



D.T.S.S. COLLEGE OF LAW

SANSKAR JUS GENTIUM



VOLUME 1

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[AN ANNUAL RESEARCH JOURNAL]**FOUNDER PRESIDENT****Late Shri Dhirajlal Talakchand Sankalchand Shah**

The Sanskar Sarjan Education Society (1964) has its origin in the tireless efforts of its founder, Late Shri Dhirajlal Talakchand Shah, who worked for social and philanthropic causes through the charitable trust along with a few like-minded friends. His vision was to create an environment where education transcends boundaries and empowers individuals to shape a better tomorrow. The aim was not only to impart knowledge, but also to nurture values, ethics and a sense of responsibility among the students. He firmly believed that education is not just acquiring information, it is about fostering holistic development. It is about equipping our young minds with the tools they need to excel academically, socially and morally. The mission of the members of the society was to provide quality education, to the underprivileged children of the society, an economically backward area in Malad (East), suburb of Mumbai - 400097.

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ABOUT D.T.S.S. COLLEGE OF LAW



The Sanskar Sarjan Education Society, established in 1964, started D.T.S.S. College of Law in 2018 under the auspice of Founder President Late Shri Dhirajlal Talakchand Sankalchand Shah, who worked for social and philanthropic causes through the charitable trust along with a few like-minded friends. His vision was to create an environment where education transcends boundaries and empowers individuals to shape a better tomorrow. The aim was not only to impart knowledge, but also to nurture values, ethics and a sense of responsibility among the students. He firmly believed that education is not just acquiring information, it is about fostering holistic development and also equipping our young minds with the tools they need to excel academically, socially and morally. This mission of the members of the society is to provide quality education, to the underprivileged children of the society, an economically backward area in Malad (East), Mumbai.

The D.T.S.S. College of Law is the newest addition to the Sanskar Sarjan Group of Institutions. Since the inception, the institutions have metamorphosed from a modest building to a sprawling impressive structure complete with all modern equipment and amenities which make them truly self-sufficient.

The college caters to the educational needs of the neglected and underprivileged students of Kurar village. Once an underdeveloped, backward area, Kurar village is now a “Centre of Learning” solely due to the institutions. A dedicated management and staff have brought about an immense change in the attitude and outlook of its student population. Students are trained in academics as well as co-curricular activities. Ethics, morals and values are steadily inculcated in them through the teaching-learning process.

The college aims to be universally respected institution making quality the defining element of knowledge of education, sculpting principles & inspiring students to become good human being spreading prosperity, peace, harmony & happiness around.



FACULTIES AT D.T.S.S. COLLEGE OF LAW



Dr. M. S. Kurhade

Principal & Campus Director

M.A., D.H.E., M.Phil., LL.M. & Ph.D.

Sir is associated with Sanskar Sarjan Education Society's D.T.S.S. College of Commerce since 2004 and is a Research Guide in Philosophy, University of Mumbai and since 2003 he is also a President of Association of Non-Government Colleges (A.N.G.C.), University of Mumbai. He was the Dean, Faculty of Humanities, University of Mumbai in 2016 and also, I/c Registrar of University of Mumbai. Sir, is a recipient of various awards such as Best Teachers Award, Asthagandha Award, Samaj Ratna Award, Excellence in Higher Education (National Award), JMF Rashtrajyot Puraskar, Indira Gandhi Sadbhavna Award, Vidya Ratna Award, JMF Rashtrajyot Puraskar (National Award), Maharashtra State Marathi Patrakar Sangh Gaurav Puraskar, Award of Excellancia, Best Principal Award etc. He is also associated with various Statutory Authorities/Bodies of University of Mumbai. He has written more than 60 articles and has published around 10 Books covering various domains. He was Officer on Special Duty (O.S.D.) at University of Mumbai between 2010-2012. He is a Member of Board of Examinations and Evaluation, Academic Council, Senate and Management Council of University of Mumbai.

**Dr. Rita Bansal**

In-Charge Principal

Ph.D. (Law), LL.M. (Human Rights) & M.Com.

Gold Medalist (Law)

Recipient of 02 Gold Medals in Law from S.N.D.T. Women's University, Juhu, she has an academic experience of 10.5 years and professional experience of 28 years. She is recipient of "Shaksheeyat" Award in 2016 at the Constitution Club of India, New Delhi on the occasion of Women's Day and is also a life member of International Council of Jurists, London. Recipient of "Best Icon Principal Award" from Dadasaheb Phalke Icon Award Films Organization (DPIAF) Mumbai. She was the Chairperson at the National Conference on 'Legal Framework for Disaster Response and Sustainability: Challenges and Opportunities' organized by University of Mumbai. She is on the Board of Studies (Business Law) of Tolani College of Commerce, Andheri. She has conducted 73 sessions as guest speaker/subject expert and attended 127 National Conferences and 17 International Conferences. 6 Students have been awarded Ph.D. under her co-guideship. She has written 28 research articles and 6 Book Chapters on various topics in Law.

**Dr. Tahira Siddique**

Assistant Professor

Ph.D. (Law) and LL.M., Diploma in H.R.

Has 13 years of practice experience in Civil and Criminal Litigation before Hon'ble Bombay High Court and is into academics since 2020. She has assisted Standing Council of State Human Rights Commission. She has written around 06 articles. She has conducted around 13 sessions as guest speaker/subject expert.

**Adv. Violet Almeida**

Visiting Faculty

Advocate, Bombay High Court

Has completed LL.M. (Human Rights) from S.N.D.T. Women's University, Juhu, Mumbai. Into Practice in Civil Matter since 2014 and taking lectures in various Law Colleges in Mumbai since 2014 as a visiting faculty.

**Adv. Priyanka Koshy**

Visiting Faculty

Advocate, Bombay High Court

Recipient of a Gold Medal in Law, completed LL.M. (Business Law) from S.N.D.T. Women's University, Juhu, Mumbai. Into Practice for 12 years and taking lectures in various Law Colleges in Mumbai since 2013 as a visiting faculty.

**Adv. Bhakti Galiya**

Visiting Faculty

Advocate, Bombay High Court

LL.M. (Human Rights), LL.S. LL.B., Diploma in Cyber Laws

She is a certified Grass Roots Football Coach. She completed LL.M. (Business Law) from S.N.D.T. Women's University, Juhu, Mumbai and has been taking lectures in various Law Colleges in Mumbai as a visiting faculty.

**Adv. Vibhuti Agrawal**

Visiting Faculty

Advocate, Bombay High Court

National Level Pisto Shooter

LL.M.(IPR), B.M.M. & Pursuing Ph.D. from NIMS, Rajasthan

National Level Pistol Shooter in 10M (air), 25M & 50M (Firearms) and has won Gold Medals at State, Zone and National levels and now aims to hit Gold at the Olympics one day. Recipient of 02 Gold Medals in Law from S.N.D.T. Women's University, Juhu. Has completed her LL.M. (Intellectual Property Law) from S.N.D.T. Women's University, Juhu, Mumbai. She is also a communications professional, Reiki Healer and a Graphologist (Handwriting Analyst). She has been felicitated by the Lokmat Group and Hastaksharr for her contributions to the legal industry. She is into Practice since 2017 and is associated with various colleges in Mumbai as visiting faculty.

**Ms. Sanskruti Joshi**

Psychologist

She is a practising psychologist. As a college Counsellor, she actively engages with students utilising the EMDR approach for trauma healing. Proficient in psychometric assessment and counselling, she combined EMDR with play therapy and mindfulness approach. Her experience includes working at private clinics, schools, NGOs, hospitals and institutions for children with special needs. She makes contributions to mental health awareness by writing articles about trauma and EMDR therapy in community newspapers.

**Dr. Raksha Vadhaiya**

Assistant Professor

Ph.D. (Philosophy), M.Phil. (Philosophy), M.A. (Philosophy) & B.Com.

Into teaching since 2004 and is a Yoga Teacher. Has published 15 research articles and is a recipient of various Awards such as Prashashti Patra, Abhinandna Pramanapatra, Certificate of Honour (R.S.P.) etc. She is a Founder Member of “Aadeeyoga Foundation”.

**Mr. Nagaraju Kanduri**

Visiting Faculty

M.Com., LL.B.

**Dr. Jyoti Panickar**

Assistant Professor

Ph.D. (Law), LL.M.

**Ms. Bhranti Desai**

Assistant Professor

LL.M.

Foreword by the President Sanskar Sarjan Education Society

Dear Readers,

It is with great pleasure and immense pride that I extend my warmest greetings to the readers of the inaugural issue of the D.T.S.S. College of Law E-Journal “*Sanskar Jus Gentium*”.

As we venture into the digital realm with this publication, we embrace a new era of scholarly discourse and legal exploration. The field of law is dynamic and ever-evolving, and it is crucial for academic institutions to foster an environment that promotes dialogue, critical thinking, and the dissemination of knowledge. The establishment of “*Sanskar Jus Gentium*” is a testament to our commitment to providing a platform for the exchange of ideas among our vibrant academic community.

In the pages that follow, you will find a collection of articles, research papers, and commentaries contributed by our esteemed faculties, dedicated students, and distinguished legal professionals. The topics covered reflect the diverse and multifaceted nature of the legal landscape, encompassing both traditional and contemporary issues. It is our hope that these writings will inspire thought, encourage debate, and contribute to the intellectual enrichment of our readers.

I would like to express my gratitude to the editorial team and all those who have worked tirelessly to bring this e-journal to fruition. Their dedication and enthusiasm are commendable, and I am confident that this publication will become a cornerstone of our academic legacy.

As we embark on this exciting journey, let us embrace the opportunities that technology affords us in advancing legal scholarship. May “*Sanskar Jus Gentium*” serve as a medium through which ideas are shared, perspectives are broadened, and the pursuit of knowledge is nurtured.

I extend my best wishes to the contributors, editors, and the students. May this be the first of many enlightening and enriching editions to come.

Warm regards,

Praful D. Shah

Foreword by the Vice-President Sanskar Sarjan Education Society

Dear Readers,

It is with immense pleasure and a sense of accomplishment that I extend my heartfelt greetings for the inaugural issue of our e-journal "*Sanskar Jus Gentium*". I am delighted to witness the fruition of our collective efforts in launching this platform for scholarly discourse and intellectual engagement.

In the dynamic and ever-evolving field of law, staying abreast of the latest developments, groundbreaking research, and insightful analyses is paramount. With this understanding, we have envisioned "*Sanskar Jus Gentium*" as a repository of knowledge, a forum for exchanging ideas, and a catalyst for fostering academic excellence. The diverse and thought-provoking articles featured in this first issue cover a spectrum of legal disciplines, reflecting the depth and breadth of our academic community. From constitutional law to commercial law, from human rights to environmental law, each contribution showcases the rigorous scholarship and innovative thinking that defines our institution.

I would like to express my gratitude to the dedicated editorial team, faculty members, and student contributors who have worked assiduously to bring "*Sanskar Jus Gentium*" to fruition. Their commitment to intellectual inquiry and the pursuit of excellence is evident in the quality of the articles presented. As we embark on this journey of knowledge dissemination, I encourage all stakeholders—students, faculty, legal practitioners, and researchers—to actively engage with the content, contribute their insights, and participate in the vibrant academic dialogue that this e-journal seeks to foster.

May this publication serve as a beacon of inspiration, sparking intellectual curiosity and promoting a culture of academic excellence within our legal community.

Wishing you an enlightening and enriching reading experience.

Sincerely,

Devendra J. Shah

Foreword by the Hon. Secretary Sanskar Sarjan Education Society

Dear Readers

It is with immense pleasure and pride that I extend my warm greetings to all the contributors, readers, and well-wishers on the occasion of the inaugural issue of the D.T.S.S. College of Law E-Journal “*Sanskar Jus Gentium*”.

As we step into the digital realm with “*Sanskar Jus Gentium*”, we embark on a journey of academic exploration, intellectual discourse, and the dissemination of knowledge. The field of law is dynamic, ever-evolving, and deeply intertwined with the societal changes we witness. The “*Sanskar Jus Gentium*” serves as a platform for our scholarly community to engage in thoughtful discussions, share insights, and contribute to the legal discourse that shapes our understanding of justice and governance.

D.T.S.S. College of Law has always been committed to providing a conducive environment for legal education and research. “*Sanskar Jus Gentium*” is an extension of that commitment, offering an avenue for students, faculty, and legal practitioners to showcase their research, analyses, and perspectives on a diverse range of legal issues.

In this first issue, you will find a collection of articles and research papers that reflect the depth and breadth of legal scholarship. The topics covered span across various branches of law, demonstrating the interdisciplinary nature of legal studies. I would like to express my gratitude to the editorial team, authors, and reviewers for their dedicated efforts in bringing “*Sanskar Jus Gentium*” to fruition. Their hard work and commitment have been instrumental in shaping this platform into a valuable resource for legal scholarship.

As we launch “*Sanskar Jus Gentium*”, we look forward to continuous growth and evolution. We invite all members of the legal community to actively participate in this academic endeavour by submitting their research, insights, and critiques for future issues. I hope you find this inaugural issue of the D.T.S.S. College of Law E-Journal “*Sanskar Jus Gentium*” both enlightening and inspiring.

Warm regards,

Satish Shah

Foreword by the Hon. Secretary Sanskar Sarjan Education Society

Dear Readers,

It is with great pleasure and a sense of accomplishment that I extend my warm greetings to all the readers and contributors of the inaugural issue of “*Sanskar Jus Gentium*” an e-journal of D.T.S.S. College of Law. As we navigate through the realms of legal education, our commitment to fostering intellectual discourse and scholarly engagement has always been paramount. This e-journal stands as a testament to our dedication to providing a platform for the exchange of ideas and the dissemination of legal knowledge.

In the dynamic and ever-evolving field of law, staying abreast of current legal trends and issues is imperative. This e-journal serves as a conduit for the expression of diverse perspectives, scholarly research, and innovative ideas within the legal community. It is a collaborative effort that brings together the insightful contributions of legal scholars, practitioners, and students alike.

The articles featured in this issue span a wide spectrum of legal disciplines, reflecting the interdisciplinary nature of contemporary legal studies. Each piece is a testament to the intellectual curiosity and rigorous research undertaken by our contributors. We hope that the content within these virtual pages sparks intellectual curiosity, encourages critical thinking, and contributes to the broader legal discourse.

I would like to express my heartfelt gratitude to the editorial team for their tireless efforts in curating and presenting this collection. Their commitment to maintaining the highest standards of academic excellence is evident in the diverse and thought-provoking content showcased in this e-journal. To the contributors, I extend my sincere appreciation for your dedication to advancing legal scholarship.

As we embark on this journey with our first issue, I am confident that this e-journal will evolve into a respected platform for legal scholarship, creating a space where ideas are nurtured, and knowledge is shared.

Thank you for your support, and I look forward to witnessing the continued growth and success of the D.T.S.S. College of Law e-journal.

Sincerely,

Parin P. Shah,

Foreword by the Hon. Secretary Sanskar Sarjan Education Society

Dear Readers,

It is with immense pleasure and a sense of accomplishment that I extend my heartfelt greetings to the esteemed readers, contributors, and supporters on the auspicious occasion of the launch of our much-awaited initiative – the Law e-Journal, a testament to our unwavering commitment to fostering legal scholarship and intellectual discourse. In an era characterized by rapid technological advancements and dynamic societal transformations, the need for accessible and insightful legal resources is more critical than ever. This electronic journal aspires to be a dynamic repository of knowledge, facilitating a cross-pollination of ideas that transcends geographical boundaries and encourages a global dialogue on legal issues.

I would like to express my sincere gratitude to the editorial team, contributors, and everyone involved in bringing this vision to life. Their dedication and intellectual prowess have played a pivotal role in shaping the e-Journal into a robust forum for legal scholarship. I am confident that the journal will serve as a beacon of intellectual enlightenment for legal enthusiasts, practitioners, and scholars alike.

As we embark on this exciting journey, I invite you all to engage wholeheartedly with the e-Journal. May it be a source of inspiration, knowledge, and dialogue, fostering a deeper understanding of the intricacies of law and its profound impact on society.

Wishing the e-Journal a resounding success and looking forward to the rich contributions it will undoubtedly elicit from the legal fraternity.

Sincerely,

Dinendraprasad Joshi

Foreword by the Treasurer Sanskar Sarjan Education Society

Dear Readers,

It is with great pleasure and enthusiasm that I extend my warm greetings to you on the release of the inaugural issue of the e-journal “*Sanskar Jus Gentium*” of D.T.S.S. College of Law. I am honoured to witness the realization of our commitment to fostering intellectual discourse and scholarly engagement within the legal community. In the dynamic landscape of legal education, the significance of staying abreast of emerging trends, critical analyses, and innovative perspectives cannot be overstated. “*Sanskar Jus Gentium*” stands as a testament to our dedication to providing a platform for the exchange of ideas, promoting research excellence, and contributing to the intellectual growth of our students, faculty, and the legal fraternity at large.

The diverse and insightful articles featured in this inaugural issue reflect the dedication and intellectual prowess of our contributors. The range of topics covered, from jurisprudential analyses to contemporary legal issues, showcases the depth and breadth of legal scholarship within our academic community. Our commitment to excellence in legal education goes hand in hand with our mission to contribute meaningfully to the legal discourse shaping our society. This e-journal, with its blend of theoretical insights and practical applications, embodies our pursuit of knowledge that transcends traditional boundaries.

I extend my heartfelt congratulations to the editorial team, authors, and everyone involved in bringing “*Sanskar Jus Gentium*” to fruition. I am confident that this platform will evolve into a dynamic space for legal scholarship, providing a voice to the diverse perspectives that enrich our understanding of law and its impact on society.

As we embark on this journey of intellectual exploration, I encourage readers to engage actively with the content, share their thoughts, and contribute to the ongoing dialogue. Together, let us build a community that thrives on the exchange of ideas, fostering a culture of learning and inquiry.

Thank you for your support, and I look forward to witnessing the continued growth and success of the D.T.S.S. College of Law e-journal.

Warm regards,

Amit D. Kothari

Foreword by the Member Sanskar Sarjan Education Society

Dear Readers,

It is with immense pleasure and pride that I extend a warm welcome to all the contributors, readers, and well-wishers of DTSS College of Law on the occasion of the launch of our inaugural e-journal “*Sanskar Jus Gentium*”.

D.T.S.S. College of Law has always stood as a beacon of legal education, committed to nurturing young minds and fostering a culture of academic excellence. In our relentless pursuit of knowledge and innovation, the idea of an e-journal emerged as a platform to showcase the scholarly pursuits and intellectual acumen of our students, faculty, and the wider legal community.

This maiden issue of the e-journal is a testament to the dedication and hard work put in by our contributors. It is a reflection of the diverse perspectives, insightful analyses, and rigorous research that define the academic ethos of our institution. As we navigate the dynamic landscape of law and its myriad facets, “*Sanskar Jus Gentium*” serves as a testament to our commitment to staying at the forefront of legal discourse.

Our institution has always embraced change and innovation, and the launch of this e-journal is a stride towards a digital future where knowledge knows no boundaries. Through this platform, we aim to bridge the gap between academia and practice, encouraging a dialogue that transcends classrooms and courtrooms.

I express my gratitude to the editorial team, faculty advisors, and the contributors who have played a pivotal role in bringing this vision to fruition. Their dedication and enthusiasm have truly made this e-journal a repository of the ongoing conversation. Let “*Sanskar Jus Gentium*” be a catalyst for intellectual growth, fostering a community of learners who are not just well-versed in the law but are valuable insights and perspectives.

I wish the e-journal team and all contributors continued success in their academic and professional pursuits.

Warm regards,

Geeta N. Malkan

Foreword by the Member Sanskar Sarjan Education Society

Dear Readers,

It gives me immense pleasure to welcome you to the inaugural issue of the e-journal “*Sanskar Jus Gentium*” of D.T.S.S. College of Law. As a proud member of the management team, I am delighted to witness this significant milestone in our academic journey.

In the rapidly evolving landscape of legal education and practice, it is imperative for educational institutions to embrace technological advancements and innovative platforms. The launch of our e-journal reflects our commitment to providing a dynamic and accessible forum for scholarly discourse, a space where ideas can flourish and contribute to the legal discourse of our times. “*Sanskar Jus Gentium*” is a testament to the intellectual vibrancy of our academic community. It is a culmination of the dedicated efforts of our students, faculty, and researchers who have passionately contributed their insights, analyses, and research findings. The diversity of topics covered in this issue underscores the broad spectrum of legal disciplines that our college is committed to nurturing.

At D.T.S.S. College of Law, we believe that knowledge creation and dissemination are integral to the educational process. The e-journal serves as a bridge between the academic realm and the practical world, providing a platform for the exchange of ideas that are both timely and relevant. As we embark on this journey, we encourage our readers to engage with the content, challenge perspectives, and contribute to the ongoing dialogue in the legal community.

I extend my sincere appreciation to the editorial team, whose dedication and hard work have brought this e-journal to fruition. Their commitment to maintaining academic excellence and integrity is evident in the quality of the articles presented in this issue.

As we launch this e-journal, we look forward to fostering a culture of continuous learning, critical thinking, and scholarly excellence. I am confident that this platform will serve as a catalyst for intellectual growth and contribute significantly to the legal scholarship emanating from our esteemed institution.

Thank you for your support, and I hope you find the contents of “*Sanskar Jus Gentium*” both informative and thought-provoking.

Best regards,

Krupali Praful Shah

Foreword by the Member Sanskar Sarjan Education Society

Dear Readers,

It is with immense pleasure and pride that I extend a warm welcome to the readers of the inaugural issue of the e-journal “*Sanskar Jus Gentium*” of D.T.S.S. College of Law. As we venture into the realm of digital scholarship, this electronic platform provides us with a unique opportunity to disseminate knowledge, foster academic discourse, and showcase the intellectual prowess of our esteemed institution.

D.T.S.S. College of Law has always been at the forefront of legal education, emphasizing not only the mastery of legal principles but also the application of these principles in the dynamic and ever-evolving legal landscape. In our pursuit of excellence, the launch of this e-journal is a significant milestone, amplifying our commitment to scholarly research and the dissemination of cutting-edge legal perspectives.

“*Sanskar Jus Gentium*” will serve as a forum for our faculty, students, and legal scholars to contribute to the discourse on various legal issues. In these pages, you will find a diverse array of articles, research papers, and case commentaries spanning across different branches of law. The intention is to create a space where ideas can be exchanged, perspectives can be challenged, and knowledge can be advanced. In the fast-paced world of today, where information knows no boundaries, “*Sanskar Jus Gentium*” is a testament to our adaptability and our embrace of technology to enhance the educational experience.

I would like to express my gratitude to the editorial team for their meticulous efforts in curating and refining the content of this journal. Their commitment to maintaining high academic standards and promoting rigorous scholarship is evident in the pages that follow.

As we embark on this journey into the digital realm of legal scholarship, I encourage all stakeholders - students, faculty, and the wider legal community - to actively engage with the content, contribute their insights, and make “*Sanskar Jus Gentium*” a vibrant platform for intellectual exchange. I hope “*Sanskar Jus Gentium*” sparks intellectual curiosity, stimulates thoughtful discussions, and becomes a source of inspiration for all those who seek to explore the diverse and intricate facets of the law.

Best Wishes,

Dilip Shah

Foreword by the Campus Director



Dear Students and Faculty Members,

I am thrilled and deeply honoured to pen this foreword for the inaugural edition of “*Sanskar jus gentium*”, an e-journal of the D.T.S.S. College of Law. It is a momentous occasion as we come together to celebrate the fruition of a collective vision—a vision that has transformed into reality through the dedicated efforts of our students and faculty.

The launch of this e-journal signifies a significant milestone in the journey of our institution. It not only underscores our commitment to academic excellence but also showcases the remarkable synergy that exists within our academic community. I extend my heartfelt gratitude and admiration to each and every individual who played a role in making this dream come true.

First and foremost, I want to express my profound appreciation to our diligent and passionate students who have poured their time, energy, and intellect into the creation of this e-journal. Your contributions, whether through research papers, articles, or editorial work, reflect your commitment to academic excellence and your desire to make a lasting impact in the field of law. This e-journal stands as a testament to your dedication and scholarly prowess.

To our esteemed faculty members, I extend my warmest appreciation for your unwavering guidance and mentorship. Your commitment to nurturing the talents and intellectual curiosity of our students is evident in the quality of work presented in this e-journal. Your support in overseeing the editorial process and providing invaluable insights has been instrumental in ensuring the high standards of scholarship reflected in these pages.

The birth of this e-journal is not just a culmination of efforts; it is the beginning of a new era in our academic journey. It is a platform where ideas, knowledge, and legal insights will flow freely, contributing to the intellectual discourse within our college and beyond. It is a testament to the dynamism of our institution and our readiness to embrace innovation in legal education. As we embark on this exciting venture, I urge all members of our academic

community to use this e-journal as a source of inspiration and a catalyst for further exploration. Let it serve as a reminder of the heights we can reach when we work together with passion, dedication, and a shared commitment to excellence.

I look forward to witnessing the continued growth and impact of the D.T.S.S. College of Law e-journal in the years to come. It is my hope that it will not only be a repository of knowledge but also a reflection of the collective spirit and intellectual vibrancy of our institution.

I extend my sincere gratitude to the Management for their visionary leadership and unwavering support. Your co-operation has enabled us to take this significant step toward shaping the future of legal education at D.T.S.S. College of Law. I also extend sincere thanks to everyone who has contributed to the success of this endeavour. Your efforts have set a benchmark for what can be achieved when a community comes together with a shared vision and purpose. Congratulations on the launch of the first edition of the D.T.S.S. College of Law e-journal. I am proud of what we have accomplished together, and I eagerly anticipate the remarkable contributions that lie ahead.

With warm regards,

Dr. M.S. Kurhade,

Foreword by the Editor



Dr. Rita Bansal
In-Charge Principal
D.T.S.S. College of Law
Mumbai.

Dear Readers,

It is with great pleasure and enthusiasm that I welcome you to the first edition of “*Sanskar jus gentium*”, an e-journal of D.T.S.S. College of Law. As the editor, I am honoured to introduce you to this diverse and thought-provoking collection of articles, essays and research papers that showcase the intellectual prowess and commitment to excellence of our students, faculty and contributors.

Our e-journal serves as a platform for the exchange of legal knowledge, critical analysis and scholarly exploration. It is a testament to our institution’s dedication to fostering a culture of academic inquiry and engagement within the field of Law. In this edition, you will find a wide range of topics, spanning various areas of Law, each shedding light on pertinent issues and emerging trends in the legal landscape.

The legal profession is ever-evolving, and as such, it is crucial for aspiring legal minds to remain up-to-date with the latest developments. This e-journal is a valuable resource for not only our college community but also for legal enthusiasts and practitioners. We aim to provide a platform for the dissemination of knowledge that promotes a deeper understanding of the Law and its implications on society.

As you navigate through the various articles and essays in this edition, I encourage you to engage with the ideas presented, challenge your perspectives, and spark meaningful conversations. The study of law is not just about memorizing statutes; it is about critical thinking, legal reasoning, and the pursuit of justice. It is our hope that this e-journal will inspire you to explore these aspects of the legal field with curiosity and dedication.

I extend my heartfelt gratitude to our students who have dedicated their time and expertise to make this journal possible. Their hard work and dedication are truly commendable and it is through their contributions that we are able to offer you this insightful collection.

I also extend my heartfelt gratitude and appreciation to the Management and Dr. M.S. Kurhade, Director of D.T.S.S. College for their unwavering support and co-operation in the

inception of the e-Journal. Your visionary leadership and commitment to fostering academic excellence have been instrumental in making this e-Journal a reality.

We hope that you find this publication informative, thought-provoking, and inspiring and we look forward to your continued involvement in our academic community.

Thanks & regards,

Dr. Rita Bansal

Foreword by Co – Editor



Dr. Tahira Siddique Deulkar
Assistant Professor
D.T.S.S. College of Law
Mumbai.

Dear Readers,

It is with immense pleasure and gratitude that we welcome you to the inaugural edition of the D.T.S.S. College of Law e-journal. This momentous occasion marks a significant milestone in our academic journey, and it would not have been possible without the tireless efforts and unwavering support of our students, faculties, and the visionary leadership of the college's management. The creation of this e-journal has been a labour of love—a collective endeavour fuelled by the shared passion for legal scholarship and the pursuit of excellence. We, the co-editors, have had the privilege of witnessing firsthand the dedication, enthusiasm, and intellectual curiosity that permeates our college's academic community.

First and foremost, we wish to extend our deepest appreciation to our outstanding students. Your commitment to rigorous research, critical analysis, and thoughtful writing is evident in the diverse and thought-provoking content within these pages. Your contributions have not only enriched the e-journal but have also set a high standard for future editions. We are immensely proud of your accomplishments and your willingness to embrace the scholarly journey.

To our esteemed colleagues and specially Dr. Rita Bansal, the editor of “*Sanskar jus gentium*”, we extend our heartfelt thanks for their unwavering guidance and mentorship. Your commitment to nurturing the talents and intellectual curiosity of students has been instrumental in ensuring the academic rigour and quality of the e-journal.

We once again thank the Management and Dr. M.S. Kurhade, Principal, D.T.S.S. College of Law for their unwavering support, thereby paving way for starting this e-Journal as a platform for the exchange of legal knowledge and ideas. We are profoundly grateful for your co-operation and for providing the resources and infrastructure necessary for this endeavour.

“*Sanskar jus gentium*” is not just a publication; it is a testament to our commitment to fostering critical thinking, legal reasoning and scholarly exploration within our college and

beyond. We are excited to witness the continued growth and impact of the “*Sanskar jus gentium*” in the years to come.

Thanking you,

Dr. Tahira Siddique Deulkar

Foreword by Student Editors

We are thrilled to present to you the inaugural edition of the eJournal of the D.T.S.S. College of Law. This endeavour would not have been possible without the unwavering support and encouragement from our esteemed management, Dr. M. S. Kurhade, Principal & Campus Director and Dr. Rita Bansal, I/c Principal. Their vision and commitment to innovation have inspired us to venture into the digital realm and create this platform for scholarly discourse. We hope that this eJournal serves as a valuable resource for our students, faculty, and the wider legal community, fostering intellectual exchange and promoting academic excellence. Thank you for your continued support, and we look forward to your engagement with our publication.

We hope that this platform will serve as a forum for intellectual exchange, creativity, and collaboration within our college community. From thought-provoking articles to insightful research, we aspire to showcase the diverse talents and perspectives of our fellow students. Thank you for joining us on this exciting venture, and we look forward to your continued support as we embark on this new chapter together.

Sincerely,

[Student Committee]

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ARTIFICIAL INTELLIGENCE AND ITS IMPACT ON LEGAL DISCOURSE IN INDIA

Introduction:

Artificial Intelligence (AI) has emerged as a transformative force across various sectors, including the legal industry. In India, the adoption of AI technologies in the legal domain is gaining momentum, revolutionizing traditional practices and reshaping the landscape of legal discourse. This article explores the profound impact of AI on legal processes, challenges, and opportunities it presents, and the implications for stakeholders in the Indian legal system¹. Artificial Intelligence (AI) is a branch of computer science that focuses on creating systems or machines capable of performing tasks that typically require human intelligence. These tasks include reasoning, learning, problem-solving, perception, understanding natural language, and interacting with the environment. The goal of AI is to develop algorithms and models that enable machines to exhibit intelligent behaviour and mimic human cognitive abilities². There are several key concepts and components that form the foundation of Artificial Intelligence:

1. Machine Learning: Machine Learning is a subset of AI that focuses on enabling computers to learn from data without being explicitly programmed. Machine learning algorithms analyse large datasets to identify patterns, make predictions, and improve performance over time through experience. Supervised learning, unsupervised learning, and reinforcement learning are common approaches in machine learning³.
2. Neural Networks: Neural networks are a computational model inspired by the structure and function of the human brain. They consist of interconnected nodes

¹ <https://bwlegalworld.businessworld.in/article/Transforming-Effects-Of-AI-In-Legal-Sector-What-Experts-Say-/23-01-2024-507229/>

² <https://www.brookings.edu/articles/how-artificial-intelligence-is-transforming-the-world/>

³ <https://www.ibm.com/topics/machine-learning>

(neurons) organized in layers, with each layer processing and transforming input data to generate output. Deep learning, a subset of neural networks, uses multiple layers of neurons to extract hierarchical features and learn complex representations from data⁴.

3. Natural Language Processing (NLP): Natural Language Processing is a subfield of AI focused on enabling computers to understand, interpret, and generate human language. NLP algorithms analyse text and speech data to perform tasks such as language translation, sentiment analysis, text summarization, and question answering⁵.
4. Computer Vision: Computer Vision is the field of AI concerned with enabling computers to interpret and analyse visual information from images or videos. Computer vision algorithms can recognize objects, detect patterns, and extract meaningful insights from visual data. Applications include facial recognition, object detection, image classification, and autonomous driving⁶.
5. Robotics: Robotics combines AI, machine learning, and sensor technologies to create autonomous or semi-autonomous robots capable of performing physical tasks in real-world environments. Robots can be programmed to navigate, manipulate objects, interact with humans, and adapt to changing conditions, making them useful in various industries such as manufacturing, healthcare, and logistics⁷.
6. Expert Systems: Expert Systems are AI programs designed to emulate the decision-making abilities of human experts in specific domains. They use knowledge representation, inference engines, and rule-based reasoning to analyse data, make recommendations, and solve complex problems. Expert systems are widely used in fields such as medicine, finance, and engineering⁸.

Artificial Intelligence encompasses a diverse range of techniques, algorithms, and applications aimed at creating intelligent systems that can perceive, reason, learn, and act autonomously in pursuit of solving complex tasks and problems. As AI continues to advance,

⁴ <https://www.ibm.com/topics/neural-networks>

⁵ <https://www.ibm.com/topics/natural-language-processing>

⁶ <https://azure.microsoft.com/en-us/resources/cloud-computing-dictionary/what-is-computer-vision#object-classification>

⁷ <https://www.techtarget.com/whatis/definition/robotics#:~:text=Robotics%20is%20a%20branch%20of,on%20a%20number%20of%20forms.>

⁸ <https://www.javatpoint.com/expert-systems-in-artificial-intelligence>

its impact on society, economy, and everyday life is expected to grow exponentially, shaping the future of human-machine interaction and redefining the boundaries of what is possible with technology⁹.

Impact on Legal Processes:

AI-powered tools and algorithms are streamlining legal processes, enhancing efficiency, and reducing costs. Tasks such as legal research, contract analysis, and document review, which were once time-consuming and labour intensive, are now being automated with the help of AI. Natural Language Processing (NLP) algorithms enable machines to comprehend and analyse vast volumes of legal texts, leading to quicker and more accurate outcomes. Moreover, predictive analytics and machine learning algorithms empower lawyers to anticipate legal outcomes, assess risks, and make informed decisions¹⁰.

The impact of Artificial Intelligence (AI) on legal processes in India is significant and multifaceted, transforming various aspects of the legal profession. AI technologies are being increasingly adopted by law firms, legal departments, and judicial bodies to streamline operations, enhance efficiency, and improve access to justice. Below are several ways in which AI is influencing legal processes in India:

1. **Legal Research:** AI-powered legal research platforms, such as ROSS Intelligence, Case text, and LexisNexis, are revolutionizing the way lawyers conduct legal research. These platforms leverage natural language processing (NLP) algorithms to analyse vast volumes of case law, statutes, regulations, and legal literature, enabling lawyers to find relevant precedents, statutes, and legal arguments more quickly and accurately. For example, AI-based legal research tools can assist lawyers in identifying relevant case law, statutes, and legal commentary related to specific legal issues, saving time and reducing the risk of overlooking important sources¹¹.
2. **Contract Analysis and Management:** AI technologies are being used to automate contract analysis and management processes, enabling organizations to review, draft, and manage contracts more efficiently. AI-powered contract analysis tools, such as Kira Systems and eBrevia, use machine learning

⁹ <https://timesofindia.indiatimes.com/readersblog/mywriteexpress/artificial-intelligence-unleashing-the-power-of-innovation-56241/>

¹⁰ <https://www.javatpoint.com/expert-systems-in-artificial-intelligence>

¹¹ <https://bwlegalworld.businessworld.in/article/Transforming-Effects-Of-AI-In-Legal-Sector-What-Experts-Say-/23-01-2024-507229/>

algorithms to extract key clauses, terms, and provisions from contracts, identify potential risks and discrepancies, and facilitate contract negotiations and due diligence processes. For example, AI-based contract analysis tools can help lawyers review and analyse large volumes of contracts in a fraction of the time it would take manually, enabling them to focus on higher-value legal tasks¹².

3. Document Review and Discovery: AI-powered document review and discovery tools are transforming the way legal teams handle e-discovery in litigation and regulatory investigations. These tools use machine learning algorithms to analyse and categorize documents, identify relevant information, and prioritize documents for review by human reviewers. For example, AI-based document review platforms, such as Relativity and Catalyst, can process and analyse millions of documents to identify key issues, patterns, and trends, reducing the time and cost associated with manual document review¹³.
4. Predictive Analytics and Case Outcome Prediction: AI technologies are enabling lawyers to predict legal outcomes, assess case risks, and make informed decisions based on data-driven insights. Predictive analytics tools, such as Lex Machina and Premonition, analyse historical case data, judge rulings, and legal precedents to predict the likely outcome of legal disputes and identify potential strategies for litigation or settlement. For example, AI-based predictive analytics tools can help lawyers assess the likelihood of success in court, evaluate the strength of legal arguments, and anticipate potential challenges or obstacles in a case¹⁴.
5. Access to Justice: AI technologies have the potential to improve access to justice by providing affordable and efficient legal services to underserved populations. Virtual legal assistants, chatbots, and online dispute resolution platforms powered by AI are helping individuals and small businesses navigate legal issues, access legal information and resources, and resolve disputes without the need for expensive legal representation. For example, AI-based virtual legal assistants, such as LawBot and DoNotPay, provide legal advice, document preparation, and dispute resolution services to users through

¹² <https://www.brookings.edu/articles/how-artificial-intelligence-is-transforming-the-world/>

¹³ <https://timesofindia.indiatimes.com/readersblog/mywriteexpress/artificial-intelligence-unleashing-the-power-of-innovation-56241/>

¹⁴ <https://www.civildaily.com/story/artificial-intelligence-ai-breakthrough/>

conversational interfaces, making legal assistance more accessible and affordable¹⁵.

Overall, the impact of AI on legal processes in India is transformative, empowering legal professionals with powerful tools and insights to enhance efficiency, reduce costs, and improve access to justice. As AI continues to advance, its role in the legal profession is expected to grow, reshaping the way legal services are delivered, disputes are resolved, and justice is administered in India. However, it is important to address ethical, regulatory, and privacy concerns associated with AI adoption in the legal domain to ensure its responsible and equitable use.

Challenges and Ethical Considerations:

While AI offers significant benefits, its adoption in the legal domain also poses challenges and raises ethical concerns. One of the primary challenges is the potential bias inherent in AI algorithms, which can perpetuate or exacerbate existing inequalities in the legal system. Moreover, the reliance on AI technologies raises questions about accountability, transparency, and the protection of sensitive legal information. Ensuring the fairness, accountability, and transparency of AI systems is crucial to building trust and confidence in their use within the legal profession. Artificial Intelligence (AI) is poised to have a significant impact on the legal discourse in India, revolutionizing the way legal services are delivered, cases are adjudicated, and laws are interpreted and applied. However, along with the potential benefits, there are also several challenges and considerations that need to be addressed¹⁶.

One of the primary challenges of AI in the legal domain is the potential for bias in algorithms and datasets. AI systems trained on biased data may perpetuate or exacerbate existing inequalities in the legal system, leading to unfair outcomes. For example, if a predictive algorithm used in bail or sentencing decisions is biased against certain demographic groups, it could result in discriminatory practices. The adoption of AI in the legal domain raises ethical and regulatory concerns related to transparency, accountability, and privacy. Lawyers and legal professionals must ensure that AI systems adhere to ethical standards and regulatory frameworks to protect sensitive legal information and uphold the rule of law¹⁷.

AI models, particularly deep learning algorithms, are often seen as "black boxes," making it challenging to understand how they arrive at their decisions or predictions. In legal

¹⁵ <https://bwlegalworld.businessworld.in/article/Transforming-Effects-Of-AI-In-Legal-Sector-What-Experts-Say-/23-01-2024-507229/>

¹⁶ <https://www.civildaily.com/story/artificial-intelligence-ai-breakthrough/>

¹⁷ <https://www.brookings.edu/articles/how-artificial-intelligence-is-transforming-the-world/>

contexts where transparency and interpretability are essential, the lack of explainability of AI systems may pose challenges to their acceptance and trustworthiness. While AI has the potential to improve access to legal services by automating routine tasks and reducing costs, there is a risk of widening the justice gap if AI technologies are not accessible or affordable to marginalized communities. Ensuring equitable access to AI-powered legal tools and services is crucial to promoting justice and fairness for all¹⁸.

The use of AI in legal practice requires access to large volumes of sensitive legal data, raising concerns about data privacy and security. Legal professionals must implement robust data protection measures to safeguard client confidentiality and comply with data privacy regulations such as the Personal Data Protection Bill in India¹⁹.

Ethical considerations surrounding AI in the legal discourse in India are critical to ensuring fairness, transparency, and accountability in the implementation and use of AI technologies. AI systems can inherit biases present in training data, leading to discriminatory outcomes. For example, if historical data used to train an AI algorithm reflects biased decisions made by human judges or lawyers, the algorithm may perpetuate or amplify these biases²⁰.

Many AI algorithms operate as black boxes, making it difficult to understand how they arrive at their decisions or recommendations. Lack of transparency and explainability can undermine trust in AI systems and raise concerns about their reliability and fairness. In the legal context, transparency and explainability are crucial for ensuring due process and the right to a fair trial. Judges, lawyers, and litigants need to understand the rationale behind AI-generated insights or predictions to assess their validity and relevance in legal proceedings²¹.

AI systems often rely on vast amounts of personal data to train and operate effectively. However, the collection, storage, and processing of sensitive information raise privacy concerns and require robust safeguards to protect individuals' rights. In the legal domain, AI applications may involve the analysis of confidential legal documents, client information, or court records. Ensuring the privacy and confidentiality of such data is essential to uphold client privilege, attorney-client confidentiality, and other legal principles²².

¹⁸ <https://www.civildaily.com/story/artificial-intelligence-ai-breakthrough/>

¹⁹ <https://www.javatpoint.com/expert-systems-in-artificial-intelligence>

²⁰ <https://bwlegalworld.businessworld.in/article/Transforming-Effects-Of-AI-In-Legal-Sector-What-Experts-Say-/23-01-2024-507229/>

²¹ <https://www.civildaily.com/story/artificial-intelligence-ai-breakthrough/>

²² <https://bwlegalworld.businessworld.in/article/Transforming-Effects-Of-AI-In-Legal-Sector-What-Experts-Say-/23-01-2024-507229/>

Determining accountability and liability in cases involving AI can be challenging, especially when errors or harm occur due to algorithmic decisions. Responsibility may lie with the developers, operators, or users of AI systems, depending on the circumstances. In legal discourse, questions of accountability and liability arise in various contexts, such as automated decision-making in criminal justice, contract disputes involving AI-generated agreements, or errors in AI-assisted legal research²³.

While AI has the potential to improve access to legal services and reduce barriers to justice, disparities in access to AI technologies can exacerbate existing inequalities. For example, individuals with limited digital literacy or financial resources may be disadvantaged in navigating AI-driven legal platforms or services. In India, ensuring equitable access to AI-enabled legal tools and services is essential for promoting equal protection under the law and addressing systemic inequalities in the justice system²⁴.

Thus, addressing ethical considerations in the deployment and use of AI in legal discourse is essential for upholding principles of fairness, transparency, privacy, accountability, and equity. By integrating ethical frameworks and guidelines into AI development and regulation, stakeholders in the legal community can mitigate risks, build trust, and harness the potential of AI to enhance access to justice and promote the rule of law in India. AI has the potential to transform legal discourse in India by enhancing efficiency, improving access to justice, and driving innovation in the legal profession. However, addressing the challenges and ethical considerations associated with AI adoption will require collaborative efforts from legal professionals, technologists, policymakers, and civil society organizations to ensure that AI serves the interests of justice and upholds the rule of law. In legal discourse, biased AI systems can result in unfair treatment or discrimination against certain individuals or groups, particularly marginalized communities. For instance, an AI-powered system used for predictive policing may unfairly target specific neighbourhoods or demographic groups based on biased historical crime data²⁵.

²³ <https://legal.economictimes.indiatimes.com/news/opinions/the-changing-landscape-of-legal-industry-the-impact-of-ai-adoption/102314570>

²⁴ <https://bwlegalworld.businessworld.in/article/Transforming-Effects-Of-AI-In-Legal-Sector-What-Experts-Say-/23-01-2024-507229/>

²⁵ <https://www.civildaily.com/story/artificial-intelligence-ai-breakthrough/>

Opportunities and Future Directions:

Despite the challenges, the integration of AI into legal discourse presents immense opportunities for innovation and growth. AI-powered legal research platforms, virtual legal assistants, and smart contracts are just a few examples of how AI is transforming legal practice. Moreover, AI-enabled tools can help bridge the gap in access to justice by providing affordable and efficient legal services to underserved populations. As AI continues to evolve, it will be imperative for legal professionals to adapt to these changes, embrace technological advancements, and develop new skills to remain relevant in the digital age²⁶.

Developing ethical AI frameworks and guidelines specific to the legal domain will be essential to address the ethical and regulatory challenges associated with AI adoption. Legal organizations and regulatory bodies can collaborate to establish standards for the responsible use of AI in legal practice, including principles of fairness, transparency, and accountability. Encouraging interdisciplinary collaboration between legal professionals, data scientists, ethicists, and policymakers can facilitate the development of AI solutions that are sensitive to the unique needs and values of the legal system. By bringing together diverse perspectives, stakeholders can co-create AI tools and applications that align with legal principles and ethical standards²⁷.

Investing in research and development of explainable AI technologies will be crucial to enhance the transparency and interpretability of AI systems in the legal domain. Explainable AI techniques such as interpretable machine learning models and model-agnostic methods can help legal professionals understand and validate AI-generated decisions, fostering trust and confidence in their use. Providing training and education on AI technologies and their applications in the legal domain can empower legal professionals to leverage AI tools effectively in their practice. Law schools and professional associations can offer courses, workshops, and certifications to equip lawyers with the skills and knowledge needed to navigate the intersection of AI and law²⁸.

Ensuring that AI-powered legal tools and services are accessible and affordable to all segments of society is critical to promoting access to justice. Legaltech startups, government agencies, and non-profit organizations can collaborate to develop user-friendly and cost-

²⁶ <https://bwlegalworld.businessworld.in/article/Transforming-Effects-Of-AI-In-Legal-Sector-What-Experts-Say-/23-01-2024-507229/>

²⁷ <https://legal.economictimes.indiatimes.com/news/opinions/the-changing-landscape-of-legal-industry-the-impact-of-ai-adoption/102314570>

²⁸ <https://timesofindia.indiatimes.com/readersblog/mywriteexpress/artificial-intelligence-unleashing-the-power-of-innovation-56241/>

effective AI solutions that address the needs of underserved communities and improve the efficiency and effectiveness of the legal system.

Artificial Intelligence (AI) presents a multitude of opportunities and future directions for the legal discourse in India. AI technologies can assist organizations in ensuring compliance with regulatory requirements, monitoring legal developments, and mitigating risks. For instance, AI-powered compliance management systems can analyse regulatory changes, track relevant laws and regulations, and provide real-time alerts or recommendations to help businesses stay compliant. Moreover, AI-driven risk assessment tools can help organizations identify and assess legal risks associated with their operations, contracts, or transactions, enabling proactive risk management and mitigation strategies.

AI has the potential to significantly enhance efficiency, effectiveness, and accessibility in the legal domain in India. By embracing AI technologies and leveraging their capabilities, legal professionals can streamline processes, improve decision-making, and deliver better outcomes for clients, thereby driving innovation and transformation in the legal industry. However, it is essential to address challenges such as data privacy, bias, and ethical considerations to ensure the responsible and equitable use of AI in legal discourse²⁹.

Conclusion:

In conclusion, Artificial Intelligence is revolutionizing legal discourse in India, offering unprecedented opportunities to enhance efficiency, improve access to justice, and drive innovation in the legal industry. However, its adoption must be accompanied by robust regulatory frameworks, ethical guidelines, and continuous monitoring to mitigate risks and ensure its responsible use. By embracing AI technologies and leveraging their potential, the Indian legal system can navigate the complexities of the digital era and emerge stronger and more resilient than ever before. AI has the potential to revolutionize legal processes by automating routine tasks, enhancing efficiency, and reducing costs. For example, AI-powered legal research platforms such as ROSS Intelligence and Lex Machina enable lawyers to quickly access relevant case law, statutes, and regulations, thereby expediting the research process. Similarly, contract analysis tools powered by Natural Language Processing (NLP) algorithms can review and extract key clauses from contracts, saving time and resources for legal professionals³⁰.

²⁹ <https://www.brookings.edu/articles/how-artificial-intelligence-is-transforming-the-world/>

³⁰ <https://bwlegalworld.businessworld.in/article/Transforming-Effects-Of-AI-In-Legal-Sector-What-Experts-Say-/23-01-2024-507229/>

Despite its benefits, the adoption of AI in the legal domain poses challenges and raises ethical concerns. One of the primary challenges is the potential bias inherent in AI algorithms, which can perpetuate or exacerbate existing inequalities in the legal system. For example, if AI algorithms are trained on biased datasets, they may produce skewed or discriminatory outcomes. Moreover, the reliance on AI technologies raises questions about accountability, transparency, and the protection of sensitive legal information. Ensuring the fairness, accountability, and transparency of AI systems is crucial to building trust and confidence in their use within the legal profession³¹.

Despite the challenges, the integration of AI into legal discourse presents immense opportunities for innovation and growth. AI-enabled tools and platforms can help bridge the gap in access to justice by providing affordable and efficient legal services to underserved populations. For example, chatbots and virtual legal assistants can offer legal guidance and support to individuals who cannot afford traditional legal representation. Moreover, AI-powered predictive analytics can help lawyers anticipate legal outcomes, assess risks, and make informed decisions, thereby improving the quality of legal services. As AI continues to evolve, it will be imperative for legal professionals in India to adapt to these changes, embrace technological advancements, and develop new skills to remain relevant in the digital age. Moreover, policymakers and regulatory bodies need to establish robust frameworks and guidelines to govern the responsible use of AI in the legal domain. By addressing issues such as bias, transparency, and accountability, India can harness the full potential of AI to enhance access to justice, improve legal outcomes, and strengthen the rule of law³².

Thus, Artificial Intelligence has the potential to transform legal discourse in India, offering unprecedented opportunities for efficiency, innovation, and access to justice. However, its adoption must be accompanied by careful consideration of ethical, legal, and societal implications to ensure its responsible and equitable use. By embracing AI technologies and leveraging their potential, India can usher in a new era of legal practice that is more efficient, accessible, and equitable for all.

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³¹ Ibid

³² <https://www.brookings.edu/articles/how-artificial-intelligence-is-transforming-the-world/>



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VELLORE CITIZENS WELFARE FORUM V. UNION OF INDIA (1996)

Introduction:

Environmental protection and the preservation of public health have become central concerns in the realm of law, particularly in countries grappling with rapid industrialization and urbanization. The case of Vellore Citizens Welfare Forum v. Union of India (1996) is a landmark judgment in Indian environmental jurisprudence that has far-reaching implications for the protection of the environment and the well-being of citizens³³. This case note aims to delve into the details of the case, the legal issues addressed, the principles established by the court, and the impact of the judgment on environmental law in India³⁴.

Background:

The Vellore Citizens Welfare Forum case is a significant environmental law case that deals with the protection of the environment and public health. It revolved around the issue of pollution caused by industrial units in the vicinity of the Vellore district of Tamil Nadu, India. The pollution resulted from a variety of sources, including tanneries, chemical factories, and other industries, which were releasing untreated effluents into water bodies, thereby causing severe environmental health problems in the region and affecting the livelihoods of local communities³⁵.

Facts of the Case:

The Vellore district of Tamil Nadu was home to numerous industrial units, including tanneries, chemical factories, and other industries. These industries were releasing untreated effluents into the nearby water bodies, including the Palar River and the Otteri Nullah, without

³³ <https://www.legalserviceindia.com/legal/article-13637-case-analysis-vellore-citizens-welfare-forum-v-s-union-of-india.html>

³⁴ <https://vidhinama.com/case-analysis-vellore-citizens-welfare-forum-vs-union-of-india-1996-5-scc-647/>

³⁵ <https://www.proquest.com/openview/3714732739069d44a5fa772b2a66aaf7/1?pq-origsite=gscholar&cbl=51922&diss=y>

proper treatment or regard for environmental standards. The industrial units in the Vellore district were releasing untreated effluents containing hazardous chemicals, heavy metals, and pollutants into the water bodies in the region³⁶. These water bodies included the Palar River and the Otteri Nullah. The effluents were being discharged without proper treatment or adherence to environmental standards.

The effluents contained hazardous chemicals, heavy metals, and pollutants that were causing widespread pollution and posing serious health risks to the local population. The pollution was visibly affecting the water bodies, leading to their contamination and the degradation of the surrounding ecosystem. The pollution had dire consequences for public health, as residents in the area were experiencing various health issues due to the consumption of polluted water and exposure to toxic substances³⁷.

Additionally, the pollution was damaging agricultural land, harming livestock, and impacting the livelihoods of communities dependent on these resources. The petition filed by the Vellore Citizens Welfare Forum sought the intervention of the court to address the environmental crisis caused by industrial pollution. The petition alleged that the industries were violating environmental laws, including the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981³⁸.

Legal Issues:

The central legal issue in this case revolved around the balance between industrial development and environmental protection. The primary questions before the Court were:

1. Does the right to carry on industrial activities override the obligation to protect the environment and public health?
2. Whether industries had the right to pollute the environment and water bodies without adhering to environmental regulations?
3. Whether there was a fundamental duty on the part of industries to protect the environment and public health?
4. Whether the government and regulatory authorities had a duty to take action to prevent and control environmental pollution caused by industrial activities?

³⁶ <https://www.legalbites.in/environment-law/case-analysis-vellore-citizens-welfare-forum-v-union-of-india-and-ors-1996-965278>

³⁷ <https://www.legalserviceindia.com/legal/article-13637-case-analysis-vellore-citizens-welfare-forum-v-s-union-of-india.html>

³⁸ <https://vidhinama.com/case-analysis-vellore-citizens-welfare-forum-vs-union-of-india-1996-5-scc-647/>

5. What legal principles should guide the regulation of industries to prevent pollution and environmental degradation?

Contentions of Petitioner:

The petition highlighted several contentions regarding the severe environmental pollution and health hazards caused by industrial activities, particularly the discharge of untreated effluents by industries, in the Vellore District of Tamil Nadu³⁹. The petitioners contended:

- **Violation of Environmental Laws:** The Petitioners contended that industries, including tanneries and chemical factories, were violating key environmental laws and regulations, such as the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981. The forum argued that the industries were releasing untreated effluents into water bodies, causing severe environmental degradation and violating the norms prescribed by the legislation⁴⁰.
- **Severe Pollution of Water Bodies:** The Petitioners argued that the untreated effluents discharged by the industries were causing severe pollution of water bodies, particularly the Palar River and the Otteri Nullah. The pollutants were contaminating the water, adversely affecting aquatic life, and degrading the overall water quality⁴¹.
- **Health Hazards and Public Health Concerns:** The pollution caused by industrial activities was leading to serious health hazards for the local population. The Petitioners contended that the residents in the area were exposed to contaminated water and hazardous substances, which were resulting in various health issues and ailments. The pollution was causing harm to public health and well-being⁴².
- **Agricultural and Livelihood Impact:** The Petitioners argued that the pollution was not limited to water bodies but was also impacting agricultural land and livelihoods. The polluted water was affecting agriculture, which was a significant source of livelihood for local communities. Livestock was also being harmed due to exposure to polluted water and environment⁴³.
- **Environmental Degradation and Ecosystem Impact:** The forum highlighted the degradation of the ecosystem due to pollution caused by industrial activities. The

³⁹ <https://www.legalbites.in/environment-law/case-analysis-vellore-citizens-welfare-forum-v-union-of-india-and-ors-1996-965278>

⁴⁰ <https://www.legalserviceindia.com/legal/article-13637-case-analysis-vellore-citizens-welfare-forum-v-s-union-of-india.html>

⁴¹ Ibid

⁴² Ibid

⁴³ Ibid

pollution was damaging the natural environment, harming aquatic life, and affecting the balance of the ecosystem in the region⁴⁴.

- **Violation of Citizens' Right to Clean Environment:** The Petitioners contended that the industrial pollution was infringing upon the citizens' fundamental right to a clean and healthy environment, which is an integral part of the right to life guaranteed by Article 21 of the Indian Constitution⁴⁵.
- **Government's Duty to Protect the Environment:** The forum argued that the government and regulatory authorities had a duty to prevent and control environmental pollution caused by industrial activities. The Petitioners contended that regulatory bodies were failing to fulfill their responsibilities in curbing pollution and ensuring the protection of the environment and public health⁴⁶.
- **Need for Judicial Intervention:** The Petitioners sought the intervention of the court to address the environmental crisis caused by industrial pollution. The forum believed that judicial intervention was necessary to ensure that industries adhere to environmental laws and regulations, and to safeguard the environment and the well-being of the local communities⁴⁷.

These contentions formed the basis of the Petitioner's PIL petition, which aimed to draw attention to the grave environmental and health concerns resulting from industrial pollution in the Vellore district and seek appropriate remedies and measures to address the situation⁴⁸.

Contentions of Respondents:

In this case, the respondents, including the Union of India and the State of Tamil Nadu, were required to present their arguments in response to the Public Interest Litigation (PIL) filed by the Vellore Citizens Welfare Forum⁴⁹. The Respondents contended:

- **Regulatory Efforts and Compliance:** The respondents, including the Union of India and the State of Tamil Nadu, might have contended that they were actively involved in regulating industrial activities and environmental protection through relevant laws and

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ <https://www.proquest.com/openview/3714732739069d44a5fa772b2a66aaf7/1?pq-origsite=gscholar&cbl=51922&diss=y>

regulations. They might have highlighted efforts to ensure that industries adhere to environmental standards and comply with pollution control norms⁵⁰.

- **Balancing Development and Environmental Concerns:** The respondents could have argued that while environmental protection is important, it needs to be balanced with economic development and industrial growth. They might have emphasized the need to strike a balance between industrial activities and environmental preservation to ensure overall economic progress⁵¹.
- **Pollution Control Measures:** The respondents might have presented the measures taken by regulatory authorities to monitor and control pollution. They could have contended that they were working to ensure that industries treat their effluents properly before discharging them into water bodies⁵².
- **Challenges and Implementation Issues:** The respondents might have raised challenges they faced in effectively implementing pollution control measures. They could have pointed out issues such as lack of resources, inadequate infrastructure, and difficulties in enforcing compliance due to the large number of industries⁵³.
- **Economic Impact and Livelihoods:** The respondents might have highlighted the economic significance of industries in the region and how they contribute to local employment and livelihoods. They could have argued that stringent environmental regulations might adversely affect industries and lead to unemployment and economic instability⁵⁴.
- **Need for Gradual Transition:** The respondents could have contended that industries need time to transition to cleaner technologies and practices. They might have argued against abrupt shutdowns or punitive measures that could have a negative impact on industrial operations⁵⁵.
- **Public Interest and Health Measures:** While acknowledging the environmental concerns raised by the VCWF, the respondents might have emphasized that they were

⁵⁰ <https://www.legalbites.in/environment-law/case-analysis-vellore-citizens-welfare-forum-v-union-of-india-and-ors-1996-965278>

⁵¹ Ibid

⁵² Ibid

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Ibid

also concerned about public health. They could have argued that measures were being taken to address health hazards and ensure the well-being of the affected population⁵⁶.

- **Coordinated Efforts:** The respondents might have underscored the need for coordination between various government bodies, regulatory authorities, and industries to collectively address environmental issues while ensuring sustainable development⁵⁷.

It's important to note that the actual contentions of the respondents would be specific to the case's context and the arguments they presented in court. The court's judgment would reflect both the contentions of the petitioners and the responses of the respondents (Union of India and State of Tamil Nadu).

Court's Analysis and Ruling:

The Hon'ble Supreme Court of India delivered a landmark judgment in this case, establishing several key principles related to environmental law and the protection of the environment:

1. **Precautionary Principle:** The Court held that the "precautionary principle" must be applied in environmental matters. This principle implies that if an action or policy has the potential to cause harm to the environment or public health, in the absence of scientific consensus, the burden of proof falls on the proponents of the action to demonstrate its harmlessness. Thus, this principle places the onus on industries to prove that their activities do not harm the environment or public health, especially in cases where scientific consensus is lacking. The Court highlighted that the absence of scientific certainty should not be used as an excuse to perpetuate activities that may cause harm⁵⁸.
2. **Polluter Pays Principle:** The court reiterated the "polluter pays principle," which states that those who pollute the environment are responsible for bearing the cost of cleaning it up. This principle encourages industries to adopt cleaner technologies and practices to avoid causing environmental harm. Thus, this principle asserts that industries responsible for environmental pollution should bear the cost of remediation and clean-

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ <https://vidhinama.com/case-analysis-vellore-citizens-welfare-forum-vs-union-of-india-1996-5-scc-647/>

up. This principle encourages industries to adopt cleaner technologies and practices to prevent environmental harm⁵⁹.

3. **Public Trust Doctrine:** The court emphasized the "public trust doctrine," stating that natural resources like air, water, and forests are held in trust by the government for the benefit of the people. Therefore, the government has a duty to protect and preserve these resources for the present and future generations⁶⁰.

Impact and Significance:

The Vellore Citizens Welfare Forum case was a groundbreaking judgment that reinforced the importance of environmental protection and sustainable development in India. This case had a profound impact on Indian environmental law and jurisprudence. It established the legal foundation for principles such as the precautionary principle, the polluter pays principle, and the public trust doctrine, which have been subsequently applied in various environmental cases, thereby setting important precedents for subsequent environmental cases. The judgment reinforced the responsibility of industries to prioritize environmental protection over profit and to adopt sustainable practices. It marked a pivotal moment in Indian environmental jurisprudence and underscored the responsibility of both industries and the government to ensure the well-being of the environment and citizens. It also highlighted a shift from a purely anthropocentric view of the environment to one that recognizes the intrinsic value of nature and the importance of intergenerational equity⁶¹.

Legacy and Future Implications:

The judgment in Vellore Citizens Welfare Forum v. Union of India laid the groundwork for subsequent environmental regulations, policies, and legal interpretations in India. The principles of the precautionary principle, polluter pays principle, and public trust doctrine have become cornerstones of environmental protection efforts⁶².

The case also encouraged public interest litigation as a means for citizens to raise environmental concerns and seek redressal through the courts. It highlighted the role of

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ <https://www.legalserviceindia.com/legal/article-13637-case-analysis-vellore-citizens-welfare-forum-v-s-union-of-india.html>

⁶² <https://www.legalbites.in/environment-law/case-analysis-vellore-citizens-welfare-forum-v-union-of-india-and-ors-1996-965278>

civil society organizations and citizen activism in holding both industries and the government accountable for environmental degradation⁶³.

Conclusion:

The Vellore Citizens Welfare Forum case remains a watershed moment in Indian environmental jurisprudence. Through its visionary judgment, the court underscored the importance of a balanced approach to development that safeguards the environment and public health. The principles established by the court continue to guide policy decisions, legal interpretations, and public discourse on environmental protection in India. This case serves as a testament to the judiciary's role as a guardian of environmental rights and its commitment to securing a sustainable future for all citizens.

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⁶³ <https://www.proquest.com/openview/3714732739069d44a5fa772b2a66aaf7/1?pq-origsite=gscholar&cbl=51922&diss=y>



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ADVOCACY

INTRODUCTION:

“Law is a pledge that the citizens of a state will do justice to one another”

(-Lycophron, 3rd -Century B.C. Greek Poet and Scholar)

People occupy different occupations for their livelihood or for their satisfaction. The occupations are broadly divided as productive occupation and service occupations. The occupations which require advanced education and special training are called professions. Law, teaching, architecture, medicine, etc are related to professions. They are intended to serve mankind.

Law as profession is one of the oldest and noblest professions. The legal service has a long history of public service and advocacy. The person in the legal profession is called an advocate or lawyer. An advocate is an officer of justice and a friend of the court. He has to accept a brief for any man who comes before the courts and do what one can do honourably on behalf of his client. He has to collect legal material relating to the case of his client had argue in the courts to help the judges to deliver judgments. The central function that the legal profession must perform is nothing less than the administration of Justice. Lawyers serve as guardians of justice, entrusted with the responsibility of ensuring that the legal rights of individuals and entities are protected and upheld. They play a critical role in advocating for fairness and equity within the legal system. Hence, legal profession is considered noble because it requires a commitment to justice, a strong ethical code, and a dedication to serving others. The legal profession is different from other professions as what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilized society. A lawyer has to conduct himself as a model for others, both in his professional and in his private and public life. It is a service-oriented profession which aims to serve society.

The legal profession is known as a noble profession having high traditions and has been catering to the needs of the society for a very long time. Thus, the members of this profession

are expected to uphold those traditions and serve the society with sincerity and honesty. If such are the expectations from a noble profession, its members must conduct themselves in a way which may be worthy of emulation. (L.C. Goyal v. Suresh Joshi, (1999) 3 SCC 376 at page 383)⁶⁴. Lawyers serve as guardians of justice, entrusted with the responsibility of ensuring that the legal rights of individuals and entities are protected and upheld. They play a critical role in advocating for fairness and equity within the legal system. As Justice MC Cardie stated; “the alternative to reign of law is the chaos of the jungle. Imagine what would be the state of things if every litigant were to plead his own cause. Conceive, if you can, a Court without a Bar. Conceive the situation of a judge set to try causes and administered legal rights between party and party without the aid of professional advocates⁶⁵.”

The purpose of law in society is to preserve the moral sanctity that binds the society. Lawyers advocate zealously on behalf of their clients, representing their interests and ensuring that their voices are heard in legal proceedings. Whether in negotiations, courtrooms, or alternative dispute resolution forums, lawyers work tirelessly to secure favourable outcomes for their clients within the bounds of the law. The underlying spirit of the legal profession is the service to society, identical to that of a doctor.

The aim is to protect citizens from social diseases. The legal profession in India is treated as an independent profession and is mainly regulated by the Advocates Act, 1961. The profession of law is a great profession, the most brilliant and attractive of the peaceful professions, with responsibilities both inside and outside it, which no person carrying on any other profession has to shoulder. It is a great controlling and unifying institution which places upon each his duties, gives to each his rights and enforces from each obligation.

It is composed of a body of men with a high sense of honour and marked by far less mutual jealousy or ill-will than any other. In the words of Mr. Justice McCardie, “the spirit among counsel is one of generous emulation and not the spirit of embittered and petty rivalry. The brotherhood of the Bar is a notable and felicitous fact⁶⁶.”

DEVELOPMENT OF LEGAL PROFESSION IN INDIA:

Development of legal profession in India can be divided into following phases are as follows:

1. Legal profession in ancient India - In ancient India, the King was considered as foundation head of justice and was reservoir of judicial powers. In fact, the structure of

⁶⁴ L.C. Goyal v. Suresh Joshi, (1999) 3 SCC 376 at page 383

⁶⁵ Sir Henry Alfred McCardie, High Court of Justice of England and Wales in one of his lectures.

⁶⁶ Ibid

judicial system rested upon the Principle of Dharma. There was no specialist like a lawyer during those days. When Kingships was established in the society, Kings delivered justice. In King's Court, the king was advised by his councillors. The law of those days was a rooted in Hindu religion and custom. Dharma was protected by the king. Though there was no Institution of a lawyer, some intellectual people served justice. From the stories of Maryada Ramayana and Vikramaditya, we are well aware of the wise man who solved the critical cases of those days. During those days the legal profession was administered by the administrators. For some time, religious heads dominated the society in administering the justice. The King took the advice of the religious heads and wise courtier and then delivered the judgment. The same procedure was followed in all cases.

2. Legal profession in medieval India - Following the collapse of Harsha's empire, India was divided once more into small kingdoms. During the Muslim period, there was no Institution of the legal profession. But both the parties of the litigation appoint their Vakils. This body decides the case and they were paid a percentage of the amount in the suit. The Court has the power to decide who should be allowed to appear as Vakils. They act as agent for principals but not as lawyers. The same system was continued in North India even under the rule of East India Company.
3. Legal profession in British India - During the British period, the model legal system was developed in India. Before 1726, the courts derived their power not from the British crown but from the East India Company. The charter of 1661 has already described the English law.
 - i. Charter of 1726: In 1726 the crown issued the charter of 1726, and the Mayor's Court were established in the presiding towns of Bombay, Calcutta, and Madras. They were the royal Courts. They followed the procedure based on English law. But there were no facilities to get the legal training. Many persons who have no knowledge of law were used to practice before the said Courts. The Mayor's Court has no jurisdiction in criminal cases. The criminal jurisdiction was conferred on the Governor.

- ii. Charter of 1753 - In 1753, another charter was issued to modify the charter of 1726. This charter also ignored significant provision for legal training and education relating to legal practitioner. Even after the charter of 1753, the legal profession was not organized.
- iii. Charter of 1774 The Regulating Act, 1773 empowered the British Crown to establish a Supreme Court at Calcutta by issuing a Charter. Accordingly, a supreme court at Calcutta was established by its own charter of 1774. Clause II of the Charter of 1774 empowered the said Supreme Court of Judicature Calcutta to approve and enrol advocates and Attorneys-in-law. They were to be Attorneys of record. They were authorized to appear and act in the supreme court. The supreme court had the power to remove any advocate for Attorney on reasonable cause. Indian legal practitioners were not allowed to enter the supreme court. At that time 'Advocate' means the British and Irish Barristers and member of the faculty of advocates in Scotland. The term 'Attorney' applied to the British attorneys or solicitor.
- iv. The Bengal Regulation Act of 1793: The Bengal Regulation Act VII Of 1793 permitted qualified Hindu and Muslim persons only to enrol as pleaders and the Bengal Regulation XII of 1833 allowed all the qualified persons of any nationality or religion to enrol as a pleader of the Sardar Diwani Adalat.
- v. The Legal Practitioners Act, 1846 - The legal practitioners Act 1846 allowed all the people of any nationality or religion to act as pleaders. It also allowed attorneys and barristers enrolled in any of Her Majesty's courts in India to plead in the company's Sardar Adalat. The Legal Practitioners Act, 1853 - This Act authorized the barristers and Attorneys of the Supreme Court to plead in any of the companies' courts subordinate to Sadar court subject to rules in force in the said subordinate courts as regards language or otherwise.
- vi. Indian High Court Act, 1861 - The Indian High Court Act, 1861 empowered the government to establish High Court in Presidency towns. After the establishment of the High Courts, the Civil Courts were organized at different

towns. The criminal courts were organized by the Criminal Procedure Code 1898.

- vii. Legal Practitioners Act 1879 - Under the Legal Practitioners Act 1879 the term 'legal practitioner' means Advocate, Vakil or attorney of a High Court and pleader, Mukhtar or revenue agent, who were non-graduates and matriculates only. All these were brought under the jurisdiction of the high court. Vakils were the persons who had taken the law degree from Indian Universities. Pleaders and mukhtars Were the Indian lawyers but advocate were to be the barristers. Section 5 of the Act says that every person entered as an attorney on the role of any High Court would be entitled to practice in all the courts subordinate To Such High Courts and in all revenue offices. Section 6 of the Act Empowered the High Court to make rules consistent with the Act as to Suspension and dismissal of pleaders and Mukhtars. Section 8 empowered the pleader to practice in courts and revenue offices after enrolment. Section 9 empowered the Mukhtar to practice in the courts after enrolment. According to Section 12, the High Court can Suspend or dismiss any pleader or Mukhtar if he was convicted of any criminal offense and according to Section 13, the high court can suspend or dismiss pleader or Mukhtar guilty of professional misconduct. Section 14 of the Act made provisions in respect of the procedure when the charge of professional misconduct was brought in subordinate Court or revenue office. Section 17 of the Act deals with the power of chief controlling revenue authority to make rules consistent with this act as to qualification, suspension, dismissal etc. of the revenue agent.
- viii. Indian bar committee 1923 - A committee called Indian bar committee under the chairmanship of Sir Edward Chaminer was constituted in 1923 to consider the issue of the organisation of the bar on all India basis. The committee did not favor the establishment of All India Bar Council. It was of the view that bar council should be constituted for each High Court.
- ix. Indian Bar Council Act 1926 - In 1926, the Indian bar council of India Act was enacted to provide a bar council for each High Court. The Bombay High Court

and Calcutta High Court allowed non-barrister advocates to practice. Thus, the distinction between Barristers and advocates was abolished. The pleaders and Mukhtars practicing in Mufusil Courts were not within the scope of the Indian bar council act 1926. Even after the enactment of the Bar Council Act 1926, the High Court has the power of enrollment of advocates and the functions of the bar council was the adversary in nature and the rules made by the bar council were to be effective only on the approval of the high court. Section 10 of the Indian Bar Council Act 1926 empowered the high court to reprimand, suspend or remove from practice any advocate of the high court if he was found guilty of professional misconduct or other misconduct.

4. Legal profession in India after independence –

- i. All India Bar Committee, 1951⁶⁷ - In 1951, the All-India Bar committee was constituted under the chairmanship of justice S.R. Das. The committee in its report recommended the establishment of an All-India Bar Councils and State Bar Councils. It recommended the powers of enrolment, suspension or the removal of advocates to the Bar Council. It recommended the common role of advocates should be maintained and they should be authorized to practice in all courts in the country. It further recommended that there should be no further recruitment of non-graduated pleaders or mukhtars. The similar recommendations Were made by the fifth Law Commission of India in its fourteenth report.
- ii. Advocate Act 1961 - The Law Commission of India in its fourteenth report, 1958 fully endorsed the recommendations made by All India Bar Committee⁶⁸. As a result of the report of the "All India Bar Committee Act, 1961" the central government enacted the Advocate Act 1961. This Act has been in Force In entire India. It brought Revolutionary changes in the legal profession in India. It was set out to achieve the utility and dignity of the profession of law on an all-India basis. The Preamble of the says that the Act amends as well as consolidates the law relating to legal practitioners. The Advocate Act, 1961 contains 60 Sections set out in 7 chapters.

⁶⁷ Ramanuja, Historical Development of Legal Profession, Ipleaders, (Jul. 27, 2021, 5:15 PM), <https://blog.ipleaders.in/historical-development-of-law-relating-to-legal-profession-and-the-bar-in-india/>.

⁶⁸ 14th Report, Law Commission of India, <https://lawcommissionofindia.nic.in/1-50/Report14Vol1.pdf>.

- Chapter I - deals with primary issues such as short title, extent and commencement and definitions.
- Chapter - II Section 3 to 15 deals with the bar councils.
- Chapter III Section 16 to 28 deals with admission and enrolment of advocates.
- Chapter IV deals with the right to practice chapter.
- Chapter V Section 35 To 44 deals with the conduct of advocate.
- Chapter VI Miscellaneous issues.
- Chapter VII deals with the temporary and transitional provisions.

The Advocate Act 1961 repeals the Indian Bar Council Act, 1926 and all other laws on the subject. The Advocate Act, 1961 provides for an autonomous bar council in each state and All India Bar Council consisting mainly of the representatives of the state bar councils. Under the act, a state bar council is to enrol the qualified person as advocates and prepare a roll of advocates practicing in the state and thereafter a common roll of advocates for the whole of India is to be prepared by the bar council of India. The Advocates whose Names are entered in the common roll would be entitled as of right to practice in all courts in India including the Supreme Court. Advocate Act 1961 amended many times to bring changes with the changing times and to solve the practical problems.

IMPACT OF ADVOCACY

Advocacy in India has a rich history of catalysing social change, empowering marginalized communities, and shaping public policies. From grassroots movements to high-profile campaigns, advocacy efforts have played a pivotal role in addressing systemic injustices, promoting human rights, and advancing socio-economic development. By raising awareness about their rights, challenging discrimination, and advocating for policy reforms, advocates empower these communities to assert their agency and demand social justice.

Advocacy efforts have been instrumental in promoting human rights and social justice across a wide range of issues, including gender equality, child rights, environmental sustainability, and access to healthcare and education. Through litigation, public awareness campaigns, and community mobilization, advocates have successfully pushed for legal reforms, policy changes, and institutional accountability to uphold these rights. Advocacy contributes to strengthening democratic processes in India by promoting citizen participation,

transparency, and accountability in governance. Through initiatives such as public interest litigation, advocacy for electoral reforms, and campaigns for greater civic engagement, advocates empower citizens to hold government institutions and elected representatives accountable for their actions and decisions.

CONCLUSION

By speaking truth to power, advocating for justice, and mobilizing collective action, advocates have the power to drive positive change and build a more equitable and inclusive world for future generations. In the words of Mahatma Gandhi, "Be the change you wish to see in the world." Advocacy empowers us to do just that. The noble characterization of the legal profession stems from its profound commitment to justice, ethical conduct, and the promotion of the rule of law. Lawyers wield their knowledge, skills, and expertise to uphold these principles and to advocate for the rights and interests of their clients and society as a whole.

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CHILDREN AS THE VICTIM OF CRIMES

Children are a blessing from God. Our souls are healed by being with children. A baby is in fact God's opinion that the world must go on. The most precious Jewel you will ever have around your neck are the arms of your children. There are 472 million children in India under the age of 18 years, representing 39% of the country's total population. A large percentage, 29% of that figure constitute children between the ages of 0 to 6 years. Despite India ratifying the United Nations Convention on the Rights of the Children in 1992 to work towards child rights, we still have a long way to go. India needs to use aggressive corrective measures to address malnutrition, infant mortality, low school enrollment and other issues. Identifying these issues with their complexities enables civil society, governments, and individual strategies to resolve them. With socially conscious corporations and citizens who donate to charity, child rights are today a cause for everyone.

Children suffer a lot of things. Child abuse is a major international problem, Abuse is rooted in social, economic, and cultural factors. Violence occurs within families, in schools, communities, and extends to child care and justice institutions. The types of abuse include physical, emotional, sexual abuse, neglect or negligent treatment (including nutritional neglect, educational neglect, physical harm due to lack of supervision and abandonment), trafficking for commercial use or child sexual exploitation (prostitution, pornography), and in some parts of the world, recruitment as suicide bombers and childhood soldiers.

In some impoverished areas, selling one's child into slavery or prostitution for profit is also included. Infants and young children are at the greatest risk with abuse rates in the 0 to 5 year age group 4 times greater than for children 5 to 14 years.⁴ The extent of abuse is often obtained from death registries and varies according to income levels of countries and the region of the world. The highest rate of child abuse is noted in low-income countries, particularly Africa.

The true magnitude of the problem is unknown because not all instances are reported, particularly nonfatal cases. Sexual abuse rates rise during the adolescent years with girls at a

higher risk, whereas boys are at a greater risk for assault. Premature infants, twins, and handicapped children are at an increased risk for physical abuse and neglect.

Mistreatment of the parent as a child and domestic violence, drugs or alcohol dependency in the home doubles the risk of abuse to the children as does residing in a single parent or broken home environment. Stepchildren are over represented in child abuse reports. Parental stress and isolation without social or community support resources, low parental educational level, and poverty also increase the risk of abuse.

The common patterns of child abuse include repetitive soft tissue (bruises and lacerations) and skeletal injuries, unusual site burns, solitary head injury, and abdominal injuries in children less than 3 years.

Consequences of child abuse are many and include the victim eventually adopting behavioural risk factors (drugs, smoking, alcohol), poor diet, lack of exercise, having an increased risk of suicide and psychiatric disorders, aggressive behaviour, cognitive impairments, and poor school performance that may eventually lead to problems that become a burden to society, the health care system, community, and judicial system. Even with social service interventions and the placement of children in protective foster care, the outcomes for these children are of dire concern.

Child sexual abuse, assault, and exploitation are topics relatively hidden from the view of most of the population. The actual incidence is probably under reported. Most of the perpetrators are male and are family members or are known to the child in the majority of cases.

Increased vulnerability to childhood sexual abuse is observed in single parent and broken homes, children in foster care, adopted children, stepchildren, children that are physically and mentally disabled, those confined in detention centres, and victims of war and conflict. The risk of sexual abuse in children is 4 times greater for those residing in low-income, poverty-stricken areas with public housing.

Rape, molestation, exposure to pornography, and exposure to sexual acts of others are the most common forms of abuse. Instances of sexual assault include forced rape, sodomy, genital insertion of objects or instruments, and fondling. Drugs facilitate sexual violence and an increased use of promised drug availability and date rape drugs has been reported.

Eighty-five percent of sexual assaults occur in girls. Up to 39% of girls less than 19 years have reported instances of sexual harassment and attempts at fondling. Recent instances

of sexual activity among teachers, teachers and students, and among students themselves within school confines have been noted in the media to the dismay of many. Overall crimes against children has increased steeply over six times in the decade over 2008-2018, from 22,500 cases recorded in 2008 to 1,41,764 cases in 2018, according to the NCRB data from 2008 and 2018. In 2017, 1,29,032 cases of crime against children were recorded 90% of the abusers are known to children.

To deal with child sexual abuse cases, the Government has brought in a special law, namely, The Protection of Children from Sexual Offences (POCSO) Act, 2012. The Act has come into force with effect from 14th November, 2012 along with the Rules framed thereunder. The POCSO Act, 2012 is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts.

The said Act defines a child as any person below eighteen years of age, and defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography, and deems a sexual assault to be “aggravated” under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-à-vis the child, like a family member, police officer, teacher, or doctor.

People who indulge in trafficking in children for sexual purposes are also punishable under the provisions relating to abetment in the said Act. The said Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine. In keeping with the best international child protection standards, the said Act also provides for mandatory reporting of sexual offences.

This casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence; if he fails to do so, he may be punished with six months’ imprisonment and/ or a fine. The said Act also casts the police in the role of child protectors during the investigative process.

Thus, the police personnel receiving a report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child, such as

obtaining emergency medical treatment for the child and placing the child in a shelter home, should the need arise. The police are also required to bring the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report, so the CWC may then proceed where required to make further arrangements for the safety and security of the child.

UNNAO RAPE CASE

The victim stated that she was lured by a woman named Shashi Singh, her son, Shubham Singh, and her daughter, Nidhi Singh, to move to Kanpur with the allurements of securing employment. On the night of 11 June 2017, she went with Shubham Singh and later was allegedly raped multiple times by him and his driver, Awdhesh Tiwari. She was later assaulted by unknown individuals and allegedly sold to one Brajesh Yadav for ₹ 60,000.

A First Information Report (FIR) was registered under section 363 and 366 of the Indian Penal Code (IPC) on 20 June 2017 against Shubham Singh and Awdhesh Tiwari. A day later, Uttar Pradesh Police located the victim in a village in Auraiya and sent her for a medical examination. On 22 June 2017, she recorded her statement in front of a Judicial Magistrate under Section 164 of the Code of Criminal Procedure^[16] (CrPC) in which she narrated her ordeal and named Shubham Singh, Awdhesh Tiwari, Brijesh Yadav and other unknown assailants for abduction and gang rape.^[15] A second FIR was registered later under the Protection of Children from Sexual Offences Act (POCSO) and the accused were subsequently detained.

On 16 December 2019, Sengar was convicted for the rape. On 20 December, he was sentenced to life imprisonment by a Delhi court and he was fined ₹25 lakh (US\$35,000) from which Rs 15 lakhs will be paid to the state government to meet the trial and prosecution expenses. Further in March 2020 Sengar was found "guilty of culpable homicide and criminal conspiracy in her father's death. A case was reported in Haryana's Panchkula district where a mentally challenged 23-year-old woman, was allegedly raped by her father. Reportedly, she delivered a stillborn baby at a hospital. She also admitted that her family members were not aware of her father's heinous act.

According to the police, the accused had been raping his daughter from the last several months. To combat rising cases of child sex abuse, the Union Cabinet approved amendments to strengthen the POCSO Act by including death penalty for aggravated sexual assault on children, besides providing stringent punishments for other crimes against minors.

The proposed changes in the Protection of Children from Sexual Offences (POCSO) Act also provide for fines and imprisonment to curb child pornography. The children of today are assets of tomorrow. Yet education, which is a fundamental right to every child in our country, is still a dream for many children in India, especially the ones who are poor, downtrodden and in dire need. Poverty and lack of education are the major factors that lead to desperate acts like child begging, which is one of the most heartbreaking and pertinent problems prevalent in our country. This act of child begging has terribly plagued the lives of thousands of children who have lost their beautiful and innocent childhood by becoming slaves.

It has often been observed that children from lower socio-economic level are more likely to be abused due to parental poverty, and hence are forced to beg so that they can supplement the total earning of the family. Apart from that, certain kinds of rackets are also at play who not only mislead or mistreat these children but even use drugs to sedate them.

Handicapped children are often used for begging as this arouses sympathy of the common people. Sometimes, they are even beaten up and physically maimed for this purpose. Religion is also used as a medium for begging where children are dressed in a religious attire carrying pictures of God while begging.

This is done to awaken the religious sentiments of the people. Child begging is something which can be twisted and manipulated by larger forces at work to give it the shape of thriving business as it functions mainly on sympathy-mongering.

Children are the most beautiful creation of God. It is said that '*Bachon me bhagwan basta hai*', if this is true how can we behave in such a manner with children, aren't we afraid? is there no humanity left in humans?

Are we trained to take advantage of people who are in need or less capable than us. Why do we have to kill the spark in a child, kill it completely from inside? No good can come

upon a country where its children are not properly taken care of. Childhood of a child is the root of a tree.

The more nourishment and correct amount of care we take of the root, the more the tree will flourish. A great quote by Nelson Mandela says, “History will judge us by the difference we make in everyday lives of children”.

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EVOLVING DYNAMICS OF HINDU UNDIVIDED FAMILY (HUF) IN MODERN INDIA: LEGAL, SOCIAL AND ECONOMIC PERSPECTIVES

The concept of Hindu Undivided Family (HUF) has been a fundamental aspect of Hindu Law and taxation in India for centuries. However, with changing societal norms, economic dynamics, and legal interpretations, the traditional institution of HUF has undergone significant transformations. This research topic aims to explore the evolving dynamics of HUF in modern India from various perspectives, including legal, social, and economic.

The Hindu Undivided Family (HUF) is a unique legal entity recognized under Hindu law in India, characterized by joint ownership of ancestral property and shared familial responsibilities. Over the years, the dynamics of HUFs have evolved significantly in response to changing legal, social, and economic landscapes in modern India. This paper examines the evolving nature of HUFs from multidimensional perspectives, exploring the implications of legal reforms, societal shifts, and economic trends on the structure and functioning of HUFs.

Historical Background:

The concept of joint family and the principles governing it can be traced back to ancient Hindu scriptures such as the Manusmriti, the Dharmashastra, and the Arthashastra. These texts provided guidelines on family structure, inheritance, and property rights within the joint family system. In ancient India, joint families were prevalent among the Hindu community, where multiple generations lived together under one roof and held property jointly.

The concept of HUF can be traced back to ancient Hindu texts and customs, where joint family arrangements were common among Hindu families. The Mitakshara and Dayabhaga schools of Hindu law recognized the joint family as a legal entity, with the eldest male member (karta) having control over family property and assets. This system facilitated mutual support, cooperation, and preservation of family wealth over generations. During the British colonial

rule in India, the concept of HUF was codified and recognized under the Hindu law. The Hindu Succession Act of 1956 codified various aspects of Hindu law, including the rights and responsibilities of HUFs. This legislation provided statutory recognition to HUFs and established rules regarding succession, partition, and management of HUF property.

Over the years, Indian courts have played a crucial role in interpreting and clarifying the legal principles governing HUFs through various landmark judgments. For example, in the case of *Commissioner of Wealth Tax v. Chander Sen*, the Supreme Court held that the existence of a joint family and the status of HUF are questions of fact to be determined based on evidence and circumstances. Similarly, in the case of *CIT v. R. R. Ramakrishna Pillai*, the Supreme Court clarified the concept of partition under Hindu law and its implications for HUFs.

Overall, the concept of HUF has evolved over time through legislative reforms, judicial interpretations, and societal changes in India. While HUFs continue to play a significant role in Indian society and economy, the legal framework governing them has evolved to address contemporary issues and ensure equity, fairness, and compliance with constitutional principles.

Thus, the Hindu Undivided Family in India has historical roots in ancient Hindu customs and traditions, with its legal foundations derived from statutes, judicial precedents, and principles of Hindu law. The HUF continues to play a significant role in Indian society, providing a framework for the preservation and management of family wealth and property across generations.

The legal foundations for HUF in India are deeply rooted in Hindu law, statutory provisions, and judicial interpretations. The concept of HUF as a joint family entity has evolved over time, and its recognition as a separate legal entity with distinct rights and obligations is essential for the preservation of Hindu customs and traditions.

Legal Foundations:

In India, the Hindu Undivided Family (HUF) is a unique legal entity that has its roots in Hindu law and customs. The legal foundations for HUF are primarily derived from ancient Hindu texts, customary practices, and judicial interpretations. The concept of HUF is governed by both personal laws applicable to Hindus and various statutory provisions.

The concept of HUF is deeply rooted in Hindu law, particularly the Mitakshara school of Hindu law, which prevails in most parts of India except for some states like Kerala and Maharashtra, where the Dayabhaga school is followed. According to Mitakshara law, an HUF

is a joint family consisting of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. The joint family property is held collectively by all members of the family, and there is a presumption of jointness unless proven otherwise.

Hindu Succession Act, 1956: The legal framework governing the Hindu Undivided Family in modern India is primarily derived from the Hindu Succession Act, 1956. This legislation codified Hindu law relating to succession, inheritance, and partition among Hindu families, including the rules governing HUF property. The Hindu Succession Act, 1956, governs the devolution of property among Hindus, including members of an HUF. Section 6 of the Act lays down the rules for the devolution of property in the case of a male Hindu dying intestate. It provides that the property of a male Hindu dying intestate shall devolve firstly upon the heirs specified in Class I of the Schedule, which includes sons, daughters, widows, and other relatives. In the case of an HUF, the joint family property devolves upon the coparceners according to the rules of succession laid down in the Act. The amendment to the Hindu Succession Act in 2005 abolished the distinction between "ancestral property" and "self-acquired property," giving daughters and sons equal rights in both types of property. This amendment aimed to promote gender equality within HUFs.

Income Tax Act, 1961: The Income Tax Act, 1961, recognizes the Hindu Undivided Family as a separate legal entity for taxation purposes. HUFs are treated as distinct assessable entities, eligible for tax benefits and exemptions available to them under the Income Tax Act. The Income Tax Act, 1961, recognizes the HUF as a separate assessable entity for the purpose of taxation. Under Section 2(31) of the Act, an HUF is defined as a separate entity consisting of all persons lineally descended from a common ancestor, including wives and unmarried daughters.

An HUF can earn income, hold property, incur expenses, and file tax returns in its own name. It is taxed separately from its individual members, and certain tax benefits and exemptions are available to HUFs under the Income Tax Act.

Hindu Marriage Act, 1955: The Hindu Marriage Act, 1955, governs marriage and family relations among Hindus. It recognizes the concept of joint family and HUF in the context of Hindu marriages. Section 17 of the Act provides that any property possessed by a Hindu female

shall be held by her as an absolute owner and not as a limited owner, thereby allowing her to contribute her share to the joint family property of the HUF.

Legal Precedents: Over the years, various court judgments and legal precedents have contributed to the understanding and interpretation of the legal principles governing HUFs. These precedents have clarified issues related to the formation, management, and dissolution of HUFs, as well as the rights and liabilities of coparceners and other members.

The legal foundations for HUF in India have also been shaped by judicial precedents and interpretations. Courts have consistently recognized the joint family as an integral part of Hindu society and have upheld the rights and obligations of members of an HUF. Various landmark judgments have clarified the principles governing HUFs, including the rights of coparceners, the nature of joint family property, and the rules of succession.

Hindu Law Principles: The legal foundation of the HUF is also based on fundamental principles of Hindu law, including the concept of coparcenary, joint ownership of ancestral property, and the right of maintenance for family members. These principles continue to shape the legal framework governing HUFs in India.

Gender Dynamics within HUF

Historically, the Hindu Undivided Family (HUF) structure in India was primarily patriarchal, with men holding the dominant position in matters of property ownership, succession, and decision-making. However, over the years, the role of women within HUFs has been evolving, driven by legal reforms, changing social norms, and increased awareness of gender equality.

With legal reforms, women within HUFs now have equal rights to ancestral and self-acquired property. They can inherit property from their parents, along with their brothers, and also hold a share in the joint family property. Example: If a Hindu father dies intestate (without a will), his daughter now has an equal right along with her brothers to inherit his property, whether it's ancestral or self-acquired.

Women within HUFs traditionally had responsibilities centered around household chores and family care. However, as their legal rights have expanded, their responsibilities have also evolved. Women now actively participate in managing family finances, making investment decisions, and contributing to the overall well-being of the family. Example: A daughter within

an HUF may take an active role in managing the family's businesses or investments, along with her brothers, contributing to the growth and prosperity of the family.

Economic Significance of HUF

The Hindu Undivided Family (HUF) is a unique and traditional form of business organization in India that holds significant economic significance. HUF enjoys certain tax benefits under the Income Tax Act of India. It is treated as a separate entity for tax purposes, allowing members to avail themselves of additional exemptions and deductions. For example, HUFs can claim separate income tax exemptions, deductions, and rates, which can result in lower tax liabilities compared to individual taxation. HUF provides a structured mechanism for business succession planning within families. It allows for the seamless transfer of wealth and business assets from one generation to the next, thereby ensuring continuity and stability in business operations.

This is particularly relevant in family-owned businesses where succession planning is crucial for long-term sustainability. By pooling together family assets under the HUF structure, individuals can enjoy better protection against creditors and legal liabilities. Since HUF properties are considered joint family assets, they are shielded from individual debts and obligations. This can be advantageous in safeguarding family wealth and preserving assets for future generations.

HUFs have the flexibility to invest in various asset classes such as real estate, stocks, mutual funds, and other financial instruments. By leveraging the combined resources of family members, HUFs can access a wider range of investment opportunities and diversify their portfolios. This can potentially lead to higher returns and wealth accumulation over time.

HUFs have deep cultural and religious significance in India, reflecting age-old traditions and values. By preserving the institution of HUFs, families can uphold their cultural heritage and transmit important values across generations. This continuity fosters a sense of identity and belonging within the family, contributing to social cohesion and stability.

HUFs offer effective estate planning and wealth management solutions for affluent families. Through strategic planning and allocation of assets within the HUF, individuals can minimize tax liabilities, optimize investment returns, and ensure equitable distribution of wealth among family members. This facilitates the efficient management and preservation of family wealth for future generations. Overall, the economic significance of HUF in India lies

in its ability to provide tax benefits, facilitate business succession, protect assets, create investment opportunities, preserve cultural traditions, and enable effective estate planning and wealth management for families. By harnessing the advantages of the HUF structure, individuals can achieve financial security, stability, and prosperity for themselves and their descendants.

Challenges and Opportunities

Despite legal reforms, there may still be societal pressure and stigma attached to women asserting their rights within HUFs, especially in conservative families or communities. Many women may not be fully aware of their rights under the law or may face challenges in asserting those rights due to lack of education or legal awareness. In some cases, women may face resistance from male family members in asserting their rights to ancestral property, leading to disputes and legal battles.

Despite legal provisions, some families may still practice discriminatory inheritance practices, favouring sons over daughters, which can pose challenges to women's rights within HUFs. While significant progress has been made in enhancing the rights of women within HUFs in India, there are still challenges and barriers that need to be addressed to ensure full gender equality and empowerment within these family structures.

Continued legal reforms, along with efforts to raise awareness and change societal attitudes, are essential in promoting the evolving role of women within HUFs. One of the significant challenges faced by HUFs is succession planning. In the absence of a clear legal framework, disputes often arise among family members regarding the division of assets and management of the family business.

This can lead to prolonged legal battles and family conflicts. HUFs face limitations in terms of expansion and growth opportunities. Unlike corporate entities, HUFs cannot issue shares or raise capital from external sources. This restricts their ability to invest in new ventures or expand their business operations.

HUFs often lack a formal governance structure, which can lead to issues related to decision-making, conflict resolution, and accountability. In the absence of clear guidelines and procedures, disputes among family members may escalate, affecting the stability and continuity of the HUF. While HUFs enjoy certain tax benefits, such as separate income tax exemptions and deductions, managing the taxation aspects can be complex.

HUFs have to maintain separate books of accounts and comply with various tax regulations, which can be burdensome and time-consuming.

Thus, while HUFs offer certain advantages in terms of tax planning and wealth management, they also face several challenges, including taxation complexities, succession planning issues, compliance requirements, and governance issues. Addressing these challenges requires careful planning, legal guidance, and effective communication among family members.

Conclusion

In conclusion, the Hindu Undivided Family (HUF) structure in India has undergone significant evolution in response to changing legal, social, and economic landscapes. While it remains a relevant and effective vehicle for preserving wealth and facilitating joint ownership, its dynamics have adapted to accommodate modern realities such as increased urbanization, globalization, and changing family structures. The legal framework governing HUFs has also evolved to address emerging complexities and ensure equitable treatment for all stakeholders. Socially, the concept of the joint family has transformed, with many families embracing more flexible arrangements that balance tradition with individual autonomy. Economically, HUFs continue to play a vital role in wealth management and succession planning, but they must navigate new challenges such as taxation and regulatory compliance. Overall, the evolving dynamics of HUFs reflect the ongoing interplay between tradition and modernity in India, highlighting the resilience and adaptability of this centuries-old institution.

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FIRE TRAGEDY IN THE COMMUNITY: USING EMDR APPROACH

This paper presents the data of Eye Movement Desensitization and Reprocessing (EMDR) intervention among college students affected by fire in the community. EMDR therapy using IGTP was employed to treat the trauma, after sufficient preparatory work.

Method: After understanding the symptoms of the fourteen students and taking their consent, the basics of trauma and stabilisation exercises were taught over the first two sessions. The pre-intervention and post-intervention data using IES-R and HAM-A was collected in the third and the fifth session. EMDR IGTP protocol was used to intervene with the target experience of the fire in the fourth session. Sixth session was a follow-up after 21 days of the intervention. Provisions were made for individualised follow-up sessions, ensuring ongoing care for those in need.

Results: Statistical analysis by employing Wilcoxon Signed-Ranks Test (Paired) was calculated. There was a significant difference (IES-R $p:0.0002$, HAM-A $p:0.0001$) between pre-intervention and post-intervention scores on IES-R and HAM-A. The results were analysed comparing the SUDs at initial stage (point A) with the SUDs at terminal stage (point D).

Conclusion: The quantitative analysis shows significant drop in the scores from pre-intervention to post-intervention on the scales IES-R and HAM-A. The EMDR IGTP succeeded in reducing symptoms of acute stress and anxiety. The reduction in SUDs from point-A to point-D indicates reduction in subjective feeling of distress. Although IGTP is proven to be effective in reducing the symptoms of acute stress, full EMDR processing on an individual therapy basis is recommended for complete resolution of the trauma.

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EXPLORING THE INTERFACE OF YOGA PHILOSOPHY AND LAW

Introduction:

Yoga, a profound spiritual and philosophical tradition originating in ancient India, has garnered widespread global recognition for its transformative potential in fostering physical health, mental well-being, and spiritual growth. Rooted in the pursuit of self-realization and inner harmony, yoga offers a holistic approach to personal development, emphasizing the integration of body, mind, and spirit. Over the centuries, yoga has evolved into a multifaceted discipline encompassing various practices, including physical postures (asanas), breath control (pranayama), meditation (dhyana), and ethical precepts (yamas and niyamas).

Simultaneously, India's legal landscape reflects a complex tapestry of statutory laws, judicial precedents, and constitutional principles that govern diverse aspects of societal life, ranging from governance and justice to human rights and public policy. As a dynamic and pluralistic democracy, India's legal system continually evolves to address the evolving needs and challenges of its populace, while upholding the foundational principles of justice, equality, and rule of law. The convergence of yoga philosophy and legal frameworks presents a compelling terrain for exploration, offering insights into the interplay between ancient wisdom and contemporary governance, spirituality, and jurisprudence.

This intersection raises intriguing questions about the compatibility, complementarity, or potential tensions between yoga principles and legal norms, as well as the implications for individual well-being, societal harmony, and legal discourse in India. Despite the growing interest in both yoga and law, scholarly inquiry into their interface remains relatively nascent, with limited systematic examination of how yoga philosophy influences legal thought, practice, and policy-making, and vice versa. Therefore, this research endeavours to fill this gap by

embarking on an interdisciplinary exploration of the interface of yoga philosophy and law in the Indian context. By adopting a multidimensional approach that integrates insights from legal analysis, philosophical inquiry, sociocultural examination, and empirical research, this study seeks to unravel the intricate connections between yoga and law, shedding light on their mutual influences, challenges, and potential synergies. Through a nuanced understanding of this interface, we aim to elucidate the role of yoga in shaping legal discourse and implementation, promoting individual well-being, fostering societal harmony, and advancing the broader goals of justice, equity, and human flourishing in contemporary India.

The article goes deep into the historical roots of yoga philosophy and legal traditions in India, explore key themes and concepts in both domains, examine case studies and contemporary manifestations of their interaction, and offer reflections on the implications for policy, practice, and future research. Ultimately, this research aspires to contribute to a more holistic understanding of the complex interrelationship between ancient wisdom and modern governance, illuminating pathways for leveraging the transformative potential of yoga philosophy within the framework of law and society.

Exploring the interface of yoga philosophy and law involves a multifaceted examination of how principles and practices from the ancient tradition of yoga intersect with contemporary legal frameworks. This exploration delves into various dimensions, including philosophical, ethical, practical, and regulatory aspects, to understand the implications of integrating yoga philosophy into legal systems and vice versa. Here's a detailed breakdown of key aspects:

1. Yoga Philosophy:

- Understanding the Foundations: Yoga philosophy is deeply rooted in ancient Indian scriptures such as the Yoga Sutras of Patanjali, Bhagavad Gita, and Upanishads. These texts outline principles of ethics (Yamas and Niyamas), techniques for physical and mental discipline (Asanas and Pranayama), and paths to spiritual enlightenment (Dhyana and Samadhi).
- Holistic Approach to Well-being: Yoga promotes a holistic view of well-being, encompassing physical health, mental clarity, emotional balance, and spiritual growth. It emphasizes practices that integrate the body, mind, and spirit to achieve harmony and self-realization.

- Ethical Principles: Central to yoga philosophy are ethical principles such as non-violence (Ahimsa), truthfulness (Satya), non-stealing (Asteya), moderation (Brahmacharya), and non-possessiveness (Aparigraha). These principles guide moral conduct and interpersonal relationships.
2. Legal Frameworks:
- Governance and Legislation: Legal systems in India encompass a wide range of laws and regulations governing governance, administration, justice, human rights, commerce, and societal conduct. These legal frameworks are established through legislation, judicial interpretation, and executive enforcement.
 - Protection of Rights and Liberties: Legal systems aim to protect individual rights and liberties, ensure social justice, maintain public order, and resolve disputes through fair and transparent processes. Fundamental rights enshrined in the Indian Constitution guarantee freedoms of speech, expression, religion, and equality before the law.
 - Regulation and Enforcement: Legal frameworks include mechanisms for regulating various activities, such as healthcare, education, commerce, environment, and public safety. Regulatory agencies, administrative bodies, and law enforcement agencies play crucial roles in implementing and enforcing laws.
3. Intersection and Implications:
- Ethical Foundations of Law: The ethical principles espoused in yoga philosophy, such as non-violence and truthfulness, can influence legal norms and principles. Integrating these principles into legal frameworks may foster a more compassionate, just, and equitable society.
 - Promotion of Well-being: Yoga practices, including mindfulness meditation, stress reduction techniques, and physical exercises, have been associated with improved mental health, emotional resilience, and overall well-being. Legal initiatives that promote access to yoga-based interventions or recognize their therapeutic benefits may contribute to public health and wellness.
 - Legal Regulation of Yoga: Conversely, legal frameworks may impact the practice and teaching of yoga. Issues such as certification and licensing of yoga teachers, standards for yoga studios and wellness centres, liability for injuries during yoga classes, and intellectual property rights over yoga techniques are subject to legal scrutiny and regulation.
- Challenges and Controversies: The interface of yoga

philosophy and law may give rise to challenges and controversies, such as conflicts between religious freedoms and secularism, cultural appropriation of yoga practices, commodification of spiritual teachings, and tensions between traditional knowledge and modern legal systems.

4. Future Directions:

- Collaborative Initiatives: There is potential for collaborative initiatives between yoga practitioners, scholars, legal experts, policymakers, and community leaders to explore synergies between yoga philosophy and legal principles. Interdisciplinary research, dialogue, and advocacy efforts can promote greater awareness, understanding, and integration of yoga into legal discourse and practice.
- Policy Recommendations: Policymakers may consider incorporating insights from yoga philosophy into legal education, training programs for legal professionals, and public policies promoting holistic approaches to health, well-being, and justice. Moreover, efforts to safeguard the authenticity, integrity, and accessibility of yoga teachings while respecting cultural diversity and individual rights are essential.

In conclusion, exploring the interface of yoga philosophy and law involves a nuanced examination of how ancient wisdom and contemporary legal frameworks intersect, interact, and influence each other. This exploration offers opportunities to enhance individual well-being, foster social harmony, and advance justice and ethical governance in diverse societies like India and beyond.

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LATA SINGH VS STATE OF U.P. & ANOTHER ON 7 JULY, 2006, WRIT PETITION (CRL.) 208 OF 2004

Citations: Lata Singh Vs State of U.P. & Another, AIR 2006 SC 2522

Date of Judgement: 07/07/2006

Equivalent Citation: (2006) 5 SCC 475; 2006 (56) ACC 234

Case No.: W.P. No. (Crl.) 208 of 2004.

Case Type: Writ Petition

Petitioner: Lata Singh

Respondent(s): State of U.P. & Another

Bench: Hon'ble Justice Ashok Bhan & Hon'ble Justice Markandey Katju

Court: Supreme Court of India

Statutes Referred:

Indian Penal Code, 1860; Section 366

Code of Criminal Procedure, 1973; Sections 164, 482.

The Hindu Marriage Act, 1955.

Constitution of India; Article 32.

Facts:

The petitioner, Lata Singh, aged 27 years, lived with her brother, Ajay Pratap Singh (a resident of Lucknow). Married to Brahma Nand Gupta at Arya Samaj Temple on 2.11.2000 without the consent of her maternal family. Petitioner had undergone inter-caste marriage against their consent. Maternal family lodged a missing report on 4th November 2000, Police Station and as a result, the police arrested two sisters of the petitioner (Lata)'s husband named Mamta and Sanghita Gupta along with the husband of one of the sisters named Rakesh Gupta and a cousin of the petitioner's husband.

The brother of the petitioner threw away the luggage, furniture, and other things from the house and also locked one of the brothers of the petitioner's husband without any food and water for five days. Threats to kill the petitioner, her husband, and relatives were constantly given.

Lata's brother lodged a false complaint against her in-laws about kidnapping his sister who is not stable. Petitioner, who was helpless, approached Rajasthan Women Commission Jaipur to save her husband and other family members from this harassment 13.03.2001, the commission recorded her statement and the complaint was forwarded to the Superintendent of Police, Lucknow. The President of the Women Commission wrote an application to the National Human Rights Commission referring to the same matter requesting the authority to intervene.

The SHO of Sarojini Nagar Police Station submitted the final report. The report presented showed no charges against any accused and they all were released on bail on 17.05.2001.

On 29.05.2001, the statements of the petitioner were recorded before the court of the learned Chief Judicial Magistrate under Section 164 of the Code. The petitioner stated that her marriage was not under coercion and it was her free consent.

However, on 05.10.2001 the Hon'ble Magistrate passed the committal order.

Petitioner filed a protest petition against the final report by the police which stated that she was not mentally fit. On medical examination, it was found that the petitioner was not suffering from any ailment.

Later the Fast Track Court of Lucknow issued non-bailable warrants against the accused persons.

Aggrieved by the order of the Fast Track Court, one of the accused presented a petition registered as Crl. Misc. No. 520/2003 before the Allahabad High Court. The matter was to be adjudged before the Session Judge.

The appeal before the High Court of Allahabad was pending when the petitioner, Lata Singh, filed a writ petition under Article 32 of the Constitution for quashing the Session Trial No. 1201 of 2001 under Section 366 & 368 of the Indian Penal Code, 1860 and also the trial pending before the Fast Track Court (Lucknow).

Issues to be answered:

Whether the Petition brought under Article 32 of the Constitution seeking issue of writ of certiorari or mandamus to quash the pending Session Trial under Section 366 & 368 of Indian Penal Code is maintainable or not?

Contention of Petitioner/Appellant:

Coercion or force: It is contended that the Petitioner is a major and is of sound mind. The petitioner has married Brahma Nand Gupta with her own free will and there is no cause of any coercion or force.

Serious threat: It is alleged that the petitioner's brother lodged false complaints against the petitioner's husband and family. There is a serious threat by the petitioner's brother to her husband and in-laws.

Inter-caste marriage: The petitioner's brother is furious because the petitioner has undergone inter-caste marriage and he is exercising violence over the petitioner's husband's family. Inter-caste marriage is neither wrong nor prohibited by any law of the country. The petitioner alleged that due to the apprehension of life and safety for her and her family, she cannot visit Lucknow.

Police (no) Action: The police and administration did not take any action against the petitioner's brothers, rather arrested the family members of the petitioner's husband on a mere complaint by the brother of the petitioner.

Contention of Respondent:

Valid consent: The respondents alleged that the petitioner was not mentally fit and unable to give a valid consent. The husband and his family have instigated the petitioner to marry under force without the respondent's consent.

Kidnapped, instigated: The respondent counsel further contended that in this case, the accused parties were liable under the ambit of Sections Section 366 & 368 of the Indian Penal Code, 1860. The accused parties have kidnapped, instigated, and compelled the respondent's sister to marry against her wishes.

Judgement / Verdict:

The court observed that the marriage between the Petitioner and Brahma Nand Gupta was valid.

Right to marry and a definite right to choose their life partner under the ambit of Article 21 of the Constitution. This fundamental right of any citizen cannot be violated at the instance of another person.

The Hon'ble Supreme Court held that the writ petition under Article 32 of the Constitution was maintainable for quashing the Session Trial under Section 366 & 368 of the Indian Penal Code, 1860.

Also, the Court quashed the Session Trial proceedings and the matter that was pending in the Fast Track Court. Accordingly, the issued warrants against the accused were also quashed.

The Court directed the police to ensure safety and required protection to the petitioner, her husband, and all the relatives of the petitioner's husband.

The Court ordered criminal proceedings to be instituted against the petitioner's brother and others involved in causing violence to the family.

The Hon'ble Court condemned practices of honour-killing and the caste system as a hindrance to the development of a nation.

Thus, the Petition stands.

Conclusion:

The caste system is nothing but an obstruction in the development of a nation. It is dividing the nation and the couple marrying inter-caste along with the family are threatened and harassed. In India Honour killing is a major issue. Worst part is Khap/ Panchayat/ Gram Sabha approves the draconian tradition even in 21st Century. According to the National Crime Bureau 2020 statistics, there were a total of 25 cases (States + Union Territories) of honour killings in India. Between 2017 and 2018, it was reported that only one such killing happened, where the motive of the murder was an honour. However, in 2019, an NGO report stated that 195 cases of honour killings were reported alone from Tamil Nadu. It means several cases go unreported. This article alone mentions three such cases in November 2022.

We may never find out if there are more. But as long as society values its casteist patriarchal (internalised patriarchy) rigidity over the lives of their actual children, this horrific practice seems likely to continue. A movie Sairat (Marathi), remade into Dhadak (Hindi) too highlighted the issue of inter-caste marriage and Honour killing.

Unless equality, the society can never progress.

References:

<https://www.herzindagi.com/society-culture/aayushi-chaudhary-honour-killing-case-highlights-the-horrors-of-castiest-patriarchy-article-214593>.

<https://www.lawinsider.in/judgment/lata-singh-vs-state-of-u-p-anr>

<https://indiankanoon.org/doc/1364215/>

The Constitution of India 1949,

Indian Penal Code 1860

Indian Evidence Act 1872

The Code of Criminal Procedure 1973

Hindu Marriage Act 1955

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SMT. SARLA MUDGAL, PRESIDENT, KALYANI AND ORS. V. UNION OF INDIA & ORS.

Name of the Case: Smt. Sarla Mudgal, President, Kalyani and Ors v. Union of India & Ors.

Citation: 1995 AIR 1531; 1995 SCC (3) 635

Court: Supreme Court of India

Date of Decision: May 10, 1995

Appellant: Sarla Mudgal, President, Kalyani and Ors.

Respondent: Union of India & Ors.

Bench: Division Bench: Justice Kuldeep Singh and Justice R M Sahai

Introduction

India is a country with diversities in all fields from people to their religion. This heterogeneity varies from region to region, community to community, which revolves around various personal laws, whether codified or not. Back in 1950's, Hindu personal laws were coded and given permanent shape through Hindu Succession Act, Hindu Marriage Act; whereas other personal laws are still ambiguous. This erratic system leads to irregularity in the society. This case essentially brings forward the need of adopting Uniform Civil Code in India, and re-emphasised the marriage and divorce laws in inter-religion marriages.

Factual Matrix

In Sarla Mudgal Case, there were four petitions filed under Article 32 of Indian Constitution which lays down right to constitutional remedies through Writ Petitions in Supreme Court.

In the Writ Petition 1079/89, there were two petitioners. First is, Sarla Mudgal, Head and President of a registered society named 'KALYANI'. This organisation primarily works for the welfare of needy families and women in distress.

Another petitioner is Meena Mathur, who was married to Jitender Mathur on February 27, 1978 and had three children. In early 1988, the petitioner got to know about her husband's second marriage with Sunita Narula alias Fathima, which they solemnised after converting into Islam.

In Writ Petition 347 of 1990, Sunita Narula alias Fathima, contends that she along with Jitender Mathur who already had a marriage alive with Meena Mathur, converted into and adopted Islam and thereafter got married. A son was born to her. Further, she states that after marrying her, Jitender Mathur gave an undertaking in April, 1988 that he had reverted back to Hinduism and will be maintaining his wife and children out of first wedlock. She grieved for maintenance by her husband.

In Writ Petition 424 of 1992, another petition was filed by Geeta Rani, married to Pradeep Kumar on November 13, 1988. She alleged that her husband used to maltreat and beat her due to which her jaw was broken. In December 1991, the petitioner learnt that Pradeep Kumar married to Deepa, after conversion to Islam. The petition stated that the conversion was only for the purpose of facilitating second marriage.

In Civil Writ Petition 509 of 1992, Sushmita Ghosh, who was the petitioner, was married to G. C. Ghosh according to Hindu rites on May 10, 1984. In April 1992, her husband asked her to take divorce by mutual consent as he didn't want to live with her. The petitioner prayed that she was his legally wedded wife and she wanted to live with her, so that divorce can be avoided. Her husband claims that he had obtained a certificate dated June 17, 1992 that he had embraced Islam and will soon marry one Vinita Gupta.

Petitioner's Contentions

Meena Mathur contends that conversion of her husband to Islam was only for the purpose of marrying Sunita aka Fathima and circumventing the Provisions of Section 194 of IPC.

Sunita aka Fathima, as a petitioner pleads that after her husband reconverted into Hinduism, she continues to be a Muslim, not being maintained by her husband and has no protection in any of the personal laws.

Geeta Rani pleads that her husband converted into Islam only for the purpose of facilitating second marriage.

Sushmita Ghosh, in her writ petition, had prayed that her husband shall be restrained from entering into second marriage with Vinita Gupta.

Facts in Issue

Whether a Hindu husband, married under Hindu law, by embracing Islam, can solemnise second marriage?

Whether such a marriage without having first marriage dissolved under law, would be a valid marriage qua the first wife who continue to be Hindu?

Whether apostate husband would be guilty of the offence under Section 494 of Indian Penal Code?

Does India need a Uniform Civil Code for all its citizens?

Bigamy

“Chains do not hold a marriage together. It is threads, hundreds of tiny threads, which sew people together through the years.”

-Simone Signoret

Section 494 of Indian Penal Code, 1860 states that -

“Marrying again during lifetime of husband or wife- Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of it taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

This section has two exceptions as -

any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction

where the spouse has been continually absent for a period of 7 years and not heard to be alive within such period.

The court, in *Pashaura Singh v. State of Punjab*⁶⁹, laid down necessary ingredients of Bigamy:

- Having a husband or wife living
- Marries in any case

³(2010) 11 SCC 749

- In which such marriages are void
- By reason of taking place during the life of such husband or wife.

The punishment of this offence under penal code is imprisonment of 7 years and fine. Bigamy is held as non-cognizable and bailable offence. The Hindu Marriage Act, 1955 also invalidates bigamy and prescribes punishment in the Act. Section 17⁷⁰ states that-

Any marriage between two Hindus (including Buddhist, Jain or Sikh) solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of Sections 494 and 495 of the Indian Penal Code (45 of 1860) shall apply accordingly.

The expression "void" for the purpose of the Act has been defined under Section 11 of the Act⁷¹. It has a limited meaning within the scope of the definition under the Section. On the other hand, the same expression has a different purpose under Section 494, IPC and has to be given meaningful interpretation. The offence of bigamy is compoundable with the consent of wife and permission of court⁷² and if a person is acquitted in a criminal case for bigamy, a departmental enquiry can be conducted against him or her.⁷³ Also, to prove offence of bigamy, the prosecution must prove that the second marriage was valid.⁷⁴

Petitioner's Arguments

The petitioners in the aforesaid case mainly resorted to declare marriage after conversion into Muslim religion and solemnise second marriage, so as to get free of punishment. People have found loopholes in Indian personal laws and these chinks have led to people committing bigamy by conversion, when the spouse is alive.

Due to these irregularities in personal laws, the petitioners have contended the necessity of introduction of Uniform personal laws. This may help to resolve the problem and lead to national consolidation. The traditional Hindu law does not dissolve the marriage by conversion to other religion. The same is held in some precedents to this case. Precedents cited in support of the Petitioners -

In *Re Ram Kumari*⁷⁵ case, a Hindu wife converted to Muslim faith and married a Muslim. She was charged of bigamy under Section 494 of Indian Penal Code, as her earlier

⁷⁰Hindu Marriage Act, 1955

⁷¹Hindu Marriage Act, 1955

⁷² Parmeshwari v. Vennila (2000) 10 SCC 348

⁷³State of Karnataka v. T. Venkataramanappa (1996) 6 SCC 455

⁷⁴S. Nagalingam v. Sivagami (2001) 7 SCC 487

⁷⁵ (1891) Calcutta 246

marriage with a Hindu husband was not dissolved by her conversion. It was held that there was no authority under Hindu law for the proposition that an apostate is absolved from civil obligations and matrimonial bond after conversion.

Another case law which supported the argument of petitioner is the court's judgement in *Gul Mohammed v. Emperor*⁷⁶, where a Hindu wife was taken away by a Mohammedan who converted her religion into Islam and married her. The court propounded that the conversion did not by the very fact (ipso facto) dissolved the marriage and her marriage with former husband is still valid.

The court also cited the case of *Nandi @ Zainab v. The crown*⁷⁷, wherein the wife of the petitioner converted into Islam and then married a Muslim man named Rukan Din. She was charged with the offence of Bigamy under Section 494⁷⁸ and it was held that this marriage could only be dissolved by a decree of court. Similar was the case in *Emperor v. Mt. Ruri*⁷⁹, in which a Christian wife embraced Islam and married a Muslim. The court held that, according to Christian personal laws, the first marriage is not dissolved and the second marriage amounts to bigamy.

In *Sayeda Khatoon's Case*⁸⁰, the parties were originally Jew, and plaintiff converted to Islam and was now governed by Mohammedan law. Justice Lodge expressed his dilemma on what personal law to be followed on the plaintiff. He dissented on the preference of Mohammedan law over Jewish law as there is no particular personal law followed in India. In India, people follow their personal laws and there is no matrimonial law of general application in India. He further clarified that marriage conducted according to one personal law can only be dissolved by the same law. Since, India doesn't have general matrimonial laws, there is no authority for the view that a marriage solemnizes according to one personal law can be dissolved according to other personal law because of conversion.

*Sayeda Khatoon's case*⁸¹ was approved by Justice Blagden of Bombay High Court in a case⁸² where parties were married according to Zoroastrian law and thereafter, wife embraced Islam and husband refused to do so. The wife claims that her marriage stands dissolved due to

⁷⁶AIR 1947 Nagpur 121

⁷⁷ILR 1920 Lahore 440

⁷⁸Section 494, Bigamy, Indian Penal Code, 1860

⁷⁹AIR 1919 Lahore 389

⁸⁰ Sayeda Khatoon @ A.M. Obadiah vs. M. Obadiah 49 CWN 745

⁸¹ Sayeda Khatoon @ A.M. Obadiah vs. M. Obadiah 49 CWN 745

⁸² Robasa Khanum vs. Khodadad Bomanji Irani 1946 Bombay Law Reporter 864

her conversion. Blagden J. dismissed the suit. The parties further appealed in higher authority where the matter was heard by division bench of Justice Stone and Justice Chagla, who resorted to determination of conclusion through the principles of natural justice of equity, justice and good conscience. The bench determined the consequences of plaintiff's conversion to Islam and upheld the judgement of J. Blagden stating that the parties were married according to Zoroastrian rites and therefore, the marriage stand monogamous and can only be dissolved according to tenets of Zoroastrian religion.

Another major judgement which was cited in the case of *Andal Vaidyanathan vs. Abdul Allam Vaidya*⁸³, where the judges dealt with the marriage under Special Marriage Act 1872. They held that the Act contemplates monogamy and person married under the Act cannot escape from its provisions by merely changing its religion. If such person re-marries again during the lifetime of spouse, then he commits bigamy, no matter any religion he/she possesses. Only Section 17 of the Act provides a way with dissolution of marriage. The judges hold that - "Consequently, where two persons married under the Act subsequently becomes converted to Islam, the marriage can only be dissolved under the provisions of the Divorce Act and the same would apply even if only one of them becomes converted to Islam.

Legal Reasoning in the Judgement

Whether a Hindu husband, married under a Hindu law, by embracing Islam, solemnise a second marriage?

The second marriage of a Hindu husband after embracing Islam is in violation of justice, equity and good conscience. Also, these circumstances also attract the provisions of bigamy under Section 494 of Indian Penal Code. The judges held that under the Hindu personal law, before its codification in 1955, a Hindu marriage exists even after conversion of one party to another religion leading to no automatic dissolution of marriage. The Hindu Marriage Act which applies to Hindus including Buddhists, Jain and Sikhs and excluding Muslims, Christians and Parsis, mentions overriding effect of the Act in Section 4 of the Act. A marriage solemnised, whether before or after the commencement of the Act, have an overriding effect and can only be dissolved by a decree of divorce on any of the grounds mentioned in Section 13 of the Act.

⁸³ 1946 Madras 745

Section 13 (ii) of Hindu Marriage Act states conversion as one of the grounds of divorce-

'That the other party has ceased to be a Hindu by conversion to another religion'

They were of the view that when a marriage takes place under Hindu law and the parties acquire status and rights as governed under Hindu marriage and if one of the parties is allowed to destroy the marriage by adopting a new personal law, it would destroy the rights of existing spouse who continues to be a Hindu. A Hindu husband has right to embrace Islam as his religion but no right to marry again without getting the first marriage dissolved as per law.

The judges in this case agreed with J. Chagla in *Robasa Khanum Case*⁸⁴, that a matrimonial dispute between a convert to Islam and non-Muslim spouse is not a dispute where the parties are Muslims, and the rule of decision was not to be the 'Muslim Personal Law'. Therefore, the courts shall act on the principles of equity, justice and good conscience. Keeping in mind the interests of both the communities and plurality of laws, the court came to a conclusion that a Hindu husband, after embracing Islam, cannot solemnise a second marriage without dissolving the first marriage.

Whether such a marriage without having first marriage dissolved under law, would be a valid marriage qua the first wife who continue to be Hindu?

Several provisions of the Act like Section 5 (i)⁸⁵ which states a primary condition of a Hindu marriage as neither party has a spouse living at the time of the marriage and strictly enforce monogamy. Any marriage performed under the act cannot be dissolved except according to the grounds mentioned in Article 13⁸⁶.

In that situation parties who have solemnised the marriage under the Act remain married even when the husband embraces Islam in pursuit of another wife. A second marriage by an apostate by conversion into Islam is a marriage in violation of the provisions of the Act by which he will be governed even after his conversion as his first marriage was performed according to Hindu rites. Therefore, the second marriage of an apostate would be invalid and illegal qua his wife who married him under the Hindu Marriage Act and continues to be a Hindu.

⁸⁴ Robasa Khanum vs. Khodadad Bomanji Irani 1946 Bombay Law Reporter 864

⁸⁵ Hindu Marriage Act, 1955

⁸⁶ Hindu Marriage Act, 1955

Whether apostate husband would be guilty of the offence under Section 494 of Indian Penal Code?

In the case of Sarla Mudgal, all the four ingredients of Section 497⁸⁷ are satisfied when a Hindu husband who marries for the second time after conversion to Islam. He also has a wife living and then too marries again. The said marriage is void by the reason of its taking place during the life of the first wife.

The court had promoted harmony between the two religions and interpreted the laws in such a way that Hindu laws and Muslims law work in their own ambit and does not trespass on each other's persona law. The court therefore held that the second marriage of a Hindu husband after his conversion to Islam is a void marriage in terms of Section 494 of IPC.

Does India need a Uniform Civil Code for all its citizens?

The court propounded the need for Uniform Civil code in India to avoid the disturbance in administration by fixing the loopholes in laws. Justice Y.V. Chandrachud said in *Mohd. Ahmed Khan vs. Shah Bano Begum*⁸⁸, that "Uniform Civil Code as Article 44 of our Constitution has remained a dead letter and a common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies." The court also cited the judgement of *Ms. Jordan Diengdeh vs. S.S. Chopra*⁸⁹ to emphasise the urgency of Article 44 to be adopted in India and referred to the judgement of J. Y.V. Chandrachud in *Shah Bano case*⁹⁰. The judges also expressed to the Government to adopt the Uniform Civil Code as soon as possible.

Uniform Civil Code

"The State shall endeavour to secure for the citizens a uniform civil code through-out the territory of India" is an unequivocal mandate under Article 44 of the Constitution of India which seeks to introduce a uniform personal law. In India the purpose of Uniform Civil code is to replace the personal laws based on the scriptures and customs of each major religious community in the country with a common set governing every citizen. A uniform civil code

⁸⁷Indian Penal Code, 1860

⁸⁸ AIR 1985 SC 945

⁸⁹ AIR 1985 SC 935

⁹⁰ Mohd. Ahmed Khan vs. Shah Bano Begum AIR 1985 SC 945

will mean a set of common personal laws for all citizens. Currently, for example, there are different personal laws for Hindus and Muslims. Personal law covers property, marriage and divorce, inheritance and succession.

The UCC aims to provide protection to vulnerable sections as envisaged by Ambedkar including women and religious minorities, while also promoting nationalistic fervour through unity. When enacted the code will work to simplify laws that are segregated at present on the basis of religious beliefs like the Hindu code bill, Shariat law, and others. The code will simplify the complex laws around marriage ceremonies, inheritance, succession, adoptions making them one for all. The same civil law will then be applicable to all citizens irrespective of their faith.

Justice R.M. Sahai was of the view that -

“The pattern of debate, even today, is the same as was voiced forcefully by the members of the minority community in the Constituent Assembly. If, ‘the non-implementation of the provisions contained in Article 44 amounts to grave failure of Indian democracy’ represents one side of the picture, then the other side claims that, ‘Logical probability appears to be that the code would cause dissatisfaction and disintegration than serve as a common umbrella to promote homogeneity and national solidarity’.”

Conclusion

In a country like India where marriage resorts to a sacrament, the loopholes of conversion and rendering the marriage null and void places an immense need to the government to go for and adopt the Uniform Civil Code so that people can be protected from each of the personal laws.

The ruling in this case where a person cannot convert into other religion and leave the spouse from first marriage also acts like a bright light in darkness where equal status is given to all the citizens. The judgement in this case for the implementation of Uniform Civil Code and homogenising personal laws as it is the need of the hour. It is high time that country rich in diversities must have a uniform law dealing with personal laws like divorce, marriage, succession and maintenance.

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MANEKA GANDHI VS UNION OF INDIA IN 1977

Citation: AIR 1978 SC 597

The facts of the case in brief: The petitioner (Maneka Gandhi) was a writer whose visa was given on June 1, 1976, under the Passport Act, 1967. Later on, July second, 1977, the Regional Passport Officer, New Delhi, had requested the solicitor to give up her identification by a letter posted. On being approached about the purposes behind her visa seizure, The Ministry of External Affairs declined to create any reasons “in light of a legitimate concern for the overall population.”

In this manner, the petitioner had documented a writ request under Article 32 of the Constitution of India expressing the seize of her visa as the infringement of her key rights; explicitly Article 14 (Right to Equality), Article 19 (Right to Freedom of Speech and Expression) and Article 21 (Right to Life and Liberty) ensured by the Constitution of India.

Arguments advanced:

1. By the regulatory request of impoundment of the visa on fourth July, 1977 the respondent has encroached Petitioner’s Fundamental Right to Freedom of Speech and Expression, right to travel abroad, right to life and individual freedom and right to opportunity of development.
2. The arrangements of Article 14, 19 and 21 are to be perused in synchronization and they are not fundamentally unrelated. These arrangements in itself however not unequivocally comprises in itself standards of regular equity. A joined perusing of the three arrangements will offer impact to the soul of the constitution and constitution producers.
3. Despite the fact that India has not received American “fair treatment of law” in its constitution, the system set up by law must be sensible, reasonable and simply liberated from any kind of assertion.

4. Area 10(3)(c) is violative of Article 21 of the constitution as in it abuses the privilege to life and individual freedom ensured under the said sacred arrangement. By the excellence of this arrangement the candidate was controlled from voyaging abroad. This limit on the solicitor was illegal since it was commonly acknowledged that option to travel abroad was inside the privilege to life and individual freedom u/a 21.
5. Audi Alteram Partem e. chance to be heard is all around perceived as a basic element of standards of common equity. These standards of common equity locate no unequivocal spot in any established arrangements.

Be that as it may, the soul of Fundamental Rights comprises in itself the pith of these standards. Further, Article 32 gives a chance to the influenced gatherings to straightforwardly move toward Apex Court in the event that there is any infringement of Part III arrangements. This arrangement of Article 32 was instituted as Heart and Soul of the Constitution is identical to Audi Alteram Partem. Along these lines, it can't be said that Principle of Natural Justice are isolated and restrictive to the Constitution.

Verdict:

The court did not reverse the government order in this case, however, the judgement had far-reaching ramifications. The seven-judge bench said that the citizens have the right to personal liberty (Article 21 of the Constitution), which is an important precedent for fundamental right cases. The case and the judgement have been cited 215 times by other Supreme Court judges in their judgments.

As per Justice Chandra, "The Maneka Gandhi case epitomized the shift in legal jurisprudence in the late 1970s, with the Supreme Court taking on a more active role and trying to assert its legitimacy after the Emergency." The Supreme Court was heavily criticized for failing to defend liberties and constitutional values during the Emergency.

Conclusion:

The most important aspect of the Maneka Gandhi vs Union of India judgment was the interconnection it established between the provisions of Articles 19, 14, and 21. The Supreme Court made these clauses inseparable and into a single body by tying them together. To be legal, any method must now meet all of the standards outlined in these three documents.

As a result, this Maneka Gandhi vs Union of India decision greatly expanded the definition of personal liberty while preserving the basic and constitutional right to life. This

decision, in addition to shielding people from the Executive's unchecked acts, also maintained the sanctity of parliamentary law by refusing to strike down Sections 10(3)(c) and 10(4) of the 1967 Act (5).

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SHAKTI VAHINI VS. UNION OF INDIA

Citation: (2018) 7 SCC 192

Facts of the case:

The petitioner-organization was authorized for conducting Research Study on “Honour Killings in Haryana and Western Uttar Pradesh” by order dated 22.12.2009 passed by the National Commission for Women. It is stated that there has been a series of such honour killings in Haryana, Punjab and Western Uttar Pradesh. According to National Crime Records Bureau (NCRB), a total of 28 cases in 2014, 251 cases in 2015 and 77 cases in 2016 were reported with motive as Honour Killing (which includes cases registered under murder (section 302 IPC) & culpable homicide not amounting to murder (section 304 IPC) in the country.

The Writ Petition has been preferred under Article 32 of the Constitution of India seeking directions to the respondents- State Governments and the Central Government to take preventive steps to combat honour crimes, to submit a National Plan of Action and State Plan of Action to curb crimes of the said nature. That apart, prayers have been made to issue a writ of mandamus to the State Governments to launch prosecutions in each case of honour killing and take appropriate measures.

The issues before the Court were:

1. Whether an individual after attaining majority has the right to choose the partner of his/her choice?
2. Whether the Khap panchayats have the right to interfere in the right of a person to choose the partner?

Arguments Advanced:**Petitioner**

It is contended that there has been increased no. of cases in Haryana Punjab and Uttar Pradesh of honour killing which create fear among young people who want to get married.

The social pressure and the consequent inhuman treatment by the core groups who arrogate to themselves the position of law makers and impose punishments which are extremely cruel instill immense fear that compels the victims to commit suicide or to suffer irreparably at the hands of these groups. The action of a woman or a man in choosing a life partner according to her or his own choice beyond the community norms is regarded as dishonour which, in the ultimate eventuate, innocently invites death at the cruel hands of the community prescription.

It is contended in the petition that the parallel law enforcement agency consists of leading men of a group having the same lineage or caste which quite often meets to deal with the problems that affect the group. These agencies call themselves Panchayats which have the power to punish for the crimes and direct for social boycott or killing by a mob.

Respondent

It has been contended that honour killings are treated as murder as defined under Section 300 of the IPC and punishable under Section 302 of the IPC. As the police and public order are State subjects under the Constitution, it is primarily the responsibility of the States to deal with honour killings. On September 9, 2013, the Union of India has filed another affidavit stating, inter alia, that in order to tackle the issue of 'honour killings', a Bill titled 'The Prohibition of Interference with the Freedom of Matrimonial Alliances Bill' has been recommended by the Law Commission of India vide the 242nd Law Commission Report.

The Union of India has further contended that since the matter of the 242nd Law Commission Report falls under List III, i.e., Concurrent list of the Seventh Schedule to the Constitution of India. An affidavit has been filed by the State of Punjab stating, inter alia, that it is not taking adversarial position and it does not intend to be a silent spectator to any form of honour killing and for the said reason, it has issued Memo No.5/151/10-5H4/2732-

80 in the Department of Home Affairs and Justice laying down and bringing into force the revised guidelines/policies in order to remove any doubt and to clear any uncertainty and/or threat prevalent amongst the public at large.

The policy, as put forth, envisages dealing with protection to newly wedded couples who apprehend danger to life and liberty for at least six weeks after marriage. It also asserted that the State is determined to take pre-emptive, protective and corrective measures and whenever any individual case comes to notice or is highlighted, appropriate action has been taken and shall also be taken by the Government.

The State of Haryana has filed an affidavit denying the allegations made against the State and further stating that adequate protection has been given to couples by virtue of the order of the High Court and District Courts and by the police. The stand of the State of Haryana is that an action plan has already been prepared and the Crime Against Women Cells are functioning at every district headquarter in the State and necessary publicity has already been given and the citizens are aware of those cells.

The State of Jharkhand has filed its response stating, inter alia, the measures taken against persons involved in such crimes. Apart from asseverating that honour killing is not common in the State of Jharkhand, it is stated that it shall take appropriate steps to combat such crimes.

A counter affidavit has been filed on behalf of NCT of Delhi. The affidavit states that Delhi Police does not maintain separate record for cases under the category of “Honour Killing”. However, it has been mentioned that by the time the affidavit was filed, 11 cases were registered. It is urged that such cases are handled by the District Police and there is a special cell functioning within Delhi Police meant for serious crimes relating to internal security and such cases can be referred to the said cell.

The Department of Women and Child Development has also made arrangements for rehabilitation of female victims facing threat of honour killing and efforts have been made to sensitize the society against commission of such crimes. The State of Rajasthan, in its reply, had strongly deplored the exercise of unwarranted activities under the garb of khap panchayats.

The State of Rajasthan contends that it has issued circulars to the police personnel to keep a check on the activities of the panchayats. The State of Uttar Pradesh has filed two counter affidavits wherein it is stated that it is the primary duty of the States to protect the Fundamental Rights enshrined and guaranteed under the Constitution of India. Directions are being given to the police stations to keep a close watch on the activities and functioning of the Khaps. The State of Uttar Pradesh has acceded to comply with any directions which this Court may issue.

The State of Bihar has, in its affidavit, acknowledged that honour killing is a heinous crime which violates the fundamental rights of the citizens. It has been asserted that the State of Bihar has initiated a scheme to provide National Saving Certificate amounting to Rs.25,000/- as incentive to any woman performing inter-caste marriage in order to ensure their economic stability.

Verdict:

SC reaffirmed that Right to choose a life partner is a fundamental right, consent of family, community, clan not necessary for marriage between two adults. The Supreme Court held that “When two adults consensually choose each other as life partners, it is a manifestation of their choice which is recognized under Articles 19 and 21 of the Constitution”.

Conclusion:

Indian society is diverse in nature. Different types of culture, customs and traditions are followed by the people. Some customs define the unity of Indian people and some of them are create a dark side which no one wants to see. *Shakti Vahini vs union of India* case is the best example of the freedom which must have been given to the individual irrespective of gender. In this case supreme court held that right to choose a life partner of one’s own choice is a fundamental right envisaged under article 21 of the constitution. *Shakti vahini* case is surely a step by which a vast change can be brought in the society.

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LACUNA IN THE INSOLVENCY & BANKRUPTCY CODE, 2016 TO DEAL WITH CROSS BORDER INSOLVENCY

Introduction:

India is one of the fast-developing nations in various fields. It has taken many farther steps in various fields to develop as a nation. Whereas there have been many foreign nations supporting India by investing in India. Only getting money through investment doesn't completes the duty of the nation. As a nation India has to protect the investments of the foreign investors. When a company becomes insolvent there are necessary steps to be taken in order to protect the foreign investors to protect their rights. But looking at the aspect of cross border insolvency, there has been limited laws dealing with it.

The present laws related to cross border insolvency are Section 234 and 235 of Insolvency & Bankruptcy Code, 2016 (hereafter referred to as "IBC"). India can ratify bilateral treaties in relation to insolvency proceedings with particular country with which reciprocal arrangements and further can make a letter of request for an insolvency proceeding. But there are certain defects and inconsistencies in present legislation and thereby the country is in stage to adopt the United Nations Commission on International Trade Law (hereafter referred to as "UNCITRAL") Model Law on cross border insolvency by introducing a bill for it and adding it as a new chapter to IBC.

At present, India has to enter into bilateral agreements with other countries which is different for every nation but when adopting the UNCITRAL Model law it would be same for all the countries who has signed the treaty. Making proper legislation for cross border insolvency would lead to further increased investment of the foreign nations in Indian companies.

What Actually is Cross-Border Insolvency?

Insolvency means a state when an organization or an individual is not able to fulfill its financial burdens which are due against the lenders in term of debts. When a company is declared as an insolvent there are certain procedures which a company goes through i.e. there are informal meeting which are organized between the company and the creditors for making an alternative mode of paying the debts.

When the outcome of such meetings is not as per expected due to poor management of cash or the cash inflow is less than expected then the company can be declared as insolvent by performing certain insolvency proceedings where the liquidator would acquire all the assets of the company and evaluate them and liquidate those assets in order to pay off the debts.

The concept of cross border insolvency refers to treatment of financially burdened debtors where the assets of the debtors are in more than one country or the creditors are in more than one country.

The cross-border insolvency deals with three dimensions:

Firstly, protecting the rights of the foreign creditors who have certain rights on the assets of the debtor which are in the different jurisdiction wherein the proceedings of the insolvency are in place.

Secondly, when the assets of the debtors are in various jurisdictions and the creditor wants to involve those assets in different jurisdiction in the proceedings of insolvency.

Thirdly, the insolvency proceedings are going on or commenced on the same debtor in more than one jurisdiction.

With increase in the globalization, the investment of different countries in India has also increased. With such increase in investment these foreign nations should be given a protection to their investment as to assure them that their investments are safe in India. Proper cross border insolvency laws are necessary to protect the rights of foreign investors. IBC has been formulated by the legislation in order to get speedy and smooth disposal of the cases in regards to the insolvency and bankruptcy.

Present Law on Cross Border Insolvency & Its Defects:

At present, cross border insolvency is regulated by Section 234 and 235 of IBC. Section 234 of the code states that the Central Government can make any agreements with the foreign country to start with the insolvency proceedings. Central Government will do so with those countries with which there are reciprocal arrangements.

While further Section 235 of the said code states that the letter of request can be made to the authority of foreign nation with which such reciprocal arrangements have been made under Section 234. This application should be addressed to the relevant authority that is an adjudicating body in a particular country to provide for evidence in relation to assets of the debtor in country. This application can only be sent to the countries having reciprocal arrangements with India. But entering in the reciprocal arrangements with different countries is itself a very cumbersome process as this method would intake a lot of time and the objective of the code i.e. timely recovery of debts would not achieve. Also, when the assets are located in different countries it would make the procedure of insolvency much more complicated through reciprocal agreements.

While further looking into the code, making reciprocal arrangements doesn't state the procedure which has to be established in order to conduct the insolvency procedure. As there is no proper procedure for the insolvency procedure to be conducted then that makes the law incomplete. By only giving the right to make reciprocal arrangements with countries through the act doesn't solve the problem of cross border insolvency.

There should be a proper procedure for the same. While on the principle of transparency and justice to all, the insolvency procedure conducted should be equivalent for all the countries entering into the reciprocal arrangements. But here there is no such procedure established by the Legislature of India.

When there is a situation that certain countries have entered into reciprocal arrangements and if for every nation there is a different process then it wouldn't work out properly as there would be a point of conflict if in one insolvency proceedings there are creditors from different countries or assets of the company in different countries. As reciprocal

agreements don't have a feature of coordinating the procedure of insolvency which is in concerned with multiple jurisdictions.

So, in order to have proper structure and justice to all the investors investing from different nations, there should be proper procedure of insolvency which would be governed with all the foreign nations. When we further look into the cross-border insolvency it has three dimensions mentioned above in the article.

When we compare those three dimensions with the IBC out of which the code has adopted only the first dimension as the definition of persons in code also includes the "persons not resident in India".

Here in this definition, the new code permits the creditors of the foreign nation to be a part of the insolvency proceeding or to commence the procedure as the foreign creditors having the same rights which the Indian resident possess in relation to the distribution of assets when the company is liquidated by being insolvent. While the second and the third dimensions are not dealt by the code.

As the code lacks any mechanism for seeking proper procedure of insolvency with respect to having different jurisdiction where in Indian courts have to seek assistance of foreign courts in case of insolvency proceedings. Though there is implication of bilateral arrangements between nations under the code but it doesn't show any proper implementation procedure for the insolvency.

While when the situation arises where India doesn't have a bilateral agreement with that particular country and Indian debtor's assets are in that country, then there will be no assistance on remedies given to insolvency professional in order to have evidence on such assets.

UNCITRAL Model Law: An Overview

The need of this model law aroused due to the issue that every nation has its own specific manner of managing the issues of Cross Border Insolvency and bankruptcy laws which were too varied. A few nations had made arrangements with each other but still there was no

uniform way to deal with the Cross Border Insolvency issues. For dealing such issue, UNCITRAL received the content of Model Law on Cross Border Insolvency issues on 30 May 1997 and thereby was passed by United Nations (UN) General Assembly on 15 December 1997.

To provide greater flexibility, it was passed as a model law and not as a convention so that the nations can make necessary changes in their domestic laws regarding cross-border insolvency as per the model. Till now 44 states have adopted this model law. It focuses on authorizing, encouraging cooperation and coordination between jurisdictions, rather than attempting the unification of substantive insolvency law, and respects the differences among national procedural laws.

In India the existing provisions for cross-border insolvency i.e. Section 234 & 235 of IBC are insufficient and time taking, for which the government is adopting this model law as this will strengthen the framework of insolvency resolution.

Drawbacks in Cross Border Insolvency Procedure:

Even if entering into Bilateral Agreement with different countries may be a way for dealing with cross border insolvency provided by the Code, there are various problems to it:

- Materializing a bilateral agreement requires time;
- Insolvency regimes of different countries may vary widely;

Countries may have different rules regarding assistance and recognition of judgment in different countries.

In context of bankruptcy laws, it was recommended in Justice Eradi Committee Report of 2000 for implementation of model law by amending Part VII of Companies Act, 1956, Recognition, co-ordination and participation of creditors in foreign proceedings. Also in 2001, the N.L. Mitra Committee Report also provided that the cross-border insolvency laws of India is outdated and there was a need of Bankruptcy Code.

The basic object behind this model law is to ensure that the interest of banks and person involved including the creditor are protected in regard to cross border insolvency matters. By

formulating these provisions there will be substantial growth in mergers and acquisitions which would thereby enhance the economy of the country.

In order to overcome the drawbacks of current law which are stated in the previous chapter, this Model Law was adopted which is applicable in situation when;

- A Foreign court or a foreign insolvency professional needs support in State.
- Both foreign and domestic proceedings are simultaneously in progress.
- Insolvency proceedings need to be commenced in State by foreign creditors and other interested parties.
- In a foreign State assistance is required relating to domestic proceedings.

This Model Law will;

- Provide creditor right to access assistance to the court and to the representatives of foreign insolvency proceedings.
- Give simple procedure for recognition of foreign proceeding and appointment of foreign representative.
- Provide interim relief and automatic stay at court discretion.
- Coordination of proceedings and cooperation among courts of States where assets of debtor are located.

Benefits of Enacting UNCITRAL Model Law:

With the enactment of this model law, India will become an attractive destination for foreign creditors for investment. The three main economic benefit achieved by Model Law are:

- reduction in time for exchanging necessary information between countries
- increase in credit recovery efficiency and
- co-operation and assistance help in preserving the company's assets from dissipating, resulting in successful reorganization.
- This law is much clearer than the IBC in terms of remedy and procedure followed for foreign entities.
- This law is more flexible as a state can make changes in the model law as per the conditions and the local insolvency laws. Ex. US law provide remedies only after foreign proceedings are recognized.
- A country could refuse validity of the foreign proceedings if such is against the public policy of the country.

- Through this Model Law coordination between courts and insolvency professionals will exist in domestic as well as foreign jurisdiction.

The Model Law lays down circumstances when the foreign proceedings are to be recognized and how they should be recognized. The recognition is granted based on where the debtor has its “centre of main interests” (hereafter referred to as “COMI”) which is in turn dependent on its place of establishment. If such a debtor has COMI in the country where such proceedings are going on or if not as foreign non-main proceedings, then, such proceedings will be recognized as foreign main proceedings.

The relief that is provided after recognizing foreign-main proceedings is in form of granting stay on local proceedings by creditors against debtor undergoing insolvency. This suggests that moratorium would be imposed on assets of debtor and administration of debtor’s assets in that State is to be entrusted to foreign representative.

Public Notice on Cross Border Insolvency: An Analysis

“The application for the recognition of foreign proceedings in India will have to be made to the NCLT by the foreign representatives pursuant to the Model Law as the tribunal is not compelled to automatically recognize the concurrent proceedings.”

The Insolvency Law Committee Report on March 2018 recommended to have an all-included mechanism for cross border insolvency matters as the current provisions i.e., Section 234 & 235 of IBC do not provide a comprehensive framework so a separate chapter was required to be inserted in the Code which will be based on UNCITRAL Model Law on Cross Border insolvency.

For this, a public notice was issued by Ministry of Corporate Affairs (hereafter referred to as MoCA) on 20th June 2018. As per this notice Central Government after entering into agreement with other countries, may bring overseas asset of domestic corporate debtor into consideration of insolvency resolution in India. While initially cross border insolvency framework will apply only to corporate debtors, it can be extended to cases of personal insolvency resolution as well.

The basic provisions provided in the public notice are:

Section 1(1) of this public notice covers:

Assistance in India by foreign court or representative for foreign proceedings and assistance by Indian representative from foreign courts. Dealing with the situations where multiple proceedings is going on against a corporate debtor in different jurisdictions. The foreign main proceedings will commence at the COMI. Section 14 of public notice explains COMI which is the state in which registered office of the corporate debtor lies.

There was no such law apart from Section 13 of Civil Procedure Code which talks about recognition of foreign judgement in India. The Chapter III of the public notice provides for such recognition by Adjudicating Authority. Also, the Chapter IV provides for cooperation and communications between Adjudicating Authority and foreign courts. This public notice empowers foreign representatives under Section 7, 9 & 10 of the Code to commence or participate in the proceedings against corporate debtor. The effects of the recognition of foreign main proceedings and the relief granted are specified under section 17 and 18 of the public notice respectively. Inclusion of cross-border insolvency framework will further enhance ease of doing business, provide a mechanism of cooperation between India and other countries in the area of insolvency resolution, and protect creditors in the global scenario. But still there are certain deficiencies in the public notice too;

By including the provision of foreign creditor right to participate in Indian proceedings, duplication will arise as there is already an existing structure for foreign creditors.

The word 'State' is used a lot in the public notice but is nowhere defined in it. Section 12(1) provides that a foreign representative may apply for recognition of the foreign proceedings to the Adjudicating Authority but does not specify what recognition of the foreign proceedings mean.

Section 2(c) defines establishment which means the place where corporate debtor carries out non-transitory economic activity three months before commencement of insolvency proceedings in COMI of debtor. But it fails to include all other places where the corporate debtor carries on principle economic activity.

There is no such provision in the public notice relating to prohibition/stay of foreign non-main proceedings.

The public notice does not impart individual bankruptcies which thereby restrict cross-border insolvencies scope to corporate debtors.

Conclusion:

As we look into the aspect of cross border insolvency, it requires a proper legal framework. This necessity has been recognized by the legislature as without proper legal provisions there would be a threat for the foreign investors to invest in India. While when we look at the current situation in India, India is inviting many foreign nations to invest in the country and to even set up their manufacturing units in the country. So, in order to save their interest and motivate them to invest in the country the formulation of the law is of great importance.

The UNCITRAL has also given aspects of cross border insolvency and has given procedural framework in regards to insolvency for efficiency in the administration. As when we look into the aspect of insolvency it requires many complex issues in several areas of law in different jurisdictions.

So, keeping in view the Model Law, MoCA has issued a public notice on cross border insolvency which would be added in the IBC itself. With the incorporation of this public notice in the Code, a uniform mechanism will be followed by various countries which also enhance cooperation among them. But there are various flaws in the public notice like the definitions of certain terms are not provided or is ambiguous, also there are flaws in certain provisions which should be taken into consideration before enacting such a public notice as a chapter in the Code. This public notice once incorporated into the IBC will resolve the problem of the cumbersome process provided in Section 234 and 235 of the IBC which has been followed till now and thereby will provide faster and proper remedy to the foreign creditors in cross border insolvency matters if the deficiencies provided are resolved too.

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ESSENTIALS OF A VALID CONTRACT

The Indian Contract Act, 1872, provides the legal framework governing contracts in India. A contract is essentially an agreement between two or more parties that creates legally enforceable obligations. For a contract to be legally valid, it must satisfy certain essential elements, as outlined in the Indian Contract Act. These essentials are crucial to ensure that contracts are enforceable and that parties' rights and obligations are protected.

Here are the key essentials of a valid contract in India:

Offer and Acceptance (Proposal and Acceptance): An agreement starts with one party making a proposal (offer) to another party. The offer must be clear, specific and communicated to the offeree. The offeree must accept the offer without any conditions or modifications for an agreement to be formed.

Example: "A" offers to sell his car to "B" for Rs. 5,00,000, and "B" accepts the offer.

Case Law: In the case of *M.P. Appanna Kamath v. K. Balakrishna Rao (1969)*, the Supreme Court held that there must be a clear and unambiguous offer that is accepted without any variations or conditions to form a valid contract.

Intention to Create Legal Relations: The parties must intend for the agreement to create legal obligations. Social or domestic agreements, often presumed to lack this intention, are not legally binding unless evidence suggests otherwise.

Example: "A" promises to pay "B" Rs. 1,000 if "B" exercises regularly. This is not intended to create a legally binding contract.

Case Law: In *Balfour v. Balfour (1919)*, the court ruled that agreements between spouses in domestic situations are generally presumed not to have the intention to create legal relations.

Legal Capacity of Parties: All parties entering into the contract must have the legal capacity to do so. Minors, persons of unsound mind and those disqualified by law cannot form valid contracts.

Example: A minor enters into a contract to buy a smartphone.

Case Law: In *Mohori Bibee v. Dharmodas Ghose (1903)*, the Privy Council held that contracts with minors are void ab initio (from the beginning) unless they fall under specific exceptions.

Free Consent: The consent of all parties must be freely given without any undue influence, coercion, misrepresentation or fraud. If the consent is obtained through any of these vices, the contract is voidable at the option of the aggrieved party.

Example: “A” threatens “B” with physical harm if “B” does not sign a contract. “B” signs the contract out of fear.

Case Law: In Coercion and Undue Influence (Section 15 and 16 of the Indian Contract Act), it is explicitly stated that a contract is voidable if it is obtained through coercion or undue influence.

Lawful Object and Consideration: The object of the Contract must be lawful. It should not be illegal or against public policy. Consideration is something of value exchanged between the parties. A contract must have lawful consideration to be valid.

Example: “A” promises to sell his car to “B” for Rs. 1,000, and “B” promises to pay “A” Rs. 1,000 in return.

Case Law: In *Jagannath v. Mysore State Road Transport Corporation (1969)*, the court emphasized that a contract must have lawful consideration, and the object of the contract must not be against public policy or illegal.

Certainty and Possibility of Performance: The terms of the contract must be clear, specific and certain. The contract must also be capable of performance. An agreement that is impossible to perform is void.

Example: “A” promises to pay “B” "a reasonable amount" for services rendered. The contract lacks certainty and may be void.

Case Law: In *Fateh Chand v. Balkishan Das (1963)*, the court stated that an agreement must not be vague, indefinite, or uncertain to be enforceable.

Not Expressly Declared Void or Illegal: The Indian Contract Act specifically declares certain types of contracts as void, such as agreements that restrain trade or marriage. Contracts that are expressly declared illegal by Statute or against public policy are also not valid.

Example: An agreement to smuggle contraband goods.

Case Law: The Indian Contract Act and other laws explicitly declare certain types of contracts, such as agreements to commit illegal activities or restrain trade, as void.

Legal Formalities (if required): Some contracts, such as those dealing with the sale of immovable property or creating interests in land, must be in writing and registered to be enforceable.

Example: The sale of immovable property typically requires a written and registered contract.

Case Law: Section 10 of the Indian Contract Act specifies that agreements that are not in compliance with the law's formal requirements may not be enforceable.

Possibility of Performance: The contract must be capable of being performed. If it is impossible to perform, it is void.

Example: “A” promises to bring “B's” grandfather back from the dead. Such a promise is impossible and, therefore, void.

Case Law: In *Taylor v. Caldwell (1863)*, the court held that a contract becomes void if the performance becomes impossible due to circumstances beyond the control of the parties.

Not Declared as a Void Contract: The Act specifies certain types of contracts that are void, such as agreements without consideration.

Example: An agreement without consideration.

Case Law: Section 25 of the Indian Contract Act lists various scenarios where an agreement without consideration is void, except when it falls under specific exceptions.

In summary, for a contract to be valid under the Indian Contract Act, it must encompass these essentials: offer and acceptance, intention to create legal relations, legal capacity, free consent, lawful object and consideration, certainty and possibility of performance, not expressly declared void or illegal, adherence to legal formalities (if required), and the possibility of performance. Understanding these essentials and their real-world applications through examples and case laws is crucial when dealing with contracts in India.

It ensures that contracts are legally binding and enforceable while protecting the rights and obligations of all parties involved. Failure to adhere to these essentials can result in a contract being declared void or voidable, which may lead to legal disputes and financial consequences. Therefore, parties should exercise caution and seek legal advice when entering into significant contractual agreements to ensure compliance with the Indian Contract Act.

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498A - BANE OR BOON?

Introduction

Marriage has been regarded as one of the essential sacraments in society. It is one of the important decisions in one's life. It is considered that man and woman are equal in this sacrament but until today there is a male dominance in a society, i.e., Indian Family Structure. Because of this, it is likely that women can become the victim of domestic violence. Women not only face abuse from husband but also his family. Prior to this section there was no Indian Law which address Domestic Abuse. After amendment to Indian Penal Code, this section was inserted in the year 1985. It was added to safeguard the woman from domestic violence i.e., any act of violence or abuse including mental, physical and sexual abuse that takes place in surrounding. This cruelty has been made punishable crime in the Court of Law after legislation in India.

Section 498a IPC

Husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation

"Cruelty means"—

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

IPC 498A was added after an amendment was approved by the Indian Parliament in the year 1985. This section is a criminal offence.

Pre requisite of Section 498A: -

For this section to apply certain condition must be met. The following are as follow as: -

- It's important that woman should be married to fall into this section.
- Married woman/ she must have subject to cruelty.
- Such cruelty should have been done by either Husband or the Husband's family or both.

Nature of offence under Section 498A

Section 498A Offence has following nature:

- 1) Non Bailable - If a complaint is lodged/register under Section 498A, magistrate can refuse Bail and send the Alleged/Indicted to Court or Police custody without the need for a Bail Hearing.
- 2) Cognizable - Crimes where the Police can arrest without a warrant is cognizable crime and vice versa. Under this Section Arrest can be made without the warrant.
- 3) Non-Compoundable – In this petitioner cannot withdraw case and it ends with acquittal or conviction of the Offender, here compromise is not allowed.

Types of Cruelty covered under Section 498A

When one person intentionally causes harm to another when it could have been avoided then it is called as Cruelty. It is a vicious treatment towards an individual. It affects the Life, the health or even the comfort of the person.

Acts of Cruelty towards women are given below: -

- Domestic Cruelty - Domestic Violence.
- Economic Cruelty - Here the Husband control the wife economic activity, forces her to depend on him solely.
- Sexual Cruelty - Forced Sexual Intercourse & other form of Sexual Coercion.
- Physical Cruelty - Slapping, hitting, kicking and beating.
- Emotional Cruelty - Insult, belittling, constant humiliation, intimidation, threatening to harm.
- Controlling Cruelty - Isolating a woman from her family restriction.

Validity of Section 498A

It is regardless of the length of Marriage. But it does not mean that the wife can file it anytime.

No limitations of numbers of year's marriage on filing 498A but complaint regarding violation under Section 498A must be made within Three years (3 yrs.) of last incident of cruelty.

Who can file a complaint under Section 498A?

Any woman who has been victim of any type of abuse either physical, mental or sexual can file complaint in/at Police station.

Or any person related to her by blood, marriage or adoption if she is too injured or does not feel comfortable to go.

A woman living in a live in relationship cannot or not entitled to file a complaint under Section 498A.

Misuse of Section 498A

Today every woman in India understands it use & file a complaint against her husband & his family as a weapon in their hand for their own convenience. Due to this many husbands and his family have become victim of this. Nowadays Section 498A is used as a blackmail attempt by the wife when troubled with a bad marriage. This exploitation of section has results in degrading the foundation base of marriage.

The number of false cases under Sec 498A has increased over past few years. Statistic says that 10,193 in 2011, 10,235 in 2012 & 10,864 in 2013. The total number of cases registered under Section 498A in year 2018-2021 were 1, 11,549 out of there 5520 were considered false and 16,151 cases were closed due to mistake of false fact, insufficient evidence and so on. If we see success rate under 498A is only 20% according to Law Commission of India.

Due to been cognizable & non bailable in nature, which means a single complaint from the woman is sufficient for arrest, technically it means that an accused can be arrested by the police without any warrant from court & it can only be invoked by wife, daughter in law or her relative.

Sadly, the purpose of this law was brought by judiciary to safeguard women against cruelty but is menace by the rising number of fake claims which can be witnessed today.

Solution for Section 498A

- 1) Get an anticipatory bail.
- 2) File defamation lawsuit under Section 500 of IPC.

- 3) File an FIR against wife for false 498A complaint.
- 4) Get the 498A quashed. If there is sufficient evidence. Court has power to quashed the false 498A filed by wife.

Landmark Judgement under Section 498A

SUSHIL KUMAR SHARMA VS UNION OF INDIA & ORS, 2005

Sushil Kumar Sharma – Petitioner

Union of India – Respondent

Date of Judgement – 19.07.2005

Facts:

In this case, the petitioner requested the Supreme Court to declare 498A as unconstitutional. He further asked that whenever the court verdict comes and the filed complaint turned to be false then strict action should be taken against the individual who made charge.

Argument:

In petitioner word, there is no prosecution in these cases but persecution in these cases. It was seen that many numbers of suits were fraudulent. Accuser bear more responsibility than accused, it was argued. It is normally used by wife to seek profit from it.

Judgement:

The apex court of India did not find any merit in the argument that 498A is unconstitutional. Court itself accept that there are many complaints which are not genuine. Thus, it is court duty to implement the correct steps to avoid it misuse.

ARNESH KUMAR VS STATE OF BIHAR, 2014

It is one of the landmark judgements of Indian Supreme Court, in which they state that arrest should be an exception where the punishment is less than 7 years of imprisonment. Legal action can be initiated against the police officer if the procedure for arrest under Arnesh Kumar Guidelines are violated.

Background:

In 1983, this Section 498A was enacted including Section 304B to prevent the threat of increasing dowry deaths and violence against married women by their husband and in laws. But in many cases of 498A, huge amount of dowry is claimed without any valid reasoning. A

low-income housewife allege that she has given huge amount of dowry and police are force to register it.

Judgement:

In the case of Arnesh Kumar Vs State of Bihar & Anr., a two bench Judge of the Supreme Court instruct state of procedure which should be followed before arrest. The court restrict the official from making arrests on just basis of complaint. The court the police to follow Section 41 of Code of Criminal Procedure which was provide a 9 checklist which must be decided to arrested. The court also said that the magistrate must decide whether an accused who is arrested is needed to keep under further detention or not.

Review:

Hence this decision was welcomed by public to uphold the Human Rights of innocent people and also by men activist but was heavily criticized by women rights activists because it weakened the negotiating power of women.

Conclusion:

Cruelty against women is a crime under Indian law and also a violation of women's human rights. This section recently has become a topic due to its misuse. Without proper legal action, this will grow into bigger issue. And women who in need cannot benefit from it properly, cunning women will use it as a tool for their advantage.

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CONCEPT OF DHARMA IN LAW

MEANING OF DHARMA

Dharma is a Sanskrit word that has multiple meanings, including ethics, duty, law, justice, truth, religion, and righteousness. It is a concept that holds a significant place in the Indian philosophy and culture, and it is considered the foundation of morality and human conduct.

The following are the key pointers forming the definition of Dharma: -

Dharma originated from Sanskrit word “dhr” which means “to hold”;

It is a form of command

In the words of Madhavacharya is, “It is most difficult to define Dharma. Dharma has been explained to be that which helps the upliftment of living beings. Therefore, that which ensures welfare (of living beings) is surely Dharma. The learned rishis have declared that which sustains is Dhrama.”

Justice M. Rama Jois defines dharma as “Dharma is that which sustains and ensures progress and welfare of all in this world and eternal bliss in the other world. The Dharma is promulgated in the form of command”.

ORIGIN OF DHARMA

The origin of the concept of Dharma can be traced back to the ancient Indian text, the Rigveda, which mentions the importance of Dharma in maintaining order and harmony in society. The concept of Dharma has been explained in greater detail in various texts such as the Vedas, Upanishads, Smritis, and Dharmashastras. Dharmashastra, often referred to simply as Dharma, is a broad term in Hinduism that encompasses various aspects of religious, moral, and legal duties or righteousness. The term "Dharmashastra" is derived from "Dharma," which translates to righteousness, duty, law, or morality, and "Shastra," which means scripture or teachings. Thus, Dharmashastra can be understood as the "science" or "teachings" of righteousness, duty, and law.

Dharmashastra texts form a significant part of Hindu literature and are considered one of the pillars of Hinduism alongside Vedas, Smritis, and others. They provide guidelines for personal conduct, social ethics, moral duties, legal principles, and rituals that govern various aspects of individual and societal life.

Dharmashastra

Manusmriti is a part of Dharmashastra;

Translated in English by Sir William Jones in 1794;

First Sanskrit text translated in English;

Manusmriti consists of 12 chapters;

Written between 200 BC to 200 A.D.;

The main objective of Manusmriti is to maintain Dharma i.e., Law and order;

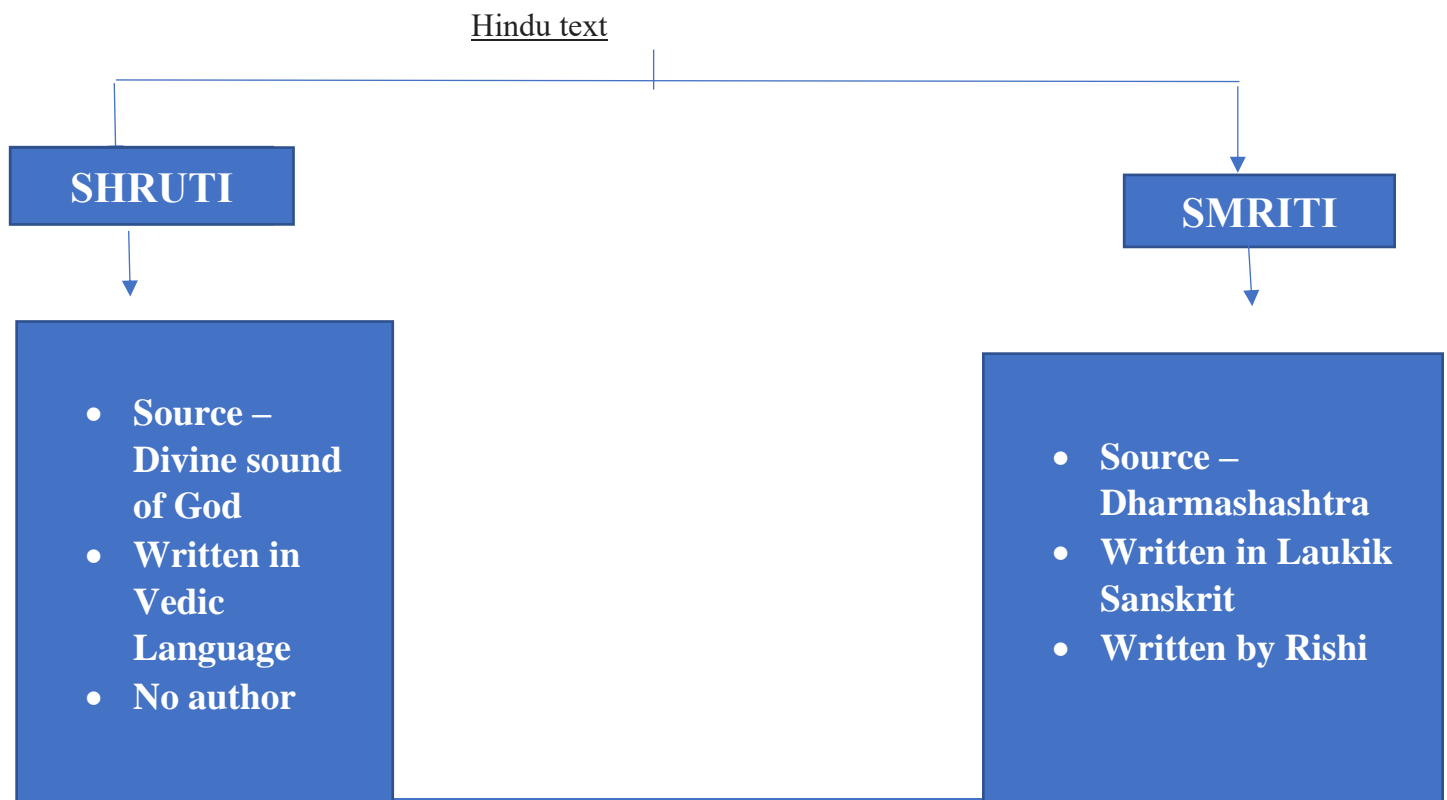
Contains practical rules governing individual, families, varna, etc.

Manu is considered as the first lawmaker;

Manu has told what is Dharma to different varna;

The main sources of Dharma are Vedas and Smriti.

The origin of Dharma can be seen from the table below: -



CONCEPT OF LIFE DEFINED IN DHARMASHASTRA

The Dharmashastras are ancient Indian texts that provide detailed codes of conduct in various aspects of life. They define the concept of life as a journey of self-discovery and self-realization, where an individual must fulfill their responsibilities and duties in society while also seeking spiritual knowledge and enlightenment.

Following are certain concepts of life defined in Dharmashastra: -

Four Goals of Life –

Dharma – Principle to lead a lawful life

Artha – wellbeing/ material possession

Kama – pleasure

Moksha – renunciation from kaam, krodh, lobh, moh and ahankaar.

Four Ashrams of Life –

Brahmacharya – student life

Grahstha – family life

Vanaprashtha – retire from family life and lead life towards dharma and aatma suddhi

Sanyasa – life away from family for mukti

Four Varnas of Hindu Society

Brahmin

Kshatriya

Vaishya

Shudras

Sixteen Sanskar/ Essential Rituals

These rituals are followed by Hindus from birth till death i.e., from *Garbhadharn* to *Anteyshti*.

APPLICABILITY OF CONCEPT OF DHARMA IN TODAY'S WORLD

Although the Dharmashastras were written centuries ago, the concept of Dharma remains applicable in today's world. The principles of Dharma, such as truth, justice, compassion, and respect, are universal and timeless. In today's society, the concept of Dharma can be applied to issues related to governance, social justice, environmental conservation, and personal ethics. The practice of Dharma can help individuals lead a more fulfilling and meaningful life, which benefits not only themselves but also society as a whole.

Following are the key pointers indicating applicability of concept of dharma in today's world

Dharma is the Indian version of the natural laws;

The concept of "welfare state" has found its root in Dharma;

Dharma is deemed to be the highest ideal of human life;

Human rights and fundamental rights have been squared from Dharma and Rig Veda.

The concept of dharma has been helping the Court to arrive at the decision, such concept of dharma was clearly spoken in –

Narayan Vs. State of Andhra Pradesh (AIR 1996);

Manika Gandhi Vs. Union of India, 1978;

Shirish Christian Vs. Manganlal Mangaldas Zaveri, 2012.

As dharma is included in every aspect and facet of human life; both (internal and external) and provides a law to govern it and safeguard, the same is been done by Article 21 of the Constitution of India with help of other articles.

CONCLUSION

Dharma and Law may seem to be in contrast but the ideology behind them is the same.

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TACKLING MENTAL HEALTH CONCERNS IMMEDIATELY

The Mental Health Day is observed on October 10th each year with the overall objective of raising awareness of mental health issues worldwide and mobilizing efforts in support of mental health. There is growing concern about mental illness with today's increasing socioeconomic competition, which is becoming more money-centric and materialistic. Despite people's lifestyles becoming better than in the past, economically with their socioeconomic development, we can see growing mental disorders and illnesses day by day.

Henceforth, we need immediate action to tackle this growing mental illness problem by taking striving action toward it. Before talking about tackling measures, we need to know what a mental disorder or illness is. The term 'Mental Disorder' is used to denote a range of mental behavioural disorders and psychosocial disabilities. They are characterized by a combination of abnormal thoughts, perception, emotions, behaviour, and relationships with others. Mental disorders include depression, bipolar disorder, schizophrenia, and other psychoses, dementia, and developmental disorders, including autism. People with mental health conditions are more likely to experience lower levels of mental well-being, but this is not always or necessarily the case.

Alarming Situation

According to the 'National Mental Health Survey' (NMHS) 2015-16, around 150 million Indians suffer from mental illness, including depression, anxiety, and other conditions. The prevalence of mental disorders in India, as per NMHS 2016, is 10.6%. According to a survey in The Lancet (2019), one in seven Indians suffers from mental disorders of varying severity. Suicide is a global priority and is included in Sustainable Development Goal 3.4. Around 10 to 15% of people suffering from depression can commit suicide, and more than 20% among them attempt to commit suicide. Recently, around 6-7% of people in the total population suffer from mental disorders in India, and one in four families is likely to have at least one member with a behavioural or mental health disorder. Over 90% of psychiatric patients in India

live with their families, which increases the risk for psychiatric caregivers. Caregivers are under considerable stress because of the physical and emotional caregiving, along with social isolation, financial difficulties, and troublesome behaviour of the patient.

The situation worsened during the COVID-19 pandemic because of stress, anxiety, financial difficulties, uncertainty about the future, losing loved ones, and mental state of the person deteriorated, leading to increasing mental illness. Biological factors such as genes or brain chemistry, life experiences such as trauma or abuse, and family history of mental health problems are some factors responsible for mental illness. Also, the absence of visible proof of illness, deviations in behaviour are attributed to attitudinal issues.

People mis conceptionally consider marital distress, financial problems, job stress, relationships, examination stress, and other problems as responsible behind a person's ill behaviour, and people do not pay much attention to the person by avoiding or ignoring it. It's unfortunate that mental health problems are often misunderstood and not taken seriously. There is a social stigma attached to mental illness, which makes it difficult for people to talk about it.

Government initiatives

However, the government is taking steps to address the challenges of mental illness. • *The Mental Health Act, 2017*, provides insurance for mental health, like other health insurance schemes. The government has also taken crucial steps by adding three measures for the well-being and proper handling of mental illness with sensitivity these measures are:-

1. The right to make an advance directive in which the patient can state how they want to be treated or not to be treated is an important step.
2. The right to appoint a nominated representative who can take health-related decisions on the patient's behalf is also crucial.
3. Decriminalization of suicide (IPC u/s 309) and providing proper care and rehabilitation to people who attempt to commit suicide are also important steps in addressing mental health challenges.

The government has launched several schemes to improve mental health in India. • *The National Tele-Mental Health Programme* is an important initiative that provides better access to quality mental health care, including counselling and support services. The programme has established twenty-three tele-mental health centres all over India with services available 24/7.

- The National Digital Health Ecosystem under Ayushman Bharat Digital Mission is another important initiative that consists of digital registration of health providers and health facilities, unique health identity, consent framework, and universal access to health facilities.
- The tax reduction for people with mental disabilities is also a positive step.
- The Rashtriya Kishor Swasthya Karyakram (2014) provides counselling and support services to adolescents who suffer from mental health problems, and
- The Atmanirbhar Bharat Abhiyan (2020) promotes mental health and provides support to individuals with mental illness.
- Other services like Kiran Helplines (24/7 free counselling and support), Manodarpan (during COVID-19 mental support), and MANAS (mobile app for mental wellbeing) are also positive steps towards better mental health in India.

Hurdles to effectively implementing of these government schemes and other factors

While the government has launched several schemes and initiatives to address mental health challenges, there are still hurdles to effectively implementing these programs.

One of the biggest challenges to effectively implementing government schemes for mental health is the lack of medical practitioners. For instance, there is only one psychiatrist for every four lakh citizens and one psychologist for every sixteen lakh citizens. Additionally, there is a lack of resources and mental health institutions, with only forty-three mental health institutions in the country. The budget allocation for mental healthcare is also very low, at only 0.05% of the total healthcare budget allocation. These challenges need to be addressed to ensure that individuals receive the support and care they need.

There is also a lack of awareness about mental health due to social stigma and poor awareness about symptoms. Caregivers are also at risk of stress, anxiety, and depression, which can become also prey of mental illness.

Rise of economic downturn during covid-19 this led to severity.

Prone to abuse i.e., sexual abuse, wrongful confinement, gross human rights violation.

Post treatment gap because of ignorance and avoidance of patients.

These are Hurdles needs to be overcome by immediate actively act of government.

Looking Ahead

I recommend some great ideas for how the government could overcome the hurdles in addressing mental health challenges. Bringing all stakeholders together with a holistic

approach to community mental healthcare, increasing resources and funding allocation, and successful intervention models such as cognitive and behavioural therapy, psycho-educational skill building, family counselling, and peer support are all important steps.

Encouraging community partnerships and spreading awareness in schools, public institutions, workplaces, and public places like gardens and meeting grounds through campaigns, seminars, webinars, and public meetings can also help reduce social stigma. Working with NGOs like White Swan Foundation, Mind root, and Lone Pace can also help to treat patients who are mentally ill and taking care of caregivers through counselling and support.

Those are great additional ideas. Engaging with private players by giving them incentives and encourage them to come with insurance policy for mental health and inspire them to participate in development of the mental ill patients and their families. these are all important steps to reduce these mental health problems. It is also important for people to cope with mental illness by sharing, spirituality, hobbies, and self-care. However, unhealthy coping mechanisms can negatively impact both caregivers and patients. Overall, mental he amidst many internal and external challenges.

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THE VITAL PURSUIT OF JUSTICE: WHY FOLLOWING THE COURT OF LAW MATTERS

“The Vital Pursuit of Justice: Why Following the Court of Law Matters” encapsulates the critical importance of adhering to legal processes and institutions within the Indian context. Following the court of law is vital in India as it upholds the principle of the rule of law. The rule of law ensures that laws are applied equally to all citizens, regardless of their status, wealth, or influence. It emphasizes that everyone is subject to the same legal framework, fostering a sense of fairness, equality, and justice within society.

India, as a democratic country, enshrines fundamental rights in its constitution. Following the court of law ensures the protection of these rights. Courts play a crucial role in safeguarding individual liberties, such as the right to life and personal liberty, freedom of speech and expression, equality before the law, and the right to constitutional remedies. By adhering to legal procedures and seeking recourse through the courts, individuals can seek redressal for violations of their rights.

In the intricate web of society, the court of law stands as the vigilant sentinel of justice, ensuring fairness and equity. Following court proceedings is not merely a formality but a crucial endeavour, indispensable for several reasons.

Courts provide a formal mechanism for the resolution of disputes. In a diverse and populous country like India, conflicts can arise in various spheres of life, including civil, criminal, commercial, and familial matters. Following the court of law allows parties to present their grievances before an impartial judicial authority, which adjudicates disputes based on evidence, legal principles, and precedents.

This helps in the fair and equitable resolution of conflicts, contributing to social harmony and stability. Courts play a crucial role in promoting justice and accountability within society. They hold individuals, organizations, and governmental bodies accountable for their actions. By following legal processes and adhering to court rulings, individuals and institutions

are compelled to act in accordance with the law, thereby deterring unlawful behaviour and fostering a culture of accountability.

Following the court of law contributes to legal certainty and predictability. It ensures that there is a clear legal framework within which individuals and businesses can conduct their affairs. Court judgments establish precedents and interpretations of law, providing guidance for future cases and transactions.

This stability in the legal system enhances investor confidence, fosters economic growth, and facilitates the smooth functioning of society. Courts serve as guardians of democracy by upholding the constitution and ensuring the separation of powers among the executive, legislative, and judicial branches of government.

By following the court of law, citizens reinforce democratic principles and respect the authority of judicial institutions. This strengthens the democratic fabric of the nation and reinforces the checks and balances essential for a healthy democracy. It leads to:

Transparency and Accountability:

Keeping abreast of court proceedings fosters transparency. It allows citizens to witness the legal process, ensuring accountability in the application of laws and the dispensation of justice. Open courts are a cornerstone of a just society.

Informed Citizenship:

Understanding legal proceedings empowers individuals to be informed citizens. Knowledge of court cases enables people to critically assess the functioning of the justice system, fostering a sense of civic responsibility and engagement.

Protection of Rights:

Courts serve as the ultimate protectors of individual rights. Following legal cases ensures that citizens are aware of their rights and liberties, and it provides a mechanism to challenge injustices, thereby upholding the principles of a democratic society.

Precedents and Legal Evolution:

Court decisions establish precedents that shape the trajectory of the legal system. Following these decisions provides insight into the evolution of laws, contributing to the development of a legal framework that is responsive to societal needs and values.

Social Harmony and Resolution:

Courts act as mediators in disputes, fostering social harmony by resolving conflicts through legal channels. By following court proceedings, individuals contribute to a culture where disputes are settled justly and in accordance with established legal principles.

In essence, the pursuit of justice extends beyond the courtroom walls. It requires an engaged and informed citizenry actively participating in the legal discourse. Following the court of law is not just a pathway to justice; it is a collective responsibility to uphold the ideals that underpin a fair and equitable society. The court of law is essential for ensuring access to justice for all segments of society, including marginalized and vulnerable groups. India's legal system endeavours to provide equal access to justice, irrespective of socio-economic status or background. By availing legal remedies and seeking redressal through the courts, individuals can address injustices and inequalities, thereby advancing the cause of social justice and inclusivity.

In conclusion, following the court of law is indispensable in India as it upholds the rule of law, protects rights, resolves disputes, promotes justice and accountability, ensures legal certainty, preserves democracy, and facilitates access to justice. By adhering to legal processes and respecting the authority of judicial institutions, individuals contribute to the maintenance of a just, equitable, and democratic society.

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EVOLUTION AND SIGNIFICANCE OF THE JUDICIAL HIERARCHY IN INDIAN LAW: A COMPREHENSIVE ANALYSIS

The legal framework of the Indian Judiciary, deeply entrenched in history, is a testament to its rich heritage and evolution. Originating from the era of British Colonial rule, spanning over two centuries, it has been meticulously structured by the Indian Constitution, which serves as the bedrock of its authority.

This judicial system operates on a multi-tiered structure, characterized by various courts, each endowed with specific powers delineated by its tier and jurisdiction. The resultant hierarchy establishes a pecking order, mirroring the arrangement of the courts themselves. At the pinnacle stands the Supreme Court of India, the highest echelon of legal authority. Directly beneath are the High Courts of individual states, followed by District Judges presiding over District Courts. Occupying the lower echelons are Magistrates of Second Class and Civil Judges (Junior Division).

This intricate hierarchy not only reflects the historical legacy of the legal system but also signifies the stratification of legal authority within the nation. As law students, understanding this hierarchical structure is pivotal to grasping the nuances of India's intricate judicial system. The evolution and significance of the judicial hierarchy in comprehensive analysis involves understanding the historical background, the structure of the Indian judiciary, its evolution over time, and its significance in contemporary legal and societal contexts.

In ancient India, justice was administered through local assemblies or "Sabhas" and "Samitis," where disputes were settled by community leaders or elders based on customs and traditions. During the medieval period, Islamic rulers introduced Qazi courts for Muslims and Hindu rulers continued with traditional systems such as Panchayats and Nyaya Panchayats for Hindus. The British colonial rule in India introduced a centralized legal system based on English common law. The Charter Act of 1833 established the Supreme Courts in Calcutta,

Bombay, and Madras. Later, the Indian High Courts Act of 1861 led to the establishment of High Courts in major provinces. Established under Part V of the Indian Constitution, the Supreme Court is the apex judicial body in the country. It has original, appellate, and advisory jurisdiction. Each state or group of states has a High Court, which is the highest judicial authority at the state level. They have original and appellate jurisdiction over civil and criminal matters. Below the High Courts are subordinate courts, which include district courts, sessions courts, and other specialized courts. They handle matters within their territorial jurisdiction.

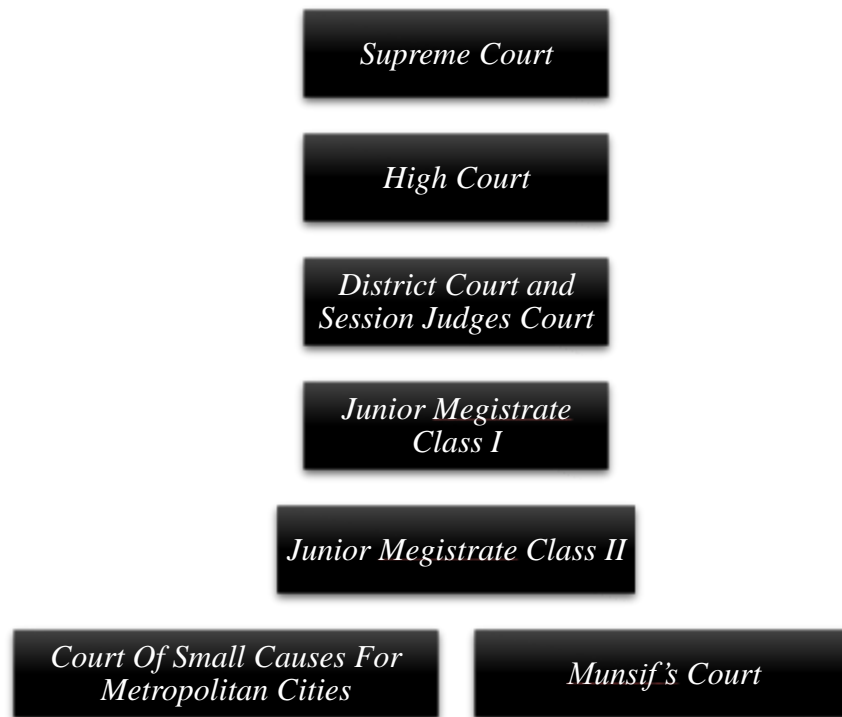
The Indian judicial system during the colonial period was characterized by a hierarchical structure with the Supreme Court at the top, followed by High Courts and subordinate courts. This structure was largely influenced by British legal principles. After independence, the Indian Constitution established a federal structure with a three-tier judiciary consisting of the Supreme Court, High Courts, and subordinate courts.

The judiciary gained significant independence and autonomy to ensure the rule of law and protect fundamental rights. Over the years, several judicial reforms have been undertaken to improve access to justice, enhance judicial efficiency, and address the backlog of cases. These reforms include the establishment of specialized tribunals, alternative dispute resolution mechanisms, and the introduction of technology in court proceedings. The judicial hierarchy plays a crucial role in protecting fundamental rights, ensuring the rule of law, and upholding the Constitution. The Supreme Court, in particular, has the power of judicial review to strike down laws that are unconstitutional.

The hierarchical structure ensures a system of checks and balances, with higher courts having appellate jurisdiction over lower courts. This helps in maintaining consistency, coherence, and fairness in the administration of justice. The judiciary acts as a guardian of the Constitution and interprets laws to resolve disputes between individuals, government bodies, and other entities.

It also plays a significant role in shaping public policy and governance through its judgments. A strong and independent judiciary enhances public confidence in the legal system. The hierarchical structure provides avenues for appeal and review, which instills trust in the fairness and impartiality of judicial proceedings.

Hierarchy of Courts in India



In conclusion, the evolution and significance of the judicial hierarchy in Indian law reflect a complex interplay of historical, constitutional, and societal factors. The hierarchical structure of the judiciary serves as a cornerstone of the Indian legal system, ensuring the protection of rights, dispensation of justice, and maintenance of public confidence in the rule of law.

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CRITICAL ANALYSIS OF DOMESTIC VIOLENCE ACT, 2005

Introduction

In general, domestic violence is described as a pattern of abusive behaviours by one or both partners in an intimate connection, such as marriage, dating, family, friends, or cohabitation. It is also referred to as domestic abuse, spousal abuse, or intimate partner violence (IPV). Physical aggressiveness (hitting, kicking, biting, shoving, restraining, hurling things), or threats of such behaviour, emotional abuse, controlling or domineering behaviour, intimidation, stalking, passive/covert abuse (such as neglect), and economic hardship are only a few examples of the various manifestations of domestic violence. Domestic abuse may or may not be illegal in your area, depending on local laws, the seriousness and length of the abuse, and other factors.

Forms of Domestic Violence

The goal of all forms of domestic abuse is to get and hold complete control over the victim. Abusers employ a variety of strategies to control their partner or spouse, including: Domination, humiliation, seclusion, threats, coercion, denial, and finger-pointing Direct physical violence includes rape, murder, and unwelcome physical contact. Indirect physical violence can take the form of hurting pets, hurling or hitting objects close to the victim, or destroying things. Abuse of the mind or emotions, including verbal threats of physical harm to oneself, the victim, or others, including children, as well as verbal abuse such as taunts, insults, and attacks Body language, facial expressions, and gestures can all be considered nonverbal threats.

In addition, economic and/or social control techniques include managing the victim's finances and other financial resources, keeping the victim from seeing friends and family, purposefully undermining the victim's social connections, and keeping the victim apart from social interactions can all be considered forms of psychological abuse.

Protection for Women against Domestic Violence Act (PWDVA)

The purpose of the Domestic Violence Act of 2005, also known as Protection for Women against Domestic Violence (PWDVA), was to provide women more power and influence in the home. On October 26, 2006, the Protection of Women from Domestic Violence Act 2005 (DVA) became operative.

DVA is widely anticipated to play a significant role in protecting women from domestic abuse and upholding their "right to live." The main purpose of DVA is to shield the wife or female live-in partner from abuse by her husband, male live-in partner, or family members. Additionally, mothers, widows, and sisters of women are covered by DVA.

The Act is incredibly progressive because it protects women in the household, including mothers and sisters, and it acknowledges women who are in live-in relationships. As a result, it encompasses relations of consanguinity, marriage, or through relationships in the nature of marriage, adoption, or joint family, which are referred to as "domestic relationships."

Loopholes in the Present System

The Domestic Violence Act mandates that Protection Officers submit applications to the magistrate and submit domestic incident reports (DIRs) in the format specified. In addition, service providers are able to record the DIR upon request from the individual who feels wronged. In actuality, each role's responsibilities still appear unclear two years after they were implemented. During the November 29–30, 2008, consultation on the Domestic Violence Act and Reproductive Rights, advocates from all over India voiced their concerns about the lack of specialization among Protection Officers.

Lack of Training of Police Officers and Magistrates

Many supporters cited the lack of sensitivity training on the problem of domestic abuse, an old evil but recently recognized idea in Indian society, as well as the absence of training for police officers and magistrates regarding the Act's criteria and purpose. Due to a lack of training, women have been victimized again by the legal system. This has happened when police have ignored calls for assistance, sending women back to their abusers by characterizing their abuse as domestic disputes, or when magistrates have allowed cases to be repeatedly

postponed, lengthening the court process and making victims appear in person repeatedly to confront their trauma.

Dual system: Family Court and Criminal Court

For women who have experienced domestic abuse, there are primarily two legal avenues available to them: applying for a divorce through Family Court or applying to the magistrate in accordance with the DV Act, which may involve the Criminal Justice System. The dual system can occasionally add to the complexity and perhaps tire them out of the legal process. Additionally, each approach's societal perception placed some strain on them.

Conclusion:

Raising women's awareness of the DV Act is one requirement for bettering its implementation. Effective trainings are also required for every department role engaged in the Act's execution. There needs to be enough money invested with good supervision to finish the system.

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JURISPRUDENCE

Introduction

The word ‘Jurisprudence’ is derived from the Latin word *jurisprudencia*, which means science or knowledge of law. It is a very vast area of study and it consists of several ideologies and theories on how law has been made. It also includes the relationship of law with individuals and other social institutions within the scope of its study. There are various sources from which we derive law. Several jurists and scholars have attempted to classify the sources of law. However, the most common sources in all these classifications are legislations, judicial precedents, and customs.

Law and sources of law

According to John Chipman Grey, who was a Harvard Law School professor, “the Law of the State or of any organized body of men is composed of the rules which the courts, that is the judicial organ of the body, lays down for the determination of legal rights and duties”. Though Gray’s definition has been criticized for being narrow, he distinguished law from the sources of law. According to him, law has evolved through case laws and sources of law are where we get the content and validity of law from. Essentially, law refers to the rules or code of conduct and its sources refer to the materials from which it gets its content.

Types of sources of law

John Salmond, a legal scholar renowned for his ideologies on law in the field of jurisprudence, classified the sources of law into mainly two categories: Material sources and Formal sources.

Material sources

Material sources of law are those sources from which the law gets its content or matter, but not its validity. There are two types of material sources which are legal sources and historical sources.

Legal sources

Legal sources are the instruments used by the state which create legal rules. They are authoritative in nature and followed by courts of law. These are the sources or instruments that permit newer legal principles to be created. According to Salmond, legal sources of English law can be further classified into four categories-

Legislation

Precedent

Customary law

Conventional law

Historical sources

Historical sources are sources that influence the development of law without giving effect to its validity or authority. These sources influence legal rules indirectly. The difference between legal and historical sources is that all laws have a historical source but they may or may not have a legal source. Decisions given by foreign courts serve as an example for this kind of source.

Formal sources

Formal sources of law are the instruments through which the state manifests its will. In general, statutes and judicial precedents are the modern formal sources of law. Law derives its force, authority, and validity from its formal sources.

According to **Keeton**, the classification given by Salmond was flawed. Keeton classified sources of law into the following:

Binding sources

Judges are bound to apply such sources of law in cases. Examples of such sources are statutes or legislation, judicial precedents, and customs.

Persuasive sources

Persuasive sources are not binding but are taken into consideration when binding sources are not available for deciding on a particular subject. Examples of such sources are foreign judgements, principles of morality, equity, justice, professional opinions, etc.

Precedent as a source of law

Judicial precedents refer to the decisions given by courts in different cases. A judicial decision has a legal principle that is binding on the subordinate courts. Once a court has delivered a judgement on a particular case, the courts subordinate to it must abide by the

precedent while deciding on similar cases with similar facts. Some of the most influential judicial precedents in India are the following:

Kesavananda Bharati v. The State of Kerala (1973): This case is what introduced the concept of the basic structure doctrine in India, protecting the fundamental features of the Indian Constitution from being removed.

Maneka Gandhi v. The Union of India (1978): The court held Section 10(3)(c) of the Passports Act, 1967 as void since it violated Article 14 and 21 of the Indian Constitution.

Legislation as a source of law

Legislation refers to the rules or laws enacted by the legislative organ of the government. It is one of the most important sources of law in jurisprudence. The word legislation is derived from the words legis and latum, where legis means law and latum means making.

Types of legislation

According to Salmond, legislation can be classified into two types- Supreme and Subordinate.

Supreme legislation

Legislation is said to be supreme when it is enacted by a supreme or sovereign law-making body. The body must be powerful to the extent that the rules or laws enacted by it cannot be annulled or modified by another body. Indian Parliament cannot be said to be a sovereign law-making body as the laws passed by the parliament can be challenged in the courts. The British Parliament, on the other hand, can be said to be a sovereign law-making body since the validity of laws passed by it cannot be challenged in any court.

Subordinate legislation

Legislation enacted by a subordinate law-making body is said to be subordinate legislation. The subordinate body must have derived its law-making authority from a sovereign law-making body. It is subject to the control of the supreme legislative body. The following are the different kinds of subordinate legislation:

Executive legislation: This is a form of subordinate legislation where the executive is granted or conferred certain rule-making powers in order to carry out the intentions of the legislature.

Colonial legislation: Many territories across the globe were colonised by Britain and such territories were called colonies. The legislation passed by the legislature of such colonies was subject to the control of the British Parliament.

Judicial legislation: Courts also have a role in enacting laws that aid in regulating the internal affairs and functioning of courts.

Municipal legislation: Municipal authorities also possess the law-making power as they enact bye-laws.

Autonomous legislation: Another kind of legislation is autonomous legislation, which is concerned with bodies like universities, corporations, clubs, etc.

Delegated legislation: Sometimes legislative powers may be delegated to certain bodies by the parliament through principal legislation. A principal act may create subsidiary legislation that can make laws as provided in the principal legislation.

Custom as a source of law

Custom refers to the code of conduct that has the express approval of the community that observes it. In primitive societies, there were no institutions that acted as authority over the people. This led to people organizing themselves to form cohesive groups in order to maintain fairness, equality, and liberty. They started developing rules with coordinated efforts to make decisions.

They eventually started recognizing the traditions and rituals practiced by the community routinely and formed a systematized form of social regulation. In India, laws relating to marriage and divorce are mostly developed from customs followed by different religious communities. Additionally, several communities belonging to the Scheduled Tribes category have their own customs related to marriage. As a result of that Section 2(2) of the Hindu Marriage Act, 1955 has exempted Scheduled Tribes from the application of this Act.

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MATERNITY RELIEF AND PROVISIONS

Abstract

In a progressive society, it has been gradually realized that women along with the men play a significant role in making the country prosper and as well as raising the standard of living. There has been evidence of tremendous change in the status of women with increasing their engagement in labour market, even though the inclination towards their social protection and social security is still under the question mark and unsatisfactory.

Article 42 of Indian Constitution incorporates a very important provision for the benefits of women. It is a principle of socialistic nature and dedicated to achieve social and economic welfare of the people with the objective to establish India as a Welfare State. It comes under Part- IV of Indian constitution which is 'Directive Principles of State Policy'.

Article 42 of the Constitution is a non-government organization operating in the sphere of protection of human rights facilitating the protection of civic and political rights and freedom, as well as protection of other fundamental rights.

To ensure that the state changes its casual attitude towards its women employees. This Article, states that the state shall make provisions for ensuring just and humane conditions of work and maternity relief. The nature of this Article was such that when it was put up for discussion, it was passed without any debate and was adopted on 23rd November 1948.

Aims & Objectives

Nature has made women to bear child in order to keep the generations going on. Bearing of child is also a family as well as social obligation of a married woman and an employed married woman cannot be an exception or immune from this obligation. Thus maternity is unavoidable.

With the emergence of the system of wage labour in the industrial undertakings, many employees tended to terminate the services of the women workers when they found that maternity interfered with the performance of normal duties by women workers. Many women workers, therefore, had to go on leave without pay during this period in order to retain their employment. Many others had to bear a heavy strain to keep their efficiency during the periods of pregnancy, which was injurious to health of both, the mother and the child.

To remove this hardship of the women workers, the concept of maternity benefit came about in order to enable the women workers to carry on the social function of child; bearing and rearing without undue strain on their health and loss of wages. Looking at the large amount of women employment in broad occupational categories, it was but natural the protective laws to safeguard they're in relation to maternity and the children are enacted by the central and state governments. Article 42 of our Constitution contains the directive that the State shall make provision for securing just and humane conditions of work and maternity benefit.

Essential features of Article 42 of the Indian Constitution

- It directs the state to make laws that ensure just and humane conditions at work and provide for maternity benefits.
- This principle, like the others, is non-justifiable. It means this principle cannot be enforced in a court of law.
- It imposes a duty on the Central as well as the state governments to apply this principle in making laws relating to maternity benefits and working conditions in factories, organisations etc.
- Its aim is to create such working conditions that each and every employee will be motivated to work efficiently. It also aims to ensure maternity benefits for female workers so that they can take a leave from work while in labour, without worrying about losing their job.
- Acts as a yardstick for the public to measure government actions related to working conditions and maternity relief.
- It can be used by the courts to help them in taking decisions when the executive or the administration has taken questionable actions against what is stated by this principle.

Case Law:

In the case of *Anshu Rani v. State of Uttar Pradesh & Ors.*, on 19 April 2019, the petitioner had asked for maternity leave of 180 days as she was in labour. But the respondent provided leave for only a period of 90 days. Subsequently, the petitioner requested again and the respondent didn't budge. Also, for both instances, no reasoning was provided by the respondent. The Allahabad High Court held that the request made for 180 days of maternity leave was valid and directed the state government to grant maternity leave of 180 days with full payment to all female employees irrespective of the nature of employment.

The Court also made some very important observations that are relevant to our topic. It stated that the Maternity Benefit Act, 1961 was made in consonance with the provisions of Article 42 which speaks about just and humane conditions of work and maternity relief.

The validity of government action in denying maternity benefits has to be examined on the anvil of Article 42 which even though not enforceable at law, is still available for determining the legal efficacy of the action. Here, the Court made it clear that any governmental action can be measured by the public by taking DPSPs as a yardstick and the courts can use DPSPs to add weight to their decisions.

Laws embodying the principles of Article 42 of the Indian Constitution*1) Maternity Benefit Act, 1961*

The Maternity Benefit Act is aimed to protect female employees during their maternity period from losing their jobs. It allows women to take paid leave when they are in labour.

A woman to be eligible for the benefits under this Act should be an employee in an establishment for a period of at least 80 days in the past year. After the Amendment to the Act in 2017, the period of maternity leave has been extended from 12 weeks to 26 weeks. Other such extensions have also been made.

2) The Factories Act, 1948

This Act is aimed to regulate labour in factories in India. It contains provisions on health, safety, leave, welfare, and working hours of workers. It also provides for inspecting staff for factories, penalties for violations of provisions, etc. It also states that no worker shall be made to work more than 48 hours in a week and 9 hours a day.

Conclusion

The Constitutional provisions for women in India are a reflection of the nation's commitment to gender equality and women's empowerment. By guaranteeing fundamental rights, promoting economic justice and ensuring participation in local governance, the Constitution lays down a comprehensive framework for advancing the rights and interests of women. Often people who work in certain public sectors where the job involves a high amount of risk to their safety, are exploited because they lack basic awareness of their rights.

Also, employees are made to work overtime without any remuneration. Such exploitation only harms the employees. It is the duty of the State to create just and safe working conditions for its workers and employees. It is also important that female workers who are in labour get maternity relief. The purpose of Article 42 was to deal with these issues.

As time has passed, the State has shown responsibility by giving teeth to this principle by enacting legislation based on it. The Maternity Benefit Act, 1961, and the various acts dealing with working conditions like the Factories Act, 1948 are proof that the state has acted on the directions given by Article 42 of the Indian Constitution. The courts, using this Article and the provisions laid down by the Acts discussed above in delivering justice, have kept the spirit of this principle alive.

Bibliography

- 1) The Constitution of India Bare Act
- 2) International Journal of Creative Research Thought

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PREVENTION OF SEXUAL HARASSMENT AND REPRODUCTIVE RIGHTS OF WOMEN.

Meaning And Concept of Right to Life under the article 21

Everyone in the world has the right to life, liberty and the security of a person. Under Article 21, of the Indian constitution the right to liberty women's reproductive Choice falls under the right to personal liberty. According to this article, it is solely the women's rights to get herself protected and also, she possesses the sacrosanct right to have her bodily integrity protected as Well as this article gives protection to the women raise voice against sexual harassment or violence.

Women's reproductive rights are human rights

Reproductive rights are established as a subset of human rights at the UN,1968 international conference on Human rights. Reproductive rights are enshrined in the UN and India being a signatory to the UN, such that these reproductive rights are guaranteed and protected. Reproductive rights are the human rights that were first formulated in the international conference on human rights held in Tehran in 1968 and it aims in promoting the Universal Declaration of Human Rights.

In the year 1994, the UN conference on population and development was an important milestone for women's rights to her body. In this conference, about 179 countries pleaded that the countries would focus on people's sexual and reproductive health and rights for the next 20 years.

A special mention of the Spanish government has to be made as the Spanish government adopted a new global development policy which offers particular concern to women's right to

her own body and sexuality and to free abortion from December, 2003 where it stands as the epitome for other countries.

Reproductive rights include:

- The right to legal and safe abortion
- The right to make the reproductive choice without coercion, violence and discrimination
- The right to control one's reproductive function
- The right to know about contraception, sexually transmitted diseases and about sterilisation and contraception
- Right Against Sexual Harassment at Workplace

Art. 21 guarantees the right to life, right to life with dignity: The court in this context has observed that:

The meaning and content of fundamental right guaranteed in the constitution of India are of sufficient amplitude to encompass all facets of gender equality including prevention of sexual harassment or abuse. Sexual Harassment of women has been held by the Supreme Court to be violative of the most cherished of the fundamental rights, namely, the Right to Life contained in Art. 21.

In **Vishakha v. State of Rajasthan** 1997, the Supreme Court has declared sexual harassment of a working woman at her work as amounting to the violation of rights of gender equality and rights to life and liberty which is a clear violation of Articles 14, 15 and 21 of the Constitution. In the landmark judgment, the Supreme Court in the absence of enacted law to provide for effective enforcement of basic human rights of gender equality and guarantee against sexual harassment laid down the following guidelines:

1. All employers or persons in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:
2. Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.
3. The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

4. As regards private employers, steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
5. Appropriate work conditions should be provided in respect of work, leisure, health, and hygiene to further ensure that there is no hostile environment towards women at workplaces and no female employee should have reasonable grounds to believe that she is.⁹¹

What is the current situation in India in terms of sexual harassment cases?

The latest National Crime Records Bureau (NCRB) annual report has revealed a distressing surge of 4% in crimes against women in India throughout 2022. This includes cases of cruelty by husbands and relatives, abductions, assaults, and rapes⁹².

The NCRB report detailed a substantial escalation in reported crimes against women, soaring from 3,71,503 cases in 2020 to 4,45,256 cases in 2022. Compared to 2021's 4,28,278 cases, the 2022 statistics marked a troubling increase⁹³.

The majority of crimes against women under the Indian Penal Code were of cruelty by husband or his relatives (31.4 per cent) followed by kidnapping and abduction of women (19.2 per cent), assault on women with intent to outrage her modesty (18.7 per cent), and rape (7.1 per cent), the NCRB stated.

Right to Reputation

Women has right to raise voice against sexual harassment. In the case of Priya Ramani Vs M.J. Akbar Acquitted journalist Priya Ramani in a criminal defamation case filed against her by former Union minister M.J. Akbar, a Delhi court asserted that “the right of reputation cannot be protected at the cost of the right of life and dignity of woman”. In doing so, the court has now laid down a precedent for women to speak up against sexual harassment — irrespective of the time elapsed since the alleged incident or the platform on which the woman chooses to speak up.

⁹¹ <https://www.legalserviceindia.com/legal/article-1235-article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty.html>

⁹² <https://chat.openai.com/c/84ec3139-582c-441b-ba62-57695a995f75>

⁹³ <https://www.newsclick.in/crime-against-women-india-4-ncrb-report-2023>

Conclusion

The protection of women's rights under Article 21 of the Indian Constitution is essential for upholding the principles of dignity, equality, and freedom. Ensuring gender equality and safeguarding women's fundamental rights contribute to the overall progress and harmony of society.

Raising awareness about the pervasive issue of sexual harassment against women in India is crucial for fostering a safer work environment. By promoting education, encouraging open dialogue, and implementing stringent anti-harassment policies, we can collectively work towards dismantling the culture of silence. It is imperative for organisations to prioritise the well-being of female employees, creating an atmosphere where reporting harassment is met with support, ensuring a workplace that respects the dignity and rights of every woman. Together, we can cultivate a society where women are empowered, protected, and free from the scourge of workplace sexual harassment.

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FROM LIBERTIES TO OBLIGATIONS: AN INTERPLAY OF FUNDAMENTAL RIGHTS AND FUNDAMENTAL DUTIES

Aim:

The aim of this article is to delve into the complex yet simple relationship between fundamental rights and duties enshrined within the constitutional framework, examining how they can intersect, conflict, and complement each other. By emphasizing the importance of striking a balance between individual liberties and societal responsibilities, it seeks to assess how fulfilling fundamental duties enhances the realization of rights and contributes to societal harmony. Additionally, it aims to explore the role of citizens in upholding constitutional values through responsible actions in their daily lives.

Method:

It employs an analytical approach, utilizing scholarly sources and legal references to support its arguments. The methodology employed in this article includes literature review of constitutional texts, articles, legal opinions & expert insights. The article employs a conceptual analysis approach, drawing upon constitutional law, political theory, and ethical principles to elucidate the nature of fundamental rights and fundamental duties. It examines real-world examples to illustrate the interplay between rights and duties and offers insights into resolving conflicts and promoting harmonious coexistence.

In any democratic society, the concepts of fundamental rights and fundamental duties play pivotal roles in shaping the relationship between citizens & state. While fundamental rights are the cornerstone of individual liberties and freedoms, fundamental duties serve as the moral and civic obligations of citizens towards the nation. The interplay between these two concepts forms the backbone of a balanced and harmonious society, albeit sometimes fraught with conflicts. A well-functioning democracy thrives on a delicate balance between individual freedoms and collective responsibility.

Fundamental Rights: The Bedrock of Individual Liberty

Fundamental rights are enshrined in the constitution to safeguard the dignity, liberty, and equality of individuals. They act as a shield against arbitrary state power, ensuring individuals can have a voice and hold the government accountable & ensure that citizens can live their lives with autonomy and dignity. Examples of fundamental rights include the right to freedom of speech and expression, right to equality before the law etc.

Fundamental Duties: The Pillars of a Responsible Citizenry

Fundamental duties, on the other hand, outline the moral obligations citizens have towards their nation and society. Though not legally enforceable, duties are essential for harmonious functioning of society & preservation of national integrity and unity. Examples of fundamental duties include respecting the national flag and anthem, upholding the ideals of the constitution, safeguarding public property etc. They remind citizens that their rights come with a responsibility to contribute to the collective good.

Conflict and Resolution:

At times, there can be conflicts between fundamental rights & fundamental duties. For instance, the right to free speech might conflict with the duty to maintain public order. Imagine a protest that turns violent: the right to freedom of assembly clashes with the duty to respect the rights of others. These conflicts are not inherent but rather contextual. For instance, while individuals have the right to freedom of speech, it is also their duty to exercise this right responsibly, taking into account the potential impact on societal harmony and national integrity. In such cases, striking a balance becomes even more crucial. Courts play a vital role in interpreting the constitution and ensuring that rights are exercised responsibly.

Complementarity:

Fundamental rights and fundamental duties are not mutually exclusive rather complementary to each other. While fundamental rights empower individuals and protect them from state intrusion, fundamental duties remind citizens of their responsibilities towards the nation. In essence, the exercise of one's rights should be tempered by a sense of duty towards

others, and fulfilling one's duties should not infringe upon the rights of others. Fundamental rights and duties work best in symphony.

Examples:

Right to Equality's (A-14) duty connection:

Citizens, in enjoying the right to equality, have a duty to treat others without discrimination, fostering a society based on fairness and justice.

Right to Freedom of Speech's (A-19) duty connection:

Citizens exercising the right to freedom of speech also have the duty to use this right responsibly, avoiding hate speech, keeping in mind the reasonable restrictions.

Right to Education's (A-21A) duty connection:

Parents have the duty to ensure their children receive education, aligning with the constitutional directive for the state to provide free and compulsory education.

In conclusion, relationship between fundamental rights & fundamental duties is symbiotic, with each reinforcing the other in pursuit of a harmonious society. While conflicts may arise, a balanced approach that respects both is essential for well-being of the nation & democratic values. Ultimately, it is through the harmonious coexistence of rights and duties that the true essence of democracy is realized. The relationship between fundamental rights and duties is that of a dynamic interplay.

The article delves into the intricate relationship between fundamental rights and duties within the constitutional framework, emphasizing how they intersect, conflict, and complement each other. It aims to strike a balance between individual liberties and societal responsibilities while assessing how fulfilling fundamental duties enhances the realization of rights and contributes to societal harmony. Employing an analytical approach, the article draws upon scholarly sources, legal references, and real-world examples to illustrate the interplay between rights and duties and offers insights into resolving conflicts and promoting harmonious coexistence. It underscores the importance of citizens' role in upholding constitutional values through responsible action. The symbiotic relationship between fundamental rights and duties is highlighted, emphasizing their essential contribution to the preservation of democratic values and societal well-being.

Bibliography:

The Constitution of India. <https://indiankanoon.org/doc/237570/>

"Difference between Fundamental Rights and Fundamental Duties | Fundamental Rights vs Fundamental Duties Comparison." BYJU'S, <https://byjus.com/free-ias-prep/fundamental-rights/>.

M Laxmikanth – Indian Polity, sixth edition

Basu, Durga Das. Introduction to the Constitution of India.

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