supporting women candidates.

5. Healthcare Access: Invest in healthcare infrastructure, especially in rural and underserved areas, and provide comprehensive maternal and reproductive healthcare services.

6. Data Collection: Enhance data collection on women's status and rights to inform policies and programs better.

7. Community Engagement: Engage communities in discussions about gender equality and women's rights to create bottom-up change. Overall, this exploration seeks to shed light on how the principles of human rights can serve as a catalyst for enhancing the status and agency of women in India, contributing to greater gender equality and social progress.

CONCLUSION

Summarise the key findings and emphasise the critical role of human rights in shaping the pathways to gender equality in India. Discuss ongoing challenges, the importance of continued advocacy, and the vision for a more equitable future where women's empowerment is not just a goal but a human right upheld in practice. human rights are essential for women's empowerment in India. They provide the legal and ethical framework necessary to challenge gender-based discrimination and inequality. However, the effective implementation of these rights remains a challenge, and continued efforts are needed to ensure that women in India can fully realise their rights and achieve empowerment in all aspects of life.

UNVEILING THE DRAWBACKS OF SURROGACY ACT 2021: NAVIGATING THE COMPLEXITIES AND CONTROVERSIES

- Vineeta Kumari Chowdhary[*]

Abstract

Surrogacy is a complicated process involving various parties and medical procedures, which is now regulated under a legal framework in India. The article focuses on the regulations imposed under the Surrogacy (Regulation) Act 2021 on the procedure of surrogacy. The Surrogacy Act 2021 seeks to address long-standing issues with legal uncertainties, ethics, and reproductive rights involved in regulating surrogacy agreements. Before the commencement of the Act, the surrogacy market in India was so unregulated and uncontrolled in the absence of any enactment, which created a legal grey. The only regulatory measure available to regulate surrogacy practices was the guidelines issued by the Indian Council for Medical Research in 2002, which resulted in ineffectiveness because of the lack of any legal backup and the lack of a sanction attached to it. Meanwhile, the issue was addressed by the Law Commission and the apex court as well. Finally, the first Surrogacy Bill was introduced in 2014. Due to various reasons, it never came into the picture. The Surrogacy Bill 2018 has gone through various changes and was brought into force on 25th December 2021, which was a dire need at the time to regulate uncontrolled practices. The Act is effective and lacking in certain areas, which is a deal under the article. Nevertheless, there are several disadvantages to this regulation, which have sparked discussions about how well it works to manage the complexity of surrogacy procedures. This article exposes the flaws in the Surrogacy Act 2021, such as unclear legal requirements, issues with commercialisation and exploitation, inadequate protections for surrogate mothers, discriminatory practices, and moral conundrums. The difficulties in regulating surrogacy and guaranteeing fair and moral procedures for all parties can be solved by critically analysing these disadvantages.

Keywords: *Surrogacy, Regulations, Surrogacy, Loopholes and Parentage Rights.*

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INTRODUCTION

The roots of the medical history of surrogacy germinated since Dr. Subhash Mukhopadhyay carried out the nation's first successful in-vitro fertilisation on October 3, 1978, yielding "Durga," also known as Kanupriya Agarwal, the second test tube baby in the history. However, every development must be subject to control and regulation. The first legal issue arose back in the year 2008, when a Japanese couple abandoned a child born out of surrogacy, and it concerned the judiciary and the entire legal system; the case was *Baby Manji Yamada* v. *Union of India*[1]. The Law Commission India reported in 2009 and gave recommendations for bringing legislation on surrogacy and assisted reproductive technologies regulation.

Surrogacy, according to Black's Law Dictionary, is "an agreement wherein a woman agrees to be artificially inseminated with the semen of another woman's husband. She agrees to conceive, carry the child for a term and after the birth, assign her parental rights to the biological father and his wife"[2]. According to the definition provided in the Surrogacy Act 2021, "surrogacy" means a practice whereby one woman bears and gives birth to a child for an intending couple with the intention of handing over such child to the intending couple after the birth.[3]

Surrogacy is an arrangement whereby a woman consents to an assisted reproductive technology-achieved pregnancy in which neither her husband nor she owns any gametes are part, with the goal of carrying the pregnancy to term and giving the child to the person or people for whom she is acting as a surrogate. For those who are unable to become parents for medical or other reasons, surrogacy is a blessing.

On 25 December 2021, the Surrogacy (Regulation) Bill 2019, along with a few modifications, became law. It was enacted with the Assisted Reproductive Technology (Regulation) Act of 2021, and on January 25, 2022, it came into effect. The Act seeks to control Indian surrogacy procedures, and also it forbids all sorts of commercial surrogacy and allows altruistic surrogacy only. It also lays out the requirements for using surrogacy as a substitute for reproduction. The condition for a close relative was lifted, but other restrictions remain.

Under Article 21 of the constitution, the Supreme Court has recognised the right to reproductive choices as a component of the right to personal liberty in the cases of *Suchitra Shrivastava* v.

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[1] (2008) 13 SCC 521
[2] Garner A. Brayan, *Black's Law Dictionary*, p. 1445 (West Thomson Reuters, U.S.A. 6th, 1990)
[3] Surrogacy Regulation Act 2021, sec. 2(zd).

Chandigarh Administration[4] and *Meera Santosh Pal* v. *Union of India*[5]. It's not everyone's fortune, though, but with the development of technology, becoming a surrogate parent has turned out to be a realistic option for some people who are childless to get their own biological child. While the Surrogacy (Regulation) Act 2021 is a step in the right direction, it has various shortcomings, including a lack of inclusivity, the exclusion of non-binary gender, the restriction of commercial surrogacy, and the ambiguity of several sections.

In the case of Justice *K.S. Puttaswamy & Anr.* v. *Union of India*[6], it was decided that obtaining and displaying a certificate of infertility violates one's right to privacy. Moreover, making a district board certificate of infertility mandatory is morally and ethically wrong. As such, this fundamental right must be upheld. The statute restricts the reproductive choices of single men, unmarried women, elderly couples, and the LGBTQI population. It also only applies to heterosexual couples and widowed or divorced women. Due to criminal penalties, it is now illegal to provide surrogacy services, including altruistic surrogacy, to single individuals, live-in partners, and lesbian, gay, bisexual, transgender, and queer couples. The act forbids using a surrogacy process to have a second child. Limiting a person's ability to choose whether or not to have multiple children is an infringement on their fundamental right to reproductive choice.

 The Indian Constitution's Article 13 strengthens and legitimises the idea of fundamental rights. In order to safeguard fundamental rights, any legislation that conflicts with the rights outlined in part III of the Indian constitution is invalid. According to Article 13(2), the state is not allowed to enact laws that restrict or eliminate the rights granted by Part III of the Constitution. Any legislation that violates this provision would be declared invalid to the degree that it does so. The authority of legislatures and other law-making bodies is expressly limited by Article 13(2) by declaring any law as unconstitutional, which is in contravention of fundamental rights at its very outset.

PREREQUISITES FOR SURROGACY UNDER THE SURROGACY (REGULATION) ACT 2021

The Act is a social welfare legislation that states that only married couples with medically indicated conditions and age for a woman between the ages of the day of certification 23 and 50 and a male between 26 and 55, the intended couple must be married for at least five years. The intending

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[4] (2009) 9 SCC 1.
[5] (2017)3 SCC 462.
[6] (2017) 10 SCC 1.

parent should not have any surviving children. The only exception to this rule is if the surviving child has a fatal illness or any disabilities. The district medical board must certify a certificate when there are medical indications, and only those instances that meet the criteria would be eligible to undergo the surrogacy method.

In Indian society, it is taboo to be infertile. For a woman to be a surrogate mother, she must be a married woman between the ages of 25 and 35 who is having a living child of her own, and she may only do so once in her lifetime. The previous condition of a woman as a close relative in the bill is lifted in the Act of 2021.

In 2022, the Surrogacy (Regulation) Act of 2021 underwent an amendment, which require the intending parent to get 36 months of insurance coverage.[7] This is a progressive approach because it's crucial to assess the safety of any medical procedure performed on an expectant mother in addition to taking any potential immediate consequences into account.

The Union Health Ministry announced new regulations on surrogacy on June 21, 2022, limiting the number of times a surrogate mother might undergo the process to three. The Ministry of Health and Family Welfare, working under Mansukh Mandaviya, developed the Surrogacy (Regulation) Rules 2022 on June 21, 2022, with the goal of improving the facilities offered in surrogacy clinics. The regulations specify the number of employees and the qualifications they must have. Furthermore, it specifies how and in what format registration will be completed, as well as how surrogacy clinic fees will be paid.

PROHIBITIONS UNDER THE SURROGACY (REGULATION) ACT 2021

No surrogacy shall be conducted other than for the purpose mentioned under the Act, which is altruistic surrogacy.[8] If the surrogate mother has not given her written informed permission regarding the risks and consequences of being a surrogate, then no surrogacy will take place. Before the embryo is implanted in her womb, the surrogate mother will have the choice to withdraw at any time.

Additionally, it is forbidden for the intended mother or couple to leave the intended child born through surrogacy for any reason, including but not limited to birth defects, genetic defects, other

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[7] Surrogacy (Regulation) Act, 2021, sec. 4, Explanation III.
[8] Surrogacy (Regulation) Act, 2021, sec. 4.

medical conditions, the child's sex, or having more than one baby, whether the child is born in India or resides outside of it.

No surrogacy clinic, laboratory, or clinical establishment of any type may coerce the surrogate mother to have an abortion for any cause other than those specified in the Medical Termination of Pregnancy Act of 1971.

PEOPLE WHO ARE EXEMPTED FROM SURROGACY IN INDIA

Under the Act, certain exemptions are provided; a woman can be a surrogate only once in her lifetime and must be of the prescribed age. The intending couple must be married for not less than five years. The Act exclusively allows surrogacy for Indian couples. A couple that is already parents to a living child is not eligible to use surrogacy for a second child unless the surviving kid is gravely ill or suffers from a physical or mental illness. Couples who are deemed medically infertile are required to present with a medical certificate for their infertility. The Act forbids a homosexual couple from becoming parents using surrogacy. The Surrogacy (Regulation) Act 2021 forbids foreigners, single people, live-in couples, and same-sex couples from using surrogacy services in India, much like the previous bill did. Nonetheless, the legislation permits altruistic surrogacy only, in which a surrogate mother has a child without getting paid, though there are provisions for necessary medical expenses and insurance for a period of 36 months postpartum.

RULES FOR SURROGACY CLINICS[9]

Clinics conducting surrogacy procedures are required to adhere to specific rules; failure to do so will result in their operation being completely unauthorised. Under this Act, every clinic that performs surrogacy or provides surrogacy services needs to be registered. An application for registration must be submitted in the required format and with the required payments to the relevant body, which is very high. Within sixty days following the appointment of the competent authority, every such clinic that performs surrogacy or surrogacy treatments must apply for registration with the appropriate authority. If the clinic fails to register within the allotted time, they will stop doing surrogacy or surrogacy procedures. Under this law, surrogacy clinics cannot be registered unless the relevant authorities are satisfied that the clinic is able to supply and maintain the proper sorts of standards and equipment.

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[9] Surrogacy (Regulation) Act, 2021, sec. 11.

THE SURROGACY ACT 2021; WHETHER IT VIOLATES FUNDAMENTAL HUMAN RIGHTS

Senior Congress politician Ajit Kumar Bhuyan stated that the surrogacy Act's provisions are "out-of-touch with ground reality," referring to the nation's main opposition party. The Surrogacy (Regulation) Act 2021 came into force on January 25, 2022. As far as we know, the Act, which aims to abolish commercial surrogacy, permits altruistic surrogacy. The surrogate mother is compensated for her services in commercial surrogacy in addition to being paid for her medical expenses. The remuneration structure might make it possible for intended parents and surrogate moms to be exploited in an unequal society. In addition to the possibility that the supply and demand chains played a role, intermediary hospitals and IVF facilities were abusing the circumstances. The facilities known as "surrogate homes," which were built to provide temporary housing to surrogate mothers in commercial surrogacy, have also participated in the exploitation process. The surrogate mother in an altruistic surrogacy only gets reimbursed for her prenatal care and insurance.

1. Legal Gaps and Ambiguities: The Surrogacy (Regulation) Act 2021 offers a framework for regulating surrogacy agreements, although it has several gaps and ambiguities. The ambiguity around the rights and obligations of intended parents, surrogate moms, and the surrogate child is one of the main causes of concern. Legal disputes and concerns resulting from unclear circumstances around topics like parental rights, custody arrangements, and financial duties can eventually affect the well-being of persons involved.

2. Concerns about Commercialization and Exploitation: The Surrogacy Act of 2021 also poses a risk of continuing the commercialisation of surrogacy and the exploitation of weaker people, especially surrogate moms, as there is no measure to keep a check on it. Although the Act seeks to control commercial surrogacy agreements, some contend that it falls short in addressing the underlying power imbalances and economic inequalities that could result in surrogate mothers being exploited[10]. Furthermore, the Act's provisions on surrogate mother compensation create moral concerns regarding the fair distribution of financial rewards and the commodification of reproductive labour.

3. Limited Protections for Surrogate Mothers: The Surrogacy Act 2021 might not go far enough in offering complete protections for surrogate mothers, even with all of the efforts made to defend their rights. There is provision for statutory insurance for surrogate

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[10] Radhey S. Sharma, "Social, ethical, medical & legal aspects of surrogacy: an Indian scenario", Indian Journal of Medical Research 140 Suppl(Suppl 1), S13-S16. (2014).

mothers under the Act, but as the condition of close relatives is lifted, that created scope for exploitation of surrogate mothers.

Since they are frequently from underprivileged backgrounds, surrogate moms may find it difficult to stand up for their rights and negotiate equitable treatment during the surrogacy procedure. Issues that still need more attention and activism are surrogate mothers' legal representation, psychological assistance, and access to healthcare.

4. Social Implications and Exclusionary Provisions: Some Surrogacy Act 2021 provisions, such as intended parent eligibility requirements, have sparked concerns about its potential to bar members of particular communities from using surrogacy services. Restrictions that stem from factors such as nationality, marital status, or sexual orientation may disproportionately affect people and couples who don't fit the mould, restricting their options for reproduction and sustaining social injustices. These clauses are of discriminatory character and emphasise the necessity of a more egalitarian and inclusive approach to surrogacy regulation.

5. Moral Controversies and Ethical Dilemmas: The Surrogacy Act 2021 has also rekindled moral and ethical discussions about the surrogacy industry. The sacredness of motherhood, the commercialisation of reproduction, and the commodification of children continue to spark contentious debates among the general public, ethicists, and legislators. The Act reflects the inherent difficulties in regulating a very private and morally delicate part of human reproduction by attempting to strike a balance between conflicting ethical considerations while negotiating the complexities of surrogacy operations.

CONCLUSION

The total prohibition might force it to operate as an unregistered underground enterprise with disastrous results. In conclusion, the Surrogacy Act 2021 has restrictions and several shortcomings despite being a significant step towards regulating surrogacy arrangements. The Act faces many obstacles in managing the intricacies and disputes surrounding surrogacy practices, ranging from legal ambiguity and commercialisation concerns to inadequate rights for surrogate mothers and exclusionary measures. In order to ensure the ethical and equitable practice of surrogacy for all parties involved, it is necessary to critically assess the weaknesses of the Surrogacy Act 2021 and work towards improving them as policymakers, stakeholders, and advocates continue to engage in discourse and lobbying.

STRIKING A BALANCE: PROMISSORY ESTOPPELS' INFLUENCE ON STATE AUTHORITY AND INDIVIDUAL RIGHTS IN INDIAN GOVERNANCE

-   Dr. Priyanka Mohod* & Ayushi**

Abstract

This study examines Promissory Estoppel in Indian administrative law, its application, history, and significance. The research examines the doctrine's use and significance in administrative law, its impact on government acts, and the legal requirements needed to invoke it against the government. The research questions examine Promissory Estoppel's role in administrative law, its growth, the legal requirements for invoking it against the government, and its effects on administrative fairness and accountability. The introduction emphasises administrative law's role in balancing individual freedoms and state power. It covers the origins of Promissory Estoppel as an equitable doctrine to ensure fairness and equity, especially when one party relies on another's pledge. According to legal precedents and statutes like Section 115 of the Indian Evidence Act, Promissory Estoppel is relevant in administrative contexts. The following sections discuss Promissory Estoppel in government ties using relevant cases. It discusses the legal requirements to utilise the doctrine against the government, including a binding legal relationship and legal compliance. The Agnipath plan and governmental industrial strategies are examined in relation to Promissory Estoppel. Promissory Estoppel is important in Indian law for maintaining obligations and guaranteeing fairness and equity. Promissory Estoppel balances individual rights and state obligations, as the conclusion states. It suggests further research and accepts the doctrine's limits, especially in rare cases like the COVID-19 pandemic. This study examines Promissory Estoppel in Indian administrative law, including its evolution, application, and role in administrative justice and fairness.

Keywords: *Promissory Estoppels, Individuals Rights, Administrative Powers, Judicial Review, Arbitrariness, Legal Mandates.*

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RESEARCH OBJECTIVES

1. To analyze the application and significance of the doctrine of Promissory Estoppel in administrative law.
2. To assess the impact of Promissory Estoppel on government actions and pledges to explore the evolution and development of Promissory Estoppel in the legal context.
3. To examine the essentials required to invoke the doctrine of Promissory Estoppel against the government, with a focus on legal parameters and binding legal connections.

RESEARCH QUESTIONS

1. What is the importance of Promissory Estoppel in administrative law, especially concerning government actions and pledges?
2. How has the concept of Promissory Estoppel evolved within the legal framework?
3. What are the legal parameters and conditions necessary to invoke Promissory Estoppel against the government?
4. How does the doctrine of Promissory Estoppel impact fairness and accountability in administrative relationships?

INTRODUCTION

Administrative law plays a significant part in preserving the delicate equilibrium between individuals' developing freedom and state power since it must evolve to meet the diverse needs and expectations of individuals, as well as their rights and responsibilities. Administrative law covers a number of principles developed by the court with the goal of exerting control over the use of authority so that abuse of power or arbitrariness does not occur. In this present era where the government makes fake promises, one doctrine strikes into our head, is the doctrine of Promissory Estoppel. This is an equitable doctrine that solely advocates justice and equity. It is a British concept and is used in a Court of Equity in England.

This means that if one party performs an act or omission or makes a promise, demonstrating his or her intention to form a legal or lawful relationship with the other party in the future, and the other party acts on that promise, the promise made by the prior party stands binding. The concept protects other parties who acted on the basis of a promise. So, the prior party should not back off

and gain an undue advantage.[1] When it comes to administrative law, this clearly demonstrates that administrative authority's actions or pledges are certain and undeniable.

It is provided in sec 115 of the Indian Evidence Act defines *"When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing."*[2]

Estoppel is a rule of evidence: Section 115 allows for the use of estoppel as a rule of evidence against the Government. This can be done by relying on a representation or statement of facts, as long as the statement is not in conflict with the law. In the case of *University of Delhi* v. *Ashok Kumar*,[3] where in order to take up the role of Technical Coordinator at CERN-Geneva, Dr. Ashok Kumar, the petitioner, filed a request asking the University of Delhi to give him study leave. Based on a letter that the institution obtained from the institution University Grants Commission on July 30, 2021, the petitioner's request was denied by the university on March 16, 2021. The Delhi High Court heard the matter before Hon'ble Justice V. Kameswar Rao, and on September 27, 2021, the court rendered a decision dismissing the plea. The petitioner was not entitled to the study leave award, the court ruled.[4]

EXPLORING THE APPLICATION OF PROMISSORY ESTOPPEL IN GOVERNMENTAL RELATIONSHIPS AND LEGAL CONTEXTS

The relationship between the government and its agencies is complex, often defined by legal principles such as promissory estoppel. This concept posits that when a government representative makes a commitment, the government is bound to fulfil it, guided by equity and good conscience. This is also known as the doctrine of equity, akin to Promissory Estoppel in Indian law, which embodies principles of fairness and justice. It operates on the premise that if one party makes a promise or representation inducing reliance by another, equity demands the fulfilment of that promise to prevent injustice. In India, Equity is invoked through legal doctrines such as Section 115 of the Indian Evidence Act, ensuring that individuals and entities are held accountable for their

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[1] Shreya Dave, *The Doctrine of Promissory Estoppel,* Manupatra for more details visit *available at*: https://www.manupatra.com/roundup/376/Articles/The%20Doctrine%20of%20Promissory.pdf (last visited on 25.12.23)
[2] Indian Evidence Act, 1872
[3] *University of Delhi* v. *Ashok Kumar*, AIR 1968 Delhi 131
[4] *Ashok Kumar* v. *University of Delhi*, 2021 SCC OnLine Del 4537

commitments. This doctrine serves as a vital mechanism in administrative and contractual matters, upholding ethical standards and ensuring equitable outcomes in legal proceedings.

GOVERNMENT AND ITS AGENCIES

According to this idea, if the public or another party acts on it and the government representative, it be an executive branch official or another authority obligated to carry out the act, he or she must change his or her stance. The government is unable to retract or alter its position. It is required to fulfil its commitment in accordance with the stated terms. This principle has evolved by the judiciary by applying equity and good conscience.

In a celebrated case of *Union of India* v. *Anglo Afghan Agencies*[5], The case involves the Government of India's Export Promotion Scheme for woollen goods. The respondent exported goods and claimed import entitlement as per the scheme, but the Textile Commissioner reduced it. "The Supreme Court rendered a verdict in favour of the respondent, asserting that the Commissioner and the Union of India failed to adhere to the requirements of the plan, so infringing upon the respondent's right to state its case". The Court emphasised the equity arising from the government's representation in the scheme. It rejected the need for promissory estoppel against the government, considering it unnecessary.

In a case of *M/S Motilal Padampat Sugar Mills* v. *State of Uttar Pradesh*[6], the High Court of Uttar Pradesh rejected a writ and dismissed a plea invoking promissory estoppel against the Uttar Pradesh government. The apex court of India clarified that if one party makes a clear promise through words or actions, intending to create legal relations or influence a future legal relationship, and the other party acts upon it, the first party is liable for any resulting loss. The principle, rooted in equity to prevent injustice, is not strictly an estoppel rule but a doctrine developed to prevent unfairness. It can serve as the basis for legal action beyond a mere defence.

ESSENTIALS TO INVOKE DOCTRINE AGAINST GOVERNMENT:

1. The state assumes the responsibility within the legal parameters.
2. The goal is to establish a binding legal connection.

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[5] AIR 1968 SC 718
[6] *M/S Motilal Padampat Sugar Mills* v. *State of Uttar Pradesh*, 1979 AIR SC 621

3. Either the other party must behave in accordance with that promise, or they are not allowed to.[7]

INSTANCES WHERE DOCTRINE CANNOT BE INVOKED AGAINST GOVERNMENT:

1. **Public interest:** The judiciary, in several cases, held that public interest will always prevail over promissory estoppel. The Supreme Court determined that promissory estoppel may be used against the Government, but its application depends on the balance of justice or public interest. If there is a significant public interest, the Government has the authority to modify its position and withdraw from its previous representation. This withdrawal may lead individuals to take actions that are not in their best interest.[8]

2. **Representation against the law:** No doctrine is in contrary to or opposed to the law, including estoppel. This was first introduced in the U.S. apex court in the case of *Federal Crop Insurance Corporation* v. *Merrill[9],* where it was determined that the government's assurance that reseeded wheat could be insured was unenforceable due to the prohibition on the insurance of reseeded wheat under crop insurance regulations. Due to the fact that the promise violated wheat crop insurance regulations, the government deemed it non-binding.

3. **Ultra vires promise:** It is important to note that estoppel cannot validate conduct that is inherently outside the legal authority (ultra vires) as established in the case of *Commonwealth of Australia* v. *Burns*[10]*,* decided by U.K. court. The promisor cannot be obligated to fulfil an unlawful promise. The root of its potency lies in its rationality. The authority of the public institution is derived from the Parliament, which serves as the highest legislative body. The jurisdictional border of the public body is determined by the Parliament. The primary function of the public body is to use its powers in order to fulfil the intended purpose set by the Parliament, which aligns with the overarching aim of the country as represented by the people's elected representatives. Representation that exceeds the legal authority deviates from the national aim. Therefore, permitting an individual to assert their self-proclaimed right in opposition to the general interest is unjust.[11]

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[7] Tripaksha Litigation, Doctrine of Promissory Estoppel, *available at*: https://tripakshalitigation.com/doctrine-of-promissory-estoppel/ (last visited on: 22.10.23)

[8] *Shrijee Sales Corporation* v. *Union of India*, 1997 (3) SCC 398

[9] 332 U.S. 380: 92 L.ed. 10

[10] 874 EDA 2023 J-S47018-23

[11] Ng May Yee, Subang Jaya, *Promisee's right to bound public authorities to their: The debate between the doctrine of estoppel and legitimate expectation*, 3, EAJ.15, 16, (2015)

4. **Estoppel against the university and educational institution:[12]** Promissory estoppel can lie against educational institutions also, which clearly given in the case of *Nilofar Insaf* v. *State of Madhya Pradesh[13]* where the court said the denial of relief to Dr. Jain in a medical college admission dispute, primarily due to the advanced stage of the M.D. course, which began in August 1989. Despite acknowledging lapses in transfer rules and court delays, the court declines to grant specific directions for Dr. Jain's admission, considering his completion of a Radiology diploma and ineligibility for the M.D. course for three years. The court expresses reluctance due to potential prejudice to other candidates and the impracticality of directing the university to fill a past vacancy. Ultimately, the appeal is allowed, upholding the appellant's admission to the M.D. Radiology course 1989-91 without costs.

5. **Estoppels against statute**: Statutes are impervious to the estoppel doctrine. In summary, an individual who initially asserts a claim concerning the language of a statute may subsequently assert that the statutory provision in question differs from their initial claim. Those who depend on a representation made about legislation or law are free to confirm the correct legal position on the subject, even if the representation is false. As the saying goes, "ignorance of the law is no excuse"; hence, people cannot utilise estoppel as a defence to argue that anything was said about a statute that was not true. Estoppel does not supplant legislative requirements, nor can it prevent legislation from requiring a certain conduct. Moreover, the theory cannot be used to impede the government's ability to carry out its executive and legislative duties[14].

EXPLORING THE TWO SCHEME AND THE ROLE OF PROMISSORY ESTOPPEL IN INDIAN LAW

This doctrine is widely applicable in the Indian administrative system, and it has been used in many scenarios where there is non-compliance from the government's side in implementing projects. This paper addresses two strategies.

1. **Agnipath scheme:** This scheme was announced by the government of India to recruit young youth in the armed forces for four years.

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[12] *Doctrine of Estoppel*, Law Times Journal (Apr. 1, 2019), https://lawtimesjournal.in/doctrine-of-estoppel/ (last visited on: 17.12.23)

[13] *Dr. Ku. Nilofar Insaf* v. *State of Madhya Pradesh*, 1991 AIR SC 1872

[14] Legal Service India, The Doctrine of Promissory Estoppel, *available at*: https://www.legalserviceindia.com/article/l249-Promissory-Estoppel.html (last visited on 05.02.24)

This scheme was introduced by recruiting candidates who had cleared the medical, physical, and written examinations of the previous recruiting process. These grievances were raised by various candidates represented by Prashant Bhushan, an Advocate argued that the government should first recruit those candidates via the previous recruiting process instead of the new scheme.

Further, he argued in the court that "Thereafter for more than one year, every three months they kept saying that appointment letters were going to be issued; however, they were postponed due to COVID-19, etc. in the meantime they did recruitment rallies for the same posts claiming it was for fast-track recruitments to address the demographic imbalance to recruit tribal people, etc.". These individuals, he said, had been offered positions in the BSF and other paramilitary groups, but they had declined, having been informed that letters of induction to the Air Force would be sent. "They didn't say the issue of letters being postponed due to Agnipath," he subsequently raises the principle of promissory estoppel against the government.[15]

2. **State industrial policy & incentive schemes:** In a case, "*Union of India and Another* v. *M/s V.V.F. Limited and Another Etc*".[16]*,* where the appeals stem from a Division Bench of the Gujarat High Court's March 10, 2010, joint judgement and order. A devastating earthquake struck Gujarat's Kutch area in 2001, destroying all of the district's infrastructure and endangering the livelihoods of the locals. The Government of India announced an Incentive Scheme for developing new enterprises in the earthquake-affected area in an attempt to draw investment for the district's restoration. An announcement about this project was made via a "Central Excise (Exemption) Notification." The notification offered an exemption equal to the amount of excise tax paid in cash or through the "Personal Ledger Account (PLA)" on completed products for commodities cleared from a new Industrial Unit created in Kutch by July 31, 2003 (later extended to December 31, 2005).

The court ruled that the promise of promissory estoppel cannot apply to industrial policy(s) and any follow-up explanations or notifications that are given in the public interest about such industrial policies.

Significance in India: Promissory estoppel is a notion that carries great significance in India, especially in the fields of contract and administrative law. This legal concept functions as a vital mechanism for upholding commitments and statements, even in the absence of a written

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[15] Express News Service, *SC ruling on Agnipath scheme: What does promissory estoppel under contract law mean?* The Indian Express (Apr. 12, 2023), *available at*: https://indianexpress.com/article/explained/explained-law/what-does-promissory-estoppel-mean-8552259/ (last visited on 28.9.23)

[16] *Union of India* v. *M/s V.V.F. Ltd.*, AIR 2020 SC 2954

agreement. Based on the principles of fairness and equity, promissory estoppel prohibits a person from breaking a definite pledge if another party has fairly depended on it to their disadvantage. In the context of administrative law, the doctrine is frequently invoked against government entities, ensuring accountability and preventing arbitrary actions. In contractual matters, it provides a flexible approach, allowing courts to uphold promises that may not strictly adhere to formal contract requirements. Essentially, the doctrine of promissory estoppel in India acts as a safeguard against injustice, fostering a legal environment that prioritises the reasonable expectations of the parties involved, both in private contracts and interactions with public authorities.[17]

SUGGESTIONS

Being a welfare nation, the government is bound to fulfil all the promises it makes. However, there are various circumstances where this doctrine fails, and it becomes irrelevant to the government's ability to discharge its promises. The recent event of the COVID-19 pandemic shows how the governments cannot be stopped and are unable to fulfil their promises.

CONCLUSION

In conclusion, this thoroughly examines the doctrine of promissory estoppel in Indian law, emphasising its crucial role in balancing individual freedoms and state power within administrative law. The study explores its application against institutions, including government and educational entities, illustrating its impact and limitations through relevant cases. Addressing its inapplicability to statutes, the research paper clarifies its role in ensuring accountability and fairness in interactions with specific schemes, like the Agnipath scheme and state industrial policies. Ultimately, promissory estoppel's significance in India lies in its enforcement of promises, protection against unfair treatment, and contribution to a legal environment prioritising justice in contractual and administrative relationships.

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[17] Legal Vidhiya, *Doctrine of Promissory Estoppel*, (Dec. 22, 2023), *available at*: https://legalvidhiya.com/doctrine-of-promissory-estoppel/ (last visited on 20.03.24)

BEYOND THE MEKONG: A LITMUS TEST FOR TRANSBOUNDARY ENVIRONMENTAL GOVERNANCE

-   Shikha Vasishta[*]

Abstract

This study looks into the complex truth behind transboundary environmental cooperation in relation to the Mekong River Basin and is a good indicator for testing whether such governance frameworks are possible anywhere. Built on political ecology, environmental policy, and international relations. It analyses from a multidisciplinary perspective the problems faced by nations along the Mekong River. Taking a comparative analytical approach, it examines cooperation for environmental problems on the part of China with Myanmar, Laos, Thailand, Cambodia, and Vietnam. There are rival interests between nations and levels of cooperation that differ according to circumstances-- and water is the most carefully contested area. A framework for the study analyses a few links in practical applications: how political forces and power structures define environmental governance or how national policies interrelate with geopolitical interests and regional cooperation institutions. Generalising international experience and making full use of existing case studies in dam building not only furthers theoretical understanding but also provides a set of practical proposals on how to improve collaboration and resolve conflicts while preserving the natural environment.

Keywords: *Transboundary Environmental Governance, Mekong River Basin, Political Dynamics, Environmental Cooperation, Political Ecology*

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INTRODUCTION

The Mekong River Basin, a vast and intricate piece of thread connecting six countries – China, Myanmar, Laos, Thailand, Cambodia, and Vietnam is, on the one hand, the lifeline that provides water to some fifty million people. It also serves as an example of how difficult transboundary governance can be. This study, titled "Beyond the Mekong: A Litmus Test for Transboundary Environmental Governance," is an intricate analysis of the forces determining cooperative environmental activities in this significant area. Located at the nexus of political science, environmental policy and international relations, our research aims to peel back layers of complexity in transboundary cooperation over tensions related to the Mekong River Basin's waters.

It is during a period when the entire world grapples with global environmental issues that call for cross-border collaboration; Mekong serves as an excellent case study in revealing the complexities and potential of transboundary governance frameworks. The concerns over water management, the build-up of dams and ecological interests are not just crucial to those living in communities near its territory but also represent a way forward for countries around the world on how to similarly manage their own resources sustainably.

This study employs a comparative analytical method to analyse the cooperative endeavours, or lack thereof, among the riparian states. Through an analysis of the policy frameworks, geopolitical motivations, and power dynamics that are at play, we seek to reveal several factors that either impede or facilitate successful transboundary environmental governance. In order to get into the details of national interests, political science gives us a lens where we can consider how these divergent agendas intersect or collide in the field of environmental policy.

This study is not just looking at the Mekong's environmental problems or issues but represents a bigger picture, extrapolating lessons and insights that are applicable to transboundary governance of the environment anywhere in the world. In order to provide some contribution towards the theoretical comprehension of transboundary environmental cooperation, an in-depth analysis of selected case studies (e.g., In addition, this research seeks to provide practical recommendations for policymakers and stakeholders in addressing similar challenges with a view towards establishing sustainable ways of managing those resources coupled with an atmosphere of cooperation.

THEORETICAL UNDERPINNINGS

This study is based on fundamental theoretical frameworks in political science, environmental governance, and international relations. Therefore, this analysis is based upon the principle of environmental diplomacy; hence, it suggests that finding a solution to ecological problems requires diplomatic effort beyond national borders. In this framework, the study also blends regime theory to look at the formation and effectiveness of international agreements and cooperative structures.

Also, the research relies on theories of power balance and imbalance, acknowledging that the management of shared resources often reflects greater geopolitical realities. Political ecology provides insights into the socio-environmental impacts of policy decisions, while institutionalism allows an inquiry into the influence regional organisations and agreements play on shaping transboundary cooperation.

Theoretical lenses are chosen carefully in order to scrutinise how state interests, power disparities and institutional frameworks come together within the Mekong River Basin. By combining these theoretical foundations, the study aims to provide an in-depth understanding of such complexities associated with transboundary environmental governance so as to enable a subtle analysis of how collaborative efforts are attempted and what consequences that is likely to be reflected upon global environmental diplomacy.

METHODOLOGICAL FRAMEWORK

This research utilises a mixed-methods study design, combining qualitative and quantitative analyses to provide for an overall investigation of transboundary environmental governance in the Mekong River Basin. Qualitatively, the study looks at policy documents, international agreements, and geopolitical narratives to understand political dynamics. Quantitatively, ecological statistics will be run on data pertaining to biodiversity, water quality and dam impact.

Particular case studies involve the impacts of dam building in Cambodia's Tonle Sap Lake, water management policies affecting both the Laos Mekong Section and the Vietnamese part of Vietnam, which involves its ecological consequences due to the changed flow of water. By triangulating cases of diverse nature, this research seeks to offer a nuanced perspective into the complex dynamics that influence transboundary environmental governance in the Mekong region.

UNDERSTANDING THE MEKONG RIVER BASIN

The Mekong River Basin spreads across six countries, China, Myanmar, Laos, Thailand, Cambodia, and Vietnam, and it houses a vibrant amalgam of geopolitical complexities and ecological

significance. In order to unravel the intricacies of transboundary environmental governance, an overall comprehension of the region is essential.

The Mekong River Basin stretches over 8,00,000 square kilometres and interconnects with the socio-economic framework of its riparian nations. China, the highest riparian state, contributes to Mekong's headwaters and holds significant control over the water flow in this river. From this point on, the Mekong meanders through other nations, contributing to their geopolitical relationships as a lifeline for trade, agri-business, and cultural interactions. The environmental history of the Mekong is no less complicated. Known for its biological diversity, the basin sustains various ecosystems, such as Tonle Sap Lake in Cambodia - a vital source of biodiversity. However, the region has many environmental problems that are intensified by the growing number of dam constructions. It disrupts the delicate equilibrium of Mekong's ecosystem, impacting fisheries, water quality and livelihood from resources.

To understand the present dynamics requires going back to the past. The Mekong River has been an artery of civilisation for thousands of years, providing pathways to trade, communication, and cultural exchanges. However, historical interactions were not free of controversy. Throughout the history of the river, territorial disputes and power struggles have ebbed and flowed along its course, shaping the geopolitical landscape. The modern period saw a boom in dam-making; this was one of the signs that showed where the region wanted to go. China's large dam network along the Mekong in its upper regions changed the natural flow of the Mekong, raising concerns downstream. Rivalry and alliances among riparian states are also largely determined by the geopolitical impact of such projects.

As environmental issues became a global issue, the Mekong River Basin emerged as an area of transboundary governance. Nations were at a crossroads, seeking to reconcile economic development with ecological sustainability. Collaborative efforts were developed, including the Mekong River Commission, which made attempts to form agreements and frameworks for joint management.

Navigating through the elaborate labyrinth of the Mekong River Basin, one can see that its geopolitical and environmental aspects cannot, therefore, be separated from each other. The history underscores what happens today, which serves as a backdrop for cooperative or contrasting initiatives. Managing the balance between developing this basin's resources and maintaining its ecological integrity poses a daunting task. Over the course of this study, we aim to peel back these interrelated threads, exposing the geopolitical and environmental complexities that lie beneath transboundary environmental governance in the Mekong River Basin.

ANALYSIS OF COOPERATION EFFORTS

- Cooperation Initiatives

The Mekong River Basin's collaborative landscape has changed over certain years, with major initiatives determining transboundary environmental governance. In 1995, the Mekong River Commission (MRC) was established as a key pillar of cooperation between Cambodia, Laos, Thailand, and Vietnam. This capacity has facilitated dialogue and information sharing over the years and culminated in the development of the Mekong Integrated Water Resources Management (IWRM) plan.

However, the effectiveness of the MRC is still an important topic for evaluation. The MRC has the challenge as of the mid-2000s on how to make policy recommendations an enforceable regulation since it does not have binding authority. While Agreements within the MRC have fostered regional cooperation, there are complexities as national interests and levels of commitment among member states vary greatly.

The year 2015 saw the debut of Lancang-Mekong Cooperation Mechanism emerging as a wider regional cooperation among China, Myanmar, Laos, Thailand, Cambodia, and Vietnam. This mechanism represents a changing field of collaboration centred on water resources, connectivity, and sustainable development. However, its efficacy depends on being able to manoeuvre complicated geopolitical dynamics and equate economic disparities among participating nations.

As of the latest available statistics, these initiatives form an energetic background for such a transboundary environmental governance evaluation in terms of the Mekong River Basin. The inability of agreements to be legally binding and the impact that other influential actors have created a host of challenges for effective joint governance. in the following analysis, this study will look into details of these initiatives, analysing development and cooperative patterns over time to evaluate their effectiveness during respective periods with insights on delicate balances between cooperation pitfalls and challenges that are inherently present within any such environmental governance system.

- Challenges and Hurdles

Navigating transboundary cooperation within the Mekong River Basin is a labyrinth nation of challenges that are intricately interwoven with geopolitical, economic, and environmental dynamics.

Persistent obstacles are territorial disputes, various national priorities, and economic asymmetries. Historical disputes such as the conflict between Cambodia and Thailand over Preah Vihear temple are examples of territorial complexities. Such territorial issues not only make the negotiation more difficult but, at the same time, highlight a broader challenge of managing nationalist interests in order to fit into these cooperative frameworks.

Mekong nations' diverse levels of economic development add to the complications in collaboration. Economic disparities influence negotiation dynamics making it difficult to find even bargains that consider the varying abilities of member states.

Different political dynamics significantly contribute to the determination of collaborative efforts. There are power imbalances among nations, which shape the negotiation process, which often traces back to history and geopolitical considerations. China brings another dimension to the cooperative field owing to its upstream standing and massive dam initiatives. The willingness to pursue joint efforts is also influenced by the political priorities of each nation, leading to a delicate balance between national interests and collective regional objectives.

The collaboration milieu is complicated by external actors, such as non-basin countries and economic stakeholders. National policies may seem to deviate from a certain trajectory due to investments made outside the country, misaligning environmental goals, and proving difficult for cohesive collaboration.

Even as of the latest appraisals, these challenges have remained in place and are reflected in difficulties in producing cohesive policies for environmental sustainability within the Mekong River Basin. the dynamics of cooperation are always changing with geopolitical shift, economic development and even changes to environmental priorities.

CASE STUDIES: WATER MANAGEMENT IN THE MEKONG RIVER BASIN

- **Case Study 1:** Lancang-Mekong Cooperation and Upstream Dam Construction 2010 – Present

They investigate the case of extensive dam construction in China on the Lancang River, an upper stretch of the Mekong, from 2010 to date. China's large-scale dam projects have raised questions downstream due to changes in water flow and sediment transport and their potential ecological impacts. 2015 saw the establishment of Lancang-Mekong Cooperation Mechanism as a collaborative platform to address these concerns and enhance regional cooperation. Balancing China's developmental dreams and environmental interests, as well as socioeconomic events with

downstream nations, is a challenge. This case examines the problem of such a mechanism in reducing environmental impacts during upstream construction and operation of dams, promoting fair water allocation, and developing guidelines for environmentally friendly cooperation beyond borders within the Mekong River Basin.

- **Case Study 2:** Mekong River Commission's Procedures for Water Use (1995 - Present)

Since its creation in 1995, the Mekong River Commission (MRC) has been central to facilitating cooperative efforts among Cambodia, Laos, Thailand, and Vietnam for appropriate water management within the ambit of the Mekong River Basin. The MRC's principal aim is to help in discussions and negotiations concerning water utilisation. It seeks to strike a balance between the developmental interests of its member states, and that requires managing resources sustainably.

This case study deals with issues concerning the implementation of water use agreements. The fact that MRC makes use of non-binding regulations also poses questions regarding the functionality of its practices. This complication arises from varying levels of commitment among member states. Thus, it calls for a sophisticated analysis of how the MRC manages these challenges to foster equitable water use in an environmentally sustainable manner within the basin. The purpose of this case is to untangle the peculiarities of MRC's operations, revealing how cooperation and disputes play a role in transboundary water governance.

- **Case Studies 3:** Ecological Concerns

The biodiversity hotspot and lifeline to millions, the Mekong River Basin faces essential ecological challenges that must be keenly investigated. This section focuses on selected case studies, presenting particular ecological dilemmas for various regions and demonstrating the primacy of transboundary environmental governance. In the north of Laos, major development projects and hydropower present a danger to unique biodiversity hot spots. Dam construction on the Nam Ou River, one of its main tributaries, is affected by increased flow changes, causing multiple problems for species inhabiting these ecologically delicate grounds. There is habitat destruction that threatens endangered species of flora and fauna in order to shift the precarious balance within this ecosystem.

The Tonle Sap, the largest lake in Southeast Asia, is of great economic and ecological importance to Cambodia. The creation of dams on the river Mekong, especially in China and Laos, has interrupted the natural process of flood for this very reason. In turn, this interference influences fish migration routes and spawning schedules, which impede the rich aquatic diversity of Tonle

Sap. In their dependence on fisheries, local communities are subject to economic insecurity that magnifies their socio-ecological impacts. The Mekong in Vietnam, the "Rice Bowl", faces ecological degradation as a result of modified river flows caused by dams upstream. This affects the natural replenishment system of the delta, resulting in saltwater intrusion, soil erosion and less productivity of agriculture. The Mangrove forests that are important for coastal ecosystems get invaded and biodiversity is negatively affected, increasing vulnerability pertaining to climate change. These case studies together highlight the complex inter-relationship between transnational environmental choices and localised ecological outcomes. The hurdles transcend the boundaries of geography and politics, which necessitate a broad but collaborative initiative for an effective effort against them. The impacts on biodiversity, water quality, and local communities are representative of the challenges facing environmental issues in the Mekong River Basin that signifies an urgent need for transboundary collaboration as well as sustainable management systems in order to preserve this ecosystem.

POLITICAL DYNAMICS AND POWER IMBALANCES

The Mekong River Basin is a scene where political processes and structural imbalances have been key in determining transboundary environmental governance. This part bears the complicated dynamics between national policies, geopolitical interests and cooperative organisational mechanisms that enhance or thwart efficient environmental management. The underlying policies implemented by the Mekong River Basin nations contribute to transboundary cooperation. The socioeconomic priorities and political agenda of each country determine the kind of environmental policy it formulates, which often seeks to promote national interest instead of efforts towards collaboration. The conflict between these policies, especially issues related to dam construction and water management, reveals the dilemma of connecting various national goals for more significant environmental benefits. The highly variable policies of the countries in the Mekong River Basin are important for guiding transboundary cooperation. This is because every country, guided by its socioeconomic priorities and political agenda, designs environmental policies geared towards furthering its national interests rather than a united effort. The conflict in policies, especially regarding dam making and water control, illustrates the difficulty of reconciling different national goals for a more significant collective gain. There are regional cooperation mechanisms such as the Mekong River Commission (MRC), but their effectiveness is limited by imbalances in power among member states. Larger nations' influence can weaken the issues of small riparian countries. Decision-making processes typical for these mechanisms may not always correspond with the requirements of ecological balance across the entire basin, thus drawing attention to

difficulties associated with a sustainable and all-inclusive transboundary environmental governance framework.

A further complication is added in the pursuit of hydropower projects as a means of energy security. In the sense that they are motivated by energy and economic independence, upstream countries usually focus on building dams. On the other hand, downstream nations are worried about the ecological and social impacts of dams that they rely on for their needs, including electricity generation. Negotiations over hydropower projects often prove to be sites of power imbalances, which affect the volume and speed at which transformations come about. In the case of the Mekong River Basin, political phenomena and uneven power relate, in turn, to considerable challenges characterising efficient transboundary environmental governance. These consequences go beyond ecological issues to influence the socio-economic stability of the nations involved.

To overcome such challenges, creating an atmosphere of mutual trust, shared responsibility, and inclusive decision-making is necessary. To achieve sustainable and fair management of the environment in the Mekong River basin, initiatives that take account of every country's needs while aligning with a framework for cooperation are crucial. Future prospects should focus on consensus, power relationships, and principles of transboundary environmental governance that are in line with regional stability and sustainability.

INSIGHTS FOR GLOBAL TRANSBOUNDARY GOVERNANCE

The complications of transboundary environmental governance in the Mekong River Basin provide valuable lessons for extrapolation to a wider international context. This section generalises lessons and insights that go beyond localities, offering a wider lens to policymakers and researchers engaging in border governance across the globe. The Mekong experience is characterised by the interrelatedness of environmental threats. Water management and dam construction are some of the issues that transcend boundaries, and so are ecological issues. Hence, global transboundary governance frameworks need to consider the complex interactions of various environmental issues across continents affecting many countries. In the Mekong, power disparities have undermined good governance. This highlights the need to promote inclusivity in global governance structures. Having a deep understanding of the different interests and capacities in nations encompassed by transboundary initiatives is essential to develop frameworks that are objective and transparent, as well as allow for responses from all stakeholders. Although regional bodies such as the Mekong River Commission have their share of problems, they show that collaborative

platforms are capable. Global governance frameworks should be based on regional building blocks that suggest transboundary cooperation. Regional cooperation may lead to increased efficiency, sharing information and consequently offering specialised services that are in line with the specifics of each region. However, the challenges encountered by the Mekong Basin in developing hydropower point to the need for a delicate equilibrium between sustainability and economic aspirations. Efforts in global transboundary governance should promote a sustainable practice that preserves the environment but does not interfere with economic development. This entails support for cleaner technologies, advancing green economies and linking development paths to long-term ecological resilience. The histories of Mekong region communities highlight the importance of adopting local knowledge and involving community membership in such processes. The emphasis of global transboundary governance should centre on community engagement to have local outcomes contribute towards the development and implementation of policies and initiatives. This strategy makes transboundary environmental governance more effective and sustainable. By applying an integrated approach, we can draw on experiences from the Mekong River Basin. Global transboundary governance initiatives emerge as beneficiaries of these insights. It is imperative that policymakers and stakeholders focus on collaboration, acknowledge the connected nature of environmental problems, and strive towards solutions that are inclusive as well as community-focused. With global environmental intricacies on the rise, regional learning from case studies such as one for the Mekong becomes essential to support building strong international frameworks that seek sustainable and fair transboundary governance.

PRACTICAL RECOMMENDATIONS

This section provides practical approaches stemming from the Mekong River Basin to support cooperation, resolve conflicts and promote sustainable utilisation of shared natural resources under transboundary environmental governance.

- Establish a Collaborative Platform: Support the establishment or improvement of a regional collaborative forum, such as that provided by the Mekong River Commission, to enable riparian states to continue engagement and cooperation. This platform should be flexible enough to cater for the differing needs and capacities of each country while incorporating key stakeholders, such as local communities and non-governmental organisations.

- Enhance Data Sharing and Transparency: Reinforce transparency in information sharing about environmental conditions, projects implemented and potential impacts.

Establish a uniform process of information transfer enabled by technology to facilitate real-time updates and effective decision-making.

- Incorporate Adaptive Management Strategies: Adopt adaptive management approaches that involve ongoing assessment and adaptation of environmental regulations to emerging risks. Promote the malleability of governance structures as science continues to evolve and technology advances.

- Promote Basin-Wide Environmental Impact Assessments (EIA): Require Environmental Impact Assessments for significant projects to analyse the cumulative impact of development on ecosystems and local communities across an entire basin. Make sure all EIAs are cross-border implemented, with participation from representatives of every riparian state and consideration for potential transboundary effects.

- Invest in Sustainable Alternatives: Highlight investments in environmentally friendly alternatives to dam constructions, renewable energy sources, and other eco-friendly infrastructure projects. Support collaboration for research and development projects of sustainable technology capable of covering all nations' energy needs but having minimal impact on the environment.

- Prioritise Community Involvement and Capacity Building: Focus more on fostering the participation of local communities to influence decision-making processes based on their unique knowledge and perspectives. Develop capacity-building programs to equip communities with the relevant skills and resources required to contribute actively towards sustainable environmental practices.

- Implement Conflict Resolution Mechanisms: Set up adequate conflict resolution mechanisms that provide a procedure for dealing with such minor issues as transboundary environmental disputes. Promote the practices of mediation, negotiation and international arbitration as peaceful conflict resolution mechanisms to avert conflicts. Monitor and Enforce Agreements: Establish a strong monitoring and compliance mechanism that will ensure the implementation of environmental regulations agreed upon in the collaborative initiatives. Penalties for non-conformance and mandates that nations be accountable to their environmental commitments should also occur.

These pragmatic measures require common initiative, political determination, and uniform accountability from all riparian states. The Mekong River Basin nations, as well as other countries that face similar challenges globally, should adopt a cooperative and adaptive model to move towards a resilient transboundary environmental governance framework.

CONCLUSION

In the final stage, transboundary environmental governance The issues that emerge in this region exhibit the need for developing efficient governance frameworks to strike a balance of development and conservation with power imbalances as well as encourage participatory decision-making.

The Mekong's transboundary governance experience focuses on the interdependence between environmental problems and politics, which disregards political boundaries. This region's insights serve to emphasise the need to consider diverse challenges, linking issues related to water management and dam building with environmental interventions that require regional planning. Immediate practical recommendations informed by these insights present a cooperative future in which nations within the Mekong River Basin and beyond can resolve environmental challenges together. Main among the recommended measures is the formulation of cooperative interfaces where there remains an unending dialogue between riparian states. Through promoting openness, these platforms encourage shared understanding and collaborative problem-solving. Another important recommendation is improving the sharing and transparency of data. This includes developing protocols for information sharing, which would allow for better-informed decisions and increase the level of trust among nations. The use of Basin-wide Environmental Impact Assessments (EIA) also promotes transparency and collaborative decisions, which ensures that there is a thorough assessment that identifies any potential transboundary impacts. The adoption of adaptive management approaches is crucial for dealing with the dynamic nature that environmental threats exhibit. This approach promotes the adaptability of governance structures which allows for constant evaluation and re-evaluation depending on new developments in scientific knowledge or technological advancements. Recommendations also place emphasis on sustainable alternatives to dam construction, investments in renewable power sources and community participation. Being aware of the particular beliefs and facts held by local communities is necessary to develop resilience and achieve effective environmental sustainability programs. A comprehensive approach that incorporates diplomacy, conflict resolution tools and geopolitical dialogues is necessary in order to address imbalances of power. Such mechanisms are designed to ensure that all riparian states hear their voice, reduce tension and work together for the wider nature's benefit. Indeed, the Mekong River Basin case demands a novel approach towards transnational environmental management. It promotes a vision of the future in which common natural resources are collectively managed according to ethical standards, such as equity and sustainability. With the application of these down-to-earth recommendations by and in Mekong

countries, not only they but also all humanity can contribute to a better, more sustainable living with our shared natural environment.

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AN ANALYSIS ON THE EFFECTIVENESS OF SECTION 309 CrPC IN DELIVERING JUSTICE

\- Rutu Muppidi* & Shivani Pranesh**

Abstract

As everyone may have heard, the popular saying "justice delayed is justice denied." The pragmatic application of this principle can be observed in section 309 CrPC. The research aims to comprehend the provisions of Section 309 CrPC to study the critical balance between speedy trial and postponement of criminal proceedings when necessary, using pertinent examples. This section will examine the daily instructions that instruct the court to expedite the criminal proceedings until all witnesses have had a chance to voice their thoughts. "If necessary, it gives the Magistrate the authority to remand the accused to judicial custody once the offence has been determined and the trial has started." The provision also controls the criminal court's power to postpone or adjourn cases, highlighting the need to avoid prolonged stays of proceedings to prevent evidence from being lost to the passage of time and from unjustified harassment of the accused. If it deems necessary, the Court may postpone the investigation or trial after being notified of the offence. In a similar vein, the trial may be delayed by the court if needed. In both situations, though, recording the rationale behind the postponement or adjournment is necessary. The study's main contribution is understanding how section 309 operates and the limitations imposed in certain situations.

Keywords: *Justice, Offence, Trial, Delay, Investigation, CrPC.*

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INTRODUCTION

Every Indian citizen has fundamental rights articulated in Part III of the Indian Constitution. Among these, Article 21[1] holds particular significance, encompassing a spectrum of rights within its purview. One pivotal entitlement it encapsulates is the right to a speedy trial. In the framework of Indian law, the principle of equality under Article 14[2] is diligently applied to accused individuals. An accused person, denoting someone apprehended for the commission or imminent commission of an offence, is accorded specific rights during inquiries and trial proceedings. These rights are protected through constitutional provisions and the Code of Criminal Procedure, 1973.[3]

The Criminal Procedure Code is designed to streamline the disposition of investigations and trial proceedings, ensuring a continuous process once the examination of witnesses has commenced. Upon taking cognisance of an offence or during the trial, the court may adjourn or postpone proceedings for valid reasons to be recorded. However, such adjournments should not exceed 15 days when detaining a suspect, and no adjournments are allowed once witnesses have testified, except for exceptional reasons documented in writing.

While witnesses play a crucial role in the criminal justice system, the current treatment of witnesses in India is alarming. Witness reluctance stems from fear, pressure, and threats from accused parties, compounded by the lack of legal obligations for the state to provide witness protection. The repeated court appearances and the fact that they face adjournments add to their frustration and impede justice delivery. Witness cooperation is further hampered by negative interactions with law enforcement, prosecutors, and court officials, leading to a hostile environment and potential retractions that complicate the pursuit of justice.

To address these issues, the court may, by the CrPC Section 309,[4] adjourn or postpone proceedings based on careful assessment and documentation of reasons. The emphasis remains on prompt initiation and continuation of investigations or trials once witness examination has started. Magistrates are limited to detaining alleged offenders for a maximum of 15 days under this section, and adjournments are subject to stringent conditions and documented special grounds. Importantly, no adjournments are granted solely for the accused to establish innocence and avoid prescribed penalties. In specific cases, adjournments or postponements may be allowed with the stipulation that the prosecution or accused bears associated expenses. This framework seeks to

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[1] The Constitution of India, art. 21.
[2] Ibid, art. 14.
[3] The Code of Criminal Procedure, 1973.
[4] Ibid. s.309(1).

balance efficiency in legal proceedings with the protection and cooperation of witnesses for a fair and effective criminal justice system.

LITERATURE REVIEW

- Right to speedy trials and mercy petitions in India, Mr Kamal Kumar Arya[5]– This article primarily explores the various provisions of the Indian legal framework that provide for a speedy trial and for avoiding delays. It also talks about the jurisprudence behind speedy trials, reasons for delay, and the international genesis and evolution of the concept. It talks about speedy trials as a fundamental right that all citizens possess. However, the paper does not delve deep into the functioning of Section 309 of CrPC in aiding speedy trials.

- The fundamental right to a speedy trial: Judicial Experimentation, S.N Sharma[6]– This paper talks about the jurisprudence of the concept of a speedy trial. It then goes on to talk about the configuration of India's Constitution. It investigates the various judgments of courts in India about speedy trials. However, this article also does not talk about Section 309 specifically.

- Speedy Trial in India: Creation, Chaos, and Institutional Choices, Sharad Verma[7]– This paper claims that the breach of the right to a speedy trial is caused by the faults in the institution. They say that it is the burden of academia to identify the problem of undecidability of each case and to propose a solution to it. It presents a comparative analysis of the Indian system with the US and Canadian systems.

- On witness in the Criminal Justice Process: Problems and perspectives, G.S. Bajpai[8]– This paper seeks to analyse the situations under which the witnesses in the court of law turn hostile. Do these incidents also rely on the personality and character of the witness himself? The witnesses interact with officers of various departments. The study aims to identify the problems faced by the witnesses in these interactions. It also talks about witness protection and explores the many judgments delivered on the same subject.

- Effectiveness and Problems of Implementation of Assistance for Witnesses, Novita Irma Yulistyani, Umar Ma'ruf, Aryani Witasari[9] - This paper talks about the legal assistance needed to be witnesses in a criminal case, IT proposes rehabilitation of the witnesses,

[5] Mr. Kamal Kumar Arya, "Right to Speedy Trial and Mercy Petitions in India", Bharati Law Review, Jan-Mar., 2016.
[6] S.N. Sharma, "Fundamental Right to Speedy Trial: Judicial Experimentation", 38, IILI (1996) pp.236-242.
[7] Sharad Verma, "Speedy Trial in India: Creation, Chaos and Institutional Choices" 3.4 CALQ (2017) pp.38
[8] G.S. Bajpai, "On witness in the Criminal Justice Process: Problems and perspectives", ILR (2010)
[9] Novita Irma Yulistyani, Umar Ma'ruf, Aryani Witasari "Effectiveness and Problems of Implementation of Assistance for Witnesses" 4 LDJ (2022) pp. 61-68

including psychological rehabilitation. Witnesses often give conclusive evidence in criminal cases; hence, measures are to be taken to ensure that they do not turn hostile or comfortable.

- ▪ Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy Trials in Comparative Perspective, Jayanth K. Krishnan, C. Raj Kumar – Instances of accused persons spending years together in jail, waiting to be presented in court are not rare in India.[10] This paper examines the criminal justice system of India and empirically evaluates the judgments that have aided the condition of these accused persons. Where these rights may be judicially pronounced, they are not necessarily exercised in reality.

As can be seen, all of the above literature largely focuses on the jurisprudential aspects of speedy trials and witness comfort. In our paper, we seek to fill this gap and provisionally analyse Section 309 and its effectiveness in mitigating the hardships of having to go through long, never-ending trial procedures for both the accused and the witnesses.

RESEARCH METHODOLOGY

We looked at various research papers and read through various judgments to comprehensively understand the jurisprudence relating to Section 309 of the Criminal Procedure Code. We collected secondary data from various sources on the internet to substantiate our research. To better understand the people's perception and their willingness to appear as witnesses in the court of law, we also conducted an empirical survey and collected primary data in that regard. The survey was conducted using a Google form that was circulated through various social media platforms to elicit responses. The form was simple and easy to understand, to make it easier for the respondents to give straightforward answers. The questions largely consisted of scales on which the respondents could place their preferences. This helps us better analyse their behaviour. We analyzed the responses collected using various data analysing tools like bar graphs, pie charts, and pivot tables. We were able to come to valuable conclusions and inferences from such data analysis.

FINDINGS AND ANALYSIS

The provision

309. Power to postpone or adjourn proceedings. -1

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[10] Jayanth K. Krishnan, C. Raj Kumar "Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy Trials in Comparative Perspective" 42 GJIL (2011)

[(1) In every inquiry or trial the proceedings shall be 1. Subs. by Act 13 of 2013, s. 21, for sub-section (1) (w.e.f. 3-2-2013). continued from day to day until all the witnesses in attendance have been examined unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded: Provided that when the inquiry or trial relates to an offence under section 376, 1 [section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA or section DB of the Indian Penal Code (45 of 1860), the inquiry or trial shall] be completed within a period of two months from the date of filing of the charge sheet.]

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody: Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time: Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing: [Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.] [Provided also that- (a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party; (b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment; (c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.]

Explanation 1. - If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2. - The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused."

Understanding

A straightforward interpretation of Section 309(1) CrPC[11] states that the court must document its reasoning if it decides to postpone the court proceedings to the next day. If not, each investigation or trial must go forward daily until all the witnesses have been cross-examined. There is one exception to the court's above-mentioned authority, nevertheless. It states that if the offence in question is related to any of the crimes listed under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, or 376DB of the Indian Penal Code, 1860[12], then the investigation or trial must be finished within two months of the date the charge sheet was filed. The CrPC Amendment Act, of 2008 introduced this clause for sub-section (1) into the CrPC.[13]

Sub-section (1) and the proviso were substituted with a new subsection (1) and proviso by the Criminal Law Amendment Act, 2013.[14] According to the new sub-section (1), the trial must be held daily, and adjournments should only be allowed when 'necessary' and for specified reasons. Within two months of the chargesheet's filing, the new proviso mandates that the offences mentioned there be the subject of a thorough inquiry.

The right to a speedy trial as a fundamental right

In *Hussainara Khatoon* v. *Home Secretary, State of Bihar*, Justice P.N Bhagwati recognised the right to a speedy trial as a fundamental right.[15] To understand this concept, one has to understand the wide ambit of Article 21 of the Constitution, which states that "*no person shall be deprived of his life and liberty except in accordance with the procedure established by law.*" This makes it the responsibility of the state to facilitate a speedy trial for the accused. It is a popular statement that "Justice delayed is justice denied." This statement stands true for both sides of a criminal trial. No innocent person must be put through the harsh edges of the law unreasonably. Both the accused's and the complainant's rights are violated when unnecessary delays are caused in a criminal trial. However, there must be a balance stricken as justice cannot be rushed either. "*Justice hurried is justice buried.*" Somewhere between the two extremes is a mid-ground that needs to be exploited to facilitate speedy and efficient yet just trials. Speedy trials have been around since the time of Mughal ruler Aurangzeb, and traces of it can be found in his "*Fatwa Namgiri.*" The courts have also held that a diligent, watchful trial judge can prove to be the best guardian of these rights. There are various judgments in this regard. However, we contend that a right to a speedy trial is not merely limited to the parties to the trial but also the other innocent stakeholders, such as the witnesses appearing in the court.

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[11] The Code of Criminal Procedure, 1973, s. 309(1).
[12] Indian Penal Code, 1860
[13] The Code of Criminal Procedure (Amendment) Act, 2008, No. 5, 2009.
[14] The Criminal Law (Amendment) Act, 2013, No. 13, 2013.
[15] (1979) 3 SCR 532 (SC).

It is no justice for them to be dragged to the court unreasonably for choosing to aid the court in seeking justice. It must also be the fundamental right of these third parties that a trial is concluded speedily.

Landmark Judgments

It was stated in the 1941 case of *Emperor* v. *Md. Ebrahim*[16] that this clause does not permit an unlimited postponement of a case. An extended delay is known as a sine die adjournment. Criminal law seeks to expeditiously bring accused parties to justice so that, in the event of a conviction, they may face punishment and, in the event of an acquittal, can be freed. If the Government wants to file a petition or seek an adjournment with the court, they can get in touch with the Public Prosecutor directly, who is the right person to put the case before the court.

In the 1962 case of *Sukhpal Singh* v. *Kalyan Singh*,[17] the Supreme Court declared that no precise rules were controlling the court's jurisdiction to grant or deny an adjournment. Nonetheless, the court must grant it after taking into account each case's unique facts and circumstances and justifiable grounds. It is consequently necessary to document the justification for the adjournment. Power and corruption are major factors now. Even if the request is unreasonable, these criteria can be used with ease to postpone a trial and secure an adjournment of proceedings for a variety of reasons. As a result, they defeat the purpose of the legal provisions.

Additionally, the Malimath Committee[18] recommended against adjournments being used by courts to delay the trial and the dispensation of justice. The committee recommended that the exceptional conditions that must be satisfied for adjournments to be granted be specified to address this circumstance.

Only in the *Hussainara Khatoon* v. *Home Secretary, State of Bihar*[19] case did the Court rule that a timely trial- a trial that proceeds reasonably quickly- is an essential component of the basic right to life and liberty guaranteed by Article 21. Since then, the Court has accumulated a substantial body of case law regarding expedited trials, but it has never defined what a reasonable trial duration is.

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[16] AIR 1942 CAL 219.
[17] 1963 SCR (3) 733.
[18] Government of India, Report of the Committee on Reforms of Criminal Justice System (Ministry of Home Affairs, 2003).
[19] (1979)3 SCR 532 (SC).

In contrast, when asked to do so in *Abdul Rehman Antulay* v. *R.S. Nayak*,[20] A five-judge Supreme Court Constitution Bench declined to set deadlines beyond which no criminal case should be allowed to proceed because, without them, the interpretation of Article 21 in the *Maneka Gandhi* and *Hussainara Khatoon* cases would remain a theoretical concept. Setting a deadline for criminal cases is "neither advisable nor practicable," the court rules.

In *P. Ramachandra Rao* v. *State of Karnataka*,[21] the Court underlined the need for a prompt trial in criminal matters, admitted that it was still difficult to achieve in reality, and stated that it was not within its jurisdiction to establish deadlines for trials.

In *Vinod Kumar* v. *State of Punjab*,[22] the Supreme Court raised severe concerns about the use of dilatory tactics and the non-application of Section 309 and ruled that adjournments for unsatisfactory reasons were not desired.

The Supreme Court criticised the practice of courts adjourning cases without interrogating witnesses when they are present in *State of U.P.* v. *Shambhu Nath Singh*.[23] It was noted that a witness cannot be forced to appear frequently for the convenience of the concerned lawyer and that the trial court should recognise that the witness is a responsible citizen with other jobs to attend to make a living.

Along similar lines, the Bombay High Court said in *State of Maharashtra* v. *Rasiklal K. Mehta*[24] that one of the fundamental tenets of criminal law is that cases should be resolved as quickly and efficiently as possible. In the case of *Hirdeesh Sahu* v. *State of Madhya Pradesh*, the Madhya Pradesh High Court ordered all trial court judges to maintain strict adherence to Section 309 of the Cr.P.C., especially in sensitive situations like murder, kidnapping, and rape.[25]

Survey Analysis

We surveyed 50 people to assess their perception of the role of witnesses in the procedure of courts. We also tried to examine their willingness to aid the courts as witnesses. The survey findings broadly show that there is a general unwillingness to appear in the courts as a witness.

Firstly, we tried to see how much the respondents value speedy trials.

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[20] (1992) 1 SCC 225.
[21] (2002) 4 SCC 607.
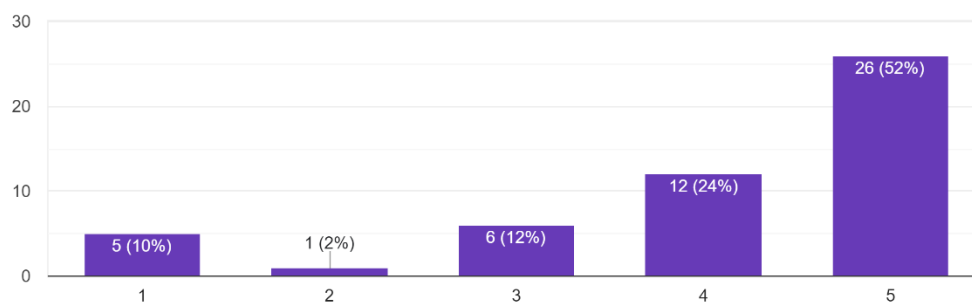[22] (2015) 3 SCC 220.
[23] (2001) 4 SCC 667.
[24] 1978 SCC OnLine Bom 209.
[25] 2021 SCC OnLine MP 1210.

Do you agree with the statement "justice delayed is justice denied"?
50 responses

As can be seen from the above bar graph, more than half of the respondents said that they strongly agree with the statement "justice delayed is justice denied". This shows us that people value the timely delivery of justice. The more delay there is in delivering justice, the higher the violation of justice.

Have you ever appeared as a witness in the court of law?
50 responses
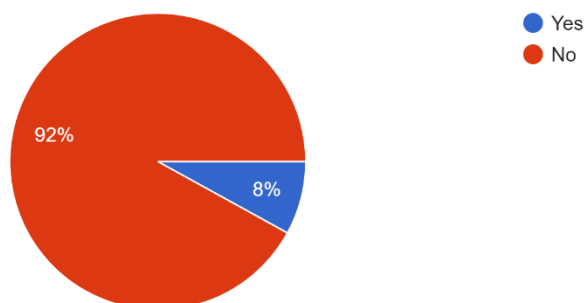
Only very few of the respondents had appeared in the court of law as a witness. This number is very low, considering that our survey was conducted across various demographics and locations. While this lack may be attributed to merely not having had the opportunity or need to appear in the court as a witness, there are other reasons, such as the sheer unwillingness to appear as a witness even when presented with the opportunity. Witnesses are depicted to be and are hence perceived to be tormented in terms of time and cost. Therefore, people are very reluctant to appear as witnesses unless it is necessary.

If yes, to the the above question, rate your experience

7 responses
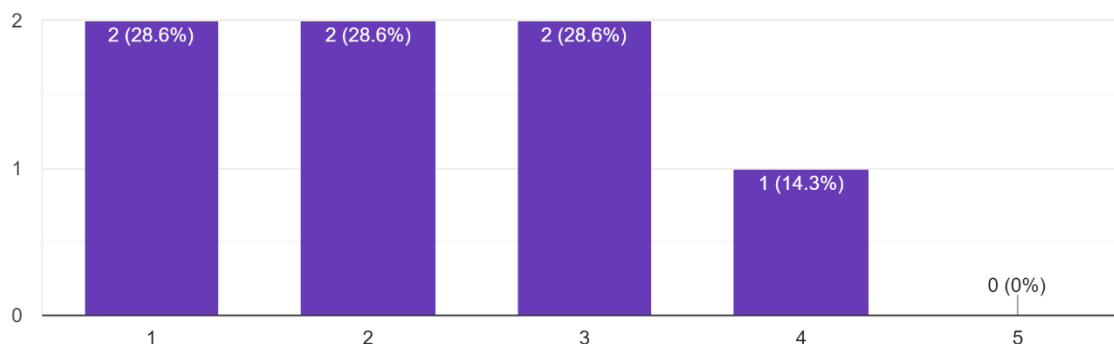
Of the very few people who had experienced being a witness, most of them said that their experience ranged from very bad to moderate. They probably faced issues with unnecessary procedural delays in these cases. It could also be the case that they were not given enough importance, and their role as witnesses was undermined. It is very natural that once they've had a bad experience, appearing as a witness, they would be reluctant to do so again. No one said their experience was very good. They are not presented with any incentive to appear as a witness in future cases.

Would you be willing to appear as a witness in the future?

Count of Would you be willing to appear as a witness in the future?	Column Labels					
Row Labels	**1**	**2**	**3**	**4**	**5**	**Grand Total**
			1	1	1	
No	5	1	5	0	5	46
Yes	1	2			1	4
Grand Total	**6**	**3**	**15**	**10**	**16**	**50**

As can be seen from the above pivot table, people who had earlier appeared as witnesses were very unwilling to appear as one in the future. The people who were willing to appear as witnesses in the

future were the ones who had never done so before. As a This stands testament to the sorry state of affairs of our criminal justice system.

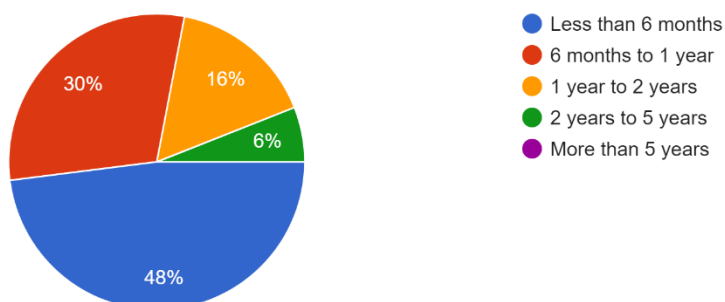**What is your biggest concern in being a witness**
50 responses

- The time and effort required to appear before the court multiple times
- Threats from opposite party
- Societal pressure effect on status
- Financial difficulties of visiting the court multiple times
- Both 2nd and 3rd options.
- All of the above
- All the above
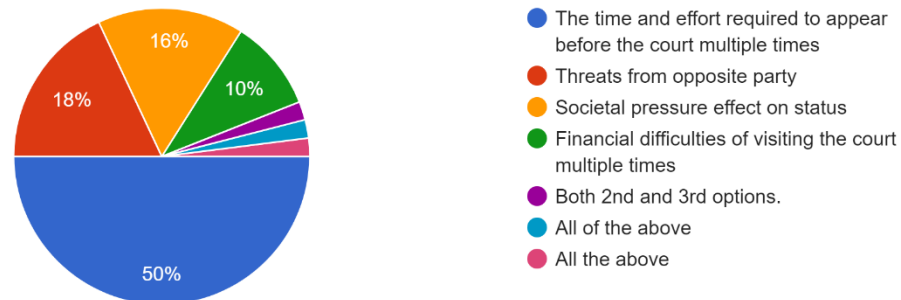
When asked what their biggest concern was in appearing as a witness or what their major constraint was, half the people's answer was that time and effort were required. The largest reason for this is the unnecessary adjournments and delays, making the witness come to the court, sideling their other prior commitments. They have to make time out of their daily schedules, and employers do not usually give exemptions or leave for the reason of appearing as a witness in a court of law. They also have to spend a significant amount of money on travelling to and far from the court, especially when they reside far away from the court premises. That is why a substantial number of people choose financial constraints as their biggest concern, too. The other major factors chosen by people were threats from the opposite party and societal pressure. The former arises from the lack of security for witnesses. They are left vulnerable with no one to ensure their safety. The latter is a result of social stigma and fear about criminal trials that persist in society. The false depiction of these scenarios by the media only worsens the situation.

What according to you is a reasonable time for the disposal of a case?
50 responses

Legend:
- Less than 6 months
- 6 months to 1 year
- 1 year to 2 years
- 2 years to 5 years
- More than 5 years

In the first question, we could see that the respondents largely believed in the timely and speedy disposal of cases and delivery of justice. The same perception is reflected in the responses to this question, too. Nearly half the respondents believed that less than 6 months was a reasonable time for the disposal of cases. This shows us the fervent desire for fast disposal by the people. However, knowledge of the law and bureaucracy tells us that this is scarcely possible, except in certain circumstances like summary hearings. The principle of natural justice is to give both parties a fair chance of being heard. Mere execution of this principle eats up the time of the courts in ensuring that no party or no plea goes unheard.

How comfortable would you be to attend an online court proceeding as witness?
50 responses
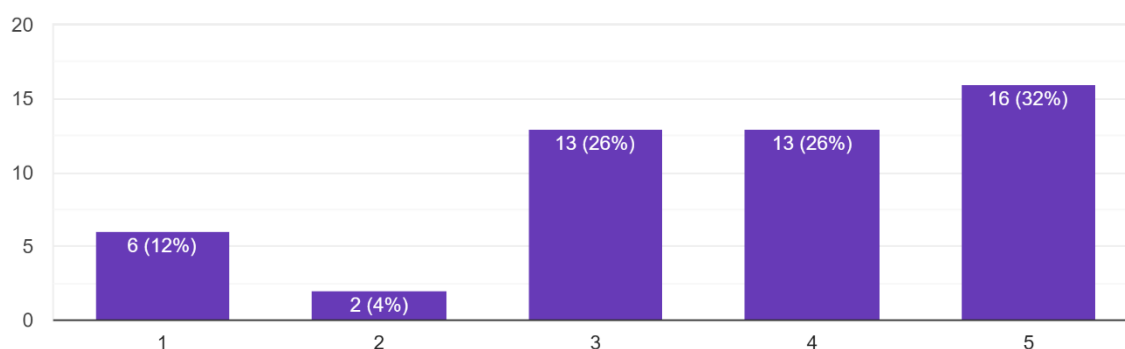
With the advent of the electronic age, court proceedings are also transitioning slowly to hybrid modes and online proceedings. The pandemic fuelled this process. The benefit of these online proceedings is that the major concerns of travel time, cost, and efforts are significantly reduced and, in most cases, brought to a nullity. Therefore, online proceedings carry the potential to

drastically increase the willingness amongst the people to appear as witnesses and improve their experience. It will make the whole process smoother and more convenient for the stakeholders, like witnesses. As can be seen, the majority of the respondents were between moderately comfortable and very comfortable in attending online court proceedings.

RECOMMENDATIONS

In this section, we propose certain policy measures and amendments to improve the existing framework. The suggestions provided were formulated after analysing the survey findings and landmark cases.

- As an immediate measure, the government must seriously consider the infrastructure development of the courtrooms. The courts should be developed to entertain virtual hearings in all possible circumstances. This measure addresses the concerns of the witnesses about safety, finances, and time delays.

- The witnesses should be sent repeated reminders and proper notices for prompt and effective communication. Modes of communication, such as social media messaging applications, can be utilised to send reminders for a faster transfer of information compared to the postal services. Implementation of these methods plays a role in diminishing the absence of witnesses.

- Proper communication between the judge and parties involved in the dispute should be present while deciding the adjournment date. This consultation of the parties helps facilitate the party's avoiding absence.

- The government should take up initiatives to encourage willingness to appear as witnesses among the people. Awareness campaigns and workshops in educational institutions should be organised to explain the crucial role of witnesses. This measure will result in legal awareness and active participation.

CONCLUSION

A multidimensional approach employed in the research assisted us in analysing the provision in a wholesome manner. The study revealed the disparity between policy and practice. Often, we may criticise the administrators for filling vacancies in the judiciary but have not questioned our role in delivering justice. As we recognise the concerns associated with attending court proceedings, we should realise that absence is also a key reason for pending proceedings. The laws should progress according to society's needs but not vice versa as no good law can be implemented without

awareness and acceptance. It may be an uphill task to maintain the delicate balance between speedy and impartial delivery of justice, though not impossible. However, we believe that efficiency in justice delivery should be made possible through increased active participation of the society rather than amendments to the existing framework. The provision has reasonably succeeded in bringing the policy in place but not to practice as certainly unambiguous from the examined landmark rulings followed by public perceptions.

IMPLICATIONS OF SARBANANDA SONOWAL v. UNION OF INDIA, A.I.R. 2005 SC 2920: A CRITICAL REVIEW

- Aditya Kumar*

Abstract

The Sarbananda Sonowal case represents a significant legal milestone in India's struggle to address illegal immigration, particularly in Assam. This paper provides a comprehensive analysis of the case, focusing on the constitutional interpretation, the legality of state-specific legislation, and the central government's responsibility in combating illegal immigration. The judgment's implications for policy, legal frameworks, and socio-political dynamics are examined, with particular attention to its impact on Assam's demographic and security landscape. Criticisms and debates surrounding the judgment are also explored, shedding light on broader issues of constitutional principles, immigration policy, and social cohesion within India. In summary, this case serves as a crucial reference point for understanding the complexities and challenges associated with illegal immigration and constitutional validity in India.

Keywords: Classification, external aggression, illegal immigration, IMDT Act, Right to equality.

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BACKGROUND OF THE CASE

The case of _Sarbananda Sonowal_ v. _Union of India and Another_[1] revolves around the legality of the Illegal Migrants (Determination by Tribunals) Act, 1983 (IMDT Act), particularly in the context of Assam, which has faced significant issues related to illegal immigration from Bangladesh for years. The IMDT Act, enacted in 1983 specifically for Assam to provide for detection and deportation of illegal immigrants. The act, though, faced severe backlash in Assam as it was seen to be unable to tackle the issue of illegal migration, and in 2005, it was challenged by Sarbananda Sonowal, who later went on to become the chief minister of Assam and a Union Minister as well. He argued that the Act facilitated illegal immigration by placing an undue burden of proof on the accusers, making it practically ineffective in addressing the issue. The petitioner further contended that the IMDT Act was discriminatory and ineffective in dealing with the influx of illegal immigrants into Assam. He argued that it violated the fundamental rights guaranteed under Articles 14 and 355 of the Indian Constitution.

THE JUDGMENT

The Supreme Court in _Sarbanda Sonowal_ v. _Union of India_ declared the IMDT Act, 1983, unconstitutional on account of the act's failure to control the large influx of immigrants into the state of Assam, which contravenes Article 355 of the Constitution. Basing the judgment on the governor's report of 1985, the court found the situation in Assam very concerning, which clearly indicated the complete failure of the central government in its duty to protect the state, which it is mandated to do under Article 355 of the Indian constitution. According to the governor's report, there was an unabated influx of illegal migration from Bangladesh into Assam, changing the state's demography inorganically. Illegal migration not only affects the demography of Assam but also has a dangerous effect on the country's national security. According to the governor's report, the unabated illegal immigration into Assam has led to an increase in uncontrolled population in Assam and the northeast and has the capability to sever the entire landmass of the northeast from India. The report, accompanied by affidavits and additional evidence, highlighted that millions of Bangladeshi individuals have unlawfully crossed the international border, resulting in the extensive occupation of land in Assam. In light of these findings, the Supreme Court concluded that Assam is undeniably experiencing "external aggression and internal disturbance" due to the significant influx of illegal migrants. Consequently, it emphasized that it is the responsibility of the Union to implement all necessary measures to safeguard Assam from such threats.

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[1] Equivalent citations: AIR 2005 SUPREME COURT 2920, 2005 (5) SCC 665, 2005 AIR SCW 3393, 2005 (5) SLT 277, (2005) 32 ALLINDCAS 64 (SC), 2005 (5) SCALE 375, 2005 (32) ALLINDCAS 64, (2005) 32 OCR 1, (2005) 5 SUPREME 10, (2005) 5 SCALE 375

The judgment was also very critical of the fact that the act as legislation is very ineffective in combating the purpose of its enactment, and already existent legislation like the Foreigners Act and the Foreigners (Tribunals) Order, 1964 were far more effective in identification and deportation of foreigners as compared to IMDT Act. The court identified the IMDT Act and its associated regulations in Assam as the primary obstacle and the most significant hindrance in the identification and expulsion of illegal migrants. It noted that a majority of the investigations initiated under this act have resulted in no deportations, which stands in stark contrast to the outcomes observed under the Foreigners Act. The IMDT Act has also nullified the effect of legislation like the Passport Act because of the overriding effect of the IMDT Act.

The IMDT act was also found as violating article 14 of the constitution for failing to establish a reasonable nexus between the object of the act and the special classification that it creates which pertains to its application with regard to only the state of Assam and not outside of it. This conflict between the object and classification was based on the ineffectiveness of the IMDT act and therefore the Supreme Court found that it cannot permit such classification based on geography when the purpose of the legislation is getting diluted and in order to satisfy the test of Article 14, the geographical factor alone is not enough to uphold the classification. Hence, the court found the classification made by the IMDT Act is applicable only in Assam and has no rational nexus with the policy and object of the Act.

DECODING THE JUDGMENT

The Supreme Court, in its judgment, struck down the legislation on the ground that it violated articles 14 and 355 of the Constitution. The basis of the judgment was that the act was discriminatory as it identified illegal migrants only in particular cases and also that under this act, it would be impossible for the state to ever identify a migrant and deport him or her. The court also pointed out that very few were deported under the act and, therefore, the act was not serving any purpose; hence, it favoured the application of the Foreigners Act as compared to this legislation. The Supreme Court said:

"It is far easier to secure the conviction of a person in a criminal trial where he may be awarded a capital punishment or imprisonment for life than to establish that a person is an illegal migrant on account of extremely difficult, cumbersome and time-consuming procedure laid down in the IMDT Act."

The Supreme Court Equated Migration with 'External Aggression'

Article 355 places a duty on the Union (central) government to protect every state in India against external aggression and internal disturbances. It ensures the integrity and stability of the country

by mandating the Union to intervene if any state is under threat from external aggression or internal turmoil. The court's conclusion was that the failure of the central government to effectively prevent illegal immigration, an area exclusively under its jurisdiction as per Article 355, signifies a breach of its constitutional obligation. Moreover, the legislation in question exacerbates this failure, necessitating its nullification. The other shocking part of the judgment was the court's myopic view of looking at migration through the lens of national security and external aggression. It based this interpretation on the cases from the United Kingdom, the United States of America and international law. It defined the term 'aggression' as an invasion of unarmed men in large proportion if it were to not only impair the economic and political well-being of the receiving state but to threaten its very existence. The court also based its findings on materials of former census official CS Mullan which can be argued to be of questionable legal material as these reports contained within themselves theories that argued that illegal immigration was the only reason behind problems like insurgency and ethnic conflict in Assam, making a ridiculous link between irregular migration with external aggression further arguing that this has lead, to the breaking down of the constitutional machinery in the state. The judgment also establishes that the court found legislation like Foreigner's Act, 1946 and the order issued through it as a better piece of legislation as compared to the IMDT Act which granted a number of rights to illegal immigrants even though the purpose of the act was to reduce illegal immigration which further establishes absence of any rational nexus with the policy and object for which the Act was drafted namely the purpose of expediting the process of identification and deportation of irregular immigrants.

This judgment has had an effect on subsequent judgments passed by the various courts which were influenced by this decision. For example, the 2014 case of *Assam Sanhmilita Mahasangha* v. *Union of India*[2] followed the same rationale used in the Sonowal judgment, including basing the decision on the same governor's report, which has highly objectionable terms in. The judgment affirmed the popular perception that Assam has a 'massive influx of illegal migrants' and 'invasion by land capturing immigrants consisting of Mohammedans from East Bengal which is the Present day Bangladesh'. A further consequence of Judicial involvement in enabling the present NRC finally culminated when the final data was published in its final report on 31 August 2019, which made nearly 20 lakh people of Assam stateless within a span of minutes.[3] If you go by the opinion

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[2] 2015 (3) SCC 1
[3] BBC, 'Assam NRC: What next for 1.9 million 'stateless Indians?', *BBC,* Aug 31 2019

of many legal experts, the judgment by the Supreme Court in the Sonowal Case goes completely against the law laid down in the *S.R. Bommai* v. *Union of India*[4] In Bommai's case, the Court declared:

"Article 355 is not an independent source of power for the centre to interfere with the state's functioning but is in the nature of justification for measures to be adopted under Articles 356 and 357 of the Constitution, with limited judicial review available".

The above principle was completely ignored in the Sonowal judgment as the judgment saw the power under 355 as an independent source power and this provision could be used as per the court by the states itself if the centre fails in its responsibility and order emergency at the local level and deal with it even though it's an exclusive domain of the central government.

Right to equality in the context of the Judgment

Article 14 guarantees the right to equality before the law and equal protection of the laws within the territory of India. In the context of the Sarbananda Sonowal case, Article 14 was invoked in relation to the identification and deportation of illegal immigrants from Bangladesh, particularly in the state of Assam. The case raised questions about the implementation of laws and policies aimed at detecting and deporting individuals who were deemed to be residing illegally in India. The court had to balance the state's interest in maintaining law and order, protecting the rights of indigenous communities, and addressing concerns related to illegal immigration against the fundamental rights guaranteed under Article 14, ensuring equality before the law.

The Supreme Court, in its judgment, held that the IMDT Act was unconstitutional as it created hurdles in the identification and deportation of illegal immigrants, thereby violating the principle of equality before the law enshrined in Article 14. The court's decision emphasized the importance of uniformity and consistency in the application of laws throughout the territory of India. Therefore, in the analysis of Article 14 in *Sarbananda Sonowal* v. *Union of India*, the court's ruling highlighted the need for laws and policies to be in accordance with constitutional principles, ensuring equality and non-discrimination for all individuals within the territory of India, regardless of their place of residence or origin.

The Criticism of the Judgment

The government passed the IMDT Act of 1983, to assuage the protestors, but the people in the state felt that the act went completely against the purpose for which the act was enacted. The

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[4] AIR 1994 SC 1918

IMDT, 1983 had a number of issues. Out of thirty tribunals provided in the act, only sixteen were approved, and out of that, only five were functional by the year 1998. The other criticism of the act was that it gave power to a third person to report illegal migrants against whom he had some information. The provision stated that both the person who is complaining and the accused against whom the complaint is lodged should reside at the same police station. But there were many progressive features within the IMDT Act, 1983 while dealing with illegal migration the State was under the obligation under the act to prove that a person was an illegal migrant, unlike the Foreigners Act this Act did not give the power to the state police to search and seizure and this lead to cases where people once they knew a process has been issued against them went missing or were untraceable. What the Supreme Court did was reverse the application of progressive legislation that could have served its purpose. The efficiency of law is not a ground for its validity, and therefore, that reasoning is flawed. Further what the judgment did was to retransfer the burden of proof on the illegal migrant who obviously is not able enough to defend himself against the mighty Indian state but that reason aside the basic rule of law principle where the prosecutor is not duty bound to establish but the defendant has to prove his innocence which goes against all legal principles.

It was imperative for the Supreme Court not only to assert a robust and unambiguous policy direction but also to ensure that it was firmly rooted in the constitutional principles and ideals envisioned by our founding fathers. Regrettably, it is argued that the Supreme Court, while accomplishing the former, did not base its decision on cogent legal or constitutional principles. This could have been achieved by (a) refraining from invoking Article 355; (b) employing Article 14 in a more nuanced and conceptually robust manner; (c) asserting that the rights to culture and language of the Assamese people as guaranteed under Articles 21 and 29(1) have been infringed; and (d) clearly demonstrating that the application of the Foreigners Act, 1946 does not violate the immigrants' right to life. The decision had significant ramifications, as it paved the way for stricter measures to address illegal immigration in Assam. Subsequently, the detection and deportation of illegal immigrants became governed by the provisions of the Foreigners Act, 1946, applicable throughout India, rather than the IMDT Act specific to Assam. Overall, the Sarbananda Sonowal case is crucial in the context of India's legal and political landscape, particularly regarding the issues of illegal immigration and the constitutional validity of legislation aimed at addressing such matters. The decision to strike down the IMDT Act and the subsequent measures taken to address illegal immigration in Assam have had long-term implications for the state's governance, security, and identity dynamics.

Implication of the judgment

The case of *Sarbananda Sonowal* v. *Union of India* holds significant implications within the legal and social context of India, particularly regarding issues of illegal immigration and constitutional validity. The case also involved a careful interpretation of constitutional provisions, particularly Articles 14 and 355 of the Indian Constitution. The Court's ruling that the Illegal Migrants (Determination by Tribunals) Act, 1983 (IMDT Act) violated these provisions set a precedent for future cases involving similar questions of constitutionality. The case further highlighted the complexities surrounding state-specific legislation and its compatibility with broader constitutional principles. The Court's decision underscored the importance of ensuring that state laws align with constitutional values and do not create discriminatory practices. The judgment underscored the central government's responsibility in tackling illegal immigration and ensuring the integrity and security of the nation's borders. It criticized the failure of the central government to effectively prevent illegal immigration and called for stringent measures to rectify this. *Beyond the legal realm, the case had significant policy implications for addressing the issue of illegal immigration in Assam and other regions facing similar challenges. It prompted policymakers to reconsider strategies and legislation aimed at tackling immigration issues while upholding constitutional rights and principles. The judgment influenced the legal framework governing immigration in India, particularly in the state of Assam. By striking down the IMDT Act, the Court paved the way for the application of the Foreigners Act, 1946, which provided a broader and more uniform approach to addressing issues of illegal immigration across the country.* It also highlighted the severe impact of illegal immigration on Assam, particularly regarding demographic changes and the socio-political landscape of the state. The Court's decision recognized the gravity of the situation and emphasized the need for decisive action to address the issue. *The case also had socio-political ramifications, particularly in the state of Assam, where illegal immigration has been a longstanding and contentious issue. The Court's decision provided clarity and direction in addressing public concerns about immigration, contributing to broader discussions on identity, citizenship, and regional autonomy.*

In summary, the implications of Sarbananda Sonowal v. *Union of India extend beyond its immediate legal significance, touching upon broader issues of constitutional interpretation, immigration policy, and social cohesion within India. The* case marked a significant turning point in India's legal and administrative approach to tackling illegal immigration, particularly in the context of Assam. It reflected the judiciary's role in upholding constitutional principles, addressing security concerns, and navigating complex socio-political realities. However, the case also raised questions about the effectiveness of legal interventions in addressing deeply entrenched issues of migration, identity, and governance.