

## ROLE OF CASTE IN INDIAN POLITICS: AN OVERVIEW OF HIMACHAL PRADESH

- Anil Kapoor,\* Naren Zangmo,\*\* & Kailash Chand\*\*\*

### ***Abstract***

*Even before independence, caste played an essential part in Indian politics. The term 'Caste' comes from the Spanish word 'CASTA,' which implies race, breed, or pedigree. Historically, the term was employed as a racial and social identification. The caste of a person is established by birth. It governs all of an individual's social, economic, and political relationships. Caste plays an important role in a person's life. At the moment, caste-based politics is especially important. Leaders of various political parties use caste for their own selfish goals, exacerbating the average man's prejudiced mindset. Caste also has an impact on the nature of political organizations, as well as the functioning of political parties and their mass organization. Caste has a unique influence on an individual's political ideas and participation. Caste divisions in Indian society make it difficult for India's parliamentary democracy and national unity. The purpose of this study is to examine the present scenario of politics in India as well as in Himachal Pradesh related to caste. In Himachal Pradesh, people had divided themselves into different castes. There are 58 sub-castes in the Scheduled Caste category. The politics of Himachal Pradesh largely depends on caste. In Himachal Pradesh, there are mainly five political parties that work between the societies. These five political parties are Indian National Congress (INC), Bhartiya Janta Party (BJP), Communist Party of India (Marxist) CPI(M), Bahujan Samaj Party (BSP) and Aam Aadmi Party(AAP). Political parties work with their agenda. They all have a specific agenda and program for the Scheduled Caste community of the State. The present research work is based on secondary data. The data has been collected from books, research papers, govt. reports, newspapers and online sources.*

**Keywords:** *Caste, Politics, Himachal Pradesh, Polarization, Development.*

\* Research Scholar (ICSSR Doctoral Research Fellow) @ Department of Laws, Himachal Pradesh University, Shimla, India; Email: anilnegi.sfi@gmail.com

\*\* Research Scholar @ Department of Psychology, Himachal Pradesh University, Shimla, India; Email: neginarda97@gmail.com

\*\*\* M.A. @ Department of Anthropology, IGNOU, Chandigarh Regional Centre, India; Email: adv.kcnevi@gmail.com

## 1. INTRODUCTION

The caste system is a traditional aspect of Indian society. The top classes of society, particularly the Brahmins and Kshatriyas, used to play an important role in politics. Brahmins were known for their intelligence and expertise, and they became instructors in our community. The Kshatriyas ruled as kings, and the Brahmins served as counsellors. In contemporary society, vaishyas have become traders, while Shudras have taken on menial tasks. Political rights were denied to the Shudras. The Dalits are the only category lacking from this Varna system. That is why they have been termed “Avarna” for so long. These individuals have no Varna and are assigned the chore of purification. Most of the time, they were kept out of society and were considered the lowest caste. Their social and political circumstances were dire. Even throughout the British occupation, the caste system retained its power. To dominate India, the British exploited caste as a tactic. India's voting procedure began after independence. Anyone over the age of 18 in the country is eligible to vote. However, caste has a unique influence on a person's voting conduct. Caste has long been an important part of India's political architecture. Most political parties exploit caste for their gain. To win the most votes, political parties adopt caste-based slogans. Such caste-based politics feeds the caste system even more. Some political leaders divide society, and caste-based politics becomes their primary goal. It shatters societal equilibrium and breeds conflict. Several political parties choose candidates based on caste so that the candidate can win the election with a majority of votes from his caste. Political parties, such as the British, use caste as a weapon to win elections in a somewhat different way. These political parties frequently divide people with divisive caste-based rhetoric. They chose their flags based on caste rather than social work.

## 2. OBJECTIVES

- To analyse the caste system in politics.
- To analyse the role of political parties on the caste system.
- To understand the role of the Scheduled caste in the politics of Himachal Pradesh.
- To understand the importance of the Scheduled Caste population in politics.
- To provide valuable suggestions.

### **3. RESEARCH GAP**

For the present study, the researcher had read previous papers on caste and politics. The entire researcher discussed the past problems in caste and politics. Many researchers have contributed to cover some important issues related to caste and politics but the present problem in politics is uncovered in the research viewpoint. The researchers will motivate the policymakers and political parties to how caste-based discrimination comes to an end in politics.

### **4. METHODOLOGY**

**Data Collection:** The study is based on secondary sources. The data has been collected from books, research papers, govt. reports, newspapers, and online sources.

**Data Analysis:** This study was based on a secondary source of data so therefore data was not analyzed with any statistical tool.

### **5. CASTE-BASED POLITICAL PARTIES IN INDIA**

The caste system is a component of the Indian political system. Regional political parties in India are heavily impacted by the caste system. In Tamil Nadu, the DMK and AIADMK are Brahmin and non-Brahmin political parties. In Punjab, the Akali Dal symbolizes the issue of Jats vs. Non-Jats. In India, all political parties used caste to secure votes. Based on the impoverished sections of society, the BSP is India's largest political party. The BJP represents Hindus and the business community. In India, the Samajwadi Party (SP) and the Rashtriya Janata Dal (RJD) are both caste-based political parties.

Caste-based political parties (regional) include Chander Sekhar Ravan's Azad Samaj Party, Himachal Pradesh's Rashtriya Devboomi Party, and Lok Janshakti Party (LJP).

### **6. SCHEDULED CASTE POLITICS IN HIMACHAL PRADESH**

Scheduled Castes account for almost 25% of the Himachal population and are concentrated in districts like as Sirmaur, Kullu, Mandi, and Solan. Caste-based inequities are widespread in Himachal Pradesh. In all twelve districts, Scheduled Castes face caste-based inequities. Three truths have emerged ahead of the elections to the 68-member Assembly, including the fact that 17 seats are reserved for scheduled castes (SC). Both the incumbent Indian National Congress (INC) and the opposition Bhartiya Janata Party (BJP) have a lot to explain to Dalits about their safety, security, and uplift. However, the situation has remained unchanged since the establishment of Himachal Pradesh. These political parties use Scheduled Caste as a voting bank.

Himachal Pradesh has seen the emergence of new political parties over the years. These political parties are the Communist Party of India (Marxist), the Bahujan Samaj Party, and the Aam Aadmi Party. The Scheduled Caste population is now gravitating towards the newly formed political parties' specially educated young. A large amount of educated Scheduled Caste youth work as party members for various political parties.

## **7. ROLE OF POLITICAL PARTIES**

For this study, it is important to discuss at major political parties of Himachal Pradesh. These parties are working for the benefit of all sections of the society. From a research point of view, it is important to discuss the role of political parties in eliminating the caste inequalities and upliftment of the downtrodden section of society i.e. Scheduled Caste community. Following are the main political parties in Himachal Pradesh and their contribution to the upliftment of Scheduled Caste communities:

- **Indian National Congress (INC):** The election of Shri Mallikarjun Kharge as the top Congress has boosted the party's Dalit activists. Traditionally, the Dalit communities in Himachal Pradesh supported the Congress party. But, except for Col. Dr. Dhani Ram Shandil, who is currently serving as a cabinet minister in Himachal Pradesh, the Congress party has no such major name in the state.
- **Bharatiya Janata Party (BJP):** The Bharatiya Janata Party (BJP) is attempting to attract the Scheduled Caste population in Himachal Pradesh following the recent allocation of one Rajya Sabha seat to academician Dr Sikander Kumar. Many Dalit leaders have emerged in the BJP in Himachal Pradesh. Former Party head Suresh Kashyap is also an example of the BJP's goal for the Scheduled Caste population. Shri Suresh Kashyap, Dr. Sikandar Kumar, Virender Kashyap, Dr. Hans Raj, and Dr. Rajiv Saizal are some examples of Scheduled Caste leaders in the state.
- **Communist Party of India (Marxist):** In Himachal Pradesh, the CPI(M) has emerged as the most popular political party among workers and the Dalit population. This political party has formed a large number of mass organizations. CPI(M) founded Dalit Soshan Mukti Manch in Himachal Pradesh to upliftment the Scheduled Caste population. However, the situation of the Scheduled Castes remains unchanged. In Himachal Pradesh, DSMM has had no significant impact. There is no Scheduled Caste leader in the CPI(M) top leadership.

- **Bahujan Samaj Party (BSP):** The BSP is attempting to establish itself as a third political force in Himachal Pradesh, where the Bhartiya Janata Party and the Congress have been the dominating political parties. The party intends to enter the contest to fight for the rights of society's marginalized groups. The party's public problems drive has mobilized the BSP cadre in Himachal. All of the BSP's senior leaders are from the Scheduled Caste category.
- **Aam Aadmi Party(AAP):** The Aam Aadmi Party is a new political party in Himachal Pradesh. Although the AAP has a significant impact in Delhi and Punjab, it has no similar impact among the Scheduled Caste minority in Himachal Pradesh.

Table 1: The following are the Dalit wing of political parties in Himachal Pradesh:

Sr. No.	Political Party	Scheduled Caste Wing
1	Indian National Congress (INC)	Himachal Pradesh Congress Committee Anusuchit Jati Vibhag
2	Bharatiya Janata Party (BJP)	Bhartiya Janta Party Anusuchit Jati Morcha
3	Communist Party of India (Marxist) CPI(M)	Dalit Shoshan Mukti Manch (DSMM)
4	Bahujan Samaj Party (BSP)	Dalit Shoshit Samaj Sanghrash Smiti (DS4)
5	Aam Aadmi Party (AAP)	AAP SC Wing

*Source:* Personal observation of the researcher

Table 1 shows that in Himachal Pradesh all major political parties formed Dalit wing political parties. Indian National Congress(INC) and Bharatiya Janata Party (BJP) have a large number of members in their SC wing. The Communist Party of India (Marxist) CPI(M) they have also a Dalit wing but is not as strong as compared to INC and BJP. Bahujan Samaj Party (BSP) and Aam Aadmi Party (AAP) have also Dalit wing but their number is few.

Table 2: The following are the party chief and their caste in India:

Sr. No.	Political Party	Name of the Party Chief with caste
1	Indian National Congress (INC)	Sh. Malikarjun Kharge (SC)
2	Bharatiya Janata Party (BJP)	Jagat Prakash Nadda (General)
3	Communist Party of India (Marxist) CPI(M)	Sh. Sitaram Yechury (General)

4	Bahujan Samaj Party (BSP)	Kumari Mayawati (SC)
5	Aam Aadmi Party (AAP)	Arvind Kejriwal (General)

*Source:* Personal observation of the researcher.

Table 2 shows that only Indian National Congress and Bahujan Samaj Party (BSP) has a Scheduled Caste chief in India. Other political parties have their chief who belongs to the upper caste category.

Table 3: The following are the party chief and their caste in Himachal Pradesh:

Sr. No.	Political Party	Name of the Party Chief with caste
1	Indian National Congress (INC)	Smt. Pratibha Virbhadra Singh (General)
2	Bharatiya Janata Party (BJP)	Dr. Rajiv Bindal (General)
3	Communist Party of India (Marxist) CPI(M)	Dr. Onkar Shad (General)
4	Bahujan Samaj Party (BSP)	Sh. Narayan Azad (SC)
5	Aam Aadmi Party (AAP)	Surjeet Singh Thakur (General)

*Source:* Personal observation of the researcher.

Table 3 shows that only Bahujan Samaj Party (BSP) has a Scheduled Caste chief in Himachal Pradesh. Other political parties have their chief who belongs to the upper caste category.

## **8. UPPER CASTE ‘DOMINATE’ POLITY IN HIMACHAL PRADESH**

The upper caste community had a strong voice in the state’s political discourse. Himachal Pradesh’s chief ministers are all from the upper castes. Sh. Yashwant Singh Parmar, the state’s first chief minister, was a Rajput who served four consecutive terms. Following that, Sh. Ram Lal Thakur, Sh. Shanta Kumar, Sh. Virbhadra Singh, Prem Kumar Dhumal, Jai Ram Thakur, and now Sh. Sukhvinder Singh Sukhu are members of the society’s ruling caste.

It’s worth noting that neither a Scheduled Caste nor a Scheduled Tribe leader was appointed as the state’s Chief Minister. This demonstrates the upper caste’s dominance in Himachal Pradesh politics.

## **9. CONCLUSION AND SUGGESTIONS**

### **9.1 Suggestions**

- **Education:** Education is treated as the most powerful weapon to eliminate the caste system in every sphere of life. It must be part of the education that caste-based politics are not good for the betterment of society. Caste-based politics divides people and creates caste-based violence. So drawback of caste-based politics must be part of our education system.
- **Proper check on political parties:** There must be proper checks on political parties by the election commission and most importantly by the judicial mechanism. If any political party creates caste-based division in society they should be banned. Political parties mustn't spread caste-based slogans and statements which creates chaos in society.
- **Appointment of SC leader as chief of the party:** It is important to social engineering that the SC leader should be promoted as party chief in all political parties. In recent times in Himachal Pradesh BJP chief was Sh. Suresh Kashyap (M.P). In BSP there is also an SC leader named Narayan Azad who leads the party at present time.
- **PRI work must be proper:** Panchayati Raj Institution must work properly despite any caste-based discrimination. In India as well as Himachal Pradesh most of the villages are affected by caste system. Elected members of the PRI observed caste-based discrimination. So this is important that PRI work must be proper despite discrimination on caste.
- **Voting should be wise: Every person in society must** vote based on merit and the social work of the candidate.
- **Dalit wings of the political parties should be banned:** There are many SC wings established by all political parties. These wings are created for the vote bank rather than the development of the Scheduled Caste community. People should be aware of the agenda of these wings. These wings discriminate among the workers and leaders of the political parties. To eliminate the caste barrier in politics all Dalit wings of all political parties should be abandoned.

## 9.2 Conclusion

Finally, there is a symbiotic relationship between caste and politics in Indian politics. Caste is a historical concept in India that had also unique space in Indian politics. India is a democratic country in which all citizens have equal rights and freedoms. However, caste impedes individual

equality. In India caste plays an important role in the determination of the political career of any political party. The future of the political party depends on how much they have supporters belong to the SC community. But it is a harsh truth that Scheduled Caste is the only vote bank of the political parties. After India gained independence on 15th August 1947 the situation of the SC community remains as it is. They are subject to caste-based inequalities, untouchability, and atrocities. Scheduled Castes are subject to social, political, and economic backwardness. All of the political parties show that they are the well-wishers of the SC community but this seems like a bubble in water.

In India as well as Himachal Pradesh political leaders observe untouchability. In village-level booth committees, all the chairpersons and the general secretaries are people from the dominant caste. Scheduled Caste people are only elected as vice president. This is the real face of political parties in Himachal Pradesh. Political parties only give representation to the SCs.

But now times have changed. BJP works extremely well in the field of social engineering. They promote the SC leader within their party. In Himachal Pradesh, many of the SC leaders in BJP have been developed during this time. BJP has shown its character towards the Dalit community and set an example for the other political parties. BSP's social engineering is also appreciable for promoting the Scheduled Caste leader within their party.

## ACKNOWLEDGEMENT

I am highly thankful to the scholars whose scholarly works helped me during this research work. I would like to thank also the Prof. (Dr). D.P. Verma, Director, HPURC, Dharamshala, Dr. Vijay Singh, Guest faculty, Department of Life Long Learning, Himachal Pradesh University, Shimla and Miss Aditi Jhouta, Ph.D. Research Scholar , Department of community Education and Disabilities Studies (Education), Panjab University Chandigarh, India to help me during this work.

## REFERENCES

- Ashwani Shama, Himachal Pradesh 2022 Elections: Dalits Have Become Prime Focus Of The BJP Welfare Agenda, Outlook, also available at <https://www.outlookindia.com/national/himachal-pradesh-2022-elections-dalits-have-become-prime-focus-of-the-bjp-welfare-agenda-news-192646> (Visited on 12-07-2023).
- Hardeep Kaur, Role of Caste in Politics, Indian Journal of Scientific Research, Vol. 5, Issue 1, pp.118-122, 2018.
- Mousami Das, Dr. Goutam Sarkar, Role of Caste in Politics: A Study on Indian Perspectives, International Journal of Humanities and Social Science Invention (IJHSSI), Volume 10 Issue 8 Ser. I, August 2021, also available at [https://www.ijhssi.org/papers/vol10\(8\)/Ser-1/B1008011921.pdf](https://www.ijhssi.org/papers/vol10(8)/Ser-1/B1008011921.pdf) (Visited on 05-08-2023).
- (-),Upper castes ‘dominate’ polity in Himachal available at <https://www.deccanherald.com/content/640962/upper-castes-dominate-polity-himachal.html> (Visited on 23-07-2023).

## RIGHT TO ABORTION IN INDIA – A STUDY AS WOMEN'S RIGHT VIS-A-VIS HUMAN RIGHT

- Dr. Caesar Roy\*

### ***Abstract***

*Abortion remains one of the greatest contentious issues because it involves taking a human life. It is up to the mother to determine abortion. Due to an unwanted pregnancy, a woman may be forced to choose an unsafe abortion that could be harmful to her health. In a country like India, abortion right of women is quite silent; this right for every women of India is not properly raised under Article 21 of our constitution. Under the Medical Termination of Pregnancy Act, 1971, only married women in India were granted the right to an abortion, and even then, only under specific circumstances. The purpose of this article is to enlighten relating to the abortion laws and legislative policies in India. The right to an abortion is one of the basic rights that all women in the US are presumed to have. Despite much criticism, the International Organization acknowledged this right as a basic human right. Only married women were allowed to obtain abortions because they were initially legalized in India for the purpose of family planning rather than as a fundamental human right, and even then, only in cases when all other birth control methods had failed to avoid pregnancy. As a result, it is impossible for women to get abortions in India. Feminist movements are urgently required in India for women to be able to claim their right to abortion. In this article, meaning of abortion, laws on abortion in India and their analytical explanation are placed. Besides, the right of abortion as human right as well as women right and the need for right to abortion are discussed in this article. Various cases of other countries including Indian judiciary are discussed here. The article is concluded by providing some fruitful and effective suggestions in this regard.*

**Keywords:** Abortion, right of women, right to abortion, Reproductive choice, Laws on abortion.

---

\* Assistant Professor of Law @ Surendranath Law College, Kolkata; Email: caesarroy123@gmail.com

## 1. INTRODUCTION

Many countries still view abortion as a topic of great concern, and it draws significant global concern as both a public health issue and an ethical and religious one. In India, the public debate on abortion has centered on either the spread of clinics in urban areas or the declining sex ratios and sex-selective abortions. Unwanted pregnancies can happen for several unanticipated reasons, and a woman ought to have the option to discontinue the pregnancy. India is one of many countries whose laws on abortion have been expanded to allow for abortions to be performed for a range of medical, humanitarian, and social purposes. The right of a woman to have an abortion is protected by her personal liberties, including her freedom for life, liberty and her quest of pleasure. The legality or illegality of abortion in India is governed by a number of laws. Sections 312 to 316 of the Indian Penal Code, 1860 and the Medical Termination of Pregnancy Act, 1971 both address the provisions of the country's abortion legislation.

Human rights encompass the freedoms that should be guaranteed to all people, free from all forms of bias. The basis of freedom is the acknowledgement of the intrinsic value and the unalienable rights of every member of the human community. The right to life is a person's most valuable right. It is the most important human right, and no exceptions are allowed. It is irrefutable. Article 6(1) of the International Covenant on Civil and Political Rights forbids the wilful taking of life. Yet, this greatest advantage is restricted by several difficult issues. The right to an abortion is one such topic. Every mother is believed to have a fundamental right to an abortion together with other rights. But both the liberties of the mother and the unborn child need to be harmonised.

Alongside to different rights, every mother is believed to have a natural right to an abortion. The right to an abortion was once prohibited and was explicitly discouraged by community. Ending of pregnancy termination was referred as the killing of the foetus. However, because of developments in technology and time, most countries now accept this right as a legal right, due to the well-known *Jane Roe v. Henry Wade*<sup>1</sup> ruling by the US Supreme Court. According to the finding of the court in this case, a mother may choose to terminate her pregnancy for whatever cause if the “point at which the foetus becomes ‘viable’”. However, yet there are many who disagreeing and who think it ought to be illegal.

---

<sup>1</sup> 410 US 113 (1973)

## 2. MEANING AND CONCEPT OF ABORTION

The word “abortion” refers to the “right to choose” of a woman over whether to keep her pregnancy or end it. There is no clear definition of “abortion” anywhere. Due to the divisive nature of abortion, lawmakers have had a difficult time defining it. In the medical field, this ambiguity has raised a few issues. Medical professionals frequently refer to it as “termination of pregnancy” due to the stigma associated with the term.

According to the Black Law Dictionary, abortion is “an artificially induced termination of a pregnancy for the purpose of destroying an embryo or foetus”.<sup>2</sup> According to Law Lexicon “abortion is the delivery or expulsion of the human foetus prematurely i.e. before it is yet capable of sustaining life.”<sup>3</sup> Abortion is also defined in Chambers 21<sup>st</sup> Century Dictionary, as “the removal of an embryo or foetus from the uterus before it is sufficiently developed to survive independently, deliberately induced by the use of drugs or by surgical procedures”.<sup>4</sup>

Medical terminology for abortion includes miscarriage, the evacuation of the foetus between the fourth and the seventh month of pregnancy, and preterm birth, giving birth to child after the seventh month but prior the entire gestation period. The phrases “miscarriage,” “abortion,” and “premature labour” are now interchangeable on the point of law and refer to any cessation of pregnancy before childbirth.<sup>5</sup>

Based on its nature and the conditions in which it happens, abortion is divided into four kinds. They are – natural, accidental, spontaneous and artificial or induced abortion. The first three types of abortions are not illegal, but induced abortions are prohibited unless specifically waived by the law.<sup>6</sup> The Medical Termination of Pregnancy (MTP) Act, 1971 which governs abortion in India, fails to define the terms “abortion” or “termination of pregnancy.”

## 3. ABORTION AS A WOMEN'S RIGHT VIS-A-VIS HUMAN RIGHT

<sup>2</sup> B. A. Garner, *Black's Law Dictionary*. 6 (West (Thomson Reuters), 11<sup>th</sup> edn., 2008)

<sup>3</sup> Aiyar, Law Lexicon, 2<sup>nd</sup> edition, 1977, p. 10

<sup>4</sup> Allied Chambers (India) Limited, New Delhi, p. 4

<sup>5</sup> K. Mathiharan and Amrit K. Patnaik (eds.), *Modi's Medical Jurisprudence & Toxicology* 1013 (Lexis Nexis Butterworth, New Delhi, 2006)

<sup>6</sup> K.D. Gaur, *Criminal Law & Criminology* 209 (Deep & Deep Publication, New Delhi, 2002)

Human rights are basic safeguards against the state or other public authorities that each and every member of the human family is entitled to, regardless of other factors.<sup>7</sup> No one may be denied these rights without committing an enormous injustice. There are some things that should never be done, some liberties that should never be violated, and some things that are sacrosanct.<sup>8</sup>

The Protection of Human Rights Act of 1993 contains a very detailed definition of human rights. According to this Act human rights mean “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”<sup>9</sup>

Human rights are those rights that every person has by virtue of being a human being and that are acknowledged and upheld in a civilised society. Humans have certain fundamental, unalienable rights known as human rights that they have by virtue of being human. These rights are in effect from the time an individual is born because they are a natural consequence of their existence. All people have innate human rights, which include birth rights, regardless of their caste, religion, sex, or nationality. Because they protect each person's freedom and dignity and advance their physical, moral, social, and spiritual well-being, these rights are essential for all. Human rights are therefore those that are part of whom we are and without which we cannot function as beings. The word “human right” is broad and includes civil rights, civil liberties, as well as social, economic, and cultural rights. Human rights are universal safeguards provided by law for people and organizations from acts and omissions that violate basic liberties, rights, and human dignity.

In the Tehran UN Conference on Human Rights, reproductive health care got accepted as an unalienable human right.<sup>10</sup> The Plan of Action from the Bucharest Conference on World Population in 1974 reiterated the fundamental human right of spouses to choose their own proportion of family members.<sup>11</sup> Due to the 1994 International Conference on Population and Development (ICPD), held in Cairo, and the 1995 Fourth World UN Conference on Women,

<sup>7</sup> D.D. Basu, *Human Rights and Constitutional Law* 5 (Prentice Hall, New Delhi, 1994)

<sup>8</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 at 619

<sup>9</sup> Human Rights Act, 1993 (Act 10 of 1993), s. 2(1)(d).

<sup>10</sup> United Nations, *Final Act of the International Conference on Human Rights, Tebran*, U.N. Doc. A/CONF. 32/41(May 13, 1968)

<sup>11</sup> United Nations, *Report of the United Nations World Population Conference, 1974* (Bucharest, 19-30 Aug. 1974) 3-26, U.N. Doc. E/CONF.60/19 (1975)

held in Beijing, the advancement of reproductive rights for women is currently growing pace.<sup>12</sup> Women's right to abortion was mentioned in the overall conclusions that were produced at these conferences, which lends more evidence that these rights are in fact human rights. Like to the UN system, regional human rights accords including the African Commission on Human and Peoples' Rights, Inter-American Commission, and European Convention on the Protection of Human Rights and Fundamental Freedoms concentrated on the right to abortion. While international and regional human rights treaties and treaty-monitoring organs have not yet specifically addressed the problem of abortion on demand, the aforementioned rights have strong written and interpretive backing that has been applied by national legislatures and courts all over the world to protect a woman's right to abortion and that advocates can use to advance women's right to abortion on demand.<sup>13</sup>

The right to life is reaffirmed and upheld by the International Covenant on Civil and Political Rights (ICCPR). The Covenant proclaims, "Every human being has the inherent right to life. Law shall protect this right. No one shall be arbitrarily deprived of his life."<sup>14</sup> Notably, the covenant declares that every person is subject to the right. "Human being" is a scientific phrase for a living human entity, in contrast to the word "person," which, through judicial interpretation in the United States (US), has put the unborn outside of a sphere of protection. A possible justification is that the fundamental human rights documents forbid abortion and do not establish a legal right to it.<sup>15</sup>

Another explanation can be derived from the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) that "States parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning."<sup>16</sup>

There should never be a requirement to become a mother. Women should have the freedom to manage their bodies and, as a result, the choice to have or not have children, without being

<sup>12</sup> Cook, Dickens and Fathalla, *Reproductive, Health and Human Rights: Integrating Medicine, Ethics and Law* 148 (Oxford University Press, New York, 2003)

<sup>13</sup> Jaime M. Gher and Christine Zampas, "Abortion as a Human Right – International and Regional Standards" 8(2) *HRLR* 249-294 (2008)

<sup>14</sup> International Covenant on Civil and Political Rights, art. 6

<sup>15</sup> *Ibid.*

<sup>16</sup> The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, art. 12

compelled to become mothers under any circumstances. In a majority decision declaring Canada's draconian criminal abortion statute unconstitutional and ineffective, the Chief Justice of Canada made the following observation -

"Forcing a woman, by threat of criminal sanction, to carry a foetus to term unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference with a woman's body and thus a violation of security of the person".<sup>17</sup>

The *Roe v. Wade*<sup>18</sup> decision by the U.S. Supreme Court in 1973, which acknowledged a woman's restricted right to end a pregnancy, set off a wave of awareness for this right. It was proclaimed a "fundamental right" that was "broad enough" to include a woman's choice to have an abortion or not, and it was only subject to government regulation in the face of some "compelling" interest of the state (both the mother's life and the "potential life" of the foetus were acknowledged as "legitimate" interests). According to the US Supreme Court, a pregnant woman has an unrestricted right to privacy regarding her body during the first twelve weeks of pregnancy. The state must not intrude in her decision to carry the pregnancy to term or end it at this point because the foetus is still an integral part of her body.<sup>19</sup>

#### **4. PRESENT LEGAL FRAMEWORK ON ABORTION IN INDIA AND ITS SIGNIFICANCE**

Abortion restrictions differ depending on the country's laws. Laws in several countries forbid abortion in any situation, even when the woman's life or health is in danger. Nicargua, for instance, fits within this category. Laws in certain countries, including Brazil, permit abortions when a woman's life is in danger. As many as 56 countries have legislation that permits abortion for health-related or medical reasons. Argentina is an example. In addition to a woman's health, certain countries frequently take into account her social or economic situation to make abortion permissible in a variety of situations. India, Japan, and the United Kingdom are a few of the countries that are in the group.

Induced abortion is illegal under Sections 312 to 316 of the Indian Penal Code (IPC), 1860. The unlawful termination of pregnancy is covered by Section 312. It states that "whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for

---

<sup>17</sup> *R. v Morgentaler v. The Queen* 44 D.L.R. (4th) 385 at 402 (1998)

<sup>18</sup> *Supra*, note 1.

<sup>19</sup> *Ibid.*

the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.” It also covers women who intentionally miscarry. The sole exception allowed was a miscarriage that was intentionally brought on to save the woman’s life. Despite the fact that Sections 312 and 316 allowed penalties for miscarriage in certain situations, the good faith provision rendered miscarriage a legal act. When India passed the Medical Termination of Pregnancy Act in 1971, its abortion regulations began to become more transparent. It was intended to relax the IPC’s current strict regulations.

On August 25, 1964, the Central Family Planning Board of India suggested that the Ministry of Health form a committee to investigate the necessity for abortion-related laws. The suggestion was implemented in the latter half of 1964, creating a committee made up of representatives from various Indian public and commercial organisations. The name of that committee was Shantilal Shah Committee. This committee’s report was published on December 30, 1966, following a review of an extensive variety of statistical data that were accessible at the time.<sup>20</sup> This report led to the government passing the Medical Termination of Pregnancy Act of 1971 (MTP Act of 1971), which relaxed India’s abortion laws and regulations.

It is important that the MTP Act was adopted in April of 1972 and again modified in 1975 to remove cumbersome processes for the approval of a place and to increase the accessibility of services. Two amendments to this Act were made in 2002 and 2005, respectively. Preamble of the Act embodies “An Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto.”<sup>21</sup> The Act, which only has 8 sections addresses a number of issues, including the time, place, and conditions under which a registered medical practitioner can end a pregnancy.

If a pregnancy is terminated by a registered medical practitioner in compliance with the MTP Act’s norms, he is not liable for any offence under the Indian Penal Code or any other currently in existence laws.<sup>22</sup>

<sup>20</sup> Government of India, “Report of the Committee to Study the Question of Legalisation of Abortion” 36 (Ministry of Health and Family, 1966)

<sup>21</sup> Medical Termination of Pregnancy Act, 1972 (Act of 1971), Preamble

<sup>22</sup> *Ibid.*, sec. 3(1)

When a pregnancy lasts no more than twelve weeks, the Act permits a registered medical practitioner to end the woman's pregnancy on the specified grounds.<sup>23</sup> However, in cases when pregnancies last longer than 12 weeks but less than 20 weeks, the concordant advice of at least two registered medical practitioners who are of the view evolved in good faith that<sup>24</sup> –

- (i) The continuation of the pregnancy would involve a risk to the life of the pregnant women, or
- (ii) A danger to her physical or mental health that could be fatal; or
- (iii) If rape resulted in the pregnancy; or
- (iv) There is a substantial possibility that the child will be significantly handicapped by certain physical or mental abnormalities if it is born; or
- (v) The failure of any device or plan employed by the married couple to reduce the number of children; or
- (vi) The pregnant woman's health is at risk due to her surroundings, whether it be present now or in the near future.

Explanation I to Section 3 states that “where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.” Additionally, Section 4 specifies where a pregnancy may be aborted. The most significant provision is the carving out of an exception to Section 3(2) in Section 5(1), which states that “the provisions of Section 4, and so much of the provisions of sub-section (2) of Section 3 as related to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that the termination of such pregnancy is immediately necessary to save the life of the pregnant woman.”

The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was passed in 1994 to stop the illicit use of technology to commit female foeticide in the whole country. The Act forbade determining the gender of the foetus and specified penalties for violations. The Pre-

---

<sup>23</sup> *Ibid.*, sec. 3(2)(a)

<sup>24</sup> *Ibid.*, sec. 3(2)(b)

conception and Pre-natal Diagnostic Techniques (Prohibitions of Sex Selection) Act, 1994, was updated in 2003 to enhance the monitoring of technology capable of selecting gender and to stop the deterioration in the child sex ratio. Both of the aforementioned laws were designed to safeguard the capacity of women to have children and to provide legal justification for both prenatal testing and abortion procedures.

Since its implementation, the MTP Act has attracted attention. It has recently come under controversy because of the outdated norms that now interfere with daily life for individuals. The government has attempted to fill in the gaps in the act using a variety of amendments, but the latest ones have not been successful in making it from bills to acts. The Act was first modified in 2002, when the law was decentralised<sup>25</sup> and the MTP Rules, 2003, which strengthened penalties for unauthorised abortions, expanded access to abortion.<sup>26</sup> On the advice of the National Commission for Women, the Union Ministry of Health and Family Welfare then put out a bill<sup>27</sup> in 2014; however, the bill was never introduced in the Parliament. The gestational limit was increased to 24 weeks, registered health professionals were permitted to perform abortions, the requirements for obtaining medical professionals' opinions were relaxed a bit, and most importantly, the term "married women" was replaced with "all women" in the contraceptive failure clause.<sup>28</sup>

The upper house of the Parliament received another bill in 2017 that sought to extend the gestational period to 24 weeks.<sup>29</sup> In an effort to increase the gestational limit to 24 weeks, a new measure was submitted to the upper house of the Parliament in 2017.<sup>30</sup> A member of the Parliament introduced the Women's Sexual, Reproductive, and Menstrual Rights Bill in 2018, which sought to do away with the requirement of a doctor's opinion for abortions up to 12 weeks.<sup>31</sup> The Amendment Bill, 2020 aims to raise the maximum gestational period to 24 weeks, reduce the number of registered medical practitioners required to one up to 20 weeks and two up to 20 to 24 weeks, and establish stipulations for unmarried women and their partners in the event that contraceptives fail.<sup>32</sup>

<sup>25</sup> The Medical Termination of Pregnancy (Amendment) Act, 2002

<sup>26</sup> The Medical Termination of Pregnancy Rules, 2003

<sup>27</sup> The Medical Termination of Pregnancy (Amendment) Bill, Ministry of Health and Family Welfare (2014)

<sup>28</sup> *Ibid.*

<sup>29</sup> The Medical Termination of Pregnancy (Amendment) Bill (2017)

<sup>30</sup> The Medical Termination of Pregnancy (Amendment) Bill (2018)

<sup>31</sup> The Women's Sexual, Reproductive and Menstrual Rights Bill, Dr. Shashi Tharoor, M.P. (2018)

<sup>32</sup> The Medical Termination of Pregnancy (Amendment) Bill, (2020)

Except in cases when it is necessary to preserve the woman's life, abortion is illegal in India under the Indian Penal Code.<sup>33</sup> The MTP Act, 1971 was enacted in order to liberalise the law to safeguard women's lives from illicit abortions because India's abortion laws were quite harsh. However, this law was created as a family planning strategy to manage the population, as every person may infer from the text of Section 3 of the Act, not as a right to be granted to women. The circumstances under which doctors may perform abortions are described in Section 3 of the MTP Act. According to the section, a doctor's approval is required before performing an abortion on a woman. Under the MTP Act, women's desire for abortion is not accorded any sort of consideration. Additionally, Explanation 2 of this provision states that only married women were permitted to have abortions and that too even only under certain circumstances, such as when the woman could demonstrate that the failure of any kind of contraception caused the pregnancy, which could be regarded as denying the right to an unmarried woman.<sup>34</sup> The question that now arises is why, in the 21<sup>st</sup> century, women still have to provide evidence that their pregnancy was brought on by the failure of any form of contraception. The fact that a woman wants an abortion indicates that the pregnancy is not wanted, which is why she must respond to the doctor's questions about why the pregnancy is unwanted. This law was put into place to safeguard the lives of mothers. However, while the law only applies to married women, rape victims, and minors, there is only one alternative left for the other woman who wants an abortion, i.e. illegal abortion.

## 5. ABORTION AND JUDICIAL OBSERVATIONS

Many anti-abortion laws were considered unlawful after the famous *Roe v. Wade* decision by the US Supreme Court on the grounds that they infringed upon a constitutional right to privacy. The Court in this case observed that "the state cannot restrict a woman's right to an abortion during the first trimester. However, the state can regulate the abortion procedure during the second trimester 'in ways that are reasonably related to maternal health,' and in the third trimester, demarcating the viability of the foetus, a state can choose to restrict or even to proscribe abortion as it sees fit".

Following the *Roe v. Wade* decision, abortion became legal in some European and American nations. Since nearly 1970, several countries have relaxed their laws on abortion throughout the

---

<sup>33</sup> Siddhivinayak S. Hirve, *Abortion Law, Policy and Services in India: A Critical Review*, 12 Reproductive Health Matters 24, 114-124 (2004)

<sup>34</sup> *Ibid.*

past thirty years. The US Supreme Court later changed *Roe case* in *Planned Parenthood v. Casey*<sup>35</sup>, where the viability of the foetus is now related to the constitutionality of the abortion law rather than the strict third trimester standard established in *Roe case*.

The first case regarding the constitutionality of the District of Columbia Law, which granted the right to abortion only in order to safeguard the mother's life and her mental health, was *United States v. Vuitch*.<sup>36</sup> The court in this instance, which was presided over by a doctor, found that the statute was ambiguous because it defined "health" to include both bodily and psychological well-being. The Court also made sure that the prosecution would have the burden of proving rather than the petitioner.

*Doe v. Bolton*,<sup>37</sup> a case that arose out of the *Roe v. Wade*<sup>38</sup> decision, provided women's rights to life and health a new dimension as the scope of abortion was broadened to include more factors. Georgia's abortion legislation was overturned in this particular case by the Supreme Court because it only permitted abortions when a pregnancy was brought on by rape, incest, or some serious health issue. The law's excessively convoluted procedures made it challenging for women to obtain their rights. In light of this, the U.S. Supreme Court declared the Georgia laws unconstitutional because they infringed on the right of the woman to determine whether or not to end her pregnancy.

Recently, *Roe v. Wade* was overturned by the US Supreme Court in *Dobbs v. Jackson Women's Health Organisation*,<sup>39</sup> ending the constitutional right to abortion after almost 50 years. The court found in majority that abortion is not a constitutional right since it is not mentioned in the Constitution and because its legal status is not "deeply rooted" in the history of the nation.

With the aid of several decisions where the court broadened the scope of the right to life and personal liberty provided by Article 21 of the Indian Constitution, the role of the Indian judiciary in enforcing reproductive justice may be pointed out. The judiciary has often taken action to stop the infringement of reproductive rights. The Supreme Court made a significant step forward in 2009 when it recognized a woman's right to choose whether or not to have children as a

---

<sup>35</sup> 505 U.S. 833 (1992)

<sup>36</sup> 402 U.S 62 (1971)

<sup>37</sup> 410 U.S. 179 (1973)

<sup>38</sup> 410 U.S 113 (1973)

<sup>39</sup> 597 U.S. \_\_\_\_ (2022) (No. 19-1392)

component of her personal freedom under Article 21.<sup>40</sup> It was held that “there is no doubt that a woman’s right to make reproductive choices is also a dimension of ‘personal liberty’ as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman’s right to privacy, dignity and bodily integrity should be respected.”

In *D. Rajeshwari v. State of Tamil Nadu*,<sup>41</sup> where the court authorised the termination of the pregnancy of an unmarried 18-year-old woman who prayed for permission, claiming that carrying the unwanted child for three months had rendered her mentally ill and that continuing the pregnancy had caused her great mental anguish, which would have seriously harmed her mental health because the pregnancy had been brought on by rape.

In the case of *Satya v. Siri Ram*,<sup>42</sup> the Punjab and Haryana High Court held that it is cruel to terminate a pregnancy when the husband has a “legitimate craving to have a child”. In *Suman Kapur v. Sudhir Kapur*,<sup>43</sup> the Supreme Court observed that a woman who has an abortion without her husband’s knowledge or consent has committed mental cruelty, which is a ground for divorce.

In a significant joint decision issued in 2011, the Delhi High Court defined the right to procreation as an “inalienable survival right” and brought it under the purview of the right to health, which is a component of the right to life under Article 21.<sup>44</sup> It also made it mandatory for all women to have access to and receive the minimal standard of care in public health facilities in an effort to end discrimination against women on the basis of social and economic status.

The Supreme Court of India has ruled that serious foetal abnormalities, even if the foetus is more than twenty weeks old, might be an adequate reason for medical termination of pregnancy. In *Ms. X v. Union of India*,<sup>45</sup> the Supreme Court let a rape survivor who was twenty-four weeks pregnant to have an abortion. In *Tapasya Umesh Pisel v. Union of India*,<sup>46</sup> when the girl was in the

<sup>40</sup> *Suchita Srivastava & Anr. v. Chandigarh Administration*, (2009) 11 SCC 409

<sup>41</sup> 1996 Cri.LJ 3795

<sup>42</sup> AIR 1983 P&H 252

<sup>43</sup> AIR 2009 SC 589: (2009) 1 SCC 422

<sup>44</sup> *Laxmi Mandal v. Deen Dayal Harinagar Hospital & Others*, (W.P. (C) No. 8853/2008) and *Jaitun v. Maternity Home, MCD, Jangpura & Others*, (W.P. No. (C) 8853/2008 & 10700/2009)

<sup>45</sup> (2016) 14 SCC 382

<sup>46</sup> (2018) 12 SCC 57

24<sup>th</sup> week of pregnancy, the Supreme Court had approved abortion. The Court held that “it is difficult for us to refuse the permission to the petitioner to undergo medical termination of pregnancy. It is certain that the foetus, if allowed to born, would have a limited life span with serious handicaps which cannot be avoided. It appears that the baby will certainly not grow into an adult.” The Supreme Court approved the termination of pregnancy in the 25<sup>th</sup> week of the pregnancy in the case of *Mamta Verma v. Union of India and Others*<sup>47</sup>.

In the case of *Devika Biswas v. Union of India*,<sup>48</sup> the Supreme Court held that “a woman’s reproductive autonomy to be her fundamental right to privacy, and has said that the decision to have or not have a child should be hers alone, devoid of any state intervention”.

In *Murugan Nayakkar v. Union of India & Ors.*,<sup>49</sup> The Supreme Court approved the abortion of a 13-year-old rape victim’s 32-week pregnancy by observing, “Considering the age of the petitioner, the trauma she has suffered because of the sexual abuse and the agony she is going through at present and above all the report of the Medical Board constituted by this Court, we think it appropriate that termination of pregnancy should be allowed.”

However, the court refused to allow the termination of a 27-week pregnancy in *Savita Sachin Patil v. Union of India*.<sup>50</sup> The Medical Board determined that although the mother posed no health risk, the foetus had serious physical defects. Based on the Medical Board Report, the Court subsequently refused to allow termination.

The Supreme Court of India’s nine-judge bench in *K.S. Puttaswamy v. Union of India*<sup>51</sup> unequivocally determined that the right to life and personal liberty guaranteed by Article 21 of the Constitution underlies the right to enjoy reproductive freedom.

The court refused to permit abortion in *Alakh Alok Srivastava v. Union of India*,<sup>52</sup> where the petitioner was a 10-year-old pregnant rape victim who was also 32 weeks along in her pregnancy. The Medical Board concluded that the petitioner would be less at risk from continuing the pregnancy than from having it terminated at that point.

<sup>47</sup> (2018) 14 SCC 289

<sup>48</sup> (2016) 10 SCC 726

<sup>49</sup> 2017 SCC OnLine SC 1092

<sup>50</sup> (2017) 13 SCC 436

<sup>51</sup> (2017) 10 SCC 1

<sup>52</sup> (2018) 17 SCC 291

Both Sections 3 and Section 5 of the Act were subject to challenge in the case of *Nikhil Datar v. Union of India*.<sup>53</sup> When the foetus in this case was truly identified with a heart blockage during the 26th week of pregnancy, the petitioner requested the termination of the pregnancy. The court decided that it cannot exercise its right under Section 3 of the MTP act because the 26th week has gone and it is therefore unable to give any orders. The type of psychological and physical trauma that the ladies experience was also thoroughly covered in the case. Additionally, a number of ethical dilemmas that doctors would encounter in situations similar to this one are covered in detail in the case.

In *R. and Anr. v. State of Haryana*,<sup>54</sup> it was held by the Punjab and Haryana High Court that “No doubt, the protection of right of unborn child is an obligation cast upon the State under the Constitutional provisions, yet in view of the unambiguous language of Section 5 of the Medical Termination of Pregnancy Act, 1971, the conflict between the right to life of the mother and the right to life of the unborn child would yield in favour of the right to life of the mother. To force a woman to continue with the pregnancy which she does not want to continue is an infringement of right to privacy and dignity of the woman as well as an infringement of the right to a healthy and dignified life of the nascent life in her womb.”

When interpreting Section 5 of the MTP Act in the case of *Ashaben v. State of Gujarat*,<sup>55</sup> where the victim experienced imprisonment before she could request termination, the Gujarat High Court adopted a restrictive stance. When a 24-week pregnancy was brought before the High Court, the Court pointed out that “undoubtedly, Section 5 of the Act relates to the right of a pregnant woman to terminate pregnancy in case it is found necessary to save her life. Section 5 nowhere speaks of any right of a pregnant woman to terminate the pregnancy beyond 20 weeks on the ground of having conceived on account of rape. It strictly restricts to the cases where the life of the pregnant woman would be in danger in case the pregnancy is not terminated and does not refer to any other circumstances. Undoubtedly, the opinion in that regard has to be formed by a registered medical practitioner and such opinion should be in good faith. The expression ‘good faith’ discloses that the opinion has to be based on the necessary examination required to form such an opinion.”

---

<sup>53</sup> SLP (C) 5334 of 2009

<sup>54</sup> CWP-6733/2016, decided on 30<sup>th</sup> May, 2016

<sup>55</sup> 2015 (4) Crimes1 (Guj.)

In *Minor R Through Mother H v. State of NCT of Delhi & Ors*,<sup>56</sup> the Delhi High Court provided guidelines that investigating personnel must abide by when a sexual assault victim is more than 24 weeks pregnant. The court held that “denying a woman the right to medical termination of pregnancy in sexual assault cases and imposing the responsibility of motherhood on her, would amount to denying her the human right to live with dignity as she has a right in relation to her body including the right to say yes or no to being a mother.” In situations where pregnancy lasted longer than 24 weeks, the Court issued the following directives that the IO was required to abide by –

- (i) It would be required to perform a urine pregnancy test when a sexual assault victim underwent a physical exam, as this Court had seen that such a test was frequently neglected.
- (ii) When a victim of sexual assault is discovered to be pregnant, the investigating officer in charge of the case must make sure that the victim appears before the Medical Board specified in Section 3 of the MTP Act on the same day, especially if the victim is a major and gives her consent and expresses a desire to have the pregnancy medically terminated.
- (iii) With the consent of her legal guardian, a minor sexual assault victim who was pregnant would be brought before the Board with a view of having the pregnancy aborted.
- (iv) A suitable report would be provided to the appropriate authorities following the examination of a minor victim by such a Board so that, in the event that a court order for the termination of a pregnancy was requested, the court in question wasted no more time and could swiftly issue the requested order.
- (v) The State Government or the Union Territory was required to see to it that the Medical Boards were established in the hospitals in accordance with Sections 3(2C) and 3(2D) of the MTP Act. The Court was informed that these boards weren’t available in hospitals in every district, which occasionally inconvenienced both the victim and the IO because they had to be taken for MTP and other testing. As a result, the State Government/Union Territory should make sure that the requirements of Sections 3(2C) and 3(2D) of the MTP Act are followed and that such Boards be established in all

---

<sup>56</sup> 2023 SCC OnLine Del 383

Government Hospitals that have legitimate MTP Centres. It should also be necessary that such Boards be established in advance.

In *Centre for Enquiry into health & Allied Themes (CEHAT) v. Union of India*,<sup>57</sup> the Supreme Court of India ordered the Central Government to educate the public about female foeticide and sex detection and to vigorously enforce the terms and rules of the PNDT Act, 1994. Additionally, the court mandated that the Central Supervisory Board (CSB) meet once every six months. The Central Supervisory Board must order States and Union Territories on how to submit quarterly returns and must also study, monitor, and assess how the law is being put into practice. In *Chetna, Legal Advisory WCD Society v. Union of India*<sup>58</sup> the court held that if necessary, it is also possible to contact the National Human Rights Commission to ask for their help in ensuring that the National Programme for the Eradication of Female Foeticide and Infanticide is implemented correctly and improved as needed. In another case, *Centre for Enquiry into Health & Allied Themes (CEHAT) v. Union of India*,<sup>59</sup> the Supreme Court of India once more ordered State Governments to conduct additional research so that unlicensed clinics cannot function in any area of the nation.

## 6. NEED FOR RIGHT TO ABORTION

According to Article 21 of the Constitution, refusing medical attention is a breach of the fundamental right to life and freedom. The Supreme Court of India has ruled that having access to emergency medical care is a fundamental right,<sup>60</sup> and that the primary responsibility of the medical profession is a duty of care. Since they lack the financial means, political strength, and influence over the judiciary, the poor are unable to routinely go to court.<sup>61</sup> Therefore, for those who are disadvantaged, access to timely and cheap abortion treatments is crucial. When illegal abortion services are the only choice, the risk of significant complications or even death is increased for women and girls who depend on the public healthcare system and have limited access to post-abortion treatment.<sup>62</sup> The fundamental principles of human rights do not warrant

---

<sup>57</sup> (2001) 5 SCC 577

<sup>58</sup> (1998) 2 SCC 158

<sup>59</sup> AIR 2002 SC 3689

<sup>60</sup> *Parmanand Katara v. Union of India*, (1989) 4 SCC 286

<sup>61</sup> Edward P. Pinto, "The jurisprudence of emergency medical care in India: an ethics perspective" 2 *Indian Journal of Medical Ethics* 4 (2017)

<sup>62</sup> Jocelyn E. Getgen, "Reproductive Injustice: An Analysis of Nicaragua's Complete Abortion Ban" 41 *Cornell International Law Journal* 1143-175 (2008)

criminalising abortions, and this has been acknowledged on a national and worldwide level.<sup>63</sup> According to a number of decisions given by Indian courts, a woman's right to an abortion comprises the rights to equality, non-discrimination, bodily autonomy, health, dignity, and choice, all of which are covered in the following section.

Due to issues with overpopulation, poverty, women's mortality, sex discrimination, etc., it is thought necessary to implement abortion reforms in developing nations like India. Reforms pertaining to abortion were considered as being focused mainly on the independence of women in developed nations. India's abortion regulations fall under the state's umbrella of welfare laws. Despite having a more general goal of achieving welfare, they are nonetheless restricted to a state's socioeconomic and political objectives.

An abortion might be the only option for rural women in a nation like India where getting contraception is difficult to come by. Criminalizing abortion promotes unauthorized, hidden abortions. Because abortion should be illegal, the fundamental error is the premise that the foetus has a right to life.<sup>64</sup>

The right to an abortion was only made available under the MTP Act at the doctors' discretion. If the expecting mother is successful in convincing him that the requirements for abortion outlined in the statute are met, he will grant permission. A certificate from one licensed gynaecologist or obstetrician is required for terminations within the first 12 weeks of pregnancy. Only if the pregnant woman's life is in danger, if it would substantially harm her bodily or mental health, or if there is a significant chance that the baby will be born with a serious disability, is termination permitted between 12 and 20 weeks. During this time, two licensed obstetricians or gynaecologists were necessary to certify the termination.

It is also important to note that, despite the fact that the Medical Termination of Pregnancy Act of 1971 (MTPA) does not require the husband's approval, Indian courts do not consider a wife's decision to end her pregnancy without his consent favourably. The unborn child is regarded as the husband's property in India. Therefore, whether a woman wants a kid or not, her husband's decision is taken into account, and since every small move a woman makes in her life is

---

<sup>63</sup> Center for Reproductive Rights, *Breaking Ground: Treating Monitoring Bodies on Reproductive Rights*, (2018), available at <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Breaking-Ground-2018.pdf> (last visited on July 23, 2023)

<sup>64</sup> Harry C Meserve, "Pro Life, Pro Choice" 22(1) *Journal of Religion & Health* 75-107(1983)

dependent on getting approval from her husband, family, and society, it is very challenging for her to have control over her womb.

Although Indian courts have not explicitly affirmed the right to an abortion, they have impliedly violated women's rights. The Supreme Court of India has ruled against the right to procreate in a number of cases, and the ability to manage one's reproductive system gives rise to a second right, the right to abortion.

To give effect to the various judgements as stated earlier, the MTP Act has not yet undergone any such obvious alteration. Therefore, it is crucial to ensure that every woman in India has access to the right to an abortion. The MTP Act is currently out of date, and as a result, women are required to file legal cases. Due to the Courts' varied views of the law, the judgements are therefore applied quite harshly.

The MTP Act also failed because it frequently considers the situation of minor rape victims whose pregnancies are found too late. Due to the stigma associated with rape and the victims' silence, adolescent pregnancies are sometimes not detected until the kid starts having health problems. By the time they emerge into the light, the infant is frequently either already past the 20-week mark or is very close to it. As a consequence, there are several situations in which young girls and women are asking with the courts to grant them permission to end their unwelcome pregnancies that are more than 20 weeks long.

All of these occurrences make it abundantly clear that, absent the enactment of alternative regulations and laws, no workable solution could be found, and the courts would still be required to consider and provide decisions in each individual case. The current system may serve as a temporary fix, but it cannot be viewed as a workable long-term solution to the issue. Another flaw in this regard is the slow legal system.

## **7. CONCLUSION AND SUGGESTIONS**

A woman has a natural responsibility to provide her children all they might possibly need. However, there may be circumstances where woman engages in actions that are harmful to the foetus. It could be the result of behaviours committed wilfully, carelessly, or ignorantly. It is best to leave the mother's decision regarding abortion to her. However, the unborn should be given the essential protection, taking the viability of a legal norm into consideration. In cases where the government or non-profit organisations are prepared to care for the unborn, it is also

advantageous to the mother. Giving the woman the power to kill the foetus serves no purpose. Her only option is to terminate her pregnancy. Additionally, it is claimed that having 20 million newborns per year would place a bigger burden on the country's healthcare system and financial resources than, say, having one to five million abortions every year.

India's current abortion laws do not consider "choice" in the calculation. The MTP Act does not merely give a woman the option of choosing whether or not to become a mother because abortions are conditional and based on factors such as the mother's physical or mental health, a handicapped or malformed child, underage pregnancies, rape, pregnancies in women who are not of sound mind, and failing to use contraceptives.

Additionally, the constitution gives women full freedom to decide how they want to use their bodies. Nobody has the right to tell her how to behave when it comes to reproductive issues. Therefore, interfering with her reproductive choices is a violation of her personal freedom and privacy. The legislative restrictions have greatly curtailed a woman's ability to enjoy her freedom, particularly when it comes to her right to self-determination, bodily autonomy, and access to abortion. The rights to life and liberty of women have been severely compromised by these regulations. India has some strict laws regarding abortion. Women should have the freedom to govern their bodies, which includes the choice of whether or not to have children. The following suggestions have been put forward in this regard –

- (i) Many believe that the legal abortion limit for terminating an abortion by 20 weeks ought to be increased by at least four or five weeks. Before the parent can even consider an abortion, a precise diagnosis of the foetal defect is required. But it takes time for these medical tests to be finished, which pinpoint major illnesses in the unborn child. Additionally, in order to obtain a more certain result, some tests start around the 20th week of pregnancy. By that point, parents will discover that they are legally unable to undergo an abortion. While the argument over abortion's legal limit may have just begun in India, it has been going on for some time in the West, particularly in nations with a significant Catholic population. Many nations, including Canada, Korea, China, Germany, France, and a number of other European nations, have comparably lenient abortion legislation. Canada even goes as far as to let the woman and her doctor handle the situation totally on them without intervening in any way. The unborn is seen as an integral component of the woman's body and is only given the status of a person after birth. The woman is thought to have complete

freedom in her person. Abortion is legal in Korea up until twenty-eight weeks, although married women must have their husbands' approval. The Abortion Act of 1967 in the United Kingdom allows abortions up to 24 weeks, however there is no upper limit if the pregnancy threatens the woman's life or if the child is expected to be born severely physically or mentally abnormal. If a child has difficulties, I believe the mother has the right to end the pregnancy. Only under particular conditions is an abortion permitted in India after 20 weeks. In light of the *Nikhil Datar v. Union of India*<sup>65</sup> popularly known as *Nikita Mehta case*, which was previously highlighted, the MTP act should now be modified. The legal term must be extended to 24 weeks or more if issues develop with the mother, the kid, or a rare condition that the child has. If a disorder is found in the unborn kid, in my opinion, the woman is free to choose whether or not to abort the child.. The situation of *Nikita Mehta* is shocking; many women must have experienced the same issues. The law should be put into effect as soon as feasible by the government. Why should India be an exception when every other nation in the world abides by the 24 week limit on abortion? India is developing in every area, so why not change the law to mandate improved maternal care and facilities? Extending the number of weeks for abortion would be a step in the direction of a robust and advanced civilization.

- (ii) It is necessary to change the MTP Act since it is thought to be a tool for population control rather than enhancing the range of reproductive options. Therefore, it is necessary to change the clauses in order to stop their abuse and to make sure that they increase rather than decrease women's reproductive freedom. Additionally, it is time to stop discriminating against married and single women. All women, whether or not they are married, must be allowed to terminate a pregnancy if their contraception fails.
- (iii) Some sections of the Indian Penal Code need to be amended. For instance, Section 312 of the IPC should be appropriately modified in accordance with the MTP Act of 1971 to cover all the grounds for which a pregnancy can now be ended by a registered medical practitioner. Additionally, Section 375 of the Indian Penal Code, 1860, which permits a husband and wife to engage in sexual activity if the wife is older than 15 years old, needs to be amended. Even though the Criminal Law

---

<sup>65</sup> SLP (C) 5334 of 2009

Amendment Act of 2013 altered the IPC, this section has not been changed. Therefore, this IPC clause unintentionally encourages child marriages.

- (iv) The role that contraceptives play in a person's sexual life is essential. The rise of AIDS has also greatly increased the use of contraception. The saying that "prevention is better than cure" is a wise one, thus it makes sense to use contraceptives to prevent abortion. There are many contraceptives available now that can effectively prevent conception, including male and female sterilisation, contraceptives, condoms, cervical caps, IUCDs, and more. However, as most people are unaware of these techniques, it is recommended that the government take a proactive role by making contraceptives easily accessible.
- (v) Professional organisations like the Medical Council of India should establish strong guidelines and rules as well as outline the proper sanctions for "erring" physicians who perform unlawful abortions.
- (vi) Female foeticide can be completely eliminated with the help of the government. The government ought to provide incentives to parents of girls, such as free schooling, additional food assistance, and tax breaks. In contrast to sting operations, this method may be the most effective. Additionally, in nations like India, where both the issue of population growth and female foeticide exist, the greatest answer is for the single girl child to be given her own category, similar to other reservations like those for SCs and STs.
- (vii) All the joys of life fade away for the average individual if they are not in excellent health. Naturally, one should not discuss the wretched life of the person born with major anomalies if this is the position for a normal person. The Supreme Court has interpreted "life" in Article 21 of the Constitution to mean "living with dignity." It is preferable to avoid giving birth to such a helpless child who will have to rely on others for the rest of his or her life if a person cannot live a dignified life and their existence is equal to that of a helpless creature.
- (viii) The negative effects of giving birth to disabled children can be reduced by establishing efficient state structures that provide enough financial and non-financial support to such children and families. Expert committees may be established to review cases that are more advanced than twenty weeks so that only specific

instances receiving an abortion sanction at this time. Additionally, it would be crucial to specify precisely what constitutes a disability severe enough to warrant an abortion after 20 weeks, such as in situations of anencephaly where there is no benefit to continuing the pregnancy.

- (ix) Services for reproductive health can greatly benefit from the involvement of the media. Because they have the power to pressure the government into creating laws that will benefit people. But regrettably, people still avoid talking about the problems with their health. They can draw attention to instances of flagrant disregard for human rights in relation to reproduction, inform those in need of health services about available options, and serve as a liaison between the populace and the government.

To sum up, not much has changed thus far despite the restriction on prenatal diagnostic methods. As a result, it implies that the Act's execution is very subpar and that the law lacks societal acceptance, which is a requirement for any law to be effective. The State should focus on improving the standing of women in society, particularly in rural India, rather than establishing regulations on abortion. To this purpose, specific efforts for women's education are required. Education is essential for empowering women since only empowered women can achieve social equality, which in turn would lessen dowry demands. Women's economic empowerment will also lessen their reliance on their sons to provide for them financially and take care of them as they age. It is important to take both legislative and non-legislative actions to empower women, as this will lower the rate of female foeticide.

## ROLE OF POCSO ACT IN CASE OF JUVENILE JUSTICE AND CHILD SEXUAL ABUSES: A CRITICAL ANALYSIS

- Niraj Pandey\*

### ***Abstract***

*The juvenile justice system is the most vibrant and modern framework adopted by the world that addresses all aspects of children's development. The primary focus is to consider the vulnerable children. As much as possible, the child is rehabilitated and brought back into the family. The scope of this project will evaluate The juvenile justice system in India has evolved over time, incorporating protected reasoning and aligning with international parameters. There have been landmark cases that prompted the need for a distinct Juvenile Justice Act. Juvenile justice was started because people didn't think that problems like juvenile delinquency or kids in abnormal situations could be solved with the usual criminal law. It's used to mean both social and legal justice. India is trying to give social and legal justice to neglected and delinquent kids by using courts, codes, etc. The Constitution of India shines a spotlight on the welfare and rights of our children, recognizing their unique status through several articles. Articles 15(3), 24, 39(e), 39(f), and 45 are like guardians, ensuring that the well-being of children remains a core value in our nation. In this article with this commitment, the Indian National Policy of 1975 proudly declared children as our most precious national resource. It's a testament to our collective belief that investing in the well-being, education, and protection of our youth is vital for the nation's future.*

**Keywords:** Juvenile Justice, Constitution, Children rights, Juvenile court, Scandinavian countries, Sexual abuses.

---

\* Research Scholar @ Central University of South Bihar, Gaya; Email. nirajpandey8574@gmail.com; Mob.: +91-8574725089

## 1. INTRODUCTION

Children are a vital segment of India's diverse population, and they rightfully command both social and legal attention when it comes to their growth and well-being. While our Constitution has made commendable efforts to ensure their safety and development, there remains a poignant truth: a substantial number of Indian children still endure a childhood marked by a lack of proper care and support.

With a deep concern for providing children in India with a good and secure childhood, our nation introduced the concept of "juvenile justice" through legislation. This approach is rooted in the belief that every young life deserves a chance at proper treatment, care, and development, especially when they find themselves in challenging situations as delinquent or neglected youth.

The concept of juvenile justice originates from the belief that the problems of juvenile delinquency and abnormal situations of young people cannot be corrected within the framework of traditional criminal law. The Juvenile Justice Act was created to serve and meet the needs of these offenders.<sup>1</sup>

The Juvenile justice Act is one of the many initiatives taken to fulfill the vision of the Constitution of India as it recognizes the special status of children under Article 15 (3), Articles 24, 39(e), 39(f) and 45.

Juvenile justice can mean a lot of things, like juvenile court, rehabilitating young people, etc. But if you look at it from a bigger picture, juvenile justice is all about making sure all the kids in need are taken care of and protected. It's used to describe social and legal justice for neglected and delinquent kids, like code, court, etc. These kids are usually forced into this lifestyle because they've committed a crime or because something happened to them that caused them to turn to crime.<sup>2</sup>

## 2. HISTORICAL DEVELOPMENT<sup>3</sup>

The development of juvenile justice, from a legal perspective, has followed similar paths in both the Western and Eastern worlds. For instance, the Juvenile Court of Madras operating under the Children Act of 1920 bore similarities to the English Children Act of 1908. However, as time passed, subsequent Children's Acts eased the requirement for lawyers to be present in these

<sup>1</sup> The Juvenile Justice (Care and Protection) Act, 2015.

<sup>2</sup> Kumari, Ved, The Juvenile Justice (Care and Protection of Children) Act 2015, Universal Law Publishers, 3<sup>rd</sup> Edn, Delhi, 2015.

<sup>3</sup> Universal Law Publishing Co. Pvt. Ltd. 10<sup>th</sup> Edn., 2008.

courts. Influences from the Nordic countries also played a significant role in shaping juvenile justice. The adoption of Juvenile Welfare Boards, which have been in operation since the 1960s, became a crucial part of legislation governing delinquent and neglected children. Initially, the belief prevailed that children were not yet emotionally mature enough to fully comprehend the nature and consequences of their actions, thus making them less accountable for their crimes.

In tracing the development of the juvenile justice system in India, we can break it down into five distinct periods to gain a better understanding. Let's start with the period "Prior to 1773."

Before the year 1773, India had rich traditions and cultural practices that governed the care and protection of children. Both the Hindu and Muslim communities had their own sets of laws and customs aimed at safeguarding the well-being of young ones. These age-old traditions reflect the deep-rooted concern for children's welfare in our society, emphasizing the timeless importance of nurturing and guiding our youth.

The main job of raising kids was for the parents and the whole family. In Muslim law, if you find an abandoned child, you have to take care of them if you think they might die. It's said that neither law had anything to do with juvenile delinquents. The period from 1773 to 1850 started with the East India Company and ended with the first laws about kids. It was also the time when prisons changed from being used for transporting prisoners to being used for keeping prisoners.

During the 1850s-1919, a lot of laws were passed to deal with all kinds of things related to kids. Some of the laws that were passed during this time are the Female Infanticide Law, 1870, and the Vaccination Law, 1880, which were really helpful for kids. Between 1919 and 1950, there were a lot of changes in the juvenile justice system. One of the biggest changes was the Indian Jail Committee's report from that year. They said that if it was possible, the courts should make it clear to all authorities that it was their job to keep people out of jail.

After 1950, five-year plans were established for general development. When the five-year plans were launched, they were intended for the benefit of children, although the implementation of juvenile justice was not a separate item in the five-year plans. During this period, the "Girl" was recognized as an important target that required attention and systems such as integrated child development services for children in need of care and protection.<sup>4</sup>

---

<sup>4</sup> Maha Rukh, Aden Walla, Child Protection and Juvenile Justice System for Juvenile in Conflict with law, Sage Publications, Delhi, 5<sup>th</sup> Edn., 2006.

### **3. LEGISLATIVE PROCESS<sup>5</sup>**

The Indian Parliament has deliberated on numerous Bills pertaining to the welfare of children in need of care and protection. These Bills have been introduced by both government ministers and private members. To advance the juvenile justice system in India, Parliament has had discussions on seven significant Bills, including the Children Bill 1953, the Women and Children Institutions Licensing Bill 1953, the Children Bill 1959, and The Children (Amendment) Act, 1977, among others. These legislative efforts highlight the ongoing commitment of India's Parliament to address issues related to child welfare and protection.

During these debates, there were varying opinions on the issue of delinquency among children. One debater expressed the view that these children had a corrupt and morbid tendency, setting them apart from ordinary children.

One of the significant challenges highlighted during the discussions was the lack of sufficient funds for implementing the proposed provisions. Various institutions and adjudicatory bodies pointed out that the extensive scope of these Bills, both in terms of subject matter and territorial coverage, incurred high costs. This was compounded by the fact that the Central Government did not directly provide funds for these initiatives. Critics also raised concerns about the Bills delegating the implementation of crucial matters to junior officers who may not fully grasp the specialized approach required by the legislation. These debates underscore the complex nature of addressing delinquency in children and the need for adequate resources and expertise to effectively implement the proposed measures.

Adoption was warmly embraced as a crucial avenue for offering children the nurturing care of a loving family. There was a strong emphasis on the need for meticulous scrutiny when selecting adoptive families, with particular attention paid to this process when it came to girl children. The inclusion of adoption provisions within the Juvenile Justice Act was viewed as a means of rehabilitating children in need. Interestingly, when these provisions were introduced, they didn't receive any discussion in the Lok Sabha, despite the minister introducing the Bill mentioning them and their features. This highlights both the importance of adoption as a child welfare measure and the intricacies involved in legislative deliberations.

### **4. FUNCTION OF THE JJ BOARD<sup>6</sup>**

---

<sup>5</sup> 84<sup>th</sup> Law Commission Report (1980) and its 172<sup>nd</sup> Report (2000).

1. According to Section 4 of the Act, a special training program must be established and board officials, including the chief justice, must be trained in child psychology and child welfare.
2. The atmosphere of the Lautakunta research site must be child-friendly. The use of a black jacket, the use of high platforms or explosions etc. should be avoided. Young people standing in front of the board should be stopped. Basic infrastructure like computer, typewriter, stenographer, furniture and buildings should also be provided to the government for smooth performance of its duties.
3. It's crucial to maintain files and case records with the utmost care and precision.
4. Children should be provided with Video links homes so that the board can control and monitor so that any activities against the interest of the child can be monitored.
5. In each Board, having at least one of the two social workers with a minimum qualification of a law degree is essential.
6. The board should have access to a comprehensive list of resources, including psychological experts, counselors, clinical psychiatrists, non-governmental organizations, trusted legal colleagues, and relevant institutions. This ensures that they can tap into a wide range of expertise and support for the benefit of children in their care. It's like having a toolbox filled with professionals and organizations dedicated to child protection. Furthermore, the officials working in juvenile courts and boards must possess qualities of sensitivity towards the developmental needs of young individuals. They should be adaptable, willing to embrace new insights from social science research, and open to exploring innovative interventions that hold promise in rehabilitating young offenders. It's about fostering an environment that prioritizes the well-being and growth of these youth.
7. To provide the best possible care to juveniles and support their parents, it's essential to address their psychological well-being. That's why it's recommended to have a psychologist and a social worker with a good understanding of the relevant laws on the Juvenile Justice Board. This combination ensures that not only are the emotional needs of the youth and their families met, but also that these actions are in accordance with the legal framework, creating a more holistic and effective support system. It's like having a

---

<sup>6</sup> Sethi, T.D, The Juvenile Court: Its Genesis, Philosophy and Characteristics, Deep & Deep Publishers, New Delhi, 4<sup>th</sup> Edn., (1982).

dedicated team to nurture both hearts and minds.

## 5. THE FOLLOWING ARE THE PROVISIONS OF THE ACT WHICH NECESSITATE A REVISION<sup>7</sup>

- i. The High Court can play a pivotal role by taking the initiative to create and establish more dedicated Juvenile Courts.
- ii. The Juvenile Justice Board (JJB) should be there for young individuals and their cases every working day. This consistency ensures that the needs of juveniles are addressed promptly and efficiently.
- iii. The Act should be updated to empower the Juvenile Justice Board (JJB) to directly listen to the concerns of children regarding offenses against them, without the need to involve the police. This change would provide a safe space for children to express their grievances without fear.
- iv. The Juvenile Act 2000 does not differentiate between men and women. Such a plan of the JJ Law in any case ignores the way in which exceptionally helpless female youth are likely to be more quietly and cheaply used, abused and even hostile. Such female youth need unusual assurance even in an observatory or welfare center, regardless of how intentional social associations may approach the shelter. For such young women, there will be a welfare component built into the law itself.
- v. It must be provided that in any case 25 percent of the number of fines collected by the criminal court in each place is intended for the payment of youth state aid and recovery aid when JJB is transferred from a particular place/area of use. through this help to meet the daily healing needs of the youth or young people in question.
- vi. Section 16(1) of the Act should undergo a change, replacing the term “life imprisonment” with “any imprisonment.” This adjustment aligns with the legislative intent expressed in section 16(2) of the Act.

## 6. THE TREATMENT OF A JUVENILE CAN PROVIDE A RANGE OF BENEFITS<sup>8</sup>

- i. Juveniles should be brought before the Juvenile Justice Board within 24 hours. This swift action is essential to ensure their rights are protected and to provide them with timely support and guidance.
- ii. The age of the adolescent should be determined based on the date of the offense's

<sup>7</sup> The Juvenile Justice (Amendment) Act, 2006

<sup>8</sup> Mousumi Dey, “International Journal of Interdisciplinary and multi-disciplinary studies” IJIMS (2014) Vol I, No.,64-70.

commission. There's no need for an exhaustive scientific examination to establish this. It's about keeping things simple and fair for everyone involved.

- iii. The Juvenile Justice Board should make it a top priority to ensure that the protection rights of the adolescents are never compromised. This means that every aspect of Section 21 of the JJ Act should be observed meticulously, not just in the letter of the law but also in its spirit.
- iv. The adolescent is subject to the same constitutional protections as other adult guilty parties. The notification of the adolescent in accordance with Section 313 of the Criminal Procedural Court should be documented, and if proof is required, then that should also be admissible.
- v. If an adolescent is brought before a judge who isn't allowed to use the powers of the board according to the JJ Act, the officer should record the assessment in a way that respects the teen and send it to the Board right away. The Board will handle the inquiry as if the teen was brought before them in the first place.
- vi. Judges in Adolescent Courts should undergo training to be able to recognize and understand the educational, social, and treatment needs of children in crisis. This training is vital to ensure that the legal proceedings take into account the unique circumstances and challenges these young individuals face.
- vii. Without a proper framework or proper implementation, this part will remain fragmented. This part should also be managed by fully involved government or non-governmental bodies.
- viii. In India, there are lots of reasons why a lot of kids don't have birth certificates, so it's important to make sure they're old enough to get the help they need. That's why using the enrollment of birth and death of the kids is so important.

## **7. CONCLUSION**

Juvenile justice is a system that plays a crucial role in nurturing the holistic development and safeguarding of young children. It's a beneficial concept that deserves to be promoted and expanded further for the well-being and growth of our youth. It's about creating a supportive and caring environment that ensures young minds are given the best chance to thrive and contribute positively to society. Young children do not possess the capacity to distinguish between right and wrong, thus they cannot be held accountable. However, in my view, there should be laws in place that prevent the minors from taking advantage of the situation they are in. After all, the law must be applicable to everyone. In conclusion, the POCSO Act plays a

crucial role within the realm of juvenile justice and child protection by providing a specialized legal framework for addressing child sexual abuse. While it has made significant strides in ensuring the rights and well-being of child victims, challenges remain in terms of implementation, awareness, and creating a supportive environment. Continued efforts, collaboration among stakeholders, and a commitment to child safety are necessary to address these challenges and uphold the Act's intended impact.

## **THE POLICY DISCOURSE OF COMMUNITY BASED BIODIVERSITY CONSERVATION IN INDIA**

- Priyanka\*

### ***Abstract***

*The Conservation and sustainable use of bio-diversity is an integral part of India's ethos. Unprecedented geographical and cultural features have together contributed to this amazing diversity of fauna, in which immense biological diversity is seen at every level in India. It would not be an exaggeration to say that a biodiversity is a real tool or parameter of any healthy nation in terms of measuring its environmental policy and governance. Similarly, this study elaborates on the traditional knowledge and rights of the indigenous communities about the commercial utilization of biological resources. In this paper, the researcher has attempted to convey those objectives of which discusses the concept of biological diversity in India and its conservation along with the policy discourse.*

**Keywords:** Intellectual Property Rights (IPRs), Cultural environmentalism, Community Resources, Game Theory, Tragedy of the Commons.

---

\* Advocate @ Civil Court, Bettiah (Bihar), Mob.+91-9304121669, Email: priyankawalter007@gmail.com

## 1. INTRODUCTION

In India since ancient times, there has been a tradition of worshipping various natural resources like rivers, mountains, forests, trees, and plants in the form of deities. In this context, Gautama Samhita also provides detailed information about biodiversity which specifically asserts three sub-themes like Dietary Biodiversity, Religious Biodiversity, and Conservation of Biodiversity<sup>1</sup> and it is also relevant in the modern era.

Similarly, the case of Sacred Groves<sup>2</sup> in India gives a better understanding of this discussion as these forests hold significant values in terms of biological, ecological, cultural, anthropological, and economic. These types of forests are mainly found in the North-East and Western Ghats of India. In this sense, sacred groves are those types of forests that are worshipped by the indigenous communities in the name of their local folk deities or ancestral and tree spirits.

As these forests are protected by the local people or tribes for many generations therefore their religious and traditional belief systems are very strong for all the biological resources such as multi-species, multi-tier primary forests, a clump of trees, etc. The local communities of this area believe that if anyone tampered with the natural resources available in these forests, then they must face the displeasure of the so-called forest deity in terms of famine, pestilence, destruction of crops, etc. as a result. So, they protect these forests from coming in contact with outsiders in every way.

## 2. RELIGIOUS BELIEF AND ECOLOGICAL TRADITIONS IN INDIGENOUS COMMUNITIES IN INDIA: COMMUNITY BASED BIODIVERSITY CONSERVATION

Moreover, it is interesting to note that there is always a symbiotic relationship between the habitats and cultures of humans especially in the central Himalayan state of Uttarakhand, and between ecosystems and cultural identity. The various religious rules and rituals associated with these forest areas often strengthen this relationship, which in the case of bio-resources only characterizes a conservation ethic. It is fair to say that the mountain communities of remote

---

<sup>1</sup> Priyadarshan Sensarma, "Biodiversity in Gautama-Samhita" 86 *Annals of the Bhandarkar Oriental Research Institute* 167–177 (2005) available at: <http://www.jstor.org/stable/41692395>.

<sup>2</sup> Anwesha Borthakur, "The Case of Sacred Groves in India" 48(41) *Economic and Political Weekly* 25-27 (2013) available at: <http://www.jstor.org/stable/23528432>.

Uttarakhand who depend on these forests, consider cultural teachings as a precondition for sustainable development<sup>3</sup>.

In other words, traditions and beliefs related to forests and biodiversity have been represented since ancient times by local and indigenous communities in India. It will not be an exaggeration to say that it is these communities that play an important role in achieving sustainable biodiversity-based on their cultural practices and beliefs and by making efforts based on their community. In this regard, there is also a harsh truth that sometimes government conservation policies ignore the link between the culture of local communities and their environment, which is a deterrent to the conservation of biodiversity. Therefore, it is necessary for the government to try as much as possible how through a better, effective, and sustainable conservation policy, cultural traditions and practices related to biodiversity can be saved for future generations through local communities.

In this sense, studies by Torri and Herrmann<sup>4</sup> show the reasons for serious consideration of the traditional practices of the local communities. Their studies examine the traditional practices of these communities in the Sariska region (Rajasthan, India) and their beliefs and values and further emphasize the community's role in conservation. In addition, this case study shows how indigenous and traditional knowledge contained in the local language is an important link between cultural diversity and biological diversity in general. It is also true that local cultures not only nurture the knowledge aspects of biological diversity but also represent the economic, socio-cultural, and spiritual life of indigenous peoples through their values and uses.

However, such a connection between community and biodiversity conservation strategies of the government seems to be missing to a large extent. The neglect of cultural values of the local stakeholders under government conservation policies of biodiversity also generates many conflicts, including economic and politically imposed disabilities which makes the region further fragile.

There is a need to bring two ideologies into coherence, i.e., one, which is anchored by the community on the name of faith for mythologies which is directly linked to the environment and

<sup>3</sup> Chandra Singh Negi, "Traditional Culture and Biodiversity Conservation: Examples from Uttarakhand, Central Himalaya" 30(3) *Mountain Research and Development* 259–265. (2010) available at: <http://www.jstor.org/stable/mounresedeve.30.3.259>.

<sup>4</sup> M.C. Torri and T.M. Herrmann, "Spiritual Beliefs and Ecological Traditions in Indigenous Communities in India: Enhancing Community-Based Biodiversity Conservation" 6(2) *Nature and Culture* 168–191(2011) available at: <http://www.jstor.org/stable/43303901>.

hence protect it. And second, state response/ respect to these faiths and incorporation of these in their conservation strategies. The main goal of both is a biodiversity conservation and hence there should be no contestation between ideologies, rather one needs to build upon others to put checks and balances as a regulatory framework.

There is a set of scholars who also argue that degradation of biodiversity also takes place by anthropogenic activities of indigenous communities. The researcher agrees to this to a certain degree. It can be argued that exploitation of biodiversity carried out by indigenous communities is not at a large scale or for commercial purposes, it is always for their sustenance. It should be not forgotten that indigenous communities do not have modern equipment/tools for exploitation and that they only have those natural resources for their livelihoods. Compared to this, commercial traders, and big private/ government corporations are equipped with all modern technologies for the exploitation and commercialization of natural resources. Thus, they have the potential to deteriorating biodiversity at a faster pace. In this regard, there is a need to provide other livelihood alternatives to these communities so that they can reduce their dependency on natural resources and remain their true protector.

### **3. ACCESS TO INDIA'S BIODIVERSITY AND SHARING ITS BENEFITS**

Gadgil & Rao<sup>5</sup> emphasized taking a strong initiative for the conservation of biodiversity at the local level specifically to readdress its challenges of it and integrate traditional conservation practices of local communities. Undoubtedly the traditional community-based systems were adversely affected by the government in some past decades. Therefore, there is a need for a new paradigm in the true sense that couples sustainable use of biological resources with conservation of biodiversity not only in protected areas but also addresses the entire geographical area in the country because all over India various types of biodiversity are found with its numerous traditional values. However, in the 1990s the Indian bureaucracy also did not acknowledge the importance of biodiversity conservation sincerely because of their friendly nexus with the unscrupulous politicians and business interests. In addition, the centralized approach based on regulation was also prevalent during that period. This atmosphere only changed after the 73rd Constitutional Amendment Act in the year 1993 which emerged as a boon for rural or local communities to some extent. Some scholars like Prof. Madhav Gadgil<sup>6</sup> believe that the idea of decentralization or local governance such as Panchayat advocated safeguarding the rights of the

---

<sup>5</sup> Madhav Gadgil and P. R. Seshagiri Rao, "A System of Positive Incentives to Conserve Biodiversity" 29(32) *Economic and Political Weekly* 2103–2107 (1994) available at: <http://www.jstor.org/stable/4401596>.

<sup>6</sup> Interview with Madhav Gadgil, Professor, *South Asia Network on Dams, Rivers and People (SANDRP)*, July 7, 2013.

indigenous communities and their traditional knowledge, but it seemed that they did not avail a proper benefit sharing in exchange. It is an irony of Indian environmental policy and governance that the National Biodiversity Fund still does not acknowledge the significant contribution of the local communities and has no proper mechanism for access to benefit sharing. These communities struggle a lot for their equal representation and recognition in terms of their traditional knowledge, innovations and sustainable usage, and conservation practices towards biodiversity. According to the data from National Biodiversity Authority, between 2017-2021 only 11 states of India entered into the Access and Benefits agreement and earned benefits but in most cases, this money has not been shared with the community<sup>7</sup>. Also, there are no guidelines on how this money should be spent by the Biodiversity Management Committees (Down To Earth, 2022)<sup>8</sup>.

No doubt Indian biodiversity has different combinations of ecosystems which is most of the time connected with traditional knowledge and practices. In this regard, there is a proper need for the protection of all the bioresources and associated knowledge for the prevention of the loss of biodiversity and excessive commercialization of natural resources. IPRs lead to monopoly because they do not provide space to indigenous communities, and in the context of India biodiversity and indigenous communities are entangled. Both of them will be endangered if separated.

Since the inception of the Convention of Biological Diversity (CBD), 1992 there have been many negotiations at the international and national levels organized for the protection of traditional knowledge and biodiversity. The CBD claims three major objectives: Conservation of biological diversity, sustainable use of the diversity, and ensuring fair and equitable sharing of benefits from this use. India has also ratified the CBD and became a part of it, showing its honest commitment to biodiversity conservation by enacting the Biological Diversity Act, 2002. However, this legislation adopted a three-tiered institutional mechanism, but it does not depict clear guidelines on benefit-sharing, especially in the context of indigenous people.

The CBD has empowered all nations to move beyond the traditional Intellectual Property Rights (IPRs) regime to exercise their sovereign rights over their biodiversity resources. In this way, they also got an opportunity to share the benefits of commercial applications of traditional knowledge of sustainable use of their biodiversity resources which for the first time was an important

---

<sup>7</sup> See, Year –wise details of Biodiversity Management Committees (BMC) available at: [http://nbaindia.org/uploaded/pdf/YearwisedetailsofBMCs\\_1.pdf](http://nbaindia.org/uploaded/pdf/YearwisedetailsofBMCs_1.pdf).

<sup>8</sup> Webinar: *Down To Earth* available at: <https://youtu.be/1zZOn3t4M4M>.

international initiative in the development of local communities. In this context, India should also take advantage of these provisions judiciously in its legislative framework as the scope of Intellectual Property Rights (IPRs) is expanding day by day. Since India has always been a rich nation in biodiversity, it is expected that it should set a model for other developing countries with its unprecedented efforts<sup>9</sup>.

Moreover, the discussion of Biodiversity related traditional knowledge and IPRs is now one of the fastest developing economic activities in the world because it adversely affects the conditions and livelihood of Traditional Knowledge holders to a large extent. It is a known fact that Traditional Knowledge is always considered a valuable resource of biodiversity which leads to sustainable development. In addition, Traditional Knowledge covers an ample number of fields like agriculture, medicine, art and architecture, and music which all represent vast bio-resources in terms of products, and culture. In India also there is a variety of traditional knowledge which helps in the holistic development of human beings. It cannot be denied that this knowledge also contributes to the conservation of forests, soil, seed, crop, etc. Hence it is necessary to protect this knowledge from commercial exploitation. The unethical practices of the industries like pharmaceuticals, and private corporations are known to everyone, they use the indigenous people to extract information on medicinal values and usages of biodiversity in day-to-day life and convert the same information into IPs<sup>10</sup>.

It is a well-known fact that since the development of human civilization, medicinal plants have been used to cure diseases and problems. Since time immemorial, mankind has developed many traditional medicine systems by using biological resources through their efforts. Indian system has never been untouched by this aspect, the evidence of which we get from the Vedic age itself. Here, as in other countries, different communities still have a vast knowledge of the diverse uses of plants and other natural resources found around them. It is preferable to say that primitive indigenous societies close to nature have created such a record of “traditional knowledge” based on piloting, empirical reasoning, and experiments over time on plants, animals, and other natural resources. This is the link that continues to inspire them for the conservation and sustainable use

---

<sup>9</sup> G. Utkarsh, Madhav Gadgil, et.al., “Intellectual property rights on biological resources: Benefiting from biodiversity and people’s knowledge” 77(11) *Current Science* 1418-1425 (1999) available at: <http://www.jstor.org/stable/24105227>.

<sup>10</sup> Krishnamoorthy Venkataraman and S. Latha, “Intellectual Property Rights, Traditional Knowledge and Biodiversity of India” 13 *Journal of Intellectual Property Rights* (2008).

of biodiversity even today<sup>11</sup>.

According to data shared by the All India Coordinated Research Project on Ethnobotany reveals that indigenous communities in India know about 7500 species of plants for medicinal purposes out of over 9000 species. It was estimated that by 2020 the global market for herbal products will touch 5 trillion US dollars only from pharmaceutical and health food etc<sup>12</sup>.

Similarly, the international regime on access and benefit-sharing describes that ABS is considered an instrument that promotes fairness and equity of traditional knowledge at the inter-state level. However, indigenous people reside in different parts of the world and follow their national boundaries and law, but they still face several illegal bioprospecting contracts or incidents (well-known examples include Haldi and neem). In this sense, there is a need to give direction to domestic legislation on ABS in every country in the world so that local communities get fair and equitable recognition for their traditional knowledge.

Besides, the Nagoya Protocol is more innovative regulations on ABS at the global level because it clearly emphasizes the use of traditional knowledge for research and development purposes. It was the first attempt in which such obligations related to ABS were prescribed with detailed provisions which were not presented under the CBD, 1992<sup>13</sup>.

In fact, after the implementation of the Nagoya Protocol, there was speculation that a biodiversity-rich country like India would get maximum benefit in matters of traditional knowledge. India signed the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their utilization in 2014<sup>14</sup>. It may be noted that under the concept of Access and Profit Sharing of Genetic Resources (ABS) concept, property rights including Intellectual Property Rights (IPRs) are also transferred specifically to the user (industry) of the genetic resource and traditional knowledge provider country. Hence, resource managers

---

<sup>11</sup> Pushpangadan, Palpu, et.al., "Review article All India coordinated research project on ethnobiology and genesis of ethnopharmacology research in India including benefit sharing" *7 Annals of Phytomedicine: An International Journal* 5-12 (2018) available at:10.21276/ap.2018.7.1.2.

<sup>12</sup> Suman Sahai, "Commercialization of Indigenous Knowledge and Benefit Sharing", UNCTAD, *Expert Meeting on Systems and National Experiences for Protecting Traditional Knowledge, Innovations and Practices* from 30 October to 1 November 2000, available at: <https://unctad.org/topic/trade-and-environment/biotrade>.

<sup>13</sup> E Tsioumani, "Moving towards fair and equitable benefit-sharing in research and development: The Nagoya Protocol on Access and Benefit-sharing to the Convention on Biological Diversity" *Web publication/site, BeneLex Blog* (2015) available at: <http://www.benelexblog.law.ed.ac.uk/2015/02/18/nagoya-protocol/>.

<sup>14</sup> MoEF&CC, "Implementation of Nagoya Protocol on Access and Benefit Sharing: India's Experience" *Ministry of Environment, Forest & Climate Change* (2018) available at: <http://nbaindia.org/uploaded/pdf/Implementation%20of%20Nagoya%20Protocol%20in%20India.pdf>.

have two possibilities to consolidate these property rights. The first possibility may be decided by national governments to include all indigenous communities in the property rights associated with biodiversity and the benefits derived from their use at the local level. A second possibility may be shown that the origin of genetic resources should be disclosed in the public domain to provide IPRs in every international and national patent law. It is no exaggeration to say that the advent of the Nagoya Protocol envisaged a solution to the issues of imbalance arising from the distribution of property rights. Because it is the only international regulation that truly advocates for fair and equitable sharing of benefits arising from the use of genetic resources held by local communities<sup>15</sup>.

In this context, we can refer that now with the CBD and WIPO guidelines and our national legislation on biodiversity in position, the Jeevani case study of Kani tribes of Kerala and become very relevant and contextual in advocating for access to benefits for its knowledge of Arogyapacha plant (*Trichopus zeylanicus*) and how these indigenous communities are making a progressive way for their empowerment, income generation and poverty eradication at the regional and global level. It could be an imitable example for other local communities of equitable benefit sharing involving genetic resources and associated traditional knowledge<sup>16</sup>.

In this regard, another scholar Prajesh<sup>17</sup> reminds us that India lags in the biodiversity access and benefit-sharing system because the ABS process in India is rigorous and takes an 18-step path. However, India had also published national ABS guidelines in 2014 but still, the question remains how these guidelines help communities and conservation fairly and equitably.

Similarly, Kohli & Bhutani<sup>18</sup> claimed that this new guideline of ABS only added general provisions which are incapable of providing any new information to the stakeholders. In short, in India evidence (The Divya Pharmacy Case) shows that ABS related to local communities and bio conservation activities are both governed by the influence of the business classes<sup>19</sup>. In that

<sup>15</sup> S Mehta, "The Nagoya Protocol-Convention on Biological Diversity" *IIPRD Blog-Intellectual Property Discussions, Monthly Archives* (2014) accessed from <https://iiprd.wordpress.com/2014/07/> on 12.09.2023.

<sup>16</sup> Suchitra M, "The Kani learning" *Down To Earth* (2012) available at: <https://www.downtoearth.org.in/coverage/the-kani-learning-39208>

<sup>17</sup> P Prajesh, "India lays the cornerstone of biodiversity access and benefit sharing system" 112(1) *Current Science* 24–28 (2017) available at: <http://www.jstor.org/stable/24911609>

<sup>18</sup> K Kohli and S Bhutani, "Access to India's Biodiversity and Sharing Its Benefits" 50(31) *Economic and Political Weekly* 19–22 (2015) available at: <http://www.jstor.org/stable/24482157>

<sup>19</sup> M Noman, "Case Comment: Divya Pharmacy v. Union of India" 39 *Biotechnology Law Report* 122-128 (2020). Available at: 10.1089/blr.2020.29161.zmn.

sense, we cannot deny that ABS is not a successful process in India hence it will remain an administrative maneuver.

#### **4. AN ASPECT OF TRADITIONAL KNOWLEDGE AND RIGHTS OF THE INDIGENOUS COMMUNITIES IN REFERENCE TO COMMERCIAL UTILIZATION OF BIOLOGICAL RESOURCES**

It is a well-known fact that the traditional knowledge and culture of local communities play a crucial role in maintaining the biodiversity of any region. The term “traditional knowledge” includes the idea of intellectual property rights which is derived from an agreement called TRIPS (Trade-Related Aspects of Intellectual Property Rights). Importantly, it holds a legal recognition of the significance of links between IP and trade. In this sense, it is important to know the background of Trade-Related Aspects of Intellectual Property Rights which was acknowledged in 1995 as part of the agreement established by the World Trade Organization (Wipo,1996). It is the most comprehensive multilateral agreement on the protection of Intellectual properties like trademarks, copyrights, geographical indications, patents, protection of plant varieties and farmer's rights (PPVFR) act, industrial design, layout design for integrated circuits, and undisclosed information or trade secrets. In addition, TRIPS has a significant role in facilitating trade in knowledge and creativity, and in solving trade-related problems over Intellectual Property. It also gives assurance to all the WTO members the latitude to achieve their domestic policy objectives. In short, TRIPS emphasizes innovation, technology transfer, and public welfare<sup>20</sup>.

For many decades the intellectual property was considered only for the western countries but now the trend has changed. Sunder<sup>21</sup> advocates that now in India also many academicians and lawyers have raised their voices for the local communities e.g., framers and artisans, and their intellectual property rights. Thus, it is also a good initiative for discussion related to traditional knowledge of biological resources. Besides, do intellectual property rights work in the favor of the indigenous people in a true sense? It has been experienced that so-called TRIPS is only bound to the knowledge and economic interests of the developed entities from the Western

---

<sup>20</sup> World Intellectual Property Organization and World Trade Organization, “Agreement Between WIPO and WTO” 35(3) *International Legal Materials* 754–759. (1996) Available at: <http://www.jstor.org/stable/20698571>.

<sup>21</sup> M Sunder, “The Invention of Traditional Knowledge” 70(2) *Law and Contemporary Problems* 97–124 (2007). Available at: <http://www.jstor.org/stable/27592181>

world. Therefore, it is high time to address the issue of the protection of indigenous and traditional knowledge of poor people who are the real conservator of the ecology.

In this context, the insight from James Boyle is also relevant who specifically presented a dark side of intellectual property in terms of Conventional wisdom. He criticizes the idea of common benefits of intellectual property rights exploiting the cultural contribution of third world countries and their poor people. The developed country did not give proper recognition to third world peoples for their cultural contributions who conserved all those cultural raw materials which gave profits to rich industrialists. Conventional wisdom was introduced for the upliftment of intellectual property rights to keep in mind the digital world. But unfortunately, this progressive thought went in vain, and the enclosure of the cultural commons and industrialization damaged our natural resources<sup>22</sup>.

Also, Boyle established a metaphor called “cultural environmentalism” and observed that the conservation of cultural raw materials is necessary for the process of creation or innovation. There is a need for fair distribution in ownership of these materials then only the process of creation may be flourished. In fact, “cultural environmentalism” gave a new direction for the recognition and protection of traditional knowledge and natural resources available in the developing world. Besides, this idea introduced a moral and economic dimension in recognizing the contribution of global biodiversity and the traditional knowledge system of biological resources which were crucial inputs in any innovation.

Boyle claimed a view related to the public domain on intellectual property. But the confusion remains about the traditional knowledge holders on this aspect. However, they may avail the money for protecting the biodiversity and contribute the raw materials for innovation through the biological resources, but it appears an irony that they have no recognition as intellectual property holders in their own right. Therefore, it is considered here that a dual role is being presented under the guise of “cultural environmentalism”. On one hand, this metaphor claims to protect the knowledge of poor people and on the other hand, it is advocating for promoting commercial development (a narrow lens of economic incentives for innovation) through the intellectual property which is an obstructive factor toward conservation of biological resources. No one can deny that humankind is enriched by chronic and dynamic traditions, not the

---

<sup>22</sup> J Boyle, “Cultural Environmentalism and Beyond” (Vol. 70, Issue 2) *In Source: Law and Contemporary Problems* (2007) available at: <http://www.econlib.org/Library/NPDBooks/Pigou/pgEWI.html>.

commercialization of natural resources. Indeed, it reveals the comprehensive purpose of intellectual property which is social and cultural too, not just the economic.

Gadgil<sup>23</sup> shares a clear view about the conservation of biodiversity in Uttara Kannada that it is an undeniable truth that conservation cannot be underestimated in isolation from the local people and broader patterns of natural-resource use and development. Therefore, all the bases that promote sustainable and equitable development of natural resources must be supplemented by policies. Also, policy-makers must involve the local people in the policy-making process as the effectiveness of any policy rests on the support of the local people as well. Since the well-being of local communities is still closely tied to the natural resources of their areas, this approach of participatory policymaking seems to work. At the same time, these people must be given their real share in the sustainable use of biological resources without any delay.

It is to be noted that people in Uttara Kannada are completely dependent on natural vegetation for all domestic needs such as fodder for animals and for their various livelihoods such as making ropes, baskets, agricultural and fishing equipment, and sorting their huts and cattle sheds, etc. Therefore, keeping these aspects in mind, it is a challenging responsibility to protect all the landscapes and ecosystems of the region and conserve the natural resources available there. There is no denying that many practices related to nature conservation still provide a viable strategic base for biodiversity conservation.

However, involving the local communities in the initiatives of ecological conservation does not mean that no effort should be made toward industrialization in the country. Rather, balancing with nature, all rights related to natural resources should be returned to the village communities so that the originality of the village society is maintained. It is also true that there are many international economic and political challenges in this effort. In this context, it is appropriate to emphasize efficient, sustainable, and equitable resource use along with incorporating industrial and intensive processes in agriculture by adopting a viable alternative. Along with this, the villagers also get the right of all management and control related to the natural resources of their area such as monetary benefits, etc. To establish a just and fair process for the conservation of biodiversity and to provide a quality of life to the local communities which are often influenced by the elite.

---

<sup>23</sup> Madhav Gadgil, "Conserving Biodiversity as If People Matter: A Case Study from India" 21(3) *Ambio*, 266–270 (1992). Available at: <http://www.jstor.org/stable/4313937>.

Studies by Murugan and Israel<sup>24</sup> also show that the formation of Forest Development and Conservation Co-operative Societies (FDPC) keeping in view the case of the local communities involved in the management of the forest and strengthening their local leadership capacity and creation of some physical assets etc. is also an essential initiative. To enable stakeholders to meet the primary needs of local communities, better micro-climatic conditions, and facilitate FDPCs' conduct of economic decisions. Therefore, giving the community full opportunity to decide which community-level asset has the most potential to meet the priority needs of the communities concerned. This initiative primarily enhances the sense of ownership of the forest among the local communities, so that they strongly contribute to forest management and conservation.

Other intellectual property scholars like Vandana Shiva have also discussed intellectual property's distributive and social effects. She always reminded us that biological diversity in our country has always been a common resource for various traditional communities, which they use and preserve as a heritage for many generations. At the same time, it is the collective and cumulative innovation of these communities that lays the foundation of a core economy by meeting the diverse livelihoods and needs of the communities while underpinning the local culture and local economies of those regions. It is to be noted that the traditional knowledge associated with some major occupations such as agriculture and fisheries is the primary basis for meeting the food and health needs of these communities.

It is fair to say that the issue of conservation of biodiversity is important in the lives of many traditional communities. For them, conservation of biodiversity is primarily a combination of aspects such as the integrity of ecosystems and different species, the right to resources and knowledge, and the right to production systems, they cannot ignore it. In other words, the scope of biodiversity closely encompasses the right to protect the generational knowledge and resources of various local communities in addition to traditional indigenous knowledge systems.

Moreover, the author has shared her views on the conservation of biodiversity and intellectual heritage and mentioned how matters involving bio-resources, particularly through "patent and corporate intellectual property rights" and corporate warfare on nature and people, initiate a challenge to biopiracy. It is therefore a debatable issue today as to what kinds of ideas, techniques, gene identification, and even manipulation of life forms are owned and exploited by

<sup>24</sup> Padmanaban Murugan and Fekadu Israel, "Impact of Forest Carbon Sequestration Initiative on Community Assets: The Case of Assisted Natural Regeneration Project in Humbo, Southwestern Ethiopia" Volume 17, Issue 1 *African Studies Quarterly* (2017). Available at: <https://asq.africa.ufl.edu/files/v17i1a2.pdf>

huge corporations for profit. To obtain biological resources as a public asset, issues such as biodiversity, traditional knowledge, and the rights of Mother Earth must be considered. To underline how this Western-inspired and unprecedented expansion of the concept doesn't encourage human creativity and the generation of knowledge. Rather, under the guise of corporate intellectual property rights, economic exploitation is being carried out by many international corporations only for private gain, misusing the cost of the health of different communities and the traditional knowledge and freedoms of the world's farmers<sup>25</sup>.

Therefore, it will not be an exaggeration to say that the issue of intellectual protection of biological resources is being converted into a kind of corporate robbery. In this context, resistance to the WTO is also increasing at the global level. It is important to note that the developed economies impose new technologies by dominating the economically less developed nations through this new intellectual world order, pharmaceutical, biotech and other corporations. All these situations represent a conflict of interest primarily between local communities striving for biodiversity conservation and the business establishments that oppose it. One who has access to natural resources and the other who benefits from its use.

Thus, the issue reflects the struggle of those two classes – on the one hand, defining and redefining the traditional rights of communities in rural India. On the other hand, the industrial progress of those so-called global projects on which those “community resources” are indiscriminately commercialized and marketed in the direction of their vested interests. It seems correct to say here that the above mentioned two paradigms related to the conservation of biological resources are explaining different value systems for different sections of the society in which there is bound to be a discrepancy. It is well known that these biological resources are the source of life in traditional communities. On the other hand, global corporations and industrial companies are concerned about their use-values related to bio-resources which give them maximum benefits.

According to Shiva, another idea related to the intellectual property rights of biological resources is also based on the sovereignty of the concerned nations and the autonomy of the individuals at the global level. Autonomy does not occur independently but rests entirely on the question of community rights. It is, therefore, interesting to know that in the issue of conservation of bio-resources the word “Commons” actually means to denote this interrelationship. For example, seed sovereignty and community rights in the context of farmers.

---

<sup>25</sup> Vandana Shiva, *Protect or plunder? Understanding intellectual property rights* (Zed Books, London,2001).

In short, the concept of the word “Commons” within the protection of biodiversity refers to resources that can never be monopolized by a handful of people. In a true sense, it reflects a strong sense of attachment to the community. In this context, the author has logically said that “...the common and the community are beyond the state and the market”<sup>26</sup>.

Therefore, here the synonym of community resources is to develop such an idea that advocates not only the collective use of the traditional resources of a particular area by a particular community but also to motivate the sustainable use of these resources keeping in mind the future generations. Taking initiative in this thinking is an urgent need of this era because day by day mankind is becoming a victim of climate change and various natural calamities which is the result of excessive exploitation and economic control of these biological resources. Therefore, it is important to ensure the protection of all those practices and knowledge towards the conservation of bio-resources through continuous efforts as possible. In this way, the cultural identity of all those indigenous communities can be maintained and their traditional knowledge systems can be truly respected, which they have deserved for centuries.

To put it another way, while analyzing the development in the reference to traditional knowledge, here the vision of Amartya Sen can be more relevant. As he advocates how “development as freedom” is a pluralist approach that measures the development based on the capacity for many freedoms. Development can be considered a broad term that expands human capabilities. In other words, this scope of capacity for many freedoms does not limit to market-oriented freedoms. These freedoms hold a vast range not only for basic needs but also in terms of the right to life and health, to more expansive freedoms of movement, creative work, and participation in social, economic, and cultural institutions.

According to Professor Amartya Sen<sup>27</sup>, the capability approach puts people and their capabilities at the center stage of development. The human capabilities approach also considers human beings and the freedom they enjoy as a means to achieve the ends of development goals. In addition, law related to Intellectual property is essential to the development in terms of narrow efficiency. On the other hand, it emphasizes a broader view of expanding capability for central freedoms. Hence, intellectual property rights also include a wide range of implications like questions of cultural relations, social development, and GDP growth apart from incentives for innovation.

---

<sup>26</sup> Vandana Shiva, *Reclaiming the Commons: Biodiversity, indigenous knowledge, and the rights of Mother Earth* (Synergetic Press, London, 2020).

<sup>27</sup> Amartya Sen, *Development as freedom* (Alfred A. Knopf, Inc, New York, 1999).

Accordingly, there is a need for giving proper recognition to the poor in terms of receivers and producers of knowledge. Lacking in the promotion of the capacity and participation of the poor people for creative work in global culture and commercial markets also hinders development as freedom. In fact, in Sen's views, the rejection of the freedom to participate in the labour market is also considered oppression in which people are not allowed to utilize their freedom. In conclusion, it would be appropriate to consider people's access to this traditional knowledge not only from a monetary point of view but also to emphasize their ability to produce new knowledge and benefit from this creation culturally and economically.

## **5. DECISION ANALYSIS AND GAME THEORY IN BIODIVERSITY CONSERVATION**

The researcher attempts to address the Decision analysis and game theory<sup>28</sup> in this study which could be considered as a useful tool to measure biodiversity conservation planning and modelling contexts. By using the game theory, conflicts between stakeholders can be used to identify Pareto–inefficient Nash equilibria. This can further be used for designing conflict resolution mechanisms which will help informed group decisions among various stakeholders.

We have seen many cases in the above paragraphs of this chapter where various agents or stakeholder holders had individual self–interests which leads to a worse outcome for all, relative to other feasible outcomes. Based on the above-mentioned evidence related to biodiversity conservation showing this feature is modelled to demonstrate how game-theoretical representation can inform group decision-making.

In this study, the researcher is using Game theory to handle the situations of interdependent decisions in biodiversity conservation, where various agents or stakeholders like governments, private enterprises, and indigenous communities play their role in their own feasible set of actions or alternatives and those outcomes depend on the choices of all the other agents or stakeholders. It has to be noted that the priorities of these various stakeholders or agents are based only on those outcomes which are the complete specification of each of the agents' actions.

Within this study, the researcher makes an analogy that an outcome is considered as Pareto - efficiency in the recently proposed amendments to biodiversity where the Government of India

---

<sup>28</sup> DM. Frank and Sahotra Sarkar, "Group Decisions in Biodiversity Conservation: Implications from Game Theory" (*PLOS ONE* 5(5): e10688,2010). Available at: <https://doi.org/10.1371/journal.pone.0010688>.

failed to address the concerns of indigenous people and gave more priority to the industrial sector. In this sense, within bio conservation, it cannot be possible that no agent or stakeholder opts for profit without harming the other stakeholders.

In addition, Pareto Efficiency<sup>29</sup> is an economic state where the reallocation of resources cannot be done without benefiting at least one person and harming another. Pareto efficiency believes that resources are allocated in the most economically efficient manner but are not equal or fair. An economy is said to be in the Pareto Optimum State when no economic change can take place without benefiting one person and harming the other. Indeed, Pareto efficiency is the main pillar of welfare economics. Pure Pareto efficiency only exists in theory. Alternative criteria for economic efficiency based on Pareto efficiency are often used in economic policy making because it is difficult to make changes that do not harm any individual.

Presumably, if there is fair competition and resources are used to the maximum efficient capacity, everyone will be at the highest standard of living or Pareto efficiency. In situations other than the Pareto Efficiency, some changes in the allocation of resources in an economy can be made in such a way that they are beneficial to at least one individual and harmful to no one. Only such changes in resource allocation that meet this condition are considered to be progressing towards Pareto efficiency. Such a change is called Pareto Improvement. Therefore, it cannot be exaggerated to say that Pareto—efficiency is a weak criterion because such an economic situation is a mere fantasy.

In addition to all this, it is important to note that efforts to conserve and promote biodiversity require at least two regulatory commitments<sup>30</sup>, which are - First of all, implementing the concept of “biodiversity”, should be decided which taxa or other biodiversity surrogate are eligible for allocation of finite conservation resources or not? Another regulatory commitment should be to reconcile major social goals such as economic welfare, public health, etc (especially when land-use policies are being formulated) when setting biodiversity conservation goals. It is clear here that there is a substantial potential for conflict in both the cases mentioned above. Therefore, it is worth considering by which type of agents and stakeholders such protests are being pursued in the direction of conservation of biodiversity? However, when such opposition is formulated in

<sup>29</sup> E C Smith and S K Swallow, “Lindahl Pricing for Public Goods and Experimental Auctions for the Environment” 3-3 *Encyclopedia of Energy, Natural Resource, and Environmental Economics* 45–51 (2013). Available at: <https://doi.org/10.1016/B978-0-12-375067-9.00107-8>.

<sup>30</sup> Sahotra Sarkar and Chris Margules, “Operationalizing biodiversity for conservation planning” 27(4) *Journal of biosciences* 299-308 (2002).

favor of a single agent (individual or organized group) it provides a useful and comprehensive insight to the analyst. Therefore, it is fair to say that game theory can play a similar role in resolving differences between multiple agents with the help of decision support tools based on such multiple-criteria analysis<sup>31</sup>.

Moreover, there are two potential roles descriptive, and normative for game theory in cooperating biodiversity conservation. The first role describes evolutionary theory and economics. Where evolutionary games are used to model frequency-dependent selection<sup>32</sup>. But in economics, traditional (Rational Choice) game theory can be used to interpret macro-behavioural consequences by trying to appeal to or harmonize some underlying game's balance<sup>33</sup>. Similarly, Game theory can be used to address the conflicts related to biodiversity conservation<sup>34</sup>. The recently proposed amendments to the biodiversity act also come under the purview of the second normative (or prescriptive) role of game theory. No doubt while addressing the issue of bio conservation that there are certain contradictions between the government's initiative and the traditional rights of indigenous people in this national legislation.

Hence the researcher believes that it is needed to identify those conflicts with Pareto-inefficient Nash equilibria which can help in taking constructive action to receive optimal conservation outcomes by known policy tools. One more thing to keep in mind is that while conserving biodiversity there is no need to attain Pareto-efficient cooperative outcomes via formal institutional arrangements<sup>35</sup>. It can be received in the best manner only through mutual consideration of all the stakeholders or agents associated with bio conservation. In this way, the Game theory is a normative tool that advocates for the best and a sustainable solution for biodiversity protection as it represents an analytical framework of deliberations to address the concerns and conflicts of various stakeholders. In this context, we also need to discuss some aspects of the theory of Commons which strengthen this study to comprehend the feasible technique for building consensus between different stakeholders for biodiversity conservation.

<sup>31</sup> R Keeney and H Raiffa "Decisions with Multiple Objectives: Preferences and Value Trade-Offs" *Cambridge*: Cambridge University Press (1993). Available at: doi:10.1017/CBO9781139174084.

<sup>32</sup> J Smith, "Evolution and the Theory of Games" *Cambridge*: Cambridge University Press (1982). Available at: doi:10.1017/CBO9780511806292.

<sup>33</sup> W E Deming, J V Neumann, et.al, "Theory of Games and Economic Behavior" 40 *Journal of the American Statistical Association* 263 (1944).

<sup>34</sup> Clark C Gibson and Stuart A Marks, "Transforming rural hunters into conservationists: an assessment of community-based wildlife management programs in Africa" 23(6) *World development* 941-957 (1995).

<sup>35</sup> DM Frank and Sahotra Sarkar, "Group Decisions in Biodiversity Conservation: Implications from Game Theory" *PLoS ONE* 5(5): e10688 (2010). Available at: <https://doi.org/10.1371/journal.pone.0010688>.

Indeed, within biodiversity conservation or environmental protection, the term “Commons” predominates in the form of a community’s shared assets such as air, water, wildlife, and trees forming a safety net and providing the necessary cornerstone for respectful, democratic, communities. Through the principle of the Commons, this study seeks to understand how it is important to preserve the rights of local communities as public property under environmental governance to protect bio-resources from privatization by wealthy, authoritarian elites<sup>36</sup>.

In other words, this principle of the Commons shows that the rights of indigenous and traditional communities have to be taken seriously. These are the people whose lives not only depend entirely on biodiversity but also jointly specialize in valuable biodiversity knowledge. It is a well-known fact that these communities freely share their innovation and creativity with others, following the principle of the common through communing. At the same time, these people have always been fighting to protect this culture of caring, sharing, and protecting biodiversity and the circle of the intellectual Commons, while making an invaluable contribution to biodiversity conservation. Therefore, this principle has an important role in environmental governance.

The discourse related to the theory of the Commons can easily be extended to environmental goods and services. This theory discusses the interactions and interdependencies between the resources of the traditional Commons and those goods and services that are the goal of environmental protection. According to the old Commons theory - the jointly significant use rights of the local populations of their land or bio-resources were managed by various customs. On the other hand, according to English jurisprudence - the theory of Commons is presented as the right to remove some material value from land owned by someone else. In European states like Norway (In Norway, “Commons” is called allmenning.) these rights were referred to as “*profits-à-prendre*” rights and were related to the land of the people. So here the Commons theory is recognized as an area where a suitably delimited group of common people have legitimate rights to the harvest of its natural resources or goods<sup>37</sup>.

In addition, it should be noted that the protection of biodiversity is often considered a “public good”. Public goods are considered in varying quantities, non-competitive in consumption,

---

<sup>36</sup> Vandana Shiva, *Reclaiming the Commons: Biodiversity, indigenous knowledge, and the rights of Mother Earth* (Synergetic Press, London,2020).

<sup>37</sup> Erling Berge, *Environmental Protection in the Theory of Commons* (2003).

excluded in use, or both<sup>38</sup>. In other words, a public good that is not purely private. When more than one person can obtain a consumption advantage from some level of supply at the same time, a good has a non-rival in consumption. Nothing is excluded if it is impracticable for any one person to maintain exclusive control over its use<sup>39</sup>.

Moreover, the principle of Commons explains why individuals or the state collectively have property rights over natural resources and goods. Hence the theory of Commons is a group of people having authority together as a group. Some discussions also prevailed, which is mainly known as “the tragedy of the Commons”<sup>40</sup>.

Indeed, the questions also rose on the nature of common rights of local communities such as why do they hold as a group and not individually? Similarly, how the theory of Commons is the best option for preserving and managing biological resources. Therefore, the researcher believes that the “theory of Commons” provides feasible conditions to measure Biodiversity in the context of the problems of motivation, the problems of cooperation or collective action, and the problems of self-governance. In nutshell, scholar Hardin Garrett summed the tragedy of the Commons as “the population problem has no technical solution; it requires a fundamental extension in morality”.

## 6. Conclusion

Finally, Game theory can be recognized as a standard tool in addressing the biodiversity conservation contexts: identifying scenarios with Pareto-inefficient Nash equilibria. Likewise, this theory enables a constructive action toward bio-conservation to achieve optimal conservation outcomes, whether policy solutions are based on a specific “system design” or otherwise.<sup>41</sup> There is no doubt, however, that in some cases of bio conservation, formal system-design solutions have the opposite effect. Therefore, such challenges need to be addressed at the earliest by “building mutual relations of group discussion and trust” because only then the usefulness of this theory will be fully visible.

<sup>38</sup> E C Smith and S K Swallow, “Lindahl Pricing for Public Goods and Experimental Auctions for the Environment” 3-3 *Encyclopedia of Energy, Natural Resource, and Environmental Economics* 45–51(2013) available at: <https://doi.org/10.1016/B978-0-12-375067-9.00107-8>

<sup>39</sup> D L Weimer and A R Vining, “Policy Analysis: Concepts and Practice” 6th ed. *Routledge* (2017) available at: <https://doi.org/10.4324/9781315442129>

<sup>40</sup> Garrett Hardin, “The Tragedy of the Commons” 162 (3859) *Science*, 1243–1248 (1968) available at: <http://www.jstor.org/stable/1724745>

<sup>41</sup> S Bowles, “Policies designed for self-interested citizens may undermine “the moral sentiments”: Evidence from economic experiments” 320(5883) *Science*, 1605-1609 (2008).

## **RESEARCH ON THE USE OF ARTIFICIAL INTELLIGENCE (AI) IN DRUG INDUSTRY**

- Prof Sunita Yadav\*

### ***Abstract***

*Artificial Intelligence (AI) will be used more and more in the healthcare assiduity as a result of the complexity and growth of data in the sector. Payers, care providers, and life lores associations presently use a variety of AI technologies. The main operation orders include recommendations for opinion and treatment, patient engagement and adherence, and executive tasks. Although there are numerous situations in which AI can execute healthcare duties just as well as or better than humans, perpetration issues will keep the jobs of healthcare professionals from getting considerably automated for a substantial quantum of time. The use of AI in healthcare and ethical enterprises are also covered.*

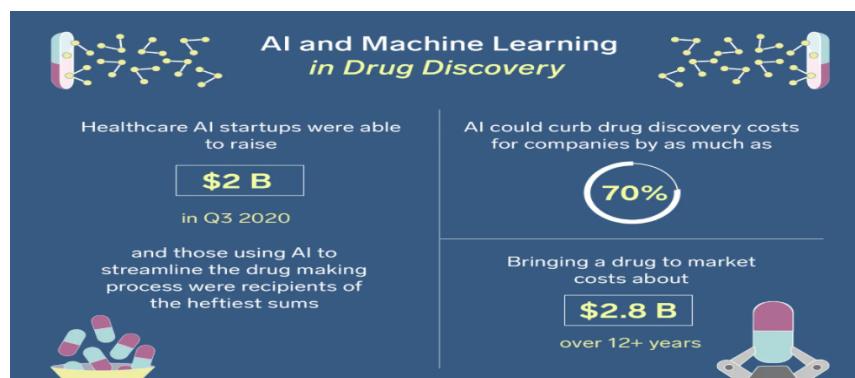
**Keywords:** Computerized decision-making, electronic health record systems, and clinical decision support, Types, Role in health care industry

---

\* Research Scholar @ D.T.S.S COLLEGE, Mumbai (Maharashtra); Email: yadavsunitavijesh@gmail.com

## 1. INTRODUCTION

AI and related technologies are starting to be employed in healthcare. They are becoming more and more widespread in business and society. These technologies have the potential to alter many aspects of patient care, as well as internal administrative processes at payer, provider, and pharmaceutical organizations. Numerous studies have already demonstrated that AI is competent at carrying out critical healthcare tasks, such as illness diagnosis, on par with or better than humans. Today, computers are already more accurate than radiologists in spotting malignant and guiding scientists in the development of cohorts for pricey clinical trials. For a number of reasons, we believe it will be a while before AI entirely replaces humans in broad medical process areas. In this article, it seems that before AI entirely replaces humans in several medical procedure industries, In the following article, researchers discuss the potential for automation in healthcare as well as some of the barriers to its rapid adoption.



## 2. OBJECTIVE

- i. To Enhance the accuracy and speed of disease diagnosis through AI-powered analysis of medical images and patient data.
- ii. To Develop personalized treatment plans by leveraging AI to process patient data, medical history, genetics, and lifestyle factors.
- iii. To Utilize AI to identify potential drug candidates, predict their efficacy, and streamline the drug discovery process.
- iv. To Utilize wearable devices and remote monitoring powered by AI to track patient health data and manage chronic conditions.
- v. To Develop AI models that predict patient outcomes, such as disease progression, complications, and readmission risks.
- vi. To Use AI to automate administrative tasks, such as medical documentation, appointment scheduling, and billing.

### 3. ADVANTAGES OF AI IN HEALTHCARE/ DRUG INDUSTRY:

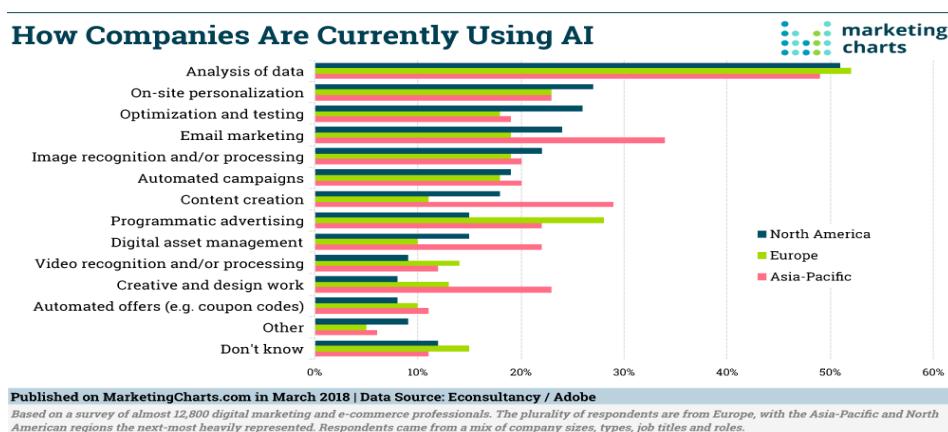
- i. ***Efficient Diagnostics:*** AI-powered diagnostic tools can analyse medical images, such as X-rays and MRIs, with high accuracy, aiding in early detection of diseases like cancer and improving patient outcomes.
- ii. ***Personalized Treatment:*** AI can process large amounts of patient data to create personalized treatment plans, considering individual medical histories, genetic factors, and lifestyle choices.
- iii. ***Drug Discovery and Development:*** AI algorithms can accelerate drug discovery by analyzing vast datasets to identify potential drug candidates, saving time and costs in the research process.
- iv. ***Remote Monitoring:*** AI-enabled wearable devices can continuously monitor patients' vital signs, allowing healthcare professionals to remotely track patients' health and intervene if necessary.
- v. ***Predictive Analytics:*** AI can predict disease outbreaks, patient readmissions, and patient deterioration, enabling proactive interventions and better resource allocation.
- vi. ***Healthcare Management:*** AI can optimize hospital operations, resource allocation, and staff scheduling, leading to improved efficiency and reduced costs.
- vii. ***Natural Language Processing (NLP):*** NLP-powered chatbots and virtual assistants can provide patients with instant medical information, schedule appointments, and offer medical advice.
- viii. ***Surgical Assistance:*** AI-assisted robotic surgery can enhance surgical precision, reduce invasiveness, and shorten recovery times.

### 4. DISADVANTAGES OF AI IN HEALTHCARE/ DRUG INDUSTRY:

- i. ***Data Privacy and Security:*** Handling sensitive patient data raises concerns about data breaches and unauthorized access, necessitating robust security measures.
- ii. ***Bias and Fairness:*** AI algorithms can inherit biases present in training data, leading to biased treatment recommendations and health disparities among different patient groups.

- iii. **Dependence on Technology:** Overreliance on AI can undermine the role of healthcare professionals, potentially leading to errors or missed diagnoses if technology fails.
- iv. **Lack of Human Touch:** The introduction of AI might diminish the personal connection between patients and healthcare providers, which can be crucial for emotional support.
- v. **Initial Costs:** Implementation of AI systems requires substantial upfront investments in technology, training, and infrastructure.
- vi. **Ethical Dilemmas:** AI raises ethical questions about patient consent, accountability in case of errors, and the role of algorithms in life-and-death decisions.
- vii. **Regulatory Challenges:** Developing regulations and standards for AI in healthcare is complex due to the rapidly evolving nature of technology and potential risks.
- viii. **Limited Accessibility:** Not all healthcare facilities and regions have the resources or infrastructure to adopt AI, potentially exacerbating healthcare inequalities.
- ix. **Algorithm Reliability:** Ensuring the reliability, transparency, and interpretability of AI algorithms is crucial to gain the trust of healthcare professionals and patients.
- x. **Unforeseen Consequences:** Rapid adoption of AI without thorough testing and monitoring could lead to unintended consequences or unforeseen medical errors.

It's important to note that while AI offers significant potential benefits in healthcare, it must be implemented thoughtfully and ethically to mitigate the associated challenges and disadvantages. Close collaboration between healthcare professionals, technologists, policymakers, and ethicists is essential to ensure that AI-driven healthcare innovations are safe, effective, and equitable.



## **5. THE ROLE OF ARTIFICIAL INTELLIGENCE IN HEALTHCARE/ DRUG INDUSTRY**

The role of Artificial Intelligence (AI) in healthcare is rapidly evolving, transforming the way medical professionals diagnose, treat, and manage diseases. AI's ability to process vast amounts of data, recognize patterns, and make informed decisions is revolutionizing various aspects of healthcare, improving patient outcomes, and enhancing the efficiency of healthcare systems. Here are some key roles AI plays in healthcare:

### ***1. Disease Diagnosis and Medical Imaging:***

- AI-powered diagnostic tools can analyze medical images, such as X-rays, CT scans, and MRIs, for abnormalities and assist radiologists in detecting diseases like cancer, heart conditions, and more accurately.
- Computer vision algorithms help identify subtle patterns that might be missed by human eyes, leading to earlier and more accurate diagnoses.

### ***2. Personalized Treatment Planning:***

- AI processes patient data, including medical history, genetics, and lifestyle factors, to create personalized treatment plans.
- By considering individual variations, AI helps doctors determine the most effective treatment options and drug dosages for specific patients.

### ***3. Drug Discovery and Development:***

- AI accelerates drug discovery by analyzing massive datasets to identify potential drug candidates and predict their effectiveness.
- Machine learning models can predict how a compound will interact with biological systems, saving time and resources in the drug development process.

### ***4. Predictive Analytics and Early Intervention:***

- AI analyzes patient data to predict disease outbreaks, patient deterioration, and readmission risks.
- Early warning systems help healthcare providers intervene proactively, potentially preventing complications and improving patient outcomes.

**5. *Remote Patient Monitoring:***

- Wearable devices equipped with AI can continuously monitor patients' vital signs, such as heart rate and blood pressure.
- Doctors can remotely monitor patients' health and intervene when necessary, reducing the need for frequent in-person visits.

**6. *Natural Language Processing (NLP):***

- NLP enables AI-powered chatbots and virtual assistants to interact with patients, answer medical queries, and schedule appointments.
- Patients can access medical information and support more conveniently.

**7. *Robot-Assisted Surgery:***

- AI-driven robotic systems assist surgeons during complex procedures, enhancing precision, minimizing invasiveness, and improving patient recovery times.

**8. *Healthcare Management and Resource Allocation:***

- AI optimizes hospital operations, including bed allocation, staff scheduling, and inventory management.
- Hospitals can operate more efficiently and reduce costs.

**9. *Behavioral Analysis and Mental Health Support:***

- AI analyzes patient behaviors and patterns to identify signs of mental health issues.
- Virtual mental health assistants offer support, monitor patient progress, and alert healthcare providers to critical changes.

**10. *Research and Clinical Trials:***

- AI helps researchers sift through vast amounts of scientific literature, aiding in the discovery of relevant studies and accelerating the research process.
- Machine learning models assist in patient recruitment for clinical trials by identifying suitable candidates.

**11. *Telemedicine and Remote Consultations:***

- AI-driven platforms enable remote consultations, diagnosing common illnesses and offering treatment recommendations.
- Patients in remote or underserved areas can access healthcare services more easily.

As AI continues to advance, its applications in healthcare are likely to expand even further, contributing to improved patient care, enhanced disease prevention, and more efficient healthcare delivery systems. However, ethical considerations, data privacy, and regulatory frameworks must be carefully addressed to ensure the responsible and effective implementation of AI in healthcare.



## 6. TYPES OF AI OF RELEVANCE TO HEALTHCARE

In healthcare, various types of AI are utilized to address different challenges and tasks. Here are some key types of AI that are of relevance to healthcare:

### 1. *Machine Learning (ML):*

- *Supervised Learning:* ML algorithms are trained on labeled datasets to make predictions or classifications. In healthcare, this can include disease diagnosis based on medical images or predicting patient outcomes based on historical data.
- *Unsupervised Learning:* Algorithms find patterns and relationships in unlabeled data. It can be used for clustering patient populations based on similar traits or identifying anomalies in large datasets.

- *Reinforcement Learning:* AI agents learn by interacting with an environment and receiving feedback. In healthcare, this can be used to optimize treatment plans over time.

***2. Deep Learning:***

- A subset of machine learning that involves neural networks with many layers. It's particularly effective in analyzing complex data like medical images (e.g., CNNs for image analysis) and natural language processing tasks (e.g., RNNs, transformers).

***3. Natural Language Processing (NLP):***

- AI techniques that enable computers to understand, interpret, and generate human language. In healthcare, NLP is used for clinical documentation, medical transcription, and understanding patient data from electronic health records.

***4. Computer Vision:***

- AI algorithms that interpret and understand visual information from the world. In healthcare, this can involve analyzing medical images (X-rays, MRIs, CT scans) for diagnosis and anomaly detection.

***5. Expert Systems:***

- AI systems designed to mimic the decision-making abilities of a human expert. In healthcare, expert systems can be used to assist in diagnosing rare diseases, suggesting treatment plans, and providing medical advice.

***6. Robotics and Robotic Process Automation (RPA):***

- Robotic systems or software that automate repetitive tasks. In healthcare, robots can assist in surgery, medication dispensing, and even patient rehabilitation.

***7. Predictive Analytics:***

- AI algorithms that predict future outcomes based on historical data. In healthcare, this can include predicting patient readmissions, disease outbreaks, and patient responses to treatments.

***8. Cognitive Computing:***

- Systems that mimic human cognitive functions, such as learning and problem-solving. In healthcare, cognitive computing can assist in complex decision-making tasks by processing vast amounts of medical data.

#### **9. Genetic Algorithms:**

- AI algorithms that use principles from evolutionary biology to solve complex optimization problems. In healthcare, genetic algorithms can optimize treatment plans based on genetic factors and patient history.

#### **10. AI-Enabled Assistants and Chatbots:**

- AI-driven virtual assistants that interact with patients, answer medical queries, and assist in appointment scheduling. They can also provide basic medical advice based on symptoms.

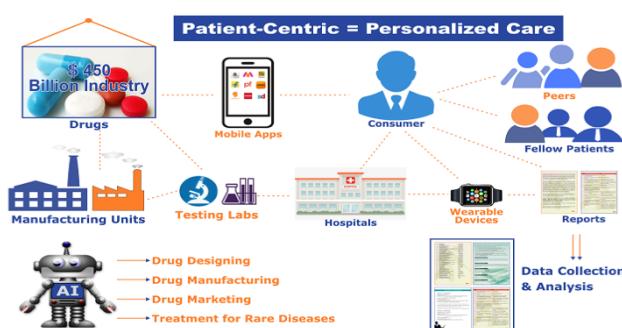
#### **11. Autonomous AI:**

- AI systems that can perform tasks without human intervention. In healthcare, this could involve AI-powered surgical robots performing complex surgeries with minimal human guidance.

#### **12. Augmented Intelligence:**

- The integration of AI with human intelligence to enhance decision-making. In healthcare, augmented intelligence can help doctors interpret data and make more informed decisions.

Each of these types of AI has specific applications in healthcare, from diagnosing diseases to drug discovery, improving patient care, and optimizing healthcare processes. The choice of AI type depends on the specific problem or task that needs to be addressed within the healthcare context.



## 7. HOW AI HELPS FOR EASY AVAILABILITY OF MEDICINES

AI plays a significant role in ensuring the easy availability of medicines by optimizing various aspects of the pharmaceutical supply chain, improving distribution, and enhancing patient access. Here's how AI helps in achieving this goal:

### 1. ***Demand Forecasting and Inventory Management:***

- AI algorithms analyse historical data, current trends, and external factors (such as weather and disease outbreaks) to predict future demand for medicines.
- Accurate demand forecasting prevents overstocking or understocking, ensuring that pharmacies and healthcare facilities have the right medicines in the right quantities.

### 2. ***Supply Chain Optimization:***

- AI optimizes the entire supply chain, from manufacturing to distribution, by identifying bottlenecks, streamlining processes, and reducing inefficiencies.
- Real-time monitoring of supply chain data helps identify potential disruptions, allowing for proactive measures to maintain a steady flow of medicines.

### 3. ***Reducing Wastage:***

- By predicting demand accurately and optimizing inventory, AI helps minimize wastage due to expired or unused medicines.
- This reduces costs and ensures that medicines are available for patients who need them.

### 4. ***Smart Warehousing and Logistics:***

- AI optimizes warehouse operations by suggesting optimal storage locations based on factors like expiration dates and demand patterns.
- AI-powered route optimization enhances the efficiency of medicine distribution, reducing delivery times and costs.

### 5. ***Cold Chain Management:***

- Many medicines, especially vaccines and biologics, require specific temperature conditions during storage and transport. AI sensors and monitoring systems ensure that these conditions are maintained, reducing spoilage.

***6. Supplier Relationship Management:***

- AI analyzes supplier performance data and market trends to identify reliable suppliers and negotiate favorable terms.
- This ensures a consistent supply of high-quality medicines from trusted sources.

***7. Emergency Response and Stockpile Management:***

- AI can help governments and organizations manage emergency stockpiles of medicines by monitoring expiration dates, usage patterns, and distribution channels.
- In case of a sudden surge in demand due to emergencies, AI ensures that medicines are distributed effectively.

***8. Medicine Authentication and Counterfeit Detection:***

- AI systems can authenticate the authenticity of medicines by analyzing packaging, barcodes, and other identifiers.
- This helps prevent the distribution of counterfeit or substandard medicines, ensuring patient safety.

***9. Predictive Maintenance of Medical Equipment:***

- Medical devices and equipment used in healthcare facilities need maintenance to function properly. AI can predict when equipment might fail, enabling proactive maintenance and minimizing disruptions in patient care.

***10. Pharmacovigilance and Safety Monitoring:***

- AI monitors adverse drug reactions and patient feedback to identify potential safety concerns with medicines.
- Rapid detection of safety issues ensures that corrective measures are taken promptly.

***11. Telemedicine and Medication Delivery:***

- AI-powered telemedicine platforms can connect patients with doctors who can prescribe medicines electronically.
- AI-driven delivery services ensure that prescribed medicines reach patients' doorsteps, particularly important for patients with mobility issues or in remote areas.

By leveraging AI technologies in these ways, healthcare providers, pharmaceutical companies, and regulatory bodies can work together to ensure the easy availability of medicines to patients, ultimately improving overall healthcare outcomes and accessibility.

## **REFERENCES**

1. Deloitte Insights State of AI in the enterprise. Deloitte, 2018. [www2.deloitte.com/content/dam/insights/us/articles/4780\\_State-of-AI-in-the-enterprise/AICognitiveSurvey2018\\_Infographic.pdf](http://www2.deloitte.com/content/dam/insights/us/articles/4780_State-of-AI-in-the-enterprise/AICognitiveSurvey2018_Infographic.pdf).
2. Lee SE, Celik S, Logsdon BA, et al. A machine learning approach to integrate big data for precision medicine in acute mIeloid -leukemia. Nat Commun 2018;9:42. [PMC free article] [PubMed]
3. Sordo M. Introduction to biase networks in healthcare. Open Clinical, 2002. [www.openclinical.org/docs/int/neuralnetworks011](http://www.openclinical.org/docs/int/neuralnetworks011).
4. Fakoor R, Ladhak F, Nazi A, Huber M. Using deep learning to enhance cancer diagnosis and classification. A conference -presentation The 30<sup>th</sup> International Conference on Machine Learning, 2013

## **ROLE OF LOCAL BODIES IN FEDERAL POLITICS: A STUDY OF SHIMLA MC ELECTION (2023)**

- Dr. Mridula Sharda\* & Ankita Dhawan\*\*

### ***Abstract***

*With rapid industrialization and developments in infrastructure, urban centers have become a hub of employment. Movement of so many people to urban areas have led to more dependency on urban resources. This requires a good administrative body to handle matters related to these areas. Urban local bodies are the prime bodies responsible for administrative management in urban areas. Shimla Municipal Corporation is the oldest MC of pre-independent Punjab and has its historical importance too. Elections to Shimla MC was of great importance especially for the major rivals BJP and Congress in the state. The study aims to analyse various factors which affect voting behaviour, performance of political parties and the organic linkage between local and state politics.*

**Keywords:** *Urbanization, federalism, BJP, Congress, Municipal Elections, Voting behaviour.*

\* Professor @ Central University of Himachal Pradesh, (Dehra) Dharamshala

\*\* Research Scholar @ Department of Political Science, Himachal Pradesh University, Shimla

## 1. INTRODUCTION

In Indian Constitution, there were adequate provisions to ensure democracy at the Centre and state level through the election for the Parliament and state legislatures. It was further taken to local levels after the 73<sup>rd</sup> and 74<sup>th</sup> Amendment Acts when a third tier of government was added below the Union and State governments. A Constitutional base was provided to Panchayati Raj Institutions (PRIs) and Urban Local Bodies (ULBs) in last decade of 20<sup>th</sup> century. Indian society was predominantly rural from the ancient times and urban centers got much recognition during British era because of their vested interest to evolve urban areas in those parts of the country which suited for trading activities. With the introduction of railways and trading and business activities, many people moved towards cities to have better opportunities. In order to have proper management of urban areas it became important for the urban localities to have their administrative bodies. Hence, first Municipal Corporation was established in Madras in 1687. Afterwards, many municipal bodies constituted in the areas like Calcutta, Bombay and other port cities. Urban areas have their own problem, much different from the rural areas. Indian society already had their local governance, in urban areas the administrative system introduced by the British government was a new system with which Indian were not familiar. ULBs are responsible for good governance and administration of urban areas. Local governance is always linked with PRIs due to predominance of rural society. ULBs are also important as they manage those localities which have immense importance to shape the administrative and political system of urban areas.

## 2. URBANIZATION

In the developing societies like India, Urbanization is not a connotation. Despite its population being predominantly rural for ages, India is emerging as one of the fastest growing urbanizing countries. Urbanization traces its origin in India back during the colonial era when Britishers introduced machinery and railways leading to the rural population migrating to cities in search of work and bread. With the advent of the globalization, it was the cities which were benefitted the most. Cities are the centers for economic development as they provide efficient infrastructure and services resulting in high density of population. Urban population is increasing at a fast rate India's population has reached from 17.92% in 1960 to 35.39% in 2021. The urban population is increasing at an average growth rate of 2.07% per year. It is projected that India's urban population will be 575 million constituting over 40% of total population by 2030. Thus, to

manage such a large population it is important to have a proper channel of administration which is provided through Urban Local Bodies.

### **3. CONSTITUTIONALITY OF THE URBAN LOCAL BODIES**

Through 74<sup>th</sup> Constitutional Amendment, a new Part IX A and Schedule Twelfth was added to the Indian Constitution in 1994 and a uniform structure of ULBs was established. First Nagar Panchayat Bill was presented in 1985 by Rajeev Gandhi but was finally passed by Parliament in 1994. This Act made it mandatory for all State governments to decentralize the powers and responsibilities to ULBs by enacting necessary legislation so that these bodies can act as autonomous units. Articles 243P- 243ZG of Indian Constitution contains the provision related to municipality. The Act also lists five criteria for constituting the ULBs namely density, population, Revenue generated per annum, percentage of employment in non-agricultural activities and economic importance of the local body. This Act provides for periodic elections, constitution of bodies with adequate representation to Scheduled Castes, Scheduled Tribes and Other Backward Classes (OBCs), reservation of at least one-third of all positions for women (50% in some states), powers and functions of ULBs and sources of revenue generation for smooth function of work. There is also a provision of an independent institution of the State Election Commission (SEC) under the Article 243 Z to conduct the elections for the urban and rural local bodies. Thereafter, periodical elections have been held for urban local bodies since 1994. The 74<sup>th</sup> Constitutional Amendment also encouraged participation of local people in the administration of local areas and helped in empowering such communities.

### **4. HISTORY OF SHIMLA MUNICIPAL CORPORATION**

Shimla Municipal Corporation (MC) is the oldest MC of pre-independent Punjab and is among the oldest MCs of the country. Established in December 1851 as a Municipal Council to handle the civil matters of summer capital of British empire. In 1871, it was declared as the Class I Municipality. At that time, it was an autonomous body which handled all matters of Shimla city from water to electricity, school management and forest cover was under its control. Before 1947, Shimla had its distinct place in the British governing system. British people preferred to stay here due to favorable climatic conditions. It gained the title of Municipal Corporation in September 1970 after which its powers decreased. At that time, it was a fully nominated body. Population of the town was always a concern of the Britishers. In 1851, the population of Shimla city was about 3500 which rose to 14000 in 1901 even though strict policies were adopted by Britishers in 1898 seeing the sharp increase in the population. Now its population has reached

1.70 lakh people and continuously increasing. Shimla being the capital of the state and a major tourist attraction, has diverse demographic composition such as labour class, students and employees who form the large part of the urban population of Shimla. Further, Shimla MC is one of the richest MC in matters relating to their taxing power. Although this population is not stable still contribute a lot to urban economy and also avails facilities provided by the MC. Thus, to manage such a large population it requires appropriate infra-structure to provide the people civic amenities.

## **5. ELECTORAL HISTORY OF SHIMLA MC**

Shimla MC administers the Shimla city through the elected body of Councillors headed by a Mayor and Deputy Mayor. Five members from academic, social service and other fields are nominated by State government. There is also a provision of reservation of fifty percent of seats for women. Along with Shimla city, the surrounding areas of Totu, Dhalli and New Shimla are under the administration of Shimla MC since 2006. First election for Shimla Municipal Corporation was held in 1986. Since then, it was under the control of the Congress party until 2012 when the State BJP government decided to hold direct elections for the seats of Mayor and Deputy Mayor. In 2012, the Mayor and Deputy Mayor both were from CPI(M) but there was majority of BJP in the MC of 25 wards. In 2017, the Congress government reversed the decision of holding direct elections for the position of Mayor and Deputy Mayor and also increased the number of wards to 34. Just before the Assembly Elections of the State, the elections to Shimla MC were held in June 2017 and BJP was able to wrest Shimla MC from Congress. BJP won in 17 wards. The body was formed with 12 Councillors of Congress, one from CPI(M) and four independents. The seat for Mayor was reserved for women of SC and ST for two and half year each but since there is less than 15% population of STs in the City, hence the seat of Mayor was held by Kusum Sadret and Satya Kaundal of BJP respectively.

The elections for Shimla MC were scheduled to be held in June 2022 but due to court case regarding delimitation of wards the elections were delayed for one year as previous BJP government increased the number of wards from 34 to 41. After coming to power in December 2022, the Congress government reversed the order. This was for the first time that MC election were held after Assembly polls. After its victory in Assembly polls, Congress was excited to have a hold on Shimla MC as party appealed to the people to vote for their 140 days performance in the state. On the other hand, BJP worked to retain its hold on the Shimla by showcasing their

achievements through the Shimla Smart City Mission which is a project of the Central government.

Although CPI(M) and AAP were also in the race of MC election still the electoral battle was much concentrated on BJP and Congress.

All political parties campaigned extensively to gain the support of people. For BJP Union Minister Anurag Thakur, former CM and the Leader of the Opposition Jai Ram Thakur along with other top leaders of the party, sitting MLAs and former Ministers campaigned for the BJP candidates in the wards. On the other side, CM Sukhvinder Singh Sukhu, MP Pratibha Singh, senior Congress leaders campaigned for their candidates. Cabinet Ministers Vikramaditya Singh, Harish Janartha and MLA Anirudh Singh worked together with candidates as 34 wards of MC fall under these three Constituencies namely Shimla Rural, Shimla Urban and Kasumti. CM Sukhu had been Councillor twice from one of the wards of Shimla MC. The Manifestos of both the parties contained the pictures of National as well as State leaderships. Further, both parties have engaged their party cadre and leadership from former ministers to sitting MLAs to campaign for the candidates in this election. All this reflects the linkage between national, state and local elections. Local election of Shimla MC became a matter of pride for both parties who left no stone unturned in convincing voters to vote in the favour of their candidate.

For CPIM, former MLA Rakesh Singha and former Mayor Sanjay Chauhan campaigned. The campaign of AAP was solely on candidates as in majority of wards AAP was missing in terms of propaganda. For example, in Chhota Shimla ward, there was no activity by AAP candidate.

## **6. CANDIDATES SOCIO- ECONOMIC PROFILE**

Total 109 candidates filled their nomination to contest in Shimla MC while after withdrawing date only 102 candidates were left in fray. BJP and Congress contested election on all 34 seats while CPIM and AAP fielded candidates on four and 21 seats respectively. There were nine independents contesting in this election which include four rebels from Congress and five from BJP. There were three contestants per seats which reflects that was not much competition in MC election as compared to 14<sup>th</sup> Assembly polls where average per seat contestation was six candidates.

Majority of candidates contesting in Shimla MC were graduates including professional degree holders. While 35% candidates were under matric or matriculate. Two candidates declared themselves as illiterate. Twenty-two candidates were plus two passed. This shows that even in

urban areas, contestation of less educated people is more as compared to more educationally qualified people. Women candidates were much educated as compared to male candidates but majority of them were housewives. Majority of candidates were below 50 years which also highlights that more young people are coming in politics. Some candidates had criminal records too. 45 candidates declared that there was criminal case registered against them varying from cheating, murder, domestic violence etc., 22 candidates contesting election were billionaires which includes ex-Councillors as well as ex-Mayor. The socio-economic profile of candidates affirms the social conception that at every level of government, people with sound financial background and criminal records are more engaged in politics and common people stay away from politics.

## **7. ROTATION OF SEATS AMONG SPOUSES**

In some wards, the seats were rotated between the spouses after reservation and de-reservation of wards. In this election, there were eight such wards where such rotation was seen and Congress has given ticket to seven such candidates while one in case of BJP. Uma Kaushal who contested from Tuditaniid ward third time, her husband had been the Councillor from the same ward twice. Umang Banga, the candidate from Lower Bazar was wife of Inderjeet Singh, ex-Councillor from the ward. Whereas BJP candidate from Ruldubhatta and her husband had been Councillors from this ward in rotation for twenty years. The same trend was seen in Bharari, Majhat, Chhota Shimla, Kanlog and Bhattacharjee wards. This is against the principle of reservation and hence, undemocratic. This had led to revolt within parties. As a result, some candidates contested as independents or under the banner of AAP.

There was direct contestation between BJP and Congress in ten wards, in 14 wards there were candidates from three political parties, ten wards were such where more than three candidates were contesting.

Further out of 102 candidates contesting on 34 wards, 14 candidates were those who had been Councillors in previous MC. The parties again betted on these candidates which reflects their performance as Councillor earlier and their support in the ward.

## **8. VOTING PERCENTAGE**

	<b>Shimla Voting %</b>
MC Election 2007	56

MC Election 2012	65
MC Election 2017	57.8
Assembly Election 2017	Shimla Urban- 64.31 Shimla Rural- 74.02 Kasumpti- 67.55
Assembly Election 2022	Shimla Urban- 62.53 Shimla Rural- 66.35 Kasumpti- 68.29
2023 MC election	58.97

**Source:** *Statistical Data on polling in Shimla*

The polling percentage of Shimla MC this year was recorded to be 58.97 which is marginally higher than previous polls (57.8%) and much less than 75.68% voters turnout recorded in Assembly polls held just six months ago. The highest voting was recorded in Bhattakuffar ward with 74.9% voter turnout and lowest in Panthghati ward with only 46.8%.

The bad weather conditions cannot not be blamed for low polling as similar trend is seen in Shimla even in Lok Sabha as well as Vidhan Sabha polls. The data shows that Shimla Urban and Kasumpti has registered a low voter turnout even in Assembly polls. In Assembly polls, 62% voters exercised their franchise in District Shimla and least voting in the State was also recorded in Shimla Urban with only 65.66% voter turnout. The participation of female voters was also less as compared to male voters of Shimla MC. In Assembly Election 2022, female voters outnumbered males in polling but in this election, male voting percentage (59.29) was higher than female voting percentage (58.60). This low polling among the voters of Shimla MC shows the apathy of urban voters. It reflects that literate and urban people vote less as compared to less educated and rural people.

## 9. PARTICIPATION OF POLITICAL PARTIES

This election was important for all political parties especially BJP and Congress. There are few reasons that MC election became so important. Firstly, Shimla being the Capital attracts the attention of whole state. Secondly, the elections were held on party symbols after ten years. Last time in 2012, MC elections were held on party symbols along with direct elections for the post of Mayor and Deputy Mayor as per the decision of then Dhumal government. Lastly, it was seen as a semi-final for upcoming Lok Sabha election of 2024. Congress was testing its acceptance in the State after four months of its ruling while for BJP, it was a matter of reputation to retain the control of Shimla MC after completing its previous tenure. As a result, all parties tried to influence the voters and made several promises.

BJP promised the voters to provide 40 thousand liters of water per family, to leavy single tax under ‘One Nigam, One tax’ for waste, sewage and dwellings, maintenance of drainage system,

build marriage palaces, constituting taskforce to control stary dogs and monkeys. It also pledged a 50% discount on waste expenses. BJP counted its work performance of last five years, comparing it with the 25 years of Congress.

Congress came with 14 guarantees like ropeway system, implementation of regulatory measures for multi-story structures, a unified tax regime, indoor stadiums, water facility, and right to build residences to non-agriculturists who settled in Shimla before 1971. Since AAP and CPI(M) didn't fielded candidates from all wards hence, their manifestos were prepared according to the needs of the particular ward.

The common promises made by all political parties were to make Shimla clean and green, to stop drug menace in the city, building parking spaces in order to curb the traffic problem, ambulance road in every ward, water facility etc. Manifestos of all the parties indicated that parties were contesting on local issues (issues were local, campaigners were the State and centre leadership). Campaigning of BJP and Congress took this election to a different level. Congress appealed the voters to vote their candidates on the basis of party's performance in last four months while BJP used Modi factor to influence the voters.

Campaigning style of all the parties reflect that local elections and local leaders depend on higher level of leadership to win the elections. They try to convince the people that the parties to which they belong would help them all the way. Vis-à-vis the state and national leadership of the parties realized the importance of the local leaders to strengthen the mass base of the party.

## **10. WOMEN PARTICIPATION IN SHIMLA MC**

Women constitute half of the population of the world. Since 1975, many efforts have been made by international organizations to reduce gender disparity worldwide. In this field, one of the strategies is to empower women politically by giving her place in law making bodies and other government and governing institutions. In case of India, women's' political status is not very encouraging. She is meagerly represented in the Parliament and State legislatures. In political parties, their role is not effective. Reservation in the local bodies is one of the distinctions in the field of women empowerment and reducing gender disparity.

As per the 74<sup>th</sup> Amendment Act, it is mandatory to reserve seats for women in Urban Local Bodies. In Himachal Pradesh, 50% seats are reserved for women including the women from Scheduled Caste. Thus, 17 wards are reserved for women candidates including 3 wards for Scheduled Caste females. Further 3 wards are reserved for Schedule Caste category and 14 wards

are open. BJP fielded women on 24 seats while Congress gave chance to 18 women candidates against 17 reserved seats. It seemed that BJP want to have the control of Shimla MC through women representatives. This data was shocking because in comparison to MC election, very few women are given chance in Assembly and Parliamentary Elections. It reflects that women are given chance in local elections either because of reservation of seats for women or the parties want women leadership to be limited to local sphere only.

Since the first election of Shimla MC, only four women held the position of Mayor. It was possible because 74<sup>th</sup> Amendment Act made reservation provision for women for the position of Mayor too. Jaini Prem (1999-2002) and Madhu Sood (2009-2012) from Congress party became the mayors of the municipal corporation followed by Kusum Sadret and Satya Kaundal of BJP from 2017-2022 for half term each. This reflects that reservation policy helped women to get representation in local politics.

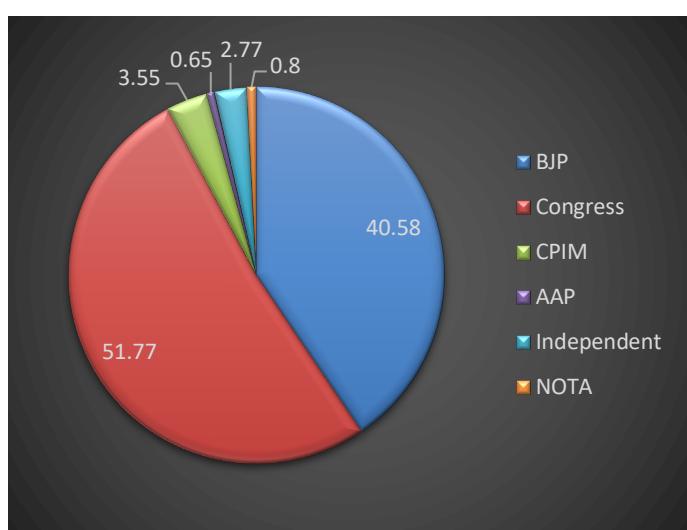
## 11. RESULTS

	2012		2017		2023		
Party	Seats won	Vote share %	Seats won	Vote share %	Seats Contested	Seats won	Vote share %
<b>BJP</b>	11	44	17	50	34	09	40.58
<b>Congress</b>	12	48	12	35.29	34	24	51.77
<b>CPIM</b>	2	8	1	2.94	4	01	3.55
<b>AAP</b>	-	-	-	-	21	00	0.65
<b>Independent</b>	0		4	11.76	9	00	2.77
<b>Total Wards</b>	<b>25</b>		<b>34</b>		<b>102</b>	<b>34</b>	

**Source:** Statistical data on Shimla MC Election 2023

The results of Shimla MC were as shocking as State Assembly Elections of 2022. Congress wrested Shimla MC from BJP with 24 seats (highest till now) whereas BJP failed to make even for double digits and managed to get 9 seats only. CPI(M) who filed candidates on four seats was able to open their account with only one seat. The candidates of AAP, the newcomer in the State, even failed to secure their deposits as none of them could touch a number of 50 votes in any ward. Ankush Verma from Engine Ghar ward, aged 28 years, is the youngest Councillor while Uma Kaushal aged 63 became the oldest Councillor. Both are from Congress party.

## 12. VOTE SHARE OF POLITICAL PARTIES IN SHIMLA MC ELECTION 2023



**Source:** Statistical data on Vote share in Shimla MC election 2023 procured from the newspapers

From the above pie-diagram, it is clear that vote share of Congress in MC election 2023 was almost half of total vote share. BJP's vote share reduced from 50% to 40% along with reduction in seat share from 17 in last election to just nine seats. The vote share of

CPI(M) increased to 3.55 but their seat share remained constant while AAP, who contested on 21 seats, failed to open its account. The vote share of AAP was even less than NOTA. Out of nine independents who contested in this election, none could make a way to MC and the vote share of independents declined from 11.76% to only 2.77%. These results affirm the bi-party character of Himachal Politics. Since the elections were held on Party symbols; the results also explain the political behaviour of local people who voted in the names of parties. Rest of the parties and independents total vote share is 7.65% which could not be considered adequate for the electoral competition. Most of the candidates who were denied ticket by their parties contested as independents but still failed to influence the voters despite being ex-Mayor or ex-Councillor. This shows that the voters of Shimla are Smart who voted on the issues of their ward. The advantage of being the ruling party also helped Congress in winning with a great majority. Independents position also convey that the voter is more concerned with political affiliation of the candidate. Inference is that it is not mere the leadership but also the voters who give equal importance to the parties in the local election. Political parties have deep roots in the local politics.

The wards of Shimla MC fall under three Assembly seats of Shimla and there are two Ministers and one MLA from this area. From Shimla Rural constituency, Congress candidates won from all four wards. On 18 wards in Shimla Urban Constituency, Congress won in 14 wards while BJP got victory in four wards. The seat share in Kasumpti constituency was nearly same as Congress managed to win in 7 out of 12 wards while BJP candidates won in 5 wards. The impact of having two Ministers and one MLA is clearly visible through the results.

### **13. MARGIN OF VOTES**

The margin of votes also varied differently in different wards. With maximum margin of 773 in Vikas Nagar ward and least being 8 votes in Khalini ward. In first case, people elected the previous Councillor Rachna Bhardwaj of Congress while in second they rejected the previous Councillor with merely 8 votes. The Congress candidates from Krishna Nagar and Ruldu Bhatta lost with 23 and 27 votes respectively. BJP candidate Sunanda Karol from Ram Bazar also lost with just 34 votes. This variation in voting margin also depicted the organic mandate. The people re-elected the Councillors they were satisfied with while those who were unable to gain the support of people were rejected.

The voters of Shimla MC trusted Congress on the basis of their promises but the party credited its 140 days work in the state for their win. BJP after losing Assembly election, tried to retain their hold on MC but all went in vain. BJP blamed Congress for making attempts to affect the organic mandate. Since 1989, this trend that ruling party loses in re-election was applicable in Assembly elections only but this time the same pattern was seen in Shimla MC polls. There are chances that due to dissatisfaction from working of previous MC or Councillors, people voted for Congress in this election. The public of Shimla also gave chance to many new comers (19 new Councillors) which reflects that people here are change oriented. People voted for development. Less margin wins, similar to Assembly polls of 2022, reflects that there was neck to neck fight between parties. This resembles to system prevailing in developed countries. Development was the only issue and in past, both parties have equally worked on it after coming to power.

### **14. CANDIDATES PERFORMANCE**

Total 102 candidates were in fray including nine independents. Congress won 24 seats followed by BJP 9, CPIM 1 and AAP zero.

Out of 14 previous Councillors of MC 2017 contesting in this election, 8 lost. Some candidates even managed to make a hattrick. Uma Kaushal of Congress from Tuttikandi became Councillor for the third whereas it was for fifth time consecutively for her family as her husband Anand Kaushal had also been a Councillor twice. Same was seen in Ruldubhatta ward where Saroj Thakur of BJP won for the third time and the post of Councillor remained in her family for fifth term as her husband Sanjeev Thakur was also Councillor of same ward for two terms. This reflects candidate's acceptance and public satisfaction in the ward. Congress candidates Sushma

Kuthiyal from Ram Bazar, Kuldeep Thakur from Sangti ward and Surinder Chauhan from Chotta Shimla also made their third term for Shimla MC. This reflects that the candidates are contesting and winning for third time do not prefer state politics and are not able to locate themselves in State and National Politics. While Harish Janartha, CM Sukhvinder Singh Sukhu, BJPs MLA from Shimla Urban Sanjay Sood had been Councillors in Shimla MC. This reflects that the performance and support of candidate helped some leaders to make way to State politics while some chose to remain confine to local bodies only.

While there are some wards where BJP and Congress came for the first time since the formation of Shimla MC. The voters of Annadel ward elected a Congress candidate for the first time while BJP got its Councillor from New Shimla ward for the first time. This trend reflects that a mixed pattern was seen in this election as people voted for some candidates even for a third term and somewhere they have brought a direct change even by not voting to ex-Councillors and ex-Mayors.

## **15. EXTENSIVE CAMPAIGNING BY LEADERSHIP**

The top leaders of Congress, BJP and CPI(M) campaigned for their party candidates through roadshows and nukkad rallies despite bad weather conditions. There were mixed results of this activity. In some wards where the candidates lost the election despite campaigning by State and National leaders of the party. CM Sukhvinder Singh Sukhu campaigned for the President of Shimla Urban Congress Jitender Chaudhary who was also a two time Councillor but he still lost the election. Further, CM Sukhu campaigned for Summerhill ward candidate where Union Minister Anurag Thakur also campaigned for BJP candidate but they both lost to CPIM candidate which was a consecutive fifth time win of CPIM in the ward. Leader of Opposition Jai Ram Thakur campaigned for ex-Mayor and two time Councillor Satya Kaundal but she also lost from her ward. But in some wards, these road shows helped in the victory of candidates. Thus, it makes it clear that voters didn't vote in the name of national or state leadership. They voted for development, their issues in the wards, their satisfaction/dissatisfaction from the work of previous Councillors. On the basis of the campaigners' viability in the election, it is clear that main issue for winning the election is development and performance of individual candidate.

## **16. REBEL FACTOR**

Rebels also played an important role in victory and defeat of parties in some wards. There were 9 independents 4 from Congress and 5 from BJP. BJP lost from Engine Ghar ward because the

ex-Councillor of BJP Arti Chauhan contested as an independent candidate when she was denied the ticket. Similarly, in Krishnan Nagar ward, ex-Mayor Sohan Lal contested as independent as a result the Congress lost with a margin of 23 votes. Rebel factor was an important reason behind BJPs defeat in Assembly polls. In this election too, the rebels became hurdle for both BJP and Congress and led to their defeat in major wards.

## 17. AREA FACTOR

Shimla is a mixed bowl of Himachal Pradesh. The original residents of Shimla are very less in number as majority of people living here are from different parts of the State especially upper Shimla region. Jubbal Kotkhai belt is predominantly the one from where most of people work and reside in different wards especially Panthaghati, Sanjauli, Chhota Shimla and Dhali. Out of total 102 candidates, 10 were from Jubbal-Kotkhai belt. For influencing the voters, BJP MLA candidate Chetan Bragta campaigned for 5 BJP candidates but only 3 candidates won. With 5 Congress Councillors, now there are 8 Councillors (collectively BJP+ Congress) from Jubbal Kotkhai belt in Shimla MC. This reflects that area factor also played an important role in this election.

## 18. Women Candidate Performance

	Total seats contested	Total women contestants	Contestation Strike rate	Total women won	Winning Strike rate	Women winning from SC reserved wards	Women winning from unreserved seats
<b>BJP</b>	34	24	70.5	7	29.1	0	3
<b>Congress</b>	34	18	52.9	14	77.77	3	1
<b>CPIM</b>	4	1	25	0	0	0	0
<b>AAP</b>	21	11	52.38	0	0	0	0
<b>Independent</b>	9	3	33.3	0	0	0	0
<b>Total</b>	<b>102</b>	<b>57</b>	<b>58.88</b>	<b>21</b>	<b>61.76</b>	<b>3/3</b>	<b>4/8</b>

**Source:** Statistical Data on Shimla MC election 2023

Due to the provision of 74<sup>th</sup> Amendment Act, 17 seats were reserved for the women candidates in Shimla MC including three for Scheduled Caste women. No ST seat was reserved in Shimla MC as ST population in the area is less than 15%. BJP fielded women candidates on 24 seats which means 17 women candidates were named on reserved seats while seven on open seats. Congress nominated women candidates on 18 seats, only one on unreserved seat. CPIM and AAP nominated one and 11 women candidates from all reserved seats respectively. There were three women contesting as independent. In total 57 women contested from different wards including 8 women candidates from unreserved seats which accounts 58.88% of total contestation. This is much higher than Assembly polls data (5.8%).

Out of 24 female candidates from BJP, only 7 got elected whereas 14 women representatives from Congress party made their way to Shimla MC. This number is much better as in addition to 17 reserved seats, 4 women candidates won from non-reserved seats. Hence, 21 women candidates won in the MC of 34 members which accounts 61.76% of total seats. Shimla MC got 21 female Councillors 7 from BJP and 14 from Congress. This number is much above than 50% reservation for women.

Further out of 14 candidates who were Councillor in 2017 MC, only 6 candidates won and that too includes 4 women candidates who recontested and won from their wards. This reflects that these women Councillors worked for their ward and people were satisfied with their work.

From this we analysed that women get good representation in local bodies but when it comes to Assembly and Parliamentary level, there is not adequate representation of women. Due to reservation, a good number of female candidates were nominated by different political parties but in Assembly and Parliamentary level where there is no provision of reservation, women lack representation. In 14<sup>th</sup> Assembly Election of Himachal Pradesh, 24 women contested against 412 males and results were much shocking as HP Legislative Assembly got only one female MLA. In Parliament there are only 14% women MPs. This point was also pointed in the National Commission to Review the Working of the Constitution (2001) that almost all parties have set up their women organisation to get the support of women who constitute nearly 50% of the electorate but in practice, very less proportion of women candidates are fielded in the elections. This reflects the patriarchal nature of Himachal politics. Women candidates are winning on unreserved seats in local body elections may it be ULBs or PRIs but this representation lacks in higher political levels.

## **19. EMPIRICAL STUDY**

A pre-poll survey was conducted by the researcher and on that basis certain findings were drawn. The survey was conducted in two phases. The data was collected from the voters through google form which candidates were personally questioned by the researcher. Among the voters responding through google form, 67.8% were males as compared to 30.2% females. This showed that women voters didn't show much interest in pre-poll survey.

Maximum respondents were between 18-30 years of age. 58.1% respondents were postgraduates. 48.8% of respondents were dissatisfied with the performance of previous Councillor and didn't want to repeat the same candidate in this election. This reflected the change-oriented nature of Shimla voters. The respondents reported that most of the wards lacked certain facilities like water, parking, cleanliness, streetlights, issue of stray animals. The voters of Shimla vote without any influence as 88.4% voters reported in the survey that casting of votes was based on their own decision. The main concern of the voters was work done by the candidate as while stating their preference, 69.8% respondents reported that they will vote on the basis of work done, 2<sup>nd</sup> priority was party affiliation of candidate and 3<sup>rd</sup> was educational qualification of candidate. While answering to the role of Councillors, 59.8% people believed that local representatives moderately think about civic and development functions in their area which 16.7% think they take it lightly. This reflects that voters are dissatisfied with the non-serious nature of local representatives. 59.5% people strongly agree that political parties take keen interest in local politics which is correct in the sense that political parties work from grassroot to national level. 70.7% people agreed that local leaders are important to get better vote share in local and state election. This proves the concept of organic linkage that parties focus on local leadership for all its activities and elections. As 88.1% people were in favour that it was easy to approach local Councillor for local issues, it is clear that local leadership is much easily approachable for people as compared to state and national leadership. 62.4% voters agreed that if any political party is elected at local and state level, it will result in better financial aid to local bodies which is the essence of fiscal federalism. Without finances, no government or body can work efficiently thus, it becomes important to provide better finances to the all levels of government, particularly, local bodies.

The candidates contesting for the post of Councillors were also interviewed. Majority of candidates were such who have no party connection with the family while some candidates responded that their family members have close connection with the party. This shows that party connection proves to be a factor while allocating of tickets while some tickets were allocated to candidates for their performance in the political party. Majority candidates were contesting on

development issues. Majority of candidates saw Shimla MC election important for State and National politics in the wake of upcoming Lok Sabha election as the election was held on party symbols. They also responded that political parties take keen interest in local elections so that they can build a great organizational structure as a base for national and local elections. Some candidates showed their concern for providing more power to MCs and Councillors in order to ensure effective functioning of local body and

## **20. ANALYSES**

In Indian polity, there are three variables those are well knitted in the Indian society and have dominant position in deciding and determining the nature of the Indian politics. Urban society in India is in comparison to rural society is in infant stage. Urban life is mainly organised on the basis of the economic variable. Community and emotional variable are loose in the urban system. These variables were much visible in Shimla MC election in voting pattern of urban people. From allocation of tickets by parties to low voting percentage, all three variables played a role along with the modern factors like development.

The results of Shimla MC reflects that there are similarities and dissimilarities in local, state and national elections. People of Himachal voted differently in State and MC election. Though, BJP tried to influence voters on national issues but the voters was concerned with their local issues. Similarly in Assembly election held six months earlier, people voted for Congress despite its weak Centre. The vote share of BJP was 42.88% as compared to 43.96% of Congress. But in MC election, BJPs vote share dropped to 40.58% and there was increase in vote share of Congress (51.77%) along with increase in seat share. While Vote share of others was 7% which shows that no third force exist in Himachal. In Himachal, both BJP and Congress have strong base. People do not prefer any third party in any election. Political parties have deep roots in the local politics. Parties gradually shifting their organizational structure and functioning on the federal principles. They recognize importance of the local leadership and local self-government.

Further, good women representation at local bodies increased considerably but this lacks at higher levels of the government. It also reflets that women are able to get representation in local bodies only due to reservation policy and the patriarchal configuration to retain the seats by involving more than one family member in the local politics. Reservation is not the solution to all problems but it can be the stepping stone for better women representation in politics at higher level. Thus, the Women Representation Bill must be passed with immediate effect so that Indian politics doesn't remain male centric and open good scope for women representation.

BJP had lost two major elections in last six months in the State at the time when the Lok Sabha elections are not too far. This is something that India's biggest party need to see. For Congress it is a third win after the death of ex-CM Virbhadr Singh. This was important to provide a big boost to the party cadre at the time when party is on the verge of extinction. CPIM managed to win only one seat though it contested on four seats which reflects the declining support of the party in the city where it once had its candidates elected directly for the position of Mayor and Deputy Mayor. CPIM need to work on its organization strengthening and cadre building from losing its lone seat in Assembly elections to just contesting on just four seats in MC polls (least till date). Otherwise, party would lose its national party status similar to CPI and TMC. AAP got a clean hand in this election after losing all seats in Assembly Election too. All the candidates of AAP lost their deposits which shows that people don't trust the party even though it became a national Party. AAP which is a newcomer in the state, a newly crowned National Party, need to understand the nature of Himachal politics. After losing all seats in Assembly polls and now in Mc polls, party should work on ground level rather than showing its presence only in elections. In Assembly polls, the party came out loud after winning the neighboring state of Punjab but left the candidates in the middle of elections. Similar instance was seen in this election when the election became the responsibility of the candidates even elections were held on party symbols. Further, caste variable is negligible in the city. AAP tried to consolidate the lower castes by allocating tickets to this section. Its electoral performance indicates that class configuration cannot help to win the elections. This trend was also similar to the state and Parliamentary elections. Independents who contested in this election were either ex-Councillors or members of BJP and Congress who were denied tickets by the party. They failed to get the support of voters as well as party loyalists in the election too. Party candidates were backed by party as well as leadership but independents had to work alone. Further, the candidates who fought as independents earlier were given ticket by parties as they betted on winning candidates. This reduced the chances of independent candidates but led to rise of some rebels from the parties. Local elections also reflect the mood of the people. There is organic linkage in the elections of the different levels. Mass understanding is that development is the core issue, local governments heavily depend on higher echelons of the government for the financial resources. From this perspective, they vote keeping in mind the ruling party at the State level.

## **21. CONCLUSION**

For better function of local bodies, candidates selected must be work-oriented, must work on issues for which they contested, must work for public satisfaction, development, ticket should

not be allocated to mafias and corrupt candidates and policies should be framed in favour of masses. The results of MC Election affirms that Himachal Pradesh has a bi-party system and there is no room for a third alternative. The fight remained between BJP and Congress. Political parties have deep roots in the local politics. Hence, people of Himachal remain confine to BJP and Congress and power at local and State level keeps on shuffling between these two parties only. Further, women participation in local politics increased due to reservation of seats. Male performance of both parties remained poor as compared to females. For better women participation in national and state level politics, it is important to have same provisions in Parliamentary and Assembly elections. Also, patriarchy has its implications in the urban politics while caste variable is not strong due to demographic composition of the city. Economic variable and the development issue played an important role in determining the shape of this election. Results of Shimla MC reflected the organic linkage in the election of the different levels.

## REFERENCES

- “Democratic Decentralization of Urban Governance: A Study of four States in India” Urban Governance. *PRIA Publications*. 2008 [www.pria-academy.org](http://www.pria-academy.org)
- Gottdiener, Mark. Budd, Leslie. & Lathouvoori, Panu. (2016). *Key Concepts in Urban Studies*. Sage Publication.
- *India Urban population 1960-2023*-Macrotrenfs [www.macrotrends.net](http://www.macrotrends.net)
- Mackenzie, W. J. M. (1954). *Representation in Plural Societies*. Political Studies.
- Maddick, Henry. (1963). *Democracy, Decentralisation and Development*. New York: Asia Publishing House.
- Sen, Payal. “Dynamic of Decentralized Governance in Urban India: Implications for Inclusive City Development.” *Nagarlok*. Vol. XLVI, No. 2, April-June. Pp- 15-36
- Singh, Abhay Prasad & Murari, Krishna. (2019). *Constitutional Government and Democracy in India*. New Delhi: Pearson India Education Services Pvt. Ltd.
- Singh, M. P. & Saxena, Rekha. (2013). *Federalizing India in the Age of Globalization*. New Delhi: Primus Books.
- Solijonov, Abdurashid. *Voter Turnout Trends around the World*. 2016. International Institute for Democracy and Electoral Assistance. Sweden.
- *Urban Governance*, Mission Directorate, JnNURM, Ministry of Urban Development (MoUD), Government of India.

- Consultation Paper on “Review of the Working of Political Parties Specially in Relation to Elections and Reform Options” prepared by Advisory Panel on Electoral Reforms; Standards in Political Life. Submitted to *National Commission to Review the Working of the Constitution (2001)*
- **Sources of information**
- Statistical data published in different newspapers during the election process from 3<sup>rd</sup> April to 6 May 2023.
- List of Municipalities in HP. [www.ud.hp.gov.in](http://www.ud.hp.gov.in)
- *Amar Ujala*
- *Divya Himachal*
- *Dainik Bhaskar*
- *Indian Express*
- *The Tribune*
- *The Times of India*

## RIGHTS OF WOMEN PRISONERS AND SOME ISSUES FACED BY THEM IN INDIA

- Ram Dular Sonkar\*

### *Abstract*

*Inmates who have broken the law are housed in jails. The purpose of prisons is to reform and rehabilitate inmates. Despite this, cruelty and depravity are frequently covered up in jails, which is dangerous for prisoners. The problems brought on by incarceration are far more obvious in the case of female prisoners. Women in detention are particularly vulnerable in a prison system dominated by men, especially in regular jails where both women and men are kept. Every member of society is given the same fundamental rights at birth and is treated equally by their creator. The rights to life and liberty, which have been recognised by numerous international constitutions, are the cornerstones of every human being. However, in every society, there are some individuals who do not uphold the morals and standards of the community, and when this occurs, those individuals are stripped of their rights and subjected to appropriate punishment. A society without crime would be a utopian idea. The most significant contribution to understanding the rights of female inmates has come from the Indian struggle. A person does not stop being a human being if they commit a crime, therefore all fundamental rights are nevertheless upheld in practise even when they are constrained by the possibility of jail time, monetary penalties, or both. The major goal of the criminal justice system is to show that just because someone commits a crime once, it does not guarantee that they will always be criminals.*

**Keywords:** Prison, Female prisoner, Jail, Criminal, Human being.

---

\* Research Scholar @ Department of Law and Governance, Central University of South Bihar, Gaya (Bihar)

## 1. INTRODUCTION

Women's status in the traditional society was quite poor. They are subject to conventional patriarchal attitudes and are denied their basic human rights. But as time goes on, the Indian Constitution offers a number of rights to improve the position of women and ensure their treatment on an equal footing with males. The standing of women is drastically altered as a result. Historically, they were confined to their homes alone, but in modern society, they are entitled to some privileges, but the percentage of these women is relatively tiny. Women continue to experience torture, exploitation, and harassment, which makes them more irritable and drives them to commit actions that are insulting and illegal. The rising tendencies in industrialization, urbanisation, and the internet increase the rate of crime in society and push women to commit crimes against their nature, which is viewed by society as being very sensitive and gentle. Even while extremely few women commit crimes and even fewer of them end themselves in jail or prison, nonetheless women crimes are increasing as compared to the males.<sup>1</sup>

Every member of society is given the same fundamental rights at birth and is treated equally by their creator. The rights to life and liberty, which have been recognised by numerous international constitutions, are the cornerstones of every human being. However, in every society, there are some individuals who do not uphold the morals and standards of the community, and when this occurs, those individuals are stripped of their rights and subjected to appropriate punishment. A society without crime would be a utopian idea. The most important role in recognising the rights of prisoners was played by the Indian fight.<sup>2</sup> A person does not stop being a human being if they commit a crime, therefore all fundamental rights are nevertheless upheld in practise even when they are constrained by the possibility of jail time, monetary penalties, or both. The major goal of the criminal justice system is to show that just because someone commits a crime once, it does not guarantee that they will always be criminals.

## 2. SOME PROBLEM FACED BY WOMEN PRISONERS

The management of prisons varies from country to country, despite the fact that the topic of prisoners is a very sensitive one in every country in the globe. Every state has a manual that

<sup>1</sup> Bandana Shekhar, Nitasha Devi.*et al.*, "Rights of Women Detainees Under Indian Judicial System", 5 *Law Audience Journal*, pp. 21-30 (2023).

<sup>2</sup> Aditi Prabhune, "A Legal Analysis of Rights of Female Prisoners Under Constitution of India", available at: <https://www.legalserviceindia.com/legal/article-2111-a-legal-analysis-of-rights-of-female-prisoners-under-constitution-of-india.html>

outlines the rights and responsibilities of inmates and should be given to them when they are first admitted to the facility. Some problem faced by women prisoners are:

### 2.1 They suffer from essential hygienic and sanitation facilities:

The majority of female prisoners in India are between the ages of 18 and 50, making up 81.8% of the total population. As a result, there is a rising demand for access to acceptable menstrual hygiene products as well as proper sanitation facilities. They should be given access to suitable sanitary pads to preserve their cleanliness, but some institutions reportedly charge for them or only distribute a predetermined quantity each month, regardless of necessity. Consequently, this forces women to use unsanitary items like cloth, ash, fragments of old mattresses, newspapers, etc.

### 2.2 Poor welfare and health care spending:

In India, prison administrations paid an average of Rs. 10,800 per prisoner per year in 2005, which was split between food, clothing, medical costs, vocational & educational costs, welfare programmes, and other expenses (National Crime Records Bureau 2005).<sup>3</sup> Medical costs were noted as being much higher in West Bengal, Punjab, Madhya Pradesh, Uttar Pradesh, Bihar, and Delhi that year, while vocational and educational costs were noted as being somewhat higher in Bihar, Karnataka, and West Bengal. According to sources, Chhattisgarh, Orissa, and Tamil Nadu spend far more on prisoner care.<sup>4</sup>

### 2.3 Poor living conditions or prison overcrowding:

One of the most serious issues that both male and female convicts in Indian jails deal with is this. In prisons, cells and barracks are given a specific size in accordance with the National Prison Manual's recommendations. 20 convicts maximum each barrack, and four to six prisoners maximum per dormitory. Because of the overcrowding, sanitation issues and health issues have gotten worse, and even mild infections spread quickly. The situation is made worse by the disproportionately small number of bathrooms and restrooms. Prisoners forced to share such close quarters with one another suffer grave psychological impacts from overcrowding.

In India, inmates who are female are not even given sufficient housing or recreational opportunities. Basic services are denied to women and their kids. It is still obvious that the female inmates are scared of the correctional staff. The children's development, survival, and

<sup>3</sup> Ibid.

<sup>4</sup> National Crime Records Bureau (NCRB)

advancement are impacted by the jail environment. Preschool access is limited for children who are kept in custody with their mothers. When incarcerated, communication with the outside world is cut off, which prevents the prisoner from being aware of his surroundings and his family.

This makes the distress worse. Many nations forbid the use of the extreme authority of detaining someone without cause or legal recourse unless there is a conflict or violent activity.

Except for those that are restricted by imprisonment, an inmate or detainee retains most of the civil rights and other freedoms that apply to a free citizen. The therapy programme in the women's prison is also subpar. It's a catastrophe. Numerous inmates have died as a result of the inadequate medical care provided in prisons, which has been well-documented.

In comparison to police custody, judicial imprisonment has a significantly higher fatality rate, according to the National Human Rights Commission's Annual Report. It would be useful to look into how many deaths in judicial detention are caused by medical neglect given the regularity and seriousness of concerns regarding prison care services.<sup>5</sup>

#### 2.4 The issue of custodial rape against women in India:

There was rape while the subject of police custody in the case of State of Maharashtra vs. C.K. Jain.<sup>6</sup> In terms of the evidence, the Supreme Court emphasised that cooperation should often not be demanded in such circumstances unless the prosecution's testimony was suspect. Second, it is assumed that no woman would typically make a false accusation of rape. Thirdly, there are perfectly logical reasons why the victim women delayed filing a complaint against the police, and the delay alone is not deadly. There was no room for compassion when it came to the judgement; the punishment had to be severe.

The ongoing problem of female prisoners being sexually harassed is significant. Torture of women in prison has been documented in horrifying incidents. According to the Asian Centre for Human Rights (ACHR), custody rape is one of the worst forms of torture meted out to women by law enforcement, and numerous custodial rapes of female inmates occur often. The NHRC has 39 cases of police-judicial rape documented between 2006 and 28 February 2010. Citing the Maloti Kalandi case, Badal Kalandi's wife and their twins were rescued from

---

<sup>5</sup> Honawar, "Social Work Intervention with Women Offenders: A Pathway to Prevent Recidivism", 4 *Asian Social Work Journal*, pp.35-46 (2019).

<sup>6</sup> *State of Maharashtra v. C.K.Jain*, AIR 1990 SC 658

trafficking and brought to the Tamulpur police station in the Baksa district of Assam under security custody. The victim was summoned to Sub-Inspector Sahidur Rahman's office, where instead of offering her safety, he sexually assaulted her.<sup>7</sup>

## 2.5 No prisons for women:

There are not enough prisons for women in India. According to the 2018 Prison Statistics India report, there are 1412 total prisons in India, with the categories provided in table.<sup>8</sup>

Jail's Name	Number of Prisons	Jail's Name	Number of Prison
Sub jails	732	Special jails	42
Women Jails	20	Borstals Schools	20
Central jails	137	Open jails	64
District Jails	394	Other jails	3

Only 12 States/UTs have female-only jails, and there are only 18 women's prisons nationwide, according to this table. Women's Jails are prisons with only female inmates. Women's jails can be found at the district, subdivisional, and central(range/zone) levels. India had 20 women's prisons as of December 31, 2018, with a total capacity of 5,197 inmates and an occupancy rate of 60.1%. Due to the lack of room in women's jails, the majority of female prisoners are housed in other types of prisons. As of December 31, 2018, approximately 83.12% of all female detainees in India were housed in facilities other than women's jails. Maharashtra has five prisons for women. There are three female jails in each of Kerala and Tamil Nadu.

## 2.6 Access to legal services and aid is restricted:

Legal representation for female inmates is insufficient. There is a critical need to address the difficulty in obtaining legal counsel. According to the NHRC's 2008-2009 Final Annual Report 17, the legal aid programme has to be improved in the majority of the jails visited in India to make sure that all indigent clients are given access to qualified solicitors. The fact that many female prisoners are ignorant of the law and its application is a major problem.

---

<sup>7</sup> Lodha, P., Venkatesh, S., Kumar, Y. and De Sousa, A., "Incentives of female offenders in criminal behavior: an Indian perspective", 5 *Violence and Gender*, pp.202-208, (2018).

<sup>8</sup> Freitas, A.M., Inácio, A.R. and Saavedra, "Motherhood in prison: reconciling the irreconcilable", 96 *The Prison Journal*, pp.415-436 (2016)

A report by the Assistant Secretary General of the United Nations for Women titled “Progress of the World’s Women” claims that uneducated women are unaware of the legal system and their legal rights. Women cannot even be released on bail in unfair circumstances with the use of section 437 of the Cr.P.C. because of their irresponsibility. For circumstances where bail is not an option, it is not an issue of the convicted party’s rights. Section 437 of the Cr.P.C. contains bail provisions for non-bailable cases that the court may or may not order a trial in. The section, however, exempts women and allows a court to grant bail to a woman regardless of how serious the offence is.

### **3. RIGHTS OF PRISONER UNDER JUDICIAL INTERPRETATION**

Rights of Prisoners Recognised by the Indian Constitution: Despite not genuinely having all the essential rights that other men do, a condemned prisoner is not prohibited by those rights. As a foundation for human rights, some essential rights are recognised for prisoners. The rights of prisoners are not explicitly stated in the Indian Constitution, but they are recognised through precedents and judicial interpretation. For example, in the landmark case of *T.V. Vatheeswaran v. State of Tamil Nadu*<sup>9</sup>, it was determined that both prisoners and the general public are entitled to the protections of Articles 14, 19, and 21.

The Indian Constitution’s Article 14 serves as a beacon for the prison administration and authorities in deciding how to segregate inmates and how to use them as reformation targets.<sup>10</sup> All Indian people are entitled to six freedoms under Article 19 of the Indian Constitution. There are several rights that do not apply to inmates, however among those freedoms, prisoners do have the right to freedom of speech and expression<sup>11</sup> and the right to join an association. Rights given in this case were (i) Right to legal aid, (ii) Right to have an interview with a friend relative and lawyer, (iii) Right of inmates of protective homes, (iv) Right to speedy trial, (v) Right to live with human dignity, (vi) Right to livelihood, etc.

According to Judicial Interpretation, the Indian Constitution guarantees the following rights to prisoners:

#### **3.1 Right to free legal aid:**

---

<sup>9</sup> *T.V. Vatheeswaran v. State of Tamil Nadu*, AIR 1983 SC 361 : (1983) 2 SCC 68.

<sup>10</sup> Chowdhury Roy Nitai, “*Indian Prison Laws and Correction of Prisoners*”, p.75, Deep and Deep Publications, New Delhi. (2002)

<sup>11</sup> The Constitution of India, art 19 (1)(a).

It also refers to offering financial support to a person involved in a legal issue. Free legal aid was added as one of the Directive Principles of State Policy under Article 39A of the Constitution by the Constitution 42<sup>nd</sup> Amendment Act of 1976. The right to legal aid is not explicitly stated in the Indian Constitution. However, the judiciary has favoured impoverished inmates who, because to their poverty, are unable to hire the attorneys of their choosing.

The Supreme Court ruled in *M.H. Hoskot v. State of Maharashtra*<sup>12</sup> that Article 21's implied fair, just, and reasonable procedures included the right to free legal assistance provided by the state at the expense of an accused who could not afford legal representation due to poverty. A three-judge Supreme Court panel that considered Articles 21 and 39-A, as well as Article 142 and Section 304 of the Criminal Procedure Code together decided that the Government has a responsibility to provide legal representation for those who have been accused of a crime.

### 3.2 Right to meet friend relative and lawyers:

The court decided in *Sheela Barse v. State of Maharashtra*<sup>13</sup> that prisoner interviews are required since else the right information might not be gathered, but that such access must be limited and monitored. In the case of *Dharambir v. State of U.P.*<sup>14</sup>, the court ordered the state government to permit family members to visit the convicts and for the prisoners to visit their families at least once a year while being closely watched.

### 3.3 Rights against unhuman treatment:

Human dignity is integral to human rights. In a number of cases, the Supreme Court of India expressed grave concern about the inhumane treatment of prisoners and gave the relevant authorities the necessary instructions to protect the inmates' rights. The Court stated that any treatment of a person that violates their human dignity, subject them to unnecessary suffering, or lowers them to the status of a beast would undoubtedly be arbitrary and subject to scrutiny under Article 14.

The Bombay High Court ruled in *Christian Community Welfare Council of India v. Government of Maharashtra*<sup>15</sup> that women should only be detained in the presence of lady constables and not after dusk or before dawn. The State Government was ordered by the Court to appoint a

<sup>12</sup> (1978) 3 SCC 544

<sup>13</sup> (1983) 2 SCC 96

<sup>14</sup> (2010) 5 SCC 344

<sup>15</sup> 1996(1) BOM CR 70

committee to develop a thorough plan for police accountability for violations of human rights and to make special arrangements for female inmates. The protection provided by this right is crucial in preventing sexual harassment and unforeseen torture of female detainees.

As a result, in addition to these, the Mulla Committee lists the following as rights of prisoners:

- Dignity of the human being,
- The right to necessities like food, water, clothing, shelter, and other necessities is guaranteed.
- The right to communicate with others,
- Rights such as the right to meaningful and lucrative employment.

#### **4. IMPORTANT LEGAL PROVISIONS FOR WOMEN IN INDIA**

In order to carry out the Constitution's authority, the state has passed a number of laws aimed at ensuring equal protection, combating social injustice, preventing various forms of violence and massacres, and offering support services, notably to employed women. Although women can become victims of any crime, including homicide, rape, and fraud, the phrase "crime against women" refers to crimes that are only committed against women. The Indian Penal Court (IPC) has the following security measures in place for women:

- Sec. 302/304-B IPC: Homicide for Dowry, Dowry Deaths, or their efforts
- Sec. 354 IPC: Harassment
- Sec. 376 IPC: Assault
- Sec. 363- 373 IPC: Kidnapping and Abduction for various reasons
- Sec. 498-A IPC: Torture, both mental and physical
- Sec. 509 IPC: Sexual Harassment
- The crimes listed in the Special Laws (SLL)

#### **5. CONCLUSION**

The proportion of women incarcerated in India is progressively increasing. Numerous issues hamper the lives of women in prison, many of whom are facing trials. Prisons fall short in their efforts to reform its inmates. Understanding the issues that women in prison face, identifying their rights, and ensuring that these rights are enforced are therefore crucial. Numerous problems affect women, such as a lack of female employees, inadequate housing, poor sanitation and hygiene, a lack of facilities to satisfy their physical and mental health needs, inadequate

nutrition, a lack of educational possibilities, and frequently useless capacity and vocational training. Many mothers who share a home with their kids lack access to quality recreational, medical, and educational resources. The situation for women is made worse by these issues, as well as a lack of access to legal counsel while in custody, little contact with the outside world, and a high rate of abuse by other inmates and staff members.

A democratic country like India needs three autonomous institutions - the legislative, executive, and judiciary - to preserve the balance between power distributions, just as a car needs four wheels to move and a person needs two legs to walk. This not only makes the work more efficient by dividing it up into smaller tasks, but it also guarantees a continual system of checks and balances. The legal and managerial tenet that duty and accountability must coexist in order to produce better results is well established. The prison administration should follow this rule as well.

The prison is supposed to serve as a place for reformation. However, when prisoners are denied the basic rights that are essential to their existence as human beings, the entire purpose is defeated. A few decades ago, inmates were despised and thought to have relinquished all of their rights. However, contemporary society is aware of a prisoner's rights. As a result, a criminal conviction does not turn a person into a non-person whose rights are dictated by the authorities and administration of the prison.

It is essential that we act today to ensure that prisoners' basic human rights are upheld and that they are treated with dignity because, when we deny other people their basic rights, we are only returning to a time of cannibalism and war. It does not imply that jail life should be made simple; rather, it should be made reasonable and humane. The way the judiciary operates shows that it has creatively used its authority and developed fresh plans to safeguard the preservation of inmates' human rights. Thus, merely writing anything down has never been sufficient. It is time for rules to be put into effect and given a chance to create a peaceful society of equals.

## REGULATIONS OF SPORTS BETTING & IT'S VARIOUS FORMS: A STUDY OF INTERNATIONAL & NATIONAL SAFEGUARDS

- Dr. Aarushi Batra,\* Shubham Bishnoi,\*\* & Sai Jahnavi Thota\*\*\*

### *Abstract*

*Sports betting is not a new concept. It has been the world's oldest form of gambling, which started off as a recreational hobby. The sports betting market has seen some tremendous changes in the last 15 years than it has in the previous 50 years. Sports betting first appeared in the world in the 1950s, and nothing altered until the turn of the century. However, since the turn of the millennium, internet betting has altered remarkably and is currently growing at a quicker rate than ever before. Sports betting is regarded an unlawful practice in many areas of the world. However, many governments throughout the world consider it to be lawful, and they profit financially from legalizing sports betting. At this point, the question is whether legalizing sports betting threatens the integrity of sports, and if not, why hasn't India legalized sports betting yet? This research paper analyses sports betting, gambling, and concept related to online betting, and it selects the important difficulties linked to legalizing sports betting in India. Further, the researchers have attempted to study the legislations of countries where sports betting is legalized.*

**Keywords:** Sports, Legislation, Betting, Gambling, Regulation.

\* Assistance Professor (Senior Scale) @ University of Petroleum & Energy Studies, Dehradun; Email: batra.aarushi@gmail.com.

\*\* Student @ University of Petroleum & Energy Studies, Dehradun; Email: bishnoishubham04@gmail.com.

\*\*\* Student @ University of Petroleum & Energy Studies, Dehradun; Email: sanajhnvi@gmail.com.

## 1. INTRODUCTION

Everyone likes sports, be it cricket, badminton, football, badminton, table tennis or chess. Some want to watch it, some like to play it, but there are still others who want to make money from it, and this desire to make money from sports gives rise to the concept of sports betting, in which one bets one's money on an event and if the result matches his prediction, he wins; otherwise, he loses.

Sports betting accounts for between 30% and 40% of the global gambling market, and the annual global gross gambling revenue is over \$400 billion. Gambling generated the equivalent of \$3.36 billion in the UK in 2020 and nearly 50% of US adults have gambled at least once in their lifetime.<sup>1</sup> This means that sports betting is not limited to a certain territory of a country, but has spread to the whole world, and the sports gambling market is very large.

## 2. UNDERSTANDING THE CONCEPTS OF SPORTS BETTING AND GAMBLING

Sports betting is a form of gambling where people bet on the outcome of a sporting event. The act of predicting sports outcomes and betting on the outcome is known as sports betting. The most popular sports to bet on vary by culture, with association football, American football, basketball, baseball, hockey, track cycling, auto racing, mixed martial arts, and boxing receiving the vast majority of bets at the amateur and professional levels. Sports betting can also extend to non-athletic events such as reality TV contests and political elections, and non-human competitions such as horse racing, greyhound racing and illegal underground dog fighting.

Sports betting is nothing more than a form of gambling. Because gambling has a wide range of bets and includes sports betting and non-sports betting. Sports betting includes casino games and non-casino games. Casino games are games played with cards, dice or any equipment in exchange for money or an item based on value. It includes games such as card games, dominoes, dice, big six, slot and roulette. Non-casino games are those played outside of casinos, such as bingo, lotteries, scratch cards, coin flips, dice games and many others.

---

<sup>1</sup> Philip Isakov, Sports Betting Statistics: Trends, Revenue, Growth [2022], PLAYTODAY, available at: <https://playtoday.co/blog/sports-betting-statistics>. (last visited February 2, 2023, 8:07 PM)

Gambling is betting money or something of value on an event with an uncertain outcome.<sup>2</sup> Games of chance are games of chance or skill in which you bet on the outcome. If you win, you increase your bottom line, if you guess wrong or play poorly, you lose the bet.<sup>3</sup> The primary intent to win money or material goods is gambling, so three elements must be present: consideration, risk, and cost. There is no clear bifurcation, but gambling has five main types, which are casino games, sports betting, poker, lotteries and sweepstakes.<sup>4</sup>

## 2.1 Online Betting and Offline Betting

Online betting is the act of placing a bet on a sporting event or other event over the internet. It is also called “online gambling. Online gambling is any game of chance operated in a virtual space and includes virtual poker, casinos and online sports betting on the other side of iGaming. iGaming, or “internet gaming” or “online gaming”, is broadly defined as betting money or other value on the outcome of an event or game using the Internet. This includes online sports betting as well as online casino games and poker.<sup>5</sup>

## 2.2 Online Betting and i-gaming

Online betting is a solo sport where one person participates against other solo parties and the dealer, so there may be more than one opponent or parties, but each party will only have one player to bet on, and when they bet, they bet one to one. , everyone bets and when a side wins, only one person wins. But iGaming is a kind of social event where a large number of people collectively participate and bet on the outcome, and when it happens according to the bet, the whole collective group of people wins.<sup>6</sup>

Offline betting, on the other hand, is a traditional form of betting where one physically bets on some outcome on any particular thing. When you bet offline, you are basically betting without using the internet or any other virtual mode. This means you will need to visit a physical location to bet. This can be done in many different places, including casinos, racetracks and even some sports venues.

<sup>2</sup> Tillamook Headlight Herald, *available at:* [https://www.tillamookheadlightherald.com/community/gambling-it-s-a-gamble/article\\_f02cea0a-5696-11eb-a3e4-975363c4329c.html](https://www.tillamookheadlightherald.com/community/gambling-it-s-a-gamble/article_f02cea0a-5696-11eb-a3e4-975363c4329c.html) (last visited January 25, 2023).

<sup>3</sup> INIWOO, *available at:* <https://iniwoo.net/tips/gambling-internet-gaming-guide/> (last visited January 30, 2023).

<sup>4</sup> PEDIAA, *available at:* <https://pediaa.com/what-is-the-difference-between-betting-and-gambling/> (last visited January, 31 2023).

<sup>5</sup> Online Sports Managers, <https://www.onlinesportmanagers.com/article/420-online-sports-betting-vs-offline/> (last visited October 22, 2022).

<sup>6</sup> What is iGaming? Everything You Need to Know, Sports Betting Dime, *available at:* <https://www.sportsbettingdime.com/guides/legal/igaming> (last visited February 23, 2022)

## 2.3 Gambling and Sports Betting

The primary difference between betting and gambling is that betting can be done at both the amateur and professional levels, while gambling is usually done at the professional level. Both betting and gambling involve placing money on the outcome of a game, race or other unpredictable event. Both terms overlap to a large extent, as we consider betting to be a form of gambling. The main difference between betting and gambling is that betting is done at both amateur and professional levels, while gambling is usually done at a professional level.<sup>7</sup>

Both gambling and sports betting differ in the level of professionalism in the process of each, but also the two acts are characterized by the fact that in gambling, bets are placed on an event without any outcome, while in betting, bets are placed at least based on the idea or performance of the given betting events.

Gambling involves a high risk of betting because it is an illegal act, but when comparing sports betting with gambling, sports betting is less risky because it is an organized commercial act and only involves the risk of losing money.<sup>8</sup>

Both gambling and sports betting have similarities in the involvement of risk and money. Both acts need money to bet and with money involved comes the risk of losing money.

## 3. INTERNATIONAL SAFEGUARDS FOR SPORTS BETTING AND GAMBLING

### 3.1 Macolin Convention 2014

Due to different interests of the individual states, no universally applicable law on gambling was signed by the national states. However, efforts have been made in the aforementioned way because on September 18, 2014, the “Council of Europe Convention on the Manipulation of Sports Competitions (Macolin Convention) was signed by 15 Council of Europe states and when it entered into force in 2019, it was also ratified by countries such as Ukraine, Norway, Portugal, Moldova etc. and currently has 30 European signatories along with Australia and Morocco.<sup>9</sup>

<sup>7</sup> PEDIAA, available at: <https://pediaa.com/what-is-the-difference-between-betting-and-gambling/> (last visited January, 31 2023).

<sup>8</sup> Ibid.

<sup>9</sup> Macolin Convention, Journals of India, (May 16, 2022), available at: <https://journalsofindia.com/macolin-convention/> (last visited October 20, 2022).

It is a multilateral treaty open to every state and is the only legal instrument and international law that addresses the issue of manipulation in sports competitions. The main goal of the convention was also the prevention and solution of illegal sports betting. This convention requires public authorities to cooperate with sports and competition organizers and betting operators in order to detect and punish offenders involved in the manipulation of sports competitions.<sup>10</sup>

### 3.2 Laws in United Kingdom

In UK, sports betting is completely legal both in person and online. Activities are governed by the Gambling Act 2005. This Act applies mainly to England, Wales and Scotland and transfers licensing authorities to local authorities from magistrates' courts and is regulated by the 'Gambling Commission'. The sole responsibility of Gambling Commission is to issue and oversee the licensing process and ensure maximum compliance with the above law.<sup>11</sup> In addition to this Act, there are specific laws that set out guidelines for individual sports, such as the Horse Betting and Olympic Lotteries Act 2004, the Gambling (Licensing and Advertising) Act 2008.<sup>12</sup>

### 3.3 Laws in United States of America

In USA, gambling and sports betting were widely considered illegal under the Professional and Amateur Sports Protection Act (PASPA) of 1992, with certain exceptions granted to states such as Oregon, Montana, and Nevada. However, in *Murphy v. National Collegiate Athletic Association*, the Supreme Court concluded that the law was a violation of the 10th Amendment,<sup>13</sup> leaving states to chart their own paths when it comes to gambling and sports betting.<sup>14</sup>

### 3.4 Laws in Australia

---

<sup>10</sup> Council of Europe Convention on the Manipulation of Sports Competitions (CETS No. 215), Council of Europe, available at: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatyid=215> (last visited October 19, 2022).

<sup>11</sup> United Kingdom Online Sports betting laws, ONLINE BETTING, available at: <https://onlinebetting.com/countries/united-kingdom> (Last visited October 19, 2022).

<sup>12</sup> Vishruthi Chauhan, *Gambling laws across the world*, IP LEADERS, (August 17, 2020) available at: [https://blog-ipleaders-in.cdn.ampproject.org/v/s/blog.ipleaders.in/gambling-laws-across-world/?amp=1&gsa=1&js\\_v=a9&usqp=eq331AQKKAFQArABIIACAw%3D%3D#amp\\_tf=From&ampshare=https%3A%2Fblog.ipleaders.in%2Fgambling-laws-across-world%2F](https://blog-ipleaders-in.cdn.ampproject.org/v/s/blog.ipleaders.in/gambling-laws-across-world/?amp=1&gsa=1&js_v=a9&usqp=eq331AQKKAFQArABIIACAw%3D%3D#amp_tf=From&ampshare=https%3A%2Fblog.ipleaders.in%2Fgambling-laws-across-world%2F) (Last visited October 20, 2022).

<sup>13</sup> *Murphy v. National Collegiate Athletic Association*, 584 US \_ (2018).

<sup>14</sup> United States online sports betting laws, ONLINE BETTING, available at: <https://onlinebetting.com/countries/united-states> (last visited October 19, 2022).

Australia has a federal law governing gambling activities and each state has separate gambling regulations. The Interactive Gambling Act of 2001 is a federal law governing gambling activities and provides licensing and regulation for gambling. States in Australia have their own gambling laws, for example Victoria has the Casino Control Act 1991 and the Gambling Regulation Act 2003 etc. Similarly, New South Wales has the Casino Control Act 1992 and the Betting and Racing Act from 1998.<sup>15</sup>

### 3.5 Laws in South Africa

Gambling in South Africa has always been restricted, and the Gambling Act of 1965 made gambling and sports betting completely illegal and unlawful, except for provisions for betting on horse racing. In the 1990s, however, the government took a more lenient approach to gambling and relaxed the ban and issued several licenses.<sup>16</sup> It was in 1996 that the National Gambling Act opened the way for licenses to establish casinos and the National Lottery. The act also established the National Gambling Board, tasked with regulating and overseeing the gambling industry.<sup>17</sup>

### 3.6 Law in Canada

In Canada, gambling and betting of all kinds are considered illegal and are prohibited with certain exceptions. Gambling and betting in the country is regulated and controlled by the Criminal Code of Canada at the federal level. Sections 201-207 provide laws relating to sports betting and gambling. Similar to the US and Australia, Canada allows states to draft their own laws. For example, in New Brunswick, gambling is regulated by the Gaming Control Act, and in Ontario, gambling activities are regulated by the Ontario Lottery & Gaming Corporation Act, 1999.<sup>18</sup>

<sup>15</sup> Vishruthi Chauhan, *Gambling laws across the world*, IPLEADERS, (August 17, 2020); available at: [https://blog-ipleaders-in.cdn.ampproject.org/v/s/blog.ipleaders.in/gambling-laws-across-world/?amp=1&amp\\_gsa=1&amp\\_js\\_v=a9&usqp=mq331AQKKAFQArABIIACAw%3D%3D#amp\\_tf=From&ampshare=https%3A%2F%2Fblog.ipleaders.in%2Fgambling-laws-across-world%2F](https://blog-ipleaders-in.cdn.ampproject.org/v/s/blog.ipleaders.in/gambling-laws-across-world/?amp=1&amp_gsa=1&amp_js_v=a9&usqp=mq331AQKKAFQArABIIACAw%3D%3D#amp_tf=From&ampshare=https%3A%2F%2Fblog.ipleaders.in%2Fgambling-laws-across-world%2F) (Last visited October 20, 2022).

<sup>16</sup> *South Africa online sports betting laws*, ONLINE BETTING, available at: <https://onlinebetting.com/countries/south-africa> (last visited October 20, 2022).

<sup>17</sup> *Online Gambling laws in South Africa*, MAIL & GUARDIAN, (August 31, 2022) available at: <https://mg.co.za/partner-content/2022-08-31-online-gambling-laws-in-south-africa/> (Last visited October 19, 2022).

<sup>18</sup> Vishruthi Chauhan, *Gambling laws across the world*, IPLEADERS, (August 17, 2020) available at: [https://blog-ipleaders-in.cdn.ampproject.org/v/s/blog.ipleaders.in/gambling-laws-across-world/?amp=1&amp\\_gsa=1&amp\\_js\\_v=a9&usqp=mq331AQKKAFQArABIIACAw%3D%3D#amp\\_tf=From&ampshare=https%3A%2F%2Fblog.ipleaders.in%2Fgambling-laws-across-world%2F](https://blog-ipleaders-in.cdn.ampproject.org/v/s/blog.ipleaders.in/gambling-laws-across-world/?amp=1&amp_gsa=1&amp_js_v=a9&usqp=mq331AQKKAFQArABIIACAw%3D%3D#amp_tf=From&ampshare=https%3A%2F%2Fblog.ipleaders.in%2Fgambling-laws-across-world%2F) (Last visited October 20, 2022).

### 3.7 Law in Japan

Gambling is an activity that is traditionally frowned upon in Japanese culture. Most forms of gambling are considered illegal under Chapter 23 of the Japanese Penal Code. The only exceptions to the law are bets against horse racing, cycling, motorcycles and motorboat racing.<sup>19</sup>

## 4. NATIONAL SAFEGUARDS AGAINST SPORTS BETTING AND GAMBLING

### 4.1 Indian Constitution

In the *Constitution of India*, gambling and sports betting come under the List II i.e., State list<sup>20</sup> as entry number 34 whereas entry number 40 under the List I i.e., Union list<sup>21</sup> mentions about the lotteries organised by the government of a state.

### 4.2 Legislations

In India, gambling and sports betting activities are regulated by the *Public Gambling Act* of 1867<sup>22</sup>. The Act criminalizes the public gambling and keeping of common gaming houses. It prescribes imprisonment up to 3 months and fine up to Rs. 200 for the first offence and imprisonment for 6 months and fine up to Rs. 500 for the subsequent offence.

The Gambling and Sports Betting in India is governed by various laws enacted from time to time by the state governments. At present, there is no central legislation governing gambling and sports betting in India. The states have the power to enact their own laws on gambling and sports betting.

However, some of the states have enacted legislation to regulate gambling and sports betting activities. The states of Karnataka and Sikkim have enacted legislation to regulate gambling and sports betting. The Karnataka Police (Amendment) Act, 2021<sup>23</sup> regulates gambling and sports betting in Karnataka. The Sikkim Casinos (Control and Taxation) Act, 2002<sup>24</sup> regulates gambling and sports betting in Sikkim. Gambling and sports betting are also regulated by the local laws of

---

<sup>19</sup> *Japan Online sports betting laws*, ONLINE BETTING, available at: <https://onlinebetting.com/countries/japan> (Last visited October 19, 2022).

<sup>20</sup> INDIA CONST. List 2, State List.

<sup>21</sup> INDIA CONST. List 1, Union List.

<sup>22</sup> The Public Gambling Act, 1867, No. 03, Acts of Parliament, 1867 (India).

<sup>23</sup> The Karnataka Police (Amendment) Act, 2021, No. 37, Karnataka Legislative Assembly, 2021 (Karnataka).

<sup>24</sup> Sikkim Casinos (Control and Taxation) Act, 2002, No. 04, Sikkim Legislative Assembly, 2002 (Sikkim).

the respective states. The Municipal Corporation of Delhi has enacted The Delhi Gambling Act, 1955<sup>25</sup> to regulate gambling and sports betting activities in Delhi.

There are various Central laws which have implications on gambling and sports betting activities in India. The *Prize Chits and Money Circulation Schemes (Banning) Act, 1978*<sup>26</sup> prohibits prize chits and money circulation schemes. The Act prohibits any person from running or promoting any prize chits or money circulation schemes.

The *Income Tax Act, 1961*<sup>27</sup> prescribes the tax on the income from gambling and sports betting activities. The Act provides that the income from gambling and sports betting activities shall be taxed at the rate of 30% of the net profits. Goods and Services Tax (GST) is a value added tax levied on the supply of goods and services. GST applies to gambling and sports betting. GST on gambling and sports betting is 18% of the total bet amount.

Online gambling and sports betting are not expressly prohibited under Indian law. There are no specific laws governing online gambling and sports betting in India. Online gambling and sports betting are governed by the general laws of India.

The *Information Technology Act, 2000* regulates e-commerce in India. The law prohibits the transmission of money through electronic media for the purpose of gambling or sports betting.

In India, gambling and sports betting are conducted in physical premises as well as in the online space. Offline gambling and sports betting are regulated by state laws. Indian laws do not specifically prohibit online gambling and sports betting.

## **5. GAMBLING AS A THREAT TO INTEGRITY**

Sports are entertaining to watch since the outcome cannot be predicted and is dependent on the game's development. Sports betting, a type of gambling, allows viewers to participate with live sports on a new level, making the activity appear to be a lot more fun experience. Sports betting, if allowed without an appropriate regulatory framework, would represent a severe threat to athlete safety and privacy, as well as match-fixing and destroying the game's integrity.

Sports betting poses a threat to the privacy and security of an athlete competing in a sport. An athlete's medical status, fitness and other key factors are taken into consideration for an educated

<sup>25</sup> The Delhi Gambling Act, 1955, No. 09, Delhi State Legislative Assembly, 1955 (NCT of Delhi).

<sup>26</sup> ACT NO. 43 OF 1978 [12<sup>th</sup> December 1978].

<sup>27</sup> Act 43 of 1961.

bet to be made<sup>28</sup>, which requires all the data about the athlete to be made public. The people betting on a sport could go to any extent to gain insider information about the athlete and this possesses a significant threat to the athlete's privacy.

Sports gambling might result in a rise of scandalous activities that lead to actions like match fixing, which involves wilfully fixing the outcome before the match commences in favour of one party. Match fixing can involve a player, a coach, a referee, or any other sports staff, who might have bribed, or threatened by gamblers<sup>29</sup>. The gamblers thereby having the knowledge of the outcome of the game, gamble in the favour of the party that is pre-determined to win and make money easily out of such bets.

Predetermined result games lack the authenticity of true games. Athletes are constantly trying their hardest to win the game, which adds aspects of surprise and pleasure to the game. The player works hard to become in the greatest form possible for the game. Bribing or threatening such passionate and hard-working players to fix the match, gamblers also want to make a qualified bet to turn the odds in their favour, which requires information about the player's physical health, which threatens the player's privacy. Such fraudulent activities in sports can demoralize them and inevitably make them choose other options than the sport they are passionate about. Therefore, it can be concluded that gambling actually threatens the integrity of the sport.

Finally, it may be inferred that both gambling and sports betting are practices of wagering money on the likely outcome of a game, such as which team will win or lose a certain game, but both breach the dignity of sports, and gambling is a danger to the integrity of sports.

To win the bet, participants try to sabotage the game by paying the players, coach, or referee in order to win the bet and obtain an unfair profit, but this eventually damages the game's authenticity. Sports betting has been legalized through some websites and apps, but only to the extent that claimants have to pay tax on a portion of their winnings.

Betting is permissible in sports where talent is required, such as horse racing, where the bettor must guess and stake money by predicting which jockey will win the race, something only a

---

<sup>28</sup> David Zimmerman, *Maintaining the integrity of the game*, Devos Sport Business Management, available at: <https://business.ucf.edu/devos/2019/07/03/maintaining-the-integrity-of-the-game/#:~:text=Sports%20gambling%2C%20if%20not%20properly,the%20largest%20microscope%20of%20doubt> (last visited October 20, 2022).

<sup>29</sup> Jeremy Luke, *Match Manipulation and Gambling in Sport*, SIRCUT, (July 15, 2020), available at: <https://sirc.ca/blog/match-manipulation/> (last visited October 20, 2022).

professional punter or bettor can accomplish. The bettor's prediction here will be based on his understanding of the history of the jockey and the horse as well as the winning statistics of the horse. It will also need knowledge of the horse's breed. When all the information is put together, the bettor may determine which horse will win.

Another common example is cricket betting websites and apps, which require the player to form a team and forecast how well the individual would perform. For example, if a bettor selects Virat Kohli and predicts that he will score up to 100 runs in a certain match, the bettor will win if Virat Kohli scores 100 runs or more in that match. In the preceding scenario, the bettor must be familiar with both the player and the game. While betting is allowed, it is restricted to a few sports and necessitates the bettor's talent and understanding of the sport.

## **6. SUGGESTIONS AND CONCLUSION**

With the rise of virtual gambling, both gambling and sports betting have gained worldwide popularity. As a result, countries' ability to monitor gambling and betting have become more difficult. There are many countries which restrict both the activities, and some who have made gambling legal, but most countries still prohibit sports betting and even some of these criminalize it because it is accepted as an activity that undoubtedly threatens the integrity of sports. Sports betting requires not only passion for the sport, but also a high level of expertise in order to tip the scales in favour of the player. The world of sports betting is not just based on chance. The advantage of betting on matches and other sporting events is that the bettor has a say if he is familiar with the sport he is betting on.

The sports betting industry has evolved alongside sports as a result of globalization and technology, with a clear link between the two. We have seen the influence of sports betting on sports, both beneficial and harmful. It is hard to say what changes sports betting will bring us in the coming years, although there is a feeling that at least for now the waters have calmed down and we should not expect big "surprises" or technological advances like before. But every now and then something new can surprise us that we don't expect.<sup>30</sup>

Sports betting and gambling are considered as a threat but rather it is a very good opportunity to increase the economy and income of the country. With the advancement in technology, it is very difficult to track sports betting in the country, but it is possible to make the process easier by

---

<sup>30</sup> Ioan Turcu, The Impact of The Batting Industry On Sports, 13 (62) Bulletin of the Transylvania University of Brasov, 257 (2020), available at: [https://webbut.unitbv.ro/index.php/Series\\_IX/article/view/157](https://webbut.unitbv.ro/index.php/Series_IX/article/view/157).

legalizing sports betting. As they may suggest, taxes on sports betting organizations and sports betting are a very good opportunity to bring a large economic and financial boost to the country. By legalizing sports betting, it is highly likely that sports betting will be easy to monitor and regulate. Governments may also bring certain policies regarding sports betting where they may place certain restrictions on the organization operating the sports betting. In countries such as Australia and Argentina, where betting is legalized and the government has imposed restrictions as in Argentina, betting is restricted to horse racing only. The country is also working on an online betting system that could be approved after the summer's World Cup. For horse racing, it is only legal at the track or in designated bookmakers, online gambling is not allowed.<sup>31</sup>

To conclude, tackling the problem of sports betting in India is not very difficult. Rather, we need some strong policies and regulations on the lines of countries like USA, UK so that it could be controlled and maintained, and could be restricted in some limits, so as to ensure fair play in sports.

---

<sup>31</sup> Which countries allow gambling on sports? Assessing the impact of betting around the world (February 3, 2023), available at: [https://www.espn.in/espn/story/\\_/id/23518003/which-countries-allow-gambling-sports-assessing-impact-betting-world](https://www.espn.in/espn/story/_/id/23518003/which-countries-allow-gambling-sports-assessing-impact-betting-world).