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MESSAGE FROM THE PATRON- PROFESSOR IN CHIEF

I am privileged to present to all our dear readers the second issue of the inaugural volume of *Journal for Law and Justice*. The inaugural volume was widely acclaimed by the readers, mostly students learning the law from different colleges and universities of our country. The number of young and bright students has increased in every college and university. Their willingness to learn the art of writing a research article is appreciable. This journal is an answer to the needs of not only the students of our Centre, but also of other students of law all over the country. Students take a lead role in managing this Journal as well as learning the skills of editing from a team of esteemed faculty members on the editorial board.

The present volume has selected eight long and short articles on contemporary topics, such as armed conflict, land related laws, international law relating to governance of space activities, family law, law on contract, labour law and the legal system. Selected articles have been carefully peer-reviewed and edited by the entire editorial team. In addition, an attractive section, i.e., book review, adds another feather in the cap of this journal as it has selected two books on torts and on law and justice for it. I take this opportunity to congratulate the entire editorial team for bringing out this issue in a timely fashion with strict adherence to the highest standards of scholarly editing. I wish the entire editorial team a huge success in broadening the base of readers of this student research journal by tagging the journal to their Linkedin profile and by such other means.

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Regards,

PROF. (DR.) ANUPAM JHA
Patron & Professor-In-Charge
Journal for Law and Justice (JLJ)
Law Centre-II, Faculty of Law
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MESSAGE FROM THE FACULTY EDITOR-IN-CHIEF

Dear Readers,

It is with enormous pride and privilege that I pen this note as the Faculty Editor-in-Chief of the second edition of Journal for Law and Justice, a distinguished student-run academic initiative of Law Centre-II, Faculty of Law, University of Delhi. This establishment, nestled within the hallowed precincts of Law Centre-II, Faculty of Law, University of Delhi, is now fastly making its name as a paragon of intellectual curiosity, academic excellence, and scholarly rigor.

The legal field being a melting pot that turns ideas into action of societal transformation does demand tireless effort when it comes to questioning the old tenets and discovering the new ones. As a journal committed to the culture of critical thinking, informed discourse, and conscientious research, we strongly believe in the importance of creating a thriving academic community between scholars, practitioners, and students in deliberating such issues that touch our lives and most of today's world.

The journal has been one of the principal forums to bring forth upcoming scholars and researchers in the field to showcase their work and contribute to discussions in a meaningful way for the continuing conversations around their respective fields. This journal serves as a repository of ideas and is also a testament to the symbiotic relationship that pedagogy has with praxis - where academic engagement informs the legal practice and the other way as well.

The editorial process in itself deserves a special mention; the sterling standards of review, painstaking attention to detail, and commitment to ethical publication reflect the ethos of academic excellence that forms the hallmark of Law Centre-II. Truly commendable is the dedication of the student editors who toiled long and hard to ensure that every contribution meets the highest of standards of quality. It is encouraging to watch them in all their hard work, showcasing prodigy through the labyrinths of editing tasks with admirable resolve and professionalism.

Budding scholars from our student editorial team have worked round the clock to make the best possible assortment of articles, legislative comment, and book reviews from a huge pool

of submissions. Their contributions, a reflection of scholars, practitioners, and students from diverse backgrounds and disciplines, range widely in themes and topics from the Environmental Impact of Armed Conflict, Land Governance, Space Commercialisation and Extraterrestrial Ventures, Analysis of Conjugal Rights of Prisoners, Identification of Jurisdictional Dissonance in the Indian Tribunal System, Examination of the impact of Citizenship Amendment Act, Force Majeure Clauses in Commercial Contracts in India to Legislative comment on The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 as well as book reviews of Justice R.V. Raveendran's "Anomalies in Law and Justice" and Shweta Vishwanathan's "Simply, Legal! Torts" adorns this edition.

As we savour the launch of second edition, this is also the ideal moment to stop and look back at the trajectory of the journal and the responsibilities ahead. The legal fraternity, both in and beyond academia, will thus look upon such initiatives as repository for thought leadership and innovation. Surely, the Journal for Law and Justice will continue to mature as a formidable platform for scholarly contributions, shaping the discourse on law and justice, in which Justice will continue to evolve as a formidable platform for scholarly contributions, shaping the discourse on law and justice in ways that are both impactful and enduring.

Warm Regards,

Prof. (Dr.) Pinki Sharma
Faculty Editor-in-Chief
Journal for Law and Justice (JLJ)
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MESSAGE FROM THE EDITOR'S DESK

It is with immense pride and excitement that I present to you the Volume I, Issue II of the Journal for Law and Justice (JLJ). As the student lead editor, I am honored to introduce this edition, which showcases the exceptional work and dedication of our contributors. Our goal is to address and discuss the gaps in the legal field through the lens of this community, with the care and diligence they deserve, while also amplifying the voices of contributors to this journal. This issue of JLJ is a testament to the vibrant intellectual community we have cultivated at Law Centre-II, Faculty of Law, University of Delhi. The articles and research papers featured in this edition reflect the diverse interests and academic rigor of our student body. In this issue, you will find a range of topics that address contemporary legal challenges and offer innovative solutions. From analyses of recent judicial decisions to explorations of emerging legal theories, our contributors have demonstrated a deep understanding of the complexities of the legal landscape. Their work not only highlights the importance of legal scholarship but also underscores the role of law in shaping a just and equitable society. I would like to extend my heartfelt gratitude to all the authors who have contributed to this issue. Your hard work, dedication, and passion for the law are truly inspiring. I would also like to thank our reviewers and editorial team members for their invaluable contributions. Your meticulous attention to detail and commitment to excellence have been instrumental in bringing this issue to fruition. We hope that the journal serves as a valuable resource for students, scholars, and practitioners alike. I would like to thank all the authors, reviewers, and editors for their valuable contributions and hard work. I hope you enjoy reading this issue and find it useful for your research and practice. I also invite you to submit your manuscripts to our journal for possible publication in future issues. We welcome submissions from all disciplines and areas of law relevant to the contemporary significance. For more information, please visit our website or contact us via e-mail lc2studentjournal@gmail.com. Thank you for your interest and support.

Warm regards,

Pulkit Dahiya

Student Editor
Journal for Law and Justice (JLJ)
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Improving Women's Access to Free Legal Aid: Are Female Community Paralegals a Force to Reckon With?

*Anjali Dixit

Abstract: *Free legal aid mechanism in the country is marred by several issues such as the poor implementation of laws, sub-optimal financial management, poor legal services provided by legal aid lawyers, lack of proper training of human resources, etc. These issues adversely affect access to legal aid for the poor, weak, and marginalized and ultimately hinder their access to justice. Women are particularly disadvantaged in this regard due to the additional and unique socio-cultural and psychological barriers they encounter on the road to justice. This paper explores the role of female community paralegals in the legal empowerment of women. This is done specifically in the Indian context; however, lessons are also drawn from other patriarchal societies where women are similarly marginalized due to gender-discriminatory norms. It studies barriers that hinder a woman's access to justice in the specific context of violence and harassment of women belonging to low-income households. Further, this paper positions female community paralegals as playing a key role in enhancing women's access to justice under the theoretical underpinning of legal empowerment. It proffers that the legal aid machinery needs to tap into the potential of female community paralegals and enhance their abilities to become active agents of social change. It aims to establish a strong case in favour of increasing the number of female community paralegals in the country, to make them more visible and accessible to women in distress. It emphasizes that empirical research must be carried out to survey the local population and determine the appropriate number, distribution, and diversity of female paralegals required.*

Keywords*:* ***Free Legal Aid, Female Community Paralegal, Women's Access to Justice, Legal***

Justice

I. INTRODUCTION

Free legal aid aims to ensure equal and effective justice for the poor, disadvantaged, and marginalized sections of society. It strives to realize the constitutional goals of equality before the law, equal protection of laws, and the right to life.[1] The Constitution of India provides that the "State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen due to economic or other disabilities."[2] In the landmark judgment of *Hussainara Khatoon v. State of Bihar*, the Hon'ble Supreme Court of India held that "legal aid is nothing

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[1] India Const.art.14, 21.
[2] India Const.art.39A.

else but equal justice in action. Legal aid is in fact the delivery system of social justice."[3] In India, the Legal Services Authorities Act 1987 also provides "the right to free legal aid to several disadvantaged sections of society, women being one among them."[4] The Act was brought in to bridge the gap between the weaker sections of society and the formal legal system. However, despite the noble intention, Constitutional provisions, Supreme Court Judgements, and dedicated legislation in place, the legal aid movement in India has failed to achieve its aim.[5]

Free legal aid mechanism in the country is marred by several issues such as the poor implementation of laws, sub-optimal financial management, questionable quality of services provided by legal aid workers, scattered distribution of legal aid lawyers, lack of proper training of human resources, etc.[6] These issues adversely affect access to legal aid for the poor, weak, and marginalized and ultimately hinder their access to justice. Women are particularly disadvantaged in this regard as they encounter additional socio-cultural, economic, and psychological barriers that are traditionally unique to them. Gender discrimination in society permeates all its institutions. The justice system is no exception. This aggravates a woman's distress as perpetrators violate her rights with impunity[7]. Additionally, limited participation by women in decision-making platforms severely limits their capability to access justice.[8] State action in the form of legislation has had little effect on the ground and justice remains elusive for many women. This is especially true for women from economically weaker sections of society who have little or no support in accessing the legal resources of the State.[9] For them to obtain meaningful access to justice targeted action needs to be taken.

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[3] AIR 1979 SC 1377 ¶ ¶ 6-7.

[4] Legal Service Authorities Act,1987, § 12.

[5] Hon'ble Justice B.S. Chauhan, *Making Legal Aid a Justice for Women from investigation to decision – a reality through sensitized Judiciary,* NIC UTTAR PRADESH (Mar.27, 2023) (hereinafter 'Dr. Justice B.S Chauhan') https://upslsa.up.nic.in/speech2.pdf.

[6] Tata Trust, India Justice Report 2022 (2023) (hereinafter, 'India Justice Report'); https://www.tatasustainability.com/pdfs/Resources/India_Justice _Report_2019_-_Tata_Trusts.pdf

[7] World Bank, *Increasing to Access to Justice* in Fragile Settings (2023); https://documents1.worldbank.org/curated/en/099101123141530374/pdf/P17955108fb2a104e0a55e04b0257738ea3.pdf

[8] UN Women, *Progress of The World's Women: In Pursuit of Justice* (2011) (hereinafter 'UN Women') https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2011/ProgressOfTheWorldsWomen-2011-en.pdf

[9] Multiple Action Research Group (Marg), *Needs Assessment Study of The Legal Services Authorities in The States of Madhya Pradesh, Jharkhand, Bihar, Uttar Pradesh, Odisha, Rajasthan And Chhattisgarh* (2012) (hereinafter 'MARG'). https://www.ngo-marg.org/what-we-do/governance/need-assessment-study-of-7-state-legal-services-authorities-in-india/

In such a scenario, the legal empowerment of women seems to be a plausible solution. Legal empowerment entails a bottom-up approach to strengthen and enable individuals to claim their rights and live with dignity. It encompasses measures that initiate change at the grassroots. One such method is community-based paralegal programs. These initiatives are growing in large numbers around the world, as they play an instrumental role in improving access to and quality of legal services. Community paralegals play a significant role as they empower communities by improving legal literacy and imparting basic legal knowledge[10]. They are credited by scholars for ushering in socio-political change and contributing to good governance.[11] Research reveals that women feel comfortable sharing their ordeal with a female paralegal volunteer. They hesitate in approaching male paralegals, especially with issues like sexual harassment and domestic violence. But, the distribution of female paralegals in the country is uneven and their numbers are dismal in most of the states.[12]

In this article, the author exclusively focuses on the role of female paralegal volunteers in improving women's access to free legal aid, being fully cognisant of the fact that this is only a part of the solution to structurally strengthen the free legal aid mechanism in the country. This article explores the role of female community paralegals in the legal empowerment of women. This is done specifically in the Indian context; however, lessons are also drawn from other patriarchal societies where women are similarly marginalized due to gender-discriminatory norms. This article proceeds in five parts. The first part lays out the conceptual framework of this research. The second part studies barriers that hinder a woman's access to legal aid in the specific context of violence and harassment of women belonging to low-income households. The third part studies the role and responsibility of paralegal volunteers in a legal aid system as envisioned by NALSA Paralegal Volunteer Scheme. The fourth part explains why female community paralegals will efficiently serve the purpose of enhancing women's access to legal aid along with examples from India. The fifth part proffers suggestions and provides a conclusion.

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II. CONCEPTUAL FRAMEWORK

[10] SCHULER AND KADIRGAMAR-RAJASINGHAM, LEGAL LITERACY: A TOOL FOR WOMEN'S EMPOWERMENT (1992)
[11] DUNI, FON, HICKEY ET AL., NGOS, SOCIAL MOVEMENTS, AND PARALEGAL EXTENSION IN NORTH WEST CAMEROON: FROM CLIENTELISM TO CITIZENSHIP AT THE MARGINS? (2005).
[12] Tata Trust, *India Justice Report 2019* (2019); https://www.tatasustainability.com/pdfs/Resources/India_Justice_Report_2019_-_Tata_Trusts.pdf

To better understand and appreciate the contextual space in which paralegal programs are envisioned, it is significant to review some key concepts forming the foundation of free legal aid programs in India i.e. – rule of law, access to justice, and legal empowerment.

A. Rule of Law

Rule of law is a cardinal legal principle which in simple terms means that law is supreme. As a concept, the rule of law traces its origins in the work of Greek philosopher Aristotle who elucidates that "in a state that functions on the principles of justice and equality, rule of law must be supreme, and the state as an institution must not be subject to the whims and fancies of its ruler". The doctrine of the rule of law as practiced in modern democratic states today was conceptualised by Prof. A.V Dicey in his book "The Law of the Constitution." Prof. Dicey explains that as per the doctrine of rule of law, all individuals in a state including government officials are subject to rule of law and no one is above the law.[13] This conception of the doctrine of rule of law is part of the basic structure of the Indian Constitution.[14] The Hon'ble Supreme Court of India has on various occasions elucidated the significance of this doctrine. The Court has ruled that equal and effective access to justice for all sections of society is quintessential to the rule of law.[15] Also, that the rule of law performs the essential function of checking the arbitrariness of state actions by holding the government accountable to the law and it is key to good governance and forms the cornerstone of a democratic nation.[16]

The concept of the rule of law has received a fair amount of criticism from legal scholars due to its state-centric approach that works on a top-down model. This in effect, leaves behind the needs of marginalized sections of society.[17] Law often takes shape to suit the interest of the most powerful. Existent power structures in society also reflect the same in its system for the administration of justice. Women have been a particularly ignored lot, as no rule of law

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[13] M/S. K.B. Tea Product Pvt. Ltd. & Anr. v. Commercial Tax Officer, Siliguri & Ors., CIVIL APPEAL NO. 2297 of 2011.

[14] Sub-Committee on Judicial Accountability v. Union of India and Ors. (1991) 2 SCR 741 ("Rule of law is a basic feature of the Constitution which permeates the whole of the constitutional fabric and is an integral part of the constitutional structure.")

[15] Maneka Gandhi v. Union of India (1978) 1 SCC 248.

[16] Sukhdev v. Bhagatram (1975) 3 SCR 619.

[17] Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Carnegie Endowment for International Peace (Working Paper no.41, 2003) (hereinafter 'Golub'). https://carnegieendowment.org/2003/10/14/ beyond-rule-of-law-orthodoxy-legal-empowerment-alternative-pub-1367

initiatives are responsive to the challenges that women face in accessing justice.[18] A report by the International Development Law Organisation states: "The rule of law continues to mean very little for the vast majority of women and girls. Many women are simply unable to access and navigate their way through formal legal institutions. This can be due to structural as well as cultural barriers, including women's inadequate knowledge of rights and remedies, illiteracy or poor literacy, and lack of resources and time to participate in justice processes, especially given the heavy burden of labour that women bear for their families. These challenges are even greater for women who are subject to multiple forms of discrimination based on factors such as being part of indigenous or ethnic minority communities, religious minorities, or sexual minorities, or for disabled women, migrant workers, and women living with HIV/AIDS."[19] The rule of law was a promise to ordinary citizens of a free and fair system devoid of discrimination. However, for women, it has been able to deliver little on the ground.[20] Also, rule of law is applicable in the public domain and injustices in the private domain fall outside its purview, which is where women face most atrocities.[21] This critique of rule of law gave way to legal empowerment which focuses on initiating change at the bottom.

B. Legal Empowerment

Legal empowerment as a concept emerges when law meets development or when law ushers in change that encourages agency.[22] It proffers pragmatic solutions to marginalized sections of society to claim equality and live a life with dignity.[23] Legal empowerment originated as a response to the top-down policy of the rule of law presents a bottom-up approach as an alternative. It shifts focus from institutions to the end user of legal services. It incorporates concepts like equal access to justice and legal aid.[24] However, according to Golub, the

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[18] NYAMU-MUSEMBI, FOR OR AGAINST GENDER EQUALITY? EVALUATING THE POST-COLD WAR RULE OF LAW REFORMS IN SUB-SAHARAN AFRICA (2005).
[19] IDLO, *Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment*,11(2013); https://www.idlo.int/publications/accessing-justice-models-strategies-and-best-practices-womens-empowerment
[20] UN Women, *supra note* 8.
[21] *Id.*
[22] Haki Legal Empowerment Network, *The Legal Empowerment Approach to International Development* (White Paper, Sep.2011)
[23] Tiernan Mennen, *The Mystery of Legal Empowerment: Livelihood and Community Justice in Bolivia* (IDLO, Legal Empowerment Working Papers) 6 (2010).
[24] INEKE VAN DE MEENE AND BENJAMIN VAN ROOJI, ACCESS TO JUSTICE AND LEGAL EMPOWERMENT: MAKING THE POOR CENTRAL IN LEGAL DEVELOPMENT CO-OPERATION, (2008).

fundamental concept of legal empowerment is power and not the law itself.[25]This essentially means looking at the concept of access to justice from the prism of prevailing power structures in society. This determines the negotiation and bargaining power of an individual.[26] When it comes to empowering women, legal empowerment aims to promote gender equality by facilitating greater integration of women in society. It adopts measures to enhance the confidence of women by imparting them the required information, skills, and training that help them to realize their legal rights.[27] At the core of it, legal empowerment ushers in development by empowering and enabling individuals at the grassroots. The fundamental concept of legal empowerment originated way back in 2001 from the annual report of the Asian Development Bank.[28] However, even today, the concept is not properly defined and different organizations have different definitions for it.[29]

The 2009 report of the UN Secretary-General titled "Legal Empowerment of Poor and Eradication of Poverty", defines legal empowerment as a "process of systemic change through which the poor are protected and enabled to use the law to advance their rights and their interests as citizens and economic actors." [30] This report serves as a guiding light for UN Agencies, member governments, and the international community at large.[31] It provides an expansive meaning to access to justice, with emphasis on legal awareness in communities, access to legal services, and paralegal programs. It highlights the significance of gender equality in accessing legal services and argues that targeted legal empowerment initiatives are a must for women and especially for rural women. As per the report, all developmental efforts must incorporate initiatives aimed at improving women's access to justice.[32] Legal empowerment entails methodical changes that enable poor and disadvantaged individuals to

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[25] Golub, *supra* note 17.
[26] Caroline Moser, *Rights Power, and Poverty Reduction*, in POWER, RIGHTS, AND POVERTY: CONCEPTS AND CONNECTIONS, 29-51(Ruth Alsop ed. 2004).
[27] ASIAN DEVELOPMENT BANK, *Legal Empowerment for Women and Disadvantaged Groups* (2009) (hereinafter 'ADB') https://www.adb.org/publications/legal-empowerment-women-and-disadvantaged-groups.
[28] ADB, *supra* note 27.
[29] *Id*.
[30] UNGA, *Legal empowerment of the poor and eradication of poverty,* Report of the Secretary-General A/64/133 (2009) (hereinafter 'UNGA'). https://digitallibrary.un.org/record/673718?ln=en&v=pdf
[31]INTERNATIONAL DEVELOPMENT LAW ORGANIZATION, LEGAL EMPOWERMENT: PRACTITIONERS' PERSPECTIVES (Stephen Golub ed. 2010).
[32] UNGA, *supra* note 28.

stake claim to their rights by accessing legal resources.[33] From a human rights lens, legal empowerment is both a process and an end. Legal empowerment approaches are intended to be pragmatic, responsive to socio-legal needs, and to reach out to those who are most vulnerable.[34]

There is a growing consensus among scholars on four facets of legal empowerment approaches.[35] First is "Rights enhancement" which means a restructuring of laws to provide agency to the weak and marginalized. It aims to provide a conducive environment for disadvantaged sections of society to claim their rights.[36] The second is "Rights Awareness" which entails the provision of knowledge to legally empower someone. Awareness is essential as it is the starting point to develop an understanding of norms and procedures. It is a prerequisite for empowerment. Only when people are aware of their rights and entitlements, they will seek justice in case of violations. Third is "Rights enablement" which focuses on methods in place to seek justice. This includes legal aid, reformation, and development of institutions, making them responsive to the vulnerable section, and other positive actions that bring marginalized people closer to legal institutions. Fourth is "Rights Enforcement" which includes improving access to enforcement mechanisms. Both formal and informal systems (such as ADR and other traditional dispute resolution systems) fall under its ambit.[37] Efforts have been made by multiple scholars and organizations to arrive at a unanimous understanding of legal empowerment initiatives, but no common understanding seems to have developed. For this paper, the author relies on the classification of legal empowerment initiatives as provided by the Asian Development Bank as "basic awareness raising, formal and informal support activities (to benefit individuals), and activities aimed at improving entire communities' relationships with the law and broader structures of administrative governance."[38]

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C. Access to Justice

[33] Commission On Legal Empowerment of Poor, UNDP, *Making the Law Work for Everyone* (2008) http://content-ext.undp.org/aplaws_assets/2099169/2099169.pdf

[34] Vivek Maru, Allies Unknown: Social Accountability and Legal Empowerment, 12(1) HEALTH & HUMAN RIGHTS IN PRACTICE 83-93 (2010).

[35] USAID, *Legal Empowerment of the Poor: From Concepts to Assessment* (2007) https://pdf.usaid.gov/pdf_docs/PNADM500.pdf

[36] Sanna Josefin Benjaminsson, *Legal Empowerment Through Legal Aid: Examining How Legal Aid Promotes Legal Empowerment for Vulnerable Women in Uganda* (2014); https://lup.lub.lu.se/luur/download?func=download File&recordOId =4443035&fileOId=4443036

[37] *Id.*

[38] ADB, *supra* note 27.

Access to justice finds its roots in the Magna Carta and the ancient Roman principle of *Ubi Jus Ibi Remedium*. The concept rose to prominence in human development discourses as a necessary concomitant of several human rights. The Magna Carta, the Universal Declaration of Human Rights 1948, The International Covenant on Civil and Political Rights 1996, and all civilized societies around the world recognize access to justice as an inalienable right. United Nations Development Program defines access to justice as "the ability of people to seek and obtain a remedy through formal or informal institutions of justice, in conformity with human rights standards."[39] Equal access to justice is a prerequisite for the rule of law and contributes to the meaningful development of a nation.[40] Access to justice is also inextricably intertwined with legal empowerment and is recognized as its vital pillar.[41]

In India, access to justice was recognized as a human right even before the Constitution came into being.[42] This right is enshrined in the Indian Constitution under Art.32, 226, and 142. The Indian Supreme Court has on multiple occasions emphasized the significance of access to justice and highlighted that it is a fundamental right implicit under Article 21 of the Constitution of India.[43] The right to free legal aid has been recognized by the Hon'ble Court as a facet of the right to access justice.[44] Sustainable Development Goal 16 aims to promote "peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable, and inclusive institutions at all levels." Sustainable development demands that institutions administering justice must be accessible, inclusive, and participatory. The 2030 agenda for Sustainable development goals aims to focus on those sections of society that are usually left far behind. Because of gender discrimination and subsequent marginalization in most societies, women, especially those from economically weaker sections of society are the poorest of the lot when it comes to accessing justice. They are particularly disadvantaged due to the traditional socio-cultural, economic, and

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[39]UN Women, *Fact Sheet on the Importance of Women's Access to Justice and Family Law;* https://www.unssc.org/ sites/default/files/UNWomenFactSheet.pdf

[40] DASRA, *Tipping the Scales: Strengthening Systems for Access to Justice in India* (2018) (hereinafter 'DASRA'); https://clapindia.org/profile/5cc81eb1c0c43.pdf

[41] National Network on Environments and Women's Health, *Women's Poverty, Women's Health: The Role of Access to Justice* (2001)

[42] In Re: Llewelyn Evans vs Unknown, AIR 1926 Bom 551.

[43] Imtiaz Ahmad v State of U.P. & Ors. (2017) 3 SCC 658.

[44] M.H Hoskot v. State of Maharashtra (1978) 3 SCC 544.

psychological barriers, such as gender discrimination, the social stigma of bringing claims, lack of gender sensitivity in legal institutions, etc.[45]

Accessible justice systems enhance women's capability to realize their rights, prevent violations, and have the potential to establish new social norms.[46] There arises a need for judicial systems to become responsive to peculiar challenges that women face in accessing justice and to devise measures that help women to realize their social, economic, political, and cultural rights.[47] To ensure equal and effective justice for women, each component of the justice system needs to be gender responsive and engineered to guarantee not just formal but substantive equality for women.[48]

III. BARRIERS TO FREE LEGAL AID FOR WOMEN IN INDIA

As a necessary concomitant of access to justice, legal aid enables women to realize their rights and live a life of dignity. Legal Services Authorities Act 1987[49] provides the right to free legal aid to all women, regardless of financial status. However, in reality, the below-mentioned factors delimit women's access to legal aid which invariably affects their access to justice. One significant aspect of legal aid is enhancing legal awareness which enables the realization of rights. Justice P.N Bhagwati laid stress on the need to raise legal awareness among the poor specifically about the right to free legal aid as he observed that in India most people are unaware of their rights guaranteed by law[50]. Awareness is key as it builds confidence to claim rights. It is not empowerment per se, but a means to empowerment. So, rights awareness is a starting point for legal empowerment.[51]

However, poor awareness of rights and the means to exercise them is a major challenge that has prevented the legal aid movement in India to realize its established goal. The right to free legal aid was envisaged to serve as a stepping stone for vulnerable women to realize their other significant rights. But, awareness about the same is abysmally low among women. This is

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[45] IDLO, Navigating Complex Pathways to Justice: Community Paralegals and Customary and Informal Justice (2021). https://www.idlo.int/sites/default/files/handout_paralegals_and_cij_for_final.pdf
[46] Dr. Justice B.S Chauhan, *supra* note 5.
[47] UN Women, *supra* note 8.
[48] Frances Raday, *Women's Access to Justice*, OHCHR; https://www.ohchr.org/sites/default/files/ documents/ HRBodies/CEDAW/AccesstoJustice/Ms.FrancesRaday.pf
[49] Legal Service Authorities Act,1987, § 12.
[50] Suk Das v. Union Territory of Arunachal Pradesh AIR 1986 SC 991.
[51] ADB, *supra* note 27.

especially true of women in low-income households. Also, the majority of Indian women especially those from rural backgrounds are illiterate and the average education level of the others is low.[52] A survey of 532 women from low-income households spread across 7 Indian states shows that they are completely unaware of their right to access free legal aid. Most of them had no clue about legal services authorities and nearly all of them were unaware of the procedure to access free legal aid. Some women who were aware of the legal service institutions had heard about them from legal awareness programs. Interestingly, most of them expressed a desire to know about legislation protecting the rights of women, especially in cases of domestic violence.[53]

Patriarchy and gender discrimination have disadvantaged and marginalized Indian women for a long time.[54] At the outset, socio-cultural and economic barriers delimit a woman's capability to exercise her will. These barriers originate from deep-seated gender discriminatory norms that affect all facets of a woman's life, be it cultural, economic, political, educational, or social. Indian Society has a male child preference. The high rates of female foeticide and infanticide in the country bear testimony to this fact. This preference originates from the belief that sons will serve as a support system to parents in old age, whereas daughters will forever be a liability. Even if a female child is born and allowed to live, she is neglected in matters of nutrition, education, health, and career opportunities. Women are unjustly treated right from childhood and denied their basic rights. They are discriminated against at every stage of society, which adversely impacts their social, political, and economic participation.[55]

The economic dependence of women on their male relatives robs them of their mobility. It is pertinent to note here that India ranked 143rd out of 146 countries in the economic participation and opportunity category for women in the Global Gender Gap Report 2022.[56] The female labour force participation rate is a mere 32.8% which severely limits women's financial

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[52] MARG, *supra* note 9, at 40.

[53] MARG, *supra* note 9, at 15. See also: DASRA, *supra* note 40 at 13.

[54] Anju Beniwal, Gender Discrimination and Empowerment of Women in India: A View, 74(1) THE INDIAN J. OF POL.SCIENCE 27-38(2013).

[55] PTI, *India accounts for 45.8 million of world's missing females over last 50 years: UN report,* THE PRINT (Jun. 30, 2020) https://theprint.in/india/india-accounts-for-45-8-million-of-worlds-missing-females-over-last-50-years-un-report/451545/; Aastha Ahuja, *National Girl Child Day: 10 Facts on The Status Of Girl Child And Women In India*, NDTV (Jan. 24, 2022). https://swachhindia.ndtv.com/national-girl-child-day-2022-10-facts-on-the-status-of-girl-child-and-women-in-india-66175/

[56] World Economic Forum, *Global Gender Gap Report* (2022) https://www3.weforum.org/docs/WEF_GGGR_2022.pdf

independence.[57] Even when women are educated and financially independent, they have little or no say in the disposal of their income.[58] This ultimately affects their access to resources including legal resources. In a patriarchal society like ours, socio-cultural norms are designed to control a women's free will in the name of family honour. If women defy these norms, they are accused of maligning the reputation of the family. As a result, most women lack agency and are forced to maintain the status quo even when they are leading a life without dignity. For instance, women may remain confined in an abusive marriage, because of societal pressure.

Matrimonial and other domestic disputes are considered extremely private issues in our society. As per societal norms, they must be dealt with within the precincts of a family home. When a woman resorts to legal measures to claim her rights in domestic disputes, she is looked down upon for dragging the family's name to the courts. Also, in cases of sexual violence against a woman, our society maligns the victim's character and brings disrepute to her family. A victim's character is scrutinized with suspicion of being impure and loose. If she is unmarried, the fact that she has been sexually violated in the past greatly reduces her chances of finding a suitable groom. All this punishes the victim in place of the perpetrator and prevents her from initiating legal action against the accused. Therefore, the social stigma attached to approaching the legal machinery for help induces fear in women and dissuades them from doing so[59].

Gender insensitivity permeates all levels of society and leaves no institution untouched. The justice system is no exception. It is manned by people who are part of a patriarchal and hierarchal society and they reflect and voice its sensibilities. This aggravates a woman's vulnerability and hinders her access to justice. While, efforts have been made in the past, to alter sensibilities and make legal institutions more accessible to women, not a lot seems to have changed on the ground. Gender-sensitive laws and procedures have been adopted by the State, but their strict and fair implementation remains the core issue.[60] To give an example, let us consider the challenges that a woman encounters while registering an FIR.

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[57] Taran Deol, *Women and Men in India: Sex Ratio Improves but female participation in the workforce still low*, DOWN TO EARTH (Mar. 17, 2023); https://www.downtoearth.org.in/news/health/women-and-men-in-india-2022-sex-ratio-improves-but-female-participation-in-workforce-still-low-88300
[58] B.R Siwal, *Empowerment of Women and Gender Issues*, (NIPCCD, 2009).
[59] Sylvia Vatuk, *The Women's Court in India: An Alternative Dispute Resolution Body for Women in Distress*, 45 J. LEGAL Pluralism & UNOFFICIAL L. 76 (2013) (hereinafter, 'Sylvia Vatuk').
[60] *Id.*

Filing an FIR sets criminal law in motion. It is the first step taken to initiate criminal proceedings against the accused. Mostly, women approach the police station with a complaint of domestic violence, cruelty by husband and relatives, molestation, rape, and assault with intent to outrage modesty.[61] It is pertinent to mention here that in doing so, the victim has already crossed one barrier of social stigma as discussed above. Once she is at the police station, usually little or no weight is given to her statements. The approach of most police officers is callous and insensitive to the plight of the victim.[62] This happens despite the gender sensitization training undertaken by police officials.[63] In case a woman has an able lawyer or paralegal to assist her, her complaint will be registered. Otherwise, in most cases, all she receives is advice to settle matters privately. Also, women in such situations are not even informed by police officers of their right to seek free legal aid.[64] If a woman is served with this attitude at the entry point of the criminal justice system, there are bleak chances of her resorting to legal help in the future.[65]

Based on the above-mentioned factors, one can argue that the barriers that women face in their access to justice are inextricably linked to their socio-economic status in society. It is vital to initiate targeted ground-level action that aims to empower women at the grassroots thereby enabling them to claim and exercise their rights. Female community paralegals can be a particularly useful resource in this regard. Part IV of this paper throws light on their role in improving women's access to free legal aid.

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[61] *Crimes against women rose 15.3% in 2021, Delhi most unsafe: Key takeaways of NCRB report*, FIRSTPOST (AUG.30,2022) https://www.firstpost.com/explainers/explained-crimes-against-women-rose-15-3-in-2021-delhi-most-unsafe-key-takeaways-of-ncrb-report-11144691.html
Also, *Cruelty by Husband' Top Crime Against Women: How India Ignored Shadow Pandemic,* QUINT (OCT.13 2022) https://www.thequint.com/news/india/cruelty-by-husband-top-crime-against-women-2021-ncrb-data#read-more

[62] *Emerging Challenges on Women and Law in India: Challenges for Women in Criminal Law,* THE LEAFLET (MAR.21,2022). https://theleaflet.in/emerging-challenges-on-women-and-law-in-india-ii-challenges-for-women-in-criminal-law/ (hereinafter 'emerging challenges'). see also: CHRI & AALI, *Barriers to Justice: Rape Survivors in State of Uttar Pradesh: The Experiences of 14 Rape Survivors in Uttar Pradesh, India* (2020). https://www.humanrightsinitiative.org/download/CHRI%20and%20AALI%20Barriers%20in%20accessing%20justice%20English.pdf

[63] PIB, *NCW signs MOU with BPR&D for Nation-Wide Gender Sensitization Training Programme for Police Personnel* (Jul.16, 2021, 5:08 P.M) https://pib.gov.in/PressReleseDetail.aspx?PRID=1736188; Sreenivas Janyala, *Telangana: Training to Increase Gender Sensitivity Among Police*, THE INDIAN EXPRESS (Mar. 1, 2017) https://indianexpress.com/article/cities/hyderabad/telangana-training-to-increase-gender-sensitivity-among-police-4548905/

[64] Bhartiya Stree Shakti, *Tackling Violence against Women: A Study of State Intervention Measures* (2017). https://wcd.nic.in/sites/default/files/Final%20Draft%20report%20BSS_1.pdf

[65] S*upra* note 62.

IV. ROLE OF PARALEGAL VOLUNTEERS IN THE LEGAL AID SYSTEM

There are two broad categories of paralegal volunteers functioning in India. The first category is of paralegal volunteers selected by Legal Service Authorities (hereinafter LSA) who are also known as LSA Paralegals. Second is paralegal volunteers trained by and working for organizations engaged in improving access to justice for the weak and marginalized sections of society. They are better known as community paralegals in several developing countries around the world.[66] Part IV of this paper discusses them in detail.

A. LSA Paralegal Volunteers: Role and Responsibility

In India, a paralegal volunteer scheme by National Legal Services Authority (hereinafter, NALSA) has been in place since the year 2009. The scheme aims to bring legal aid to the doorstep of beneficiaries by bridging the gap between the poor, weak, marginalized, and legal services institutions thereby improving their access to justice. It envisions paralegal volunteers as intermediaries who reach out to far-fetched and underserved sections of society to facilitate their access to justice. Paralegal volunteers are to be trained in basic laws and welfare measures so that they raise legal awareness in their immediate neighbourhood and provide necessary legal assistance to community members.[67] As per the scheme, a paralegal is required to be a literate person with basic comprehension abilities. However, preference is given to candidates with matriculation. Paralegal volunteers can be selected from a pool of teachers (including retired teachers), retired government servants, senior citizens, Anganwadi workers, NGO workers, students, doctors, members of self-help groups, etc.[68]

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In a vast and diverse country like India, a workforce of paralegal volunteers plays a significant role in reaching intended beneficiaries in far-off locations and linking them to legal services institutions. They are not lawyers providing legal advice, but volunteers engaged in awareness-building programs and assisting people to receive free legal aid when in need. They are required to have basic knowledge of rights and entitlements, services provided by legal services institutions, and the basic functioning of the justice system.[69] Raising legal awareness is not

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[66] DASRA, *supra* note 40.

[67] NALSA, *Scheme for Para-Legal Volunteers* (2009) (hereinafter, 'NALSA'); https://nalsa.gov.in/acts-rules/preventive-strategic-legal-services-schemes/scheme-for-para-legal-volunteers

[68] *Id.* At 3.

[69] NALSA, *supra* note 67 at 2.

the sole mandate provided to paralegals, but they are also required to settle simple issues at origin through counselling of parties. In case the dispute is of a nature that cannot be settled at source, paralegals are required to assist the parties in accessing mediation centers, ADR centers, Lok Adalat, or Court as per the case requirements.[70]

The NALSA Vision document of 2009, states that paralegal volunteers are required to educate common people about their constitutionally and legally guaranteed rights as well as their duties and obligations as per the law of the land. These volunteers are required to assess the nature of the conflict between parties and assist them in taking help from suitable legal services institutions. Acts of violence and injustice in their area must be immediately brought to the notice of the concerned Taluka Legal Services committee by the para-legal volunteer so that effective action can be taken by the committee.[71] Paralegal volunteers are required to provide necessary assistance, to concerned legal aid authorities for organizing legal awareness camps in their designated area of work. They are required to be instrumental in facilitating physical access of beneficiaries to legal services authorities by providing their addresses and raising awareness of the free legal services provided by such authorities. They shall also enlighten people on the benefits of dispute settlement at the pre-litigation stage by spreading awareness on the functioning of Lok Adalat's, Arbitration, mediation, and conciliation methods.[72]

B. Distribution and Diversity of LSA Paralegal Volunteers

As paralegals are the first contact point between the general public and legal services authorities, they play a key role in improving access to justice for the weaker sections of society. Given their instrumental role in the legal aid system, the selection of appropriate paralegals is significant. Diversity in the paralegal force will expand outreach and enhance access. As per NALSA Paralegal Volunteer Scheme, the committee for the selection of Paralegals is mandated to prefer women paralegal volunteers (hereinafter, PLVs) and ensure adequate representation from SC/ST, minority, and other backward classes.[73] However, the India Justice Report 2022, reveals the scattered distribution of PLVs across the country[74]. The said report observed that as per the NALSA mandate, every DLSA should have 50 active PLVs,

[70] *Id.*
[71] NALSA, *supra* note 67 at 7.
[72] *Id.*
[73] NALSA, *supra* note 67 at 4.
[74] India Justice Report, *supra* note 6.

however in the past 2 years, 26 out of 36 states in the country have lowered the number of PLVs. There is a 15% drop in the national average. Also, there is no uniform established criteria for the number of PLVs to be appointed in a particular area. Consequently, some States and UTs appoint more PLVs than required, whereas some appoint less than the required number.

Unfortunately, there is no data available on the caste and religious diversity of paralegals in the country. However, relevant figures are available to assess diversity based on gender. Between years 2020 and 2022, the share of female paralegals increased from 35 to 40 % nationally. But, the distribution of female paralegals is highly uneven and their numbers are dismal in most states. Some big states like Uttar Pradesh and Bihar have 25 and 27 % of female paralegals respectively.[75] This is worrying as these states have a substantial share of poor people in the country and report high rates of crime against women.[76] Also concerning is the fact that there is no empirical evidence available to suggest reasons for the low numbers of female paralegals in the country. Research shows that State Human Rights Commissions, as well as State Women Commissions, receive a high incidence of complaints of violence against women. In most of these cases, there is little or no help from legal service institutions.[77] As per a child rights activist in Agra, "Women victims hesitate to narrate their ordeal to male paralegals." At police stations, male police officers ask female victims discomforting questions that can dissuade them from reporting offences.[78] Further, in several cases of crimes against women where the perpetrator is close kin of the victim, lack of suitable paralegal help for the victim leads to the crime being unreported. Victims of crimes such as sexual harassment hesitate in sharing their plight with a male paralegal. This situation is worse when the victim is a minor and her parents do not intend on taking the legal route due to fear of losing their reputation.[79] There is no denying the fact that a low percentage of female paralegals is a potential challenge for women in accessing legal aid services. Considering the significant role and responsibilities of LSA Paralegal volunteers as discussed above, there is a strong case in

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[75] *Id.*

[76] Amogh Rohmetra, *Maximum cases of crimes against women in UP, most rape cases in Rajasthan in 2021, says NCRB*, THE PRINT (Aug. 30, 2022). https://theprint.in/india/maximum-cases-of-crimes-against-women-in-up-most-rape-cases-in-rajasthan-in-2021-says-ncrb/1107482/

[77] MARG, *supra* note 9, 36-39.

[78] Manish Chandra Mishra, *India's Legal Aid System Needs More Female Paralegals, Monitoring,* INDIA SPEND (Feb.11, 2020) https://www.indiaspend.com/indias-legal-aid-system-needs-more-female-paralegals-monitoring/

[79] *Id.*

favor of increasing female paralegal volunteers to reach out to more women beneficiaries under the free legal aid scheme.

V. FEMALE COMMUNITY PARALEGALS: WHY INDIA NEEDS THEM?

Around the world, several initiatives are being taken to impart fundamental legal knowledge to some women in the local community and prepare them as community paralegals. The rationale is that women from the same community can better understand and appreciate the socio-cultural fabric of a community and the barriers that restrict community women to access legal help. These programs are a promising mechanism for legal empowerment and improving access to justice. Community Paralegals are volunteers who are formally trained to raise legal awareness and impart basic legal education to their community. They are usually unpaid or paid a small amount depending on their work. They may be associated with a charitable organization receiving donations, a non-government organization receiving government aid, or an organization of a government nature. These organizations usually compensate them for expenses incurred on transport and other related costs.[80] Community Paralegals are an effective tool when it comes to empowering the marginalized sections of society to claim equality and live with dignity. They are a crucial resource embedded within the community for raising awareness and facilitating access to formal legal systems. They are increasingly being seen as a force to reckon with, especially in hierarchical and patriarchal societies where women have historically been discriminated against.

For women, accessibility, both physical and financial is a major cause affecting their use of legal services. In most cases, women lack the financial resource to travel to far-off places and seek legal aid. As community paralegals are embedded in the local population they serve, they are more visible and accessible. Community paralegals are not just physically accessible but their knowledge of the local population makes them more approachable. In the words of Prof. Chris Maina Peter,[81] community paralegals play a significant role as "they talk the talk and walk the walk of a community." They also have the added advantage of being context-specific

[80]Carley Robb-Jackson, *Justice Watchdogs: Promoting Women's Access to Justice Through Community-Based Paralegal Programs* (CISDL, Legal Working Paper Series on Legal Empowerment for Sustainable Development) (2012) (hereinafter, 'Carley Robb-Jackson'). https://idl-bnc-idrc.dspacedirect.org/bitstream/handle/10625/49946/ IDL-49946.pdf?sequence=1&isAllowed=y

[81] Chris Maina Peter, *Access to justice - Creating a role for paralegals in the administration of justice in Africa* 1 RECHT IN AFRIKA 128 (2008).

and not imposing a uniform pattern of legal aid assistance designed from an outsider's perspective that might not incorporate the concerns of all sections of society.[82]

A refreshing example of female community paralegals from India is the *Jankar* program in Maharashtra.[83] The program began in the year 2000 as a response to increasing instances of abuse and violence against women in lower-income households. Under the program, selected women from the local community are provided with basic legal knowledge of women's rights and are called '*Jankar'*, meaning the one who is informed. The idea is to enable them to raise awareness about women's rights in the community. They are trained to counsel parties and if possible, amicably resolve family disputes at the source itself. Interestingly, awareness about the program in the community was created by several self-help group members as well as police personnel. When a complainant approaches *the Jankars* for help, they are made to fill up a form with details of both the parties involved and the nature of the issue. Both parties are then called for discussion separately and also jointly. Due counselling is provided to parties and efforts are made to reach a settlement. However, if parties do not arrive at a settlement, the matter is then taken to the Court.

In several years of their successful operation, the *Jankars* have also acted as a ground force for state officials by raising awareness and facilitating effective implementation of laws enacted for the welfare of women in distress, such as the Domestic Violence Act, 2005, the Criminal Amendment Act (2013), etc. *Jankars* enlighten women on their rights and keep them abreast with relevant laws enacted and updated by the State for their protection. A *Jankar* decodes the legal jargon for community women and explains them in their simple day-to-day language. Women attending these legal awareness programs conducted by *Jankars* share this information with other women in the community and as a result, information about the relevant gender laws travels far by word of mouth. The ever-increasing number of cases received by *Jankars* over the years bears testimony to the effectiveness of such programs. There is no denying the fact that many women face different kinds of abuse in a patriarchal family setting. But, awareness of such abuse being a violation of their fundamental rights is abysmally low. This is especially true in terms of women from rural backgrounds and low-income households in urban areas. Apart from low awareness, socio-cultural and economic factors also limit women's access to

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[82] Carley-Robb Jackson, *supra* note 80.

[83] Vaishnavi Pawar, *Women Paralegals Help Settle Disputes at Community Level*, VILLAGE SQUARE (Mar. 25, 2020) https://www.villagesquare.in/women-paralegals-help-settle-disputes-at-community-level/

law enforcement mechanisms. This is the gap that community paralegals such as the *Jankars* fill in.

Another example of a successful community paralegal model is the *Narmada Mahila Sangh* (hereinafter, NMS) from Betul district in Madhya Pradesh. NMS is a federation of around 15000 marginalized women's collectives working for the overall development of villages since the year 2009. The NMS Paralegal program started in the year 2012 in response to rising cases of domestic violence and various other atrocities committed against women in the region. It supports poor victims of gender-based violence in accessing justice. A case is registered with NMS on a written application by the victim or by any representative of the victim. The case is then judged on viability and if deemed fit, it is assigned to a paralegal. The paralegal begins by counselling the victim and providing necessary information on the available legal route. A village-level meeting then takes place to mobilize support in favour of the victim. Often this meeting acts as a platform for dispute resolution, however, that entirely depends on the choice of the victim. The victim is then assisted by a paralegal to approach a police station and file an FIR. NMS supports a victim with all necessary assistance till her case is registered in court or till the trial begins. In some special circumstances, a victim is supported till she gets justice. Apart from assisting victims in accessing justice, NMS paralegals are also engaged in awareness-building exercises that aim at sensitizing the community about gender discrimination, gender violence, women's rights, legal safeguards provided to them by the State, etc.

NMS Paralegal Program has so far been efficient in bridging the gap between victims of violence and state legal services. It realizes that only when there is active participation at the community level, state legal measures and policies will be effective.[84] More evidence in support of the effectiveness of female community paralegals in improving women's access to justice stems from studies of scholars[85] examining the working of all-women dispute resolution bodies operating across the country. The said scholarly studies focus on "all women courts" for their unique structural composition and examine their role in alleviating concerns of women. An 'all women court,' is a dispute resolution forum in which all mediators are women

[84] Clara Mallik, *The Narmada Mahila Sangh Paralegal System: In quest of a sustainable model to address gender violence,* SAMPARK.NET (Feb. 23, 2021) https://www.pradan.net/sampark/the-narmada-mahila-sangh-paralegal-system-in-quest-of-a-sustainable-model-to-address-gender-violence/

[85] Sylvia Vatuk, *supra* note 59.

primarily drawn from the same locality as the clients and belonging to the same socio-economic class.

These dispute settlement mechanisms are primarily set up to deal with marital and other family issues of women as they are one of the most prevalent issues. Their end goal is to preserve the marriage rather than resort to litigation. For this, mediation and counselling sessions are held with the woman, husband, and other relatives. Some of these organizations are of a government nature, some receive aid from the state while some others are run by voluntary organizations working for women's welfare. Organisations running such "all women courts" reason that an abused woman needs a congenial atmosphere to share her ordeal with someone who appreciates and sympathizes with her concerns, is familiar with her culture and will suggest her a solution that aligns with ground reality. It has been observed that even women who run these non-governmental organizations do not themselves preside over the dispute resolution bodies, but hire women from the same community as their client base and train them to act as mediators. Such a mechanism is seen to bridge the class divide between the mediator and the client and provide a conducive atmosphere for free communication. It enables an illiterate or least educated woman to speak without any hesitation and embarrassment. She will also be confident that her issues will be understood in the right context. Moreover, such a mechanism also helps in devising solutions in touch with the realities of the client.[86] Such dispute resolution forums often arrive at an agreement between parties and if all goes well, the issue is resolved at the source, thereby reducing the burden on Courts. However, if the disputing parties do not agree or one of them or both do not abide by the agreement, the complainant is then assisted in approaching the police or a civil court depending on the nature of the complaint.

Social stigma and a fear of loss of reputation often prevent women from taking disputes to the legal system. This is especially true in the case of matrimonial disputes. As observed earlier, in this paper, such disputes are thought to be dealt with in private, and resorting to legal ways is considered as dragging a family to court[87] Community women have either gone through matrimonial issues themselves or have observed them from close quarters.[88] They share the same or similar value system as that of the complainant and can arrive at a pragmatic solution.

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[86] *Id.*

[87] Eva Diehl, Can Paralegals Enhance Access to Justice? The Example of Morogoro Paralegal Centre in Tanzania 42(2) LAW & POL. IN AFRICA, ASIA, AND LAT. AMERICA 187-211(2009).

[88] Dina Afrianty, Agents for Change: Local Women's Organizations and Domestic Violence in Indonesia, 174(1) BIJDRAGEN TOT DE TAAL-LAND- EN VOLKENKUNDE, 24-46 (2018).

Women from a similar background as the complainant can understand and empathize with her grievance better than other women despite being educated and having formal training.[89] Educated upper-class or middle-class paralegal volunteers however well-meaning and well-trained, will not be able to cut through class, gender, linguistic, and other socio-cultural and psychological barriers. This is the reason why even women-led NGOs working for gender justice, recruit and train women from local communities and turn them into mediators. Several feminist activists think that class and gender differences between paralegals and complainants hamper free and open communication. Paralegals from a different gender and class will not inspire the same level of confidence and trust, as somebody from the same gender and community will. It is also likely that educated middle-class values will be thrust upon poor illiterate women who form the majority of victims. This is precisely why feminist activists advocate for all-woman dispute resolution forums. The rationale is to expand outreach and initiate free communication.[90]

VI. SUGGESTION AND CONCLUSION

Women's access to free legal aid is a necessary determinant of their access to justice. Patriarchy, discriminatory socio-cultural norms, fear of social stigma, poor awareness, and a gender-insensitive justice system prevent women from realizing their rights. State measures such as introducing social welfare legislation and initiatives to revamp legal institutions to become gender sensitive have had little effect on the ground and justice remains elusive for many women. This is especially true for women from low-income households as they face a double whammy of both gender and class discrimination. It is an absolute necessity to adopt legal empowerment initiatives that entail a bottom-up approach because clearly, the top-down policies have failed to serve the purpose. In this endeavour to legally empower women at the grass-root level, female community paralegal volunteers can play a significant role.

Various organizations functioning across the country for gender justice have set up forums where women from the same community as the target population act as mediators. Most of these organizations aim to achieve gender equality in society by challenging patriarchal norms that perpetuate discrimination against women and delimit their access to justice.[91] They impart

[89] *Id.*
[90] Sylvia Vatuk, *supra* note 59.
[91] *Id.*

basic knowledge on women's rights to selected women in a community and train them to act as paralegals. The rationale behind this is that these women will understand the plight of a distressed victim in a specific socio-cultural context and provide them with solutions in touch with ground reality. NALSA Paralegal Volunteer scheme directs the paralegal selection committee to prefer women paralegal volunteers and ensure adequate representation from SC/ST, minorities, and other backward classes. However, the number of women paralegals in most states is dismal and their distribution is uneven. This is a potential challenge as it impacts outreach to a community that faces traditional socio-cultural barriers in accessing legal aid.

Therefore, there is a strong case in favour of increasing the number of female paralegals in the country, to make them more visible and accessible to women in distress. In doing so, the focus must be on the socio-cultural and economic embeddedness of paralegals in their target community. Also, multiple organizations working across the length and breadth of the country train community women to act as paralegals and promote the legal empowerment of women in their community. Legal service institutions can absorb this pool of women to act as legal aid volunteers after necessary checks to ensure their suitability as legal aid volunteers.[92] Further, empirical investigation on the local population must be undertaken to assess the appropriate number, caste, and religious diversity of female paralegals required. There is no denying the fact that empowering women through female paralegals is only one aspect of facilitating woman's access to legal aid. But it is a key aspect as paralegals play a crucial role in empowering women to claim their rights. With their work at the grassroots, female community paralegals are likely to be the most effective agents for the legal empowerment of women.

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[92] DASRA, *supra* note 40.

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Examining Intersection of Law and Equity: A Critical Analysis of Nazul Land Evictions, Rights of Vulnerable Groups and Quest for Social Justice in Haldwani's Eviction Case

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Abstract: *Fair and equitable access to land, especially for marginalized groups, is a fundamental aspect of social justice in relation to land rights. The connection between land rights and social justice becomes readily apparent when we consider the struggle against encroachment on property and the need to safeguard communities from forceful eviction. The Supreme Court's decision to overturn the Uttarakhand High Court's ruling on the eviction of over 4,000 families, primarily Muslims, from Haldwani in Uttarakhand is noteworthy. This paper presents a thorough analysis of the intersection of concept of nazul land and implementation of right to housing in India. This paper investigates into the legal intricacies encompassing nazul land and its ramifications on the rights of inhabitants. Nazul land, governed by state governments in India, is commonly used for social welfare projects, housing societies, and building infrastructure to ensure the provision of shelter for citizens. Nevertheless, difficulties arise when individuals residing on nazul land lack ownership rights, impacting their security and tenure. This situation raises concerns about the potential subsidence of constitutional principles of fairness and social justice. In the Haldwani Railway encroachment case, it seems that there is an issue regarding the illegal occupation of nazul land by certain individuals or entities near railway properties in Haldwani. The case revolves around disputes between the rights of inhabitants, the state's ownership of nazul property, and universal concepts of social justice and fair allocation of land resources. This analysis explores the legal and social facets of the issue, offering an extensive comprehension of the challenges experienced by eviction victims and other marginalized groups in India.*

Keywords - "Nazul Land" "Encroachment", "Land Laws", "Rehabilitation Rights", "Equity and Social Justice".

I. INTRODUCTION

"Land can be a major engine of shared prosperity or one of the most pervasive drivers of inequality[1] When land rights are secure and fairly distributed, it can act as a driving force for collective prosperity by granting individuals and communities access to resources, livelihood opportunities, and economic development. Recognizing and protecting land rights empowers individuals to make long-term investments in their land, enhance efficiency, and create prosperity, fostering widespread economic development and societal welfare. On the other hand, disparities in land access can worsen social inequalities, maintain poverty, and marginalize vulnerable communities, resulting in social unrest and economic instability. In

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[1] Ward Anseeuw & Giulia Maria Baldinelli, '*Land Inequality at The Heart of Unequal Societies: Research Findings from The Land Inequality Initiative*, International Land Coalition' (2020)

such instances, land is utilized as a means of excluding, exploiting, and consolidating power among a select group of individuals, further widening the divide between those who possess it and those who do not.

Land holds immense significance in India, serving as a vital source of power in social and political realms. Aside from its role as a provider of sustenance and a means of survival, land carries a multitude of connotations - ownership, permanence, honor, boundaries, individuality, recollection, and the past. Land inequality plays a significant role in perpetuating long-term wealth and asset inequality. The distribution of land is crucial in rural economies like India, as it impacts the overall distribution of assets. Moreover, when land ownership is highly concentrated, it can contribute to widespread social and political inequality. Land continues to hold significant value for Indians, comprising 69% of all assets in rural India and 49% in urban India, according to the latest data from the All-India Debt and Investment Survey conducted by the National Sample Survey Organisation in 2019.[2] Out of all the land acquired by rural households, a staggering 86% is inherited by men. Women's inheritance makes up a mere 1.8% of the total.[3] The Socio-Economic Caste Census 2011 has not released caste-disaggregated statistics to the public and is gradually becoming redundant. It also provides information that challenges preconceived notions.

In India, there is a significant disparity in the distribution of land ownership. In 2003, the 'Gini coefficient' stood at 0.73, indicating significant disparities in land distribution across Punjab, Andhra Pradesh, Tamil Nadu, and Haryana.[4] Based on the India Rural Development Report 2013-14 by IDFC, there was a slight decrease in the percentage of rural landowners who identified as Muslims.[5] From 2004-05 to 2011-12, the figure went down from 12.7% to just over 11%, suggesting a decline in land ownership among Muslim households during this time.[6]

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[2] Sudheesh RC, *Mapping Land Ownership as Part of the Caste Census Could Uncover Key Patterns about Power, Resources*, SCROLL.IN, (Feb. 29, 2024), https://scroll.in/article/1064261/mapping-land-ownership-as-part-of-the-caste-census-could-uncover-key-patterns-about-power-resources (last visited Mar 29, 2024).

[3] Rahul Lahoti, Suchitra J Y & Hema Swaminathan, *Not in Her Name: Women's Property Ownership in India*, 51 ECONOMIC AND POLITICAL WEEKLY 17 (2016). https://www.epw.in/journal/2016/5/commentary/not-her-name.html.

[4] Vikas Rawal, *Ownership Holdings of Land in Rural India: Putting the Record Straight*, 43(10) ECONOMIC AND POLITICAL WEEKLY (2008)

[5] Orient Blackswan, '*IDFC Rural Development Network, India Rural Development Report*'(2012-13)

[6] *Id.*

The case in Haldwani has sparked significant concerns regarding potential discrimination against the Muslim community.[7] Municipal authorities recently demolished a mosque and a madrasa in the Banbhoolpura area, citing them as illegal structures constructed on government land that was allegedly encroached upon by a contractor named Abdul Malik. The demolition resulted in violent confrontations after the Uttarakhand High Court issued an order instructing the eviction of individuals from lands that are being claimed by the Railways in Haldwani.[8] The order led to the issuance of eviction notices to more than 4000 families who have been residing in the area for years, supported by valid documents recognized by government authorities. The land where the Haldwani riots occurred in February 2024 was registered as Nagar Nigam's Nazul land. That said, it is deemed an illegality to make the nazul land freehold, according to a court order. However, the Supreme Court has stayed the demolition of over 4,000 homes in Haldwani town, Uttarakhand, which were accused of encroaching on railway land.[9]

By means of this socio-legal and critical analysis, the research endeavours to elucidate the complex power relations at play in the contexts of forceful displacement from Nazul area. It provides a critical analysis of the institutional barriers and systemic prejudices that sustain the marginalization of vulnerable groups and are the root causes of forced land evictions. By dissecting the Haldwani case, the research aims to contribute to the ongoing debate on marginalized communities' rights and the attainment of social justice for them. Its objective is to provide insights for legal and policy reforms and assist marginalized communities in their efforts for decent housing, dignity, and a comprehensive rehabilitation and compensation scheme that protects them from the likelihood of eviction.

II. NAZUL LAND: CONCEPT AND LEGAL FRAMEWORK

The term ‘Nazul’ was coined as an acronym for ‘**N**on-**A**gricultural **Zu**dpi **L**and’ during the early stages of organising land governance by the British government in India from 1820-1880

[7] Sparsh Upadhyay, *Haldwani Mosque-Madrasa Demolition*, LIVE LAW, (Feb. 15, 2024), https://www.livelaw.in/high-court/uttarakhand-high-court/uttarakhand-high-court-banbhoolpura-haldwani-violence-demolition-madrasa-mosque-may-8-notice-govt-249582#:~:text=html.

[8] Ravi Shankar Joshi v. Union of India and ors., WP PIL No.30 of 2022 (High Court of Uttarakhand 2022).

[9] *India Top Court Stays Demolition of over 4,000 Homes in Haldwani*, AL JAZEERA, (Jan. 5, 2023), https://www.aljazeera.com/news/2023/1/5/india-top-court-stays-demolition-of-over-4000-homes-in-haldwani.

AD.[10] Zudpi land, sometimes referred to as Zudpi Jungle or grassland woodlands, is a designated forested region that is strictly off-limits for any other usage.[11] The Central Provinces Land Revenue Act (CPLRA), 1917, was a legislation enacted during the British rule in India, which regulated land revenue administration in the Central Provinces region (now part of modern-day states like Madhya Pradesh, Chhattisgarh, and Maharashtra).[12]

According to Section 3(17) of the CPLRA, 1917, the term 'Nazul Land' is given a specific definition. 'Nazul Land' refers to land that has been fully transferred to the State Government due to its inability to be transferred or inherited, lack of heirs, or voluntary surrender by the owner.[13] Nazul Land under the CPLRA, 1917, meant the land that could not be transferred or inherited, and therefore returned to the state government because there were no legal heirs or successors.[14] It included the land that was willingly relinquished or transferred to the state government by its former owner or proprietor, land that came under the ownership of the state government for various reasons, such as conquest, escheat (reversion to the state due to lack of legal heirs), or forfeiture. The CPLRA, 1917 granted the state government full ownership and authority over nazul lands within its jurisdiction.[15] The government has the authority to grant, lease, or manage these lands in accordance with its discretion and established regulations.

The fundamental principle of nazul land management, as established through various judicial pronouncements in India, is that the State or the governing authority has the ultimate ownership and control over nazul land.[16] In nazul land, ownership is attributed to the State or the ruling authority, rather than being designated as the private property of any individual or ruler. This principle was established in the significant case of *Maharajah of Vizianagaram v. Secretary of*

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[10] BHARAT PRABHAKAR RAJGURU, LAW OF NAZUL, LEASE AND BHU MAFIA SARKAR (Blue Rose Publishers 2020).

[11] CSE, *Conservation's Language*, DOWN TO EARTH, (Jul. 31, 1995), https://www.downtoearth.org.in/environment/conservations-language-28450.html

[12] *State Of Madhya Pradesh & Ors. v. Seth Balkishan Nathani & Ors.,* (1967) AIR 394.

[13] RAI-SAHIB MATHURA-PRASADA, THE CENTRAL PROVINCES LAND REVENUE ACT, II OF 1917. (Chhindwara 2d ed. 1930).

[14] *Id.*

[15] *Smt. Jaikumari Amar bahadursingh v. The State of Maharashtra*, (2008) WP No. 2129

[16] Rajdeep Singh & Harjeet Singh, *Nazul Land and the Indian Constitution: A Legal Perspective in Relation to State of Punjab*, 3 IJCLLR 30 (2023).

State for India (1936).[17] The State possesses complete authority to reclaim, allocate, lease, or otherwise manage nazul land according to its own judgment and policies.[18] This power is derived from the State's position as the ultimate owner of nazul land. Although the State has the authority to allocate nazul land to individuals or organizations, such grants are usually accompanied by specific conditions and limitations.[19] Non-compliance with these conditions could lead to the grant being revoked or terminated. Nazul land is typically regarded as inalienable, indicating that it cannot be permanently transferred or sold to private individuals or entities.[20] The State maintains complete ownership and control over such land.

The State has the authority to collect revenue, rent, or taxes from nazul land, either directly or through granted lands, due to its ownership over such lands. The management and allocation of nazul land should ideally prioritize the public good and benefit the community as a whole, rather than focusing solely on private interests. When granting nazul land, it is important for the State to ensure a fair distribution and avoid allowing a small group of individuals or entities to control a disproportionate amount of land. The fundamental idea is that nazul land is a valuable public asset, and its administration should prioritize the State and community's interests. It should also aim to promote efficient use and prevent any improper use or unauthorized transfer of such land.

In India, there is no specific law that provides a straightforward description of the term ‘Nazul land’. However, the notion of nazul land is referenced and defined in several land revenue laws and acts at the state level, tracing its origins back to the British colonial era. Here are some of the important laws and acts that pertain to nazul land in various states of India:

i. The Central Provinces Land Revenue Act of 1917, which is applicable to areas now in Madhya Pradesh, Chhattisgarh, and Maharashtra, includes a definition of ‘Nazul Land’ in Section 3(17).[21]

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[17] The *Vizianagaram v The Secretary of State for India*, 1 MLJ 873 (1936).

[18] *Dr. O.P. Gupta and 5 others vs State of U.P.*, AIR ONLINE 2323 (2019).

[19] UP Nazul Properties (Management and Utilisation for Public Purposes) Ordinance (2024).

[20] *Hari Babu Jain and 2 others vs State of U.P. And 2 Others*, AIR ONLINE 1949 (2019).

[21] *Supra* note 14.

ii. The Bombay Revenue Code of 1879, which is applicable to areas now in Gujarat and parts of Maharashtra, includes a definition of 'Nazul Lands' in Section 2(8).[22]

iii. The Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli (1908 CE), specifically outlines the definition of 'Nazul Land' in Section 3(14).[23]

iv. The Punjab Land Revenue Act of 1887 includes a definition for 'Nazul Land' in Section 3(7).[24]

v. The Rajasthan Land Revenue Act of 1956 includes a definition for 'Nazul Land' in Section 2(17).[25]

vi. The Tamil Nadu Land Encroachment Act of 1905 includes a definition for 'Nazul Land' in Section 3(5).[26]

Although the wording of the definitions may differ in these acts, there is a common understanding that nazul land refers to land that has returned to the ownership of the state government. This can occur due to various reasons, such as the absence of legal heirs, voluntary surrender, or through conquest/annexation. It's worth mentioning that following Independence, several states have revised or abolished this land revenue laws from the colonial era and implemented new legislations.[27] Nevertheless, the notion of nazul land and its associated principles remain significant in addressing issues concerning the ownership and administration of specific types of state-owned land in India.

Nazul land distinguishes itself from other types of land through its ownership and utilization. The government owns nazul land and has the authority to allocate it for different purposes, including the construction of public infrastructure, schools, hospitals, or social organizations.[28] The allocation of nazul land entails the leasing of it to individuals, public institutions, or

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[22] The Bombay Land Revenue Code (1879).

[23] Andhra Pradesh (Telangana Area) Land Revenue Act,1317 F (1317).

[24] The Punjab Land-Revenue Act (1887).

[25] Rajasthan Land Revenue Act (1956).

[26] Tamil Nadu Land Encroachment Act (1905).

[27] Alexander Lee, *Land, State Capacity and Colonialism: Evidence from India*, 52 COMPARATIVE POLITICAL STUDIES (2017).

[28] *Narain Prasad Aggarwal v. State of M.P*, (2007) AIR 2349

organizations for specific periods, in accordance with the terms and conditions established by the authorities.[29]

In contrast, various types of land, such as private land, community land, or agricultural land, possess distinct ownership structures and usage rights. Private land is owned by individuals or entities and is commonly utilized for residential, commercial, or industrial purposes. Community land is collectively held by a community, based on their shared cultural or community interests. Agricultural land is utilized for farming and agricultural activities, making a significant contribution to food production and supporting rural livelihoods. Here dealing with some of the important laws that pertain to nazul land in Delhi, U.P and Maharashtra:

A. Delhi

In Delhi, the legal framework concerning Nazul land is primarily regulated by the Delhi Land Revenue Act, 1954 and the Delhi Land Reforms Rules, 1959.[30] The Delhi government has the authority to provide or lease out nazul land, in accordance with the terms and conditions specified under the Act and Rules.[31] The government has the authority to collect rent, revenue, or other charges from the nazul lands that have been granted or leased out.[32] The permanent transfer, sale, or alienation of nazul land to private individuals or entities requires prior approval from the government. The government has the authority to acquire or take possession of nazul land for public purposes such as the construction of roads, buildings, or other infrastructure projects.

B. Uttar Pradesh

In Uttar Pradesh, the main legislation that governs nazul land is the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, along with the Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952.[33] Section 3(16)) of the Act defines 'Nazul' as to lands that belong

[29] State Of U.P vs Zahoor Ahmad & Anr, (1973) AIR 2520.

[30] Sh Ajay Singhal vs Government of NCT of Delhi & Ors., (2022) SCC 360

[31] The Delhi Development Authority (Disposal of Developed Nazul Land) Rules,1981 (1981).

[32] *Id.*

[33] *Ram Briksha and another Vs Dy. Director of Consolidation and Others*, 5 AHC CK 86 (2017).

to the State Government and are located within the jurisdiction of a District Magistrate.[34] This also includes lands that have been transferred to the State Government from any source. The State Government retains ownership of all nazul lands, including lands that were previously owned by the State Government.

The State Government possesses the authority to oversee, lease, or handle nazul lands in a manner it considers appropriate, in accordance with the provisions of the Act and any relevant regulations.[35] The State Government has the authority to allocate or rent out nazul lands based on its own terms and conditions. These conditions may include factors such as the purpose of the grant or lease, the duration, the rent, and the possibility of resumption. In the event that the terms of the grant or lease are breached, the State Government has the authority to reclaim the nazul land. Prior to taking action, the government will provide adequate notice and an opportunity for a fair hearing.

The State Government has the right to gather all rents, profits, and proceeds from nazul lands, including those that have been granted or leased out. Nazul lands cannot be permanently transferred, sold, or alienated without obtaining prior approval from the State Government. The Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 offer additional information regarding the processes involved in identifying, managing, granting, leasing, and resuming nazul lands in the state.[36] In addition, the Uttar Pradesh Revenue Code, 2006 also includes provisions concerning the management and administration of nazul lands by the revenue authorities.[37]

March 7, 2024 marked an important milestone as the Uttar Pradesh government announced the Uttar Pradesh Nazul Properties (Management and Utilization for Public Purposes) Ordinance, 2024.[38] The ordinance restricts the alteration of nazul land into freehold property for private individuals or entities. By way of Section 3(1), the State Government has notified that:

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[34] The U.P. Zamindari Abolition and Land Reforms Act (1950).

[35] *Id.*

[36] U.P. Zamindari Abolition and Land Reforms Rules (1952).

[37] Uttar Pradesh Revenue Code (2006).

[38] The Uttar Pradesh Nazul Properties (Management and Utilization for Public Purposes) Ordinance No.5, 2024

"3(1) Notwithstanding any judgment, decree or order of any Court to the contrary or, any other law or any Government order for the time being in force, Nazul lands located in Uttar Pradesh shall not be converted to freehold in favour of private person or private entity after commencement of this Ordinance."[39]

The Ordinance is significant as it includes a comprehensive definition of 'Nazul Land' under Section 2(g), covering different types of land that have been vested with the state government, such as escheated, evacuee, and surplus lands. It describes nazul land as land that is owned by the State Government and encompasses:[40]

i. Land that has been fully transferred to the State Government due to its inability to be transferred or inherited, or due to the absence of heirs, or because it has been surrendered to the State Government by its owner or proprietor;

ii. Land that has been escheated to the State Government;

iii. Land acquired by the State Government for agricultural or non-agricultural purposes;

iv. Land owned by the State Government for a public or a private purpose;

v. Excess land held by the State Government as per legislation on land ownership limits;

vi. Land voluntarily relinquished by any individual or group and transferred to the State Government;

vii. Land administered by the State Government in any other manner whatsoever."

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The Uttar Pradesh Nazul Ordinance aims to establish a comprehensive legal framework for the management and regulation of state-owned land, ensuring uniformity across all categories of nazul lands in the state.

C. Maharashtra

[39] *Id.*

[40] *Id.*

The Maharashtra Land Revenue Code of 1966 establishes the legal framework for land revenue administration in Maharashtra.[41] The document provides a comprehensive overview of the processes involved in leasing government-owned land, including nazul land, and clearly defines the terms and conditions that apply to these leases. The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 governs the ownership and utilization of agricultural land in Maharashtra.[42] The Maharashtra Land Revenue (Conversion of Occupancy Class II Lands) Rules, 1969 regulate the conversion of Occupancy Class II lands, which may encompass nazul land, for a range of purposes including residential, commercial, or industrial utilization.[43]

As per Maharashtra XLI of 1966, nazul land refers to government-owned land designated for non-agricultural activities like roads, playgrounds, markets, or buildings.[44] Nazul land may also be land that has the potential for future non-agricultural use, such as land granted on short- or long-term lease, or without compensation. The Maharashtra Land Revenue Code, 1966, imposes limitations on the sale, transfer, redevelopment, and change of use of nazul land. As an illustration, Section 19(3) specifies that the Authority will handle nazul land in accordance with the directions of the State Government. According to Section 18(3), the Authority is responsible for handling nazul land in accordance with the rules and directions set by the Government.

III. ISSUES AND CHALLENGES FACED IN THE MANAGEMENT AND GOVERNANCE OF NAZUL LANDS

The status of Indian nazul lands is poorly documented.[45] This lack of paperwork and record-keeping has hindered nazul land management and use. Nazul land originated in the colonial era, and several states inherited incomplete or outdated British records, resulting in data gaps and inconsistencies.[46] These records are generally kept at district, tehsil, or village levels, resulting in fragmented and unreliable state data. Such records have often not been updated in

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[41] The Maharashtra Land Revenue Code, 1966, MAHARASHTRA ACT NO. XLI (1966).

[42] The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, MAHARASHTRA ACT NO. XXVII (1961).

[43] The Maharashtra Land Revenue (Conversion of Use of Land and Non-Agriculture Assessment) Rules, 1969, G.N., R. & F.D., NO. UNF.1967-R (1969).

[44] The Maharashtra Land Revenue Code, 1966, *supra* note 42.

[45] *Gangumal V. State of Chhattisgarh*, (2009) WP No.1574 (Chattisgarh High Court).

[46] *Ravi Shankar Joshi vs. Union of India and others*, *supra* note 9.

decades, resulting in differences on the ground due to ownership, use, or status changes.[47] Most states still have manual, paper-based nazul land records, making it hard to keep accurate, consolidated, and accessible data.[48] Lack of precise delineation and accurate survey records cause boundary issues and arguments over nazul land ownership and extent.[49] Uncertain records make it easy for individuals or parties to intrude on nazul lands, complicating ownership and management. Inaccurate or insufficient records make it hard for the state to collect nazul land rents, taxes, and earnings. Without reliable records, it's hard to discover and use abandoned or underutilized nazul lands for efficient use or to satisfy stakeholders.

Unauthorised occupation and encroachments of nazul lands by individuals or groups hinder India's state-owned land administration.[50] Many such lands are unfenced, making it easy for people to illegally inhabit them.[51] Encroachers exploit ambiguity caused by the lack of clear and updated documents on nazul lands' extent and limits.[52] State authorities sometimes lack the resources and manpower to monitor and prevent land encroachments, especially in distant or inaccessible locations.[53] Unauthorized settlement of nazul lands cause environmental deterioration, deforestation, and biodiversity loss in ecologically significant places.[54] Encroached nazul lands are generally neglected or used unintentionally, thwarting land management.

Underutilization of nazul lands hinders land management and revenue collection for Indian state governments.[55] Many states lack a plan or policy for using nazul lands, resulting in

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[47] Naresh C. Saxena, *Updating Land Records: Is Computerisation Sufficient?*, 40 ECONOMIC AND POLITICAL WEEKLY 313 (2005).

[48] Pradeep Nayak, *Policy Shifts in Land Records Management*, 48 ECONOMIC AND POLITICAL WEEKLY 71 (2013).

[49] Gaurika Chugh, *Examining E-Governance: A Study of Land Records Management System in India*, 23 MADHYA PRADESH JOURNAL OF SOCIAL SCIENCES 33 (2018).

[50] In Reference Nazul Policy of *the State V. State of Uttarakhand and Others* (2018) AIR 785.

[51] Devesh Chandra Srivastava, *De-Jargoned | Nazul Land*, LIVE MINT, (2011), https://www.livemint.com/Money/Jhn6Iy6jVEz8bciE4YC8rI/Dejargoned--Nazul-Land.html.

[52] *Municipal Council vs Kundanlal Mohanlal Jaiswal and Ors*., (2007) MHLJ 155 .

[53] ASIAN NGO COALITION FOR AGRARIAN REFORM AND RURAL DEVELOPMENT (ANGOC), *IN DEFENCE OF LAND RIGHTS -A Monitoring Report on Land Conflicts in Six Asian Countries*, (2019).

[54] DEPARTMENT OF FOREST AND WILDLIFE, GOVT. OF NCT OF DELHI, DELHI'S FOREST: AT A GLANCE (2022).

[55] Priyanwada Indeewaree Singhapathirana, Eddie Chi Man Hui & Wadu Mesthrige Jayantha, *Critical Factors Affecting the Public Land Development: A Systematic Review and Thematic Synthesis*, 117 LAND USE POLICY 106077 (2022).

random allocation or abandoned territory. Decision-making delays and bureaucratic processes can leave such lands inactive for long periods, preventing revenue generation and productivity. Some nazul lands are allocated for specific uses or have limits on their use, restricting their potential for other productive applications. Many such lands, especially in rural areas, lack roads, electricity, and water, making them unattractive for development.[56] Some nazul areas are environmentally or ecologically significant, requiring thorough evaluation before use, resulting in extended vacant.[57] Depending on market conditions, economic variables, and demographic trends, nazul land lease or use may be minimal.[58] State governments may lack the funding, incentives, and resources to develop and encourage nazul land use. It may cause poor land management and state resource use, increased risk of invasion, unlawful occupation, or misuse, and lost potential for economic development, job generation, and land use.[59]

The complicated and fragmented legal system controlling nazul lands in India causes uncertainty, ambiguity, and discrepancies in the interpretation and application of laws and regulations.[60] Many nazul land rules and regulations derive from British colonial land revenue systems, which may not be relevant or compatible with modern land management approaches.[61] The Indian Constitution makes land revenue collection a state responsibility, hence each state has its own land revenue legislation, laws, and rules for nazul lands.[62] This has created a diverse and inconsistent legal landscape across states. Some state-level nazul land laws and regulations are decades old and don't reflect changing socio-economic and developmental dynamics. Nazul lands have overlapping jurisdictions or conflicts between laws or regulations, making their interpretation and implementation unclear.[63] The lack of a central

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[56] Narain Prasad Aggarwal v. State Of M.P, *supra* note 29.

[57] *Supra* note 8.

[58] Leases type, https://ldo.gov.in/WriteReadData/userfiles/file/office_manuals/TYPES%20OF%20LEASES.pdf.

[59] In Reference Nazul Policy of The State vs State of Uttarakhand and Others, *supra* note 51.

[60] *Karkal Balakrishna Rao and Ors. vs State of Mysore*, (1970) AIR 125.

[61] *Supra* note 17.

[62] The Constitution of India, 1950, (art. 246)

[63] Namita Wahi, *Indian Courts Clogged with Land Disputes Because Laws Keep Conflicting Each Other*, THE PRINT, (2019), https://theprint.in/opinion/indian-courts-clogged-with-land-disputes-because-laws-keep-conflicting-each-other/254033/.

legislative or policy framework for nazul land management has caused legal frameworks to vary across states.

Complex legislative rules, administrative challenges, and a lack of resources might make it hard for state authorities to execute and enforce nazul land laws. Outdated or ambiguous terminology in some laws and regulations can cause stakeholders, including courts, to interpret them differently, causing disagreements and lawsuits.[64] For instance, in Andhra and Telangana, there are so many overriding land law provisions.[65] The Andhra Pradesh Record of Rights land revenue regulation from 1358 Fasli, the Andhra Pradesh (Telangana Area) Land Revenue Act from 1317 Fasli, and the Andhra Pradesh Record of Rights in Land and Pattadar Passbook Act from 1971 have provisions that overlap, leading to ambiguity in interpretation.[66]

The illegal taking and occupancy of nazul lands by powerful individuals or groups, frequently with vested interests or by exploiting system flaws, is a major issue in India's management and governance.[67] To prevent such exploitation, clear and extensive legislative frameworks are needed. Nazul lands are illegally taken due to weak law enforcement and government corruption.[68] Insufficient monitoring and accountability worsen this. The increased urbanization and rising demand for property for housing, commercial, and infrastructural projects have put great pressure on the government to transform nazul lands. Converting nazul lands for commercial or residential use can cause tensions and raise fundamental considerations about equitable distribution and use.[69] Real estate developers, urban planners, environmentalists, and local communities often clash over nazul land development. Each group may have different goals and interests, causing land use disputes. Urban nazul lands typically

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[64] Mane Rajaram R., *Study of Causes of Land Disputes and Delays in Decisions Over Property Rights in Agricultural Lands in Maharashtra*, (2012).

[65] Acts Manuals, https://ccla.telangana.gov.in/viewActs.do?method=acts, accessed on 4 january 2024.

[66] *Id.*

[67] Manju Menon, Debayan Gupta & Kanchi Kohli, *In State-Level Changes to Land Laws, a Return to Land Grabbing in Development's Name*, THE WIRE, 2017, https://thewire.in/law/state-level-changes-land-laws-return-land-grabbing-developments-name (last visited Jan 4, 2024).

[68] Sapana Doshi & Malini Ranganathan, *Contesting the Unethical City: Land Dispossession and Corruption Narratives in Urban India*, 107 ANNALS OF THE AMERICAN ASSOCIATION OF GEOGRAPHERS 183 (2017).

[69] *Satya Narain Kapoor vs State of U.P. And Others*, 1 AWC 1B (1998).

function as parks, open spaces, and other public amenities.[70] Their conversion for commercial or residential use can degrade local inhabitants' quality of life by removing these public resources.

Converting nazul lands for development projects can displace underprivileged communities like slum dwellers and informal settlements that depended on these lands. Nazul lands may feature wetlands, woods, or natural habitats. Their conversion for development can degrade the ecosystem, destroy biodiversity, and upset ecological equilibrium. Converting nazul lands for commercial or residential use raises problems regarding public resource distribution and access. Concerns exist that such conversions may benefit private developers or wealthier groups while marginalizing vulnerable communities.[71] Converting nazul lands for development projects may involve corruption, partiality, or misuse of public resources.[72]Comprehensive policy reforms, improved administrative processes, transparent record-keeping, and efficient coordination among government entities managing nazul lands are needed to address these issues.[73] Community engagement, public knowledge, and stakeholder participation can also help govern and sustain these vital public resources.

Nazul land disputes and their effects on marginalized populations and their rights are crucial to public land governance. Slum dwellers, informal settlers, and tribal people may live on such lands for food and shelter.[74] In disputes over land ownership or use, these groups risk displacement, eviction, and loss of income.[75] Marginalized groups struggle to demonstrate their

[70] Bhanwar Singh v. State of Rajasthan, (2021), https://www.livelaw.in/pdf_upload/bhanwar-singh-v-state-of-rajasthan-and-ors--409484.pdf (last visited Feb 4, 2024).

[71] *Housing and Land Rights in India: Status Report for Habitat III*, Housing and Land Rights Network, New Delhi, 2016. https://hlrn.org.in/documents/Housing_and_Land_Rights_in_India_Report_for_Habitat_III.pdf (last visited March 30, 2024).

[72] Francesco Chiodelli & Stefano Moroni, *Corruption in Land-Use Issues: A Crucial Challenge for Planning Theory and Practice*, 86 TOWN PLANNING REVIEW 437 (2015).

[73] Snehasis Mishra & Varsha Ganguly, *Documentation of Best Practices in Land Resources Management in India*, (2016)

[74] Malay Kotal, *Land vs. Housing: How Effective Are Tenurial Measures to House the Urban Poor?*, INDIA HOUSING REPORT (Jun. 16, 2021), https://indiahousingreport.in/outputs/opinion/land-vs-housing-how-effective-are-tenurial-measures-to-house-the-urban-poor/ (last visited Feb 4, 2024).

[75] Babette Wehrmann, *Land Conflicts- A Practical Guide to Dealing with Land Disputes*, (2008), https://toolsfortransformation.net/indonesia/wp-content/uploads/2017/05/giz2008-en-land-conflicts.pdf (last visited Feb 4, 2024).

rights and ownership of lands because they lack legal recognition.[76] This legal ambiguity makes them vulnerable to exploitation. Marginalized communities frequently lack political authority, social influence, and nazul land decision-making representation. Their voices and concerns are routinely ignored, worsening their marginalization. Nazul lands may be marginalized populations' traditional habitats, natural resource sources, or cultural or religious locations. Cultural identities and traditional habitats are threatened by land disputes. Powerful parties generally win land conflicts, resulting in unequal access to public resources.[77] If displaced or denied access, marginalized communities may be unfairly compensated.[78] The eviction of vulnerable communities from nazul lands without rehabilitation or compensation violate their human rights to housing, livelihood, and basic resources.[79]

Underprivileged communities encounter obstacles when trying to access justice systems in order to resolve nazul land disputes. Legal aid services, alternative dispute resolution mechanisms, and community-based paralegal initiatives can be instrumental in empowering marginalized communities to effectively assert their land rights. In addition, it is crucial to prioritize the independence, impartiality, and accessibility of judicial institutions in order to deliver timely and fair resolutions to land disputes. Marginalized communities face a heightened risk of being forcibly evicted and displaced due to conflicts over land ownership, development initiatives, or land encroachments.[80] It is crucial for governments to establish and uphold laws and policies that safeguard against unjust displacement and guarantee fair compensation, resettlement, and rehabilitation for communities impacted by such actions. In addition, it is the need of hour to implement proactive measures to mitigate land-related conflicts and tackle the root causes such as poverty, inequality, and marginalization.

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[76] Kundan Pandey, *Punjab's Marginalised Communities Struggle for Their Right to Cultivate Common Lands*, DOWN TO EARTH, Feb. 7, 2019, https://www.downtoearth.org.in/news/agriculture/punjab-s-marginalised-communities-struggle-for-their-right-to-cultivate-common-lands-63005 (last visited Feb 4, 2024).

[77] The United Nations Interagency Framework Team for Preventive Action, *Land and Conflict-Toolkit and Guidance for Preventing and Managing Land and Natural Resources Conflict*, (2012), https://www.un.org/en/land-natural-resources-conflict/pdfs/GN_Land%20and%20Conflict.pdf (last visited Feb 4, 2024).

[78] Lai Ming Lam & Saumik Paul, *Disputed Land Rights and Conservation-Led Displacement: A Double Whammy on the Poor*, 12 CONSERVATION & SOCIETY 65 (2014).

[79] Miloon Kothari, Sabrina Karmali & Shivani Chaudhry, *The Human Right to Adequate Housing and Land*, (2006), https://nhrc.nic.in/sites/default/files/Housing.pdf (last visited Feb 4, 2024).

[80] Smitu Kothari, *Whose Nation? The Displaced as Victims of Development*, 31 ECONOMIC AND POLITICAL WEEKLY 1476 (1996).

Prioritizing the rights and well-being of marginalized communities in nazul land disputes is not only a matter of social justice, but also essential for fostering inclusive and sustainable urban growth, preserving cultural plurality, and preserving the standards of nondiscrimination and equality codified in the Indian Constitution.

IV. HALDWANI EVICTION CASE: A CRITIQUE

The Haldwani Railway land encroachment case serves as a compelling example that sheds light on various issues concerning the governance and management of nazul lands in India. The case pertains to the encroachment and unauthorized occupation of railway land in Haldwani, Uttarakhand, by various individuals and groups over a significant period of time.[81] This land, initially obtained by the railways for public purposes, is known as nazul land.[82] The central concern in this case revolves around the extensive encroachment and illicit occupation of railway land by various individuals and groups.[83] This intrusion has led to the development of housing and business buildings on land that was originally designated for public purposes. The encroachments on railway land in Haldwani highlight the insufficient monitoring and enforcement mechanisms by the relevant authorities. Despite being well-informed about the encroachments, the authorities neglected to take prompt action, resulting in the escalation of the encroachments over the years.

The British-built Haldwani-Kathgodam railway line in the 1880s sparked the legal dispute. The Railways complained to the court that these 4,365 homes were illegal encroachments that they tried to remove in 2007.[84] It claims 10 acres of the 29 acres were razed in the exercise, but new structures were built this year. Locals entered the streets weeks before the Supreme Court decree, claiming their family have resided there for nearly 100 years. The petitioners opposing the HC ruling stated they are poor lawful inhabitants of Mohalla Nai Basti and Line No 17 &

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[81] Outlook Web Desk, *Explained: What Is Nazul Land Which Is at The Heart of Haldwani Violence?*, OUTLOOK, https://www.outlookindia.com/national/explained-what-is-Nazul-land-which-is-at-the-heart-of-haldwani-violence.html (last visited Feb 4, 2024).

[82] Sparsh Upadhyay, *Haldwani Evictions: Reasons Given by Uttarakhand High Court to Order Evictions in Gafoor Basti Near Railway Land*, LIVE LAW, Jan. 4, 2023, https://www.livelaw.in/news-updates/haldwani-evictions-reasons-given-by-uttarakhand-high-court-to-order-evictions-in-gafoor-basti-near-railway-land-read-judgment-218051#:~:text.html (last visited Feb 4, 2024).

[83] *Ravi Shankar Joshi v. Union of India and ors*., WP PIL No.30 of 2022 (High Court of Uttarakhand 2022).

[84] DH Web Desk, *History of the Legal Struggle in Uttarakhand's Haldwani*, DECCAN HERALD, 2023, https://www.deccanherald.com/india/history-of-the-legal-struggle-in-uttarakhands-haldwani-1178450.html (last visited Feb 4, 2024).

18, Banbhulpura (Azad Nagar) in Haldwani, Uttarakhand. They claimed to have title and occupation documents. In the mid-1800s, the British government bought property in Uttarakhand's steep Bhawar region, dubbed it 'Haldwani Khas', and transferred interior dwellers there. By 1880, the railway line was completed on land seized in 1859.In 1907, British officials gave the area to local municipal authorities as 'nazul land' and prohibited lease or sale. The current conflict hinges on this. Principal occupiers leave *'jaayajaad munjaapaata*'land portions. '*Jaayajaad munjaapaata'* pertains to land parcels that are passed down via the family lineage, providing an illustration of conventional land ownership and inheritance practices rooted on historical entitlements and familial ties.[85]

In December, 2023, the Uttarakhand HC ruled, If the records which are available with the local government are reviewed, in fact, in Haldwani Khas, there appears to be no asset which could be termed as to be nazul land on which the local body or the commissioner could have at all implemented any of the leases, which could be said to be under law or in complying with law.[86] Ravi Shankar Joshi filed a PIL in 2013 in the HC saying that 29 acres of railway land around Haldwani railway station, under the North Eastern Railway Zone, was encroached after the 2007 encroachment drive.[87] The 2016 High Court's decision imposing penalties on this PIL failed. Joshi pleaded again in March 2022. The Railways informed the court that 4,365 illegal dwellings were identified on roughly 78 acres of railway land in Banbhoolpura.[88] The court then requested legal documentation to determine document ownership. On December 20, 2022, the HC concurred with the petitioner and directed the encroachment to be removed, giving residents a week to vacate the premises.[89] Locals appealed to the Supreme Court, which halted demolition and prohibited new development.

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[85] *Supreme Court halts Haldwani eviction drive; says cannot uproot thousands of occupants overnight*, THE LEAFLET, Jan. 5, 2023, https://theleaflet.in/supreme-court-halts-haldwani-eviction-drive-says-cannot-uproot-thousands-of-occupants-overnight/ (last visited Mar 30, 2024).

[86] Gautam Bhatia, *Evictions and the Right to Housing: The Uttarakhand High Court's Haldwani Judgment*, INDIAN CONSTITUTIONAL LAW AND PHILOSOPHY, Jan. 4, 2023,https://indconlawphil.wordpress.com/2023/01/04/evictions-and-the-right-to-housing-the-uttarakhand-high-courts-haldwani-judgment.html (last visited Feb 4, 2024).

[87] S*upra* note 83.

[88] *Ibid.*

[89] *Id.*

The matters at hand revolve around the status of an individual who possesses nazul land after the lease period has expired, and their legal rights or interests over the disputed nazul land. It also raises questions about the legality of the State's exercise of the right of resumption. The Uttarakhand Nazul Land Management, Settlement and Disposal Act, 2021 and Nazul Policy 2021 applies to Uttarakhand state. This Act grants the government the authority to lease out nazul land to any entity for a predetermined duration, typically ranging from 15 to 99 years.[90]The claim of the residents who asserted ownership based on the notification released in 1907 was dismissed by the two-judge bench of the Uttarakhand High Court in *Ravi Shankar Joshi vs. Union Of India And Others.*[91] The Court dismissed the claim of the residents regarding 'uninterrupted possession' and stated that a legal right to claim ownership does not arise solely based on uninterrupted possession. In the end, the Court sided with the Railways' arguments and instructed the state authorities to promptly remove the families residing in the encroachment area, even if it required assistance from para-military forces.

The Court's disregard for the 'Right to Housing' aspect in this issue, along with its indirect denial and violation of various supreme court judgments, undermines the progress made in shelter jurisprudence under the Right to life. The High Court overlooks the Supreme Court's interpretation in *Olga Tellis vs. Bombay Municipal Corporation*[92]. In this instance, the highest court granted permission for the removal of jhuggi jhopri dwellers, while also implementing a comprehensive rehabilitation system. The mention of a Para-military force in Uttarakhand high court's verdict raises concerns about the potential for human rights violations. The designated time frame for the eviction is excessively strict, as the judgment overlooks the duration that the residents have been living in the place. The lack of effectiveness in the state machinery is not explicitly stated in the judgment, even though it is the primary responsibility of the State to ensure that all citizens have the right to adequate shelter and related rights, as per the Supreme Court's ruling in the case of *Ajay Maken v. Union of India*[93].

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[90] Uttarakhand Nazul Land Management, Settlement and Disposal Act, 2021, UTTARAKHAND BILL NO. 12 OF 2021 (2021).

[91] *Supra* note 83.

[92] *Olga Tellis & Ors vs Bombay Municipal Corporation & Ors*., 2 BOM CR 434 (1985).

[93] *Ajay Maken & Ors. vs Union of India & Ors*., AIR ONLINE (2019).

Though the Supreme Court has recognized that the encroached land in Haldwani rightfully belongs to the Railways Department, the Supreme Court stayed the order of the Uttarakhand High Court's order to remove more than 4000 occupants from lands claimed by railways in Haldwani in within short span of time.[94] On 7th February 2023, the highest court provided the Indian Railways authorities and Uttarakhand government with a period of eight weeks to find a resolution regarding the relocation of individuals who were instructed to leave the unauthorized structures on railway property in Haldwani's Banbhoolpura area.[95] A bench comprising Justices Sanjay Kishan Kaul and Manoj Misra has granted a period of eight weeks to the Railway authorities and Uttarakhand, as requested by Additional Solicitor General Aishwarya Bhati.[96]

This situation highlights the difficulties involved in relocating individuals or communities who have unlawfully occupied nazul lands for a long time. The Haldwani case has shed light on the intricate legal disputes and complexities that can emerge when addressing encroachments on nazul lands. The issue has been brought to court, with different parties disputing the eviction orders and asserting their rights to the land in question. This case highlights the wider challenges surrounding the administration and control of nazul lands in India. It highlights the difficulties posed by encroachments, ineffective monitoring and enforcement, political interference, displacement of occupants, and legal complexities. Tackling such matters necessitates a holistic approach, encompassing policy reforms, bolstering legal frameworks, efficient coordination among authorities, and initiatives to prevent and resolve encroachments on nazul lands.

Marginalized communities, like slum dwellers, informal settlers, and tribal populations, often reside on or depend on nazul lands for their livelihood and shelter. When conflicts arise regarding the ownership or utilization of these lands, these communities are at risk of being displaced, evicted, and losing their sources of sustenance. Numerous marginalized communities face the challenge of lacking legal recognition or title to the nazul lands they

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[94] Utkarsh Anand, *Top Court Stops Mass Eviction in Haldwani*, HINDUSTAN TIMES, Jan. 6, 2023, https://www.hindustantimes.com/india-news/top-court-stops-mass-eviction-in-haldwani-101672986358365.html (last visited Feb 4, 2024).

[95] Sohini Chowdhury, *Haldwani Evictions| Supreme Court Grants 8 Weeks Time to Railways to Work Out Rehabilitation Solution*, LIVE LAW, Feb. 7, 2023, https://www.livelaw.in/top-stories/haldwani-evictions-supreme-court-grants-8-weeks-time-to-railways-to-work-out-rehabilitation-solution-220949 (last visited Feb 4, 2024).

[96] *Id.*

occupy, which poses difficulties in asserting their rights and claiming ownership. The lack of clarity in the legal realm adds to their susceptibility and the possibility of being taken advantage of. Marginalized communities frequently face challenges in gaining proper representation when it comes to decision-making processes concerning nazul lands. Their perspectives and issues are frequently disregarded or pushed aside, which only worsens their exclusion. Underprivileged communities face exclusion from the advantages or receive unfair compensation in the case of displacement or loss of access.

The forced removal of marginalized communities from nazul lands without appropriate rehabilitation or compensation is the violation of their fundamental rights, such as the right to adequate housing, means of living, and access to essential resources.[97] In the case of *Olga Tellis & Ors. vs Bombay Municipal Corporation & Ors. (1985),* the Supreme Court established that the right to life under Article 21 of the Constitution encompasses the right to livelihood.[98] The Court emphasized that the eviction of pavement dwellers without offering them alternative accommodation would infringe upon their fundamental rights, such as the right to life and livelihood. In *Ahmedabad Municipal Corporation vs Nawab Khan*[99] ,the Supreme Court emphasized the significance of procedural safeguards in eviction cases. It highlighted that these safeguards are not mere formalities, but rather crucial for upholding human values and the rule of law. The Court highlighted the importance of providing sufficient notice, consultation, and rehabilitation measures prior to conducting evictions. In the case of *Chameli Singh & Ors. vs State of Uttar Pradesh & Anr. (1996)*[100]*,* the Supreme Court made a significant ruling. It emphasized that the right to shelter and adequate housing is a fundamental right protected under Article 21 of the Constitution. The court further stated that any forced evictions without proper rehabilitation would amount to a violation of this fundamental right. In the case of *Udal v. Delhi Urban Shelter Improvement Board*[101], the Delhi High Court ruled that the lack of specific

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[97] Sudama Singh & Others vs Government of Delhi & Anr., WP (C) 7317 and 8904 of 2009 (Delhi High Court 2010). https://www.hlrn.org.in/documents/Sudama_Singh_and_Ors_v_Government_of_Delhi.pdf (last visited Mar 30, 2024).

[98] *Olga Tellis & Ors vs Bombay Municipal Corporation & Ors., supra* note 93.

[99] *Ahmedabad Municipal Corporation vs Nawab Khan*, AIR 152 (1997).

[100] *Chameli Singh And Others vs State of U.P. And* Another, 1051 (1996).

[101] *Udal & Ors vs Delhi Urban Shelter Improvement Board*, W.P.(C) 5378 of 2017 (Delhi High Court 2017).

documents should not be used as a reason to deny rehabilitation to evicted families, as long as there is sufficient evidence of residence.

It is important to prioritize the needs of underprivileged communities who rely on nazul lands for their livelihoods, including farming, grazing, and informal economic activities. These communities should be granted the right to sustain their current activities or be offered suitable alternative livelihood options in the event of displacement or changes in land use. Access to legal aid and representation is often limited in underprivileged communities. Every individual deserves the opportunity to access legal aid and receive effective representation in order to protect their rights and interests in cases concerning nazul land disputes or development projects. When underprivileged communities are compelled to be displaced or relocated from such lands as a result of development projects or other valid reasons, it is critical to provide them with the right to receive fair and equitable compensation, along with appropriate rehabilitation and resettlement measures. The underprivileged communities living on nazul lands should be provided access to vital services and resources, including water, sanitation, healthcare, and education, without facing any form of discrimination or obstacles. Such communities should be treated fairly and without bias, regardless of their socio-economic status, caste, religion, or ethnicity, in all matters related to nazul lands.

V. BARRIERS IN ACHIEVING SOCIAL JUSTICE WITH RESPECT TO NAZUL LAND

There are many hurdles that impede the attainment of social justice regarding nazul lands in India. These obstacles present considerable difficulties in guaranteeing equal access, safeguarding rights, and ensuring fair treatment of disadvantaged and marginalized communities. These are some of the significant obstacles:

i. The absence of a thorough and unified legal framework and policies that specifically address nazul land governance and the rights of underprivileged communities results in a void that enables exploitation and injustice.[102] Current laws and regulations might be outdated, unclear, or insufficient, which can lead to misinterpretation and abuse.

[102] Emmanuel Okon, *Land Law as An Instrument of Social Change*, 31 JOURNAL OF THE INDIAN LAW INSTITUTE 194 (1989).

ii. Underprivileged communities living on nazul lands face challenges in providing adequate documentation or legal records to support their long-standing occupancy or claims.[103] This creates a challenging situation for individuals to assert their rights and hinders their ability to seek legal remedies or receive compensation.

iii. Despite the existence of laws and policies, their implementation and enforcement frequently suffer from bureaucratic inefficiencies, corruption, and a dearth of political determination. Underprivileged communities are left vulnerable to exploitation and eviction without proper legal procedures.

iv. A notable disparity in power exists between marginalized communities and influential stakeholders, including real estate developers, politicians, and influential groups. The concentration of power and the close relationships between these influential individuals can result in the neglect of the rights and interests of disadvantaged communities.

v. Disadvantaged communities frequently face a lack of knowledge regarding their rights, legal provisions, and potential solutions concerning nazul lands. Their vulnerability is further intensified by the limited access they have to information and legal resources.

vi. Disadvantaged communities often experience long-standing socio-economic challenges, including poverty and limited access to education and resources.[104] These factors impede their capacity to effectively advocate for their rights and navigate intricate legal and administrative processes.

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[103] HOUSING AND LAND RIGHTS NETWORK, FORCED TO THE FRINGES: DISASTERS OF 'RESETTLEMENT' IN INDIA (2014).

[104] Lorenzo Cotula, Camilla Toulmin & Julian Quan, *Better Land Access for the Rural Poor Lessons from Experience and Challenges Ahead*, (2006), https://www.iied.org/sites/default/files/pdfs/migrate/12532IIED.pdf (last visited Feb 4, 2024).

vii. Discrimination based on caste, religion, ethnicity, or socio-economic status exacerbate the marginalization of underprivileged communities and hinder their access to fair treatment in matters concerning nazul lands.[105][106]

viii. The forced removal of marginalized communities from nazul lands, without proper support or alternative means of sustenance, can perpetuate cycles of poverty and marginalization, hindering their pursuit of social justice.[107]

To address these challenges, a comprehensive strategy is needed that encompasses legal and policy reforms, robust implementation and enforcement mechanisms, capacity building initiatives, awareness programs, empowerment of marginalized communities, and efforts to tackle long-standing socio-economic disparities. Effective collaboration among government agencies, civil society organizations, and affected communities is crucial to uphold social justice in the governance and management of nazul lands.

VI. SUGGESTIONS AND CONCLUSION

The surveys conducted by the National Sample Survey Office lacks in detailed information on specific caste groups. Several of these surveys focused solely on agricultural land, disregarding the significant shifts in land use and the evolving significance attached to it. It is important to accurately document the caste/religion-related patterns associated with non-agricultural land uses. Conducting a caste census could offer valuable insights into the variations within different sects and religious communities, as well as shed light on issues such as land ownership and tenancy. Enhancing transparency and accountability in nazul land management, rigorous enforcement of laws and severe consequences for violations, improving collaboration between government agencies and departments responsible for managing these lands, increasing awareness and encouraging community involvement in monitoring and reporting illegal activities related to land disputes, as well as protecting vulnerable communities from unlawful

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[105] Tarini Manchanda, *Learning from Dalit Women Fighting for Land Rights in Punjab*, (2020), https://www.openglobalrights.org/learning-from-dalit-women-fighting-for-land-rights-in-punjab.html (Feb 4, 2024).

[106] Awanish Kumar, *B R Ambedkar on Caste and Land Relations in India*, 10 REVIEW OF AGRARIAN STUDIES (2020).

[107] *Supra* note 86.

land acquisitions, are important measures to address these issues and safeguard underprivileged communities in nazul land disputes.[108]

In conclusion, the Haldwani Railway Encroachment Case highlights the complex relationship between land rights and social justice. This case shows how difficult it is to balance the interests of underprivileged populations and government. The encroachment of nazul property in Haldwani drives the need for equitable, inclusive, and rights-based land governance. The case emphasizes the need of recognizing and defending marginalized people' land rights, who often suffer from socioeconomic inequities and historical injustices. The case also emphasizes the need for transparent and responsible land administration institutions that preserve the rule of law and promote fair land resource access. Social justice in land governance requires strengthening legal frameworks, enforcement mechanisms, and community engagement in decision-making. Policymakers, government agencies, civil society organizations, and the judiciary must collaborate to address structural concerns that cause land encroachments and conflicts. More inclusive and equitable society that respects the rights of all people, especially marginalized ones, by promoting discourse, land tenure stability, and social justice needs to be created. The Haldwani Railway Encroachment Case highlights the need for land governance reforms that promote social justice and preserve land rights for future generations of the affected people.

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[108] Satish K. Puri, *Integrating Scientific with Indigenous Knowledge: Constructing Knowledge Alliances for Land Management in India*, 31 MIS QUARTERLY 355 (2007).

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Environmental Impact of Armed Conflict: A Legal Concern from Global Justice Perspective

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Abstract: *Throughout the years, the maturing of a global community and enhanced knowledge of the growing deleterious effects of human interactions with the environment have resulted in the unequivocal acknowledgement of the fact that protecting the environment is a global concern. In light of this, various measures such as environmental conventions, protocols, agreements, sustainable development goals, etc. among states have been developed, imposing global environmental responsibilities, such as the United Nations ENMOD Convention and Protocol I, along with more recent measures such as the 2022 ILC's proposed 27 draft principles for PERAC. However, with the advent of globalisation along with various economic, political, religious, social and cultural factors, contemporary issues such as environmental harm by way of armed conflict, a present example of which is the Russia-Ukraine War, continue to become frequent. The aim of this paper is thus, to firstly, assess the impact that armed conflict has had on the global environment and evaluate various recent examples as well as the implications of the same in the global context. Based on the previous averment, to assess if this environmental concern is indeed a global justice concern or restricted only to the involved states and secondly, to analyse the existing international legal framework/ mechanism and its practical application, adherence and effectiveness in recent years. Lastly, the proposition that there is a growing urgency and importance of a revised legal effort, founded on global cooperation, in view of several recognised international environmental conventions, protocols, etc., with regard to taking measures to protect and preserve the environment in wake of the recent international armed conflicts impacting the environment is scrutinized.*

Keywords: Armed Conflict, Global Justice, Ecocide, Hague Regulations, Geneva Convention, Rome Statute.

I. INTRODUCTION

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Armed conflicts and wars are strenuous events, to say the least, and the loss suffered generally far too immense. Historically, it has resulted in not only environmental harm, but also a humanitarian crisis, major blow to the economy, displacement, infrastructural damage, poverty, and so on. The most obvious and well acknowledged repercussions are the casualties of the war and the lives lost, but more often than not, we have overlooked the damage caused to our natural environment during these times. "Ecocide" are acts which lead to destruction of

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the environment, similar to "ecoterrorism"[1]. These acts can be negligent or intentional human actions. Concerns are raised for the toll these armed conflicts have with regard to the lives at stake and the impact it leaves on the economy and society. As important as these concerns are, we, as a world community, have fallen behind to grant due attention to the effect it has on the environment. While the international legal framework has its own role to play, the primary duty lies on our global community, acting as one, to address these concerns.

There are many ways in which armed conflicts have and continue to impact the environment. Although armed conflicts evidently take place in the environment, it is somehow disregarded when it comes to acknowledging the harm caused to it during war. Armed conflicts impact the environment through the application of weapons such as bombs, chemicals and gases, nuclear weapons. It includes the extraction of timber from forests for war purposes, destruction of land mines, oil fields and battlegrounds. Thereby, depleting physical capital. Weapons of warfare, military actions, exploitation of natural resources and insufficient governance contribute to the environmental damage during armed conflicts. The harm to the environment that arises out of armed conflicts is substantial, and it is important to realise that it speeds up the degradation to the environment, and major environmental issues such as climate change and loss of biodiversity. Be it earth, water, air, animals or flora and fauna, all elements of the environment are affected. During and in the aftermath of armed conflicts, attention to subsequent environmental issues is generally limited against the economic problems faced. Maintaining military equipment has disposal tolls. Countries often neglect the pollution caused by the military, the costs of managing which are high. Modernisation of warfare and war equipment often go hand in hand with the impact on nature.

Massive CO2 emissions, radiation through atomic bombing and radioactive debris take place during these conflicts and affect the climate. Air and soil pollution is caused by explosives and causes habitat destruction. When industries such as oil facilities are attacked, the resultant fuel leakage contributes to widespread pollution and is also harmful for public health. Military scrap too adds to the pollution, as it may contain harmful materials and an increase in waste dumping is possible. Nuclear weapons have devastative capabilities. Armed conflicts also result in destruction of forests, wells, farms, etc., climate change and damage to ecosystems. Destruction

[1] Sean Fleming, What is Ecocide and Which Countries Recognize It In Law?, WORLD ECONOMIC FORUM (Aug, 30; 2021), (June 9, 2023), https://www.weforum.org/agenda/2021/08/ecocide-environmental-harm-international-crime.html.

of infrastructure makes it difficult to maintain food security especially for vulnerable communities which may become refugees in need of shelter, water and sanitation facilities and the areas which they move to may come under too much pressure. The people who are displaced can engage in severe deforestation for wood and charcoal, etc and can also result in unchecked hunting. At times, refugees travel across boundaries.

During occupations by another state, although they have a duty to protect the land and population of said occupied land, their environmental duties are not laid down. At times when the conflict is internal, i.e., between rival states within a nation, conflict is beyond the scope and reach of international treaties and law. Thus, any environmental damage may go uncurbed by international organisations. These non-international armed conflicts can be extremely harmful to the habitats as the military in such circumstances often targets the environment to reduce access to water, food and other resources for the opposing side while simultaneously also relying on the natural resources for their various operations. The resulting displacement and loss of wildlife is unavoidable.

Local environmental laws take a back seat during conflicts and may be ignored. At times, the strain of the armed conflict itself is so big that governments are left unable to meet their environmental obligations. All this can impact a country to an extent where it can take years for the country to make up for all the damage. Costs of recovery can be major. The environmental reach of these harmful effects is so wide that it reaches even those far away and not involved in the conflict itself. Further, these effects are sufficiently long lasting and, in some cases, affect future generations too, through air, water and soil pollution and other health concerns which arise. The extent and magnitude of these armed conflicts are cataclysmic, severely altering the shape and quality of landscape to a point beyond which it can be altered back to its original state. Thus, the protection of our environment is a serious international concern, one that we must essentially address and taking into account the extent to which wars can devastate the surroundings, we must have proper laws in place so that these conflicts do not have calamitous results and the same has been recognised more and more over the years.

II. ENVIRONMENTAL CONCERNS AS A GLOBAL CONCERN AND IN LIGHT OF GLOBAL JUSTICE

A. Environmental Harm Due to Armed Conflict As A Global Concern

First, we must understand whether these environmental concerns due to armed conflicts are indeed a global concern. Such armed conflicts lead to destruction of habitats, employ hazardous levels of pollution, degrade sea and land soil, and many other environmental issues, making it a global concern[2]. A global concern can at times be construed as a slightly broader term than a problem of global justice. There are many environmental issues which are concerns of global justice, but in order to elaborate, a problem of global justice would surface when one or more of these conditions are met:[3]

(i) Actions that can be traced to one or more state/s affect in a negative manner residents in another state/ such actions bring a benefit or reduce harm to residents in another state.

(ii) Normative considerations such as norms or institutions are present which mandate entities in one state to take particular actions with respect to entities of another.

(iii) A problem affecting residents of one or more states cannot be solved with cooperation of others.

The environmental harm that results from an armed conflict between states undertaking intentional military action against each other would impact not only those states, but also the overall environment nearby as well as other states, depending on its intensity. A duty of a developed nation or a nation with sufficient resources or mediated through international organisations dedicated to human rights or protection of environment, to help can be said to be under a normative consideration to assist the nation affected from such armed conflict on humanitarian grounds and other normative norms. Environment is an already alarming issue, with various concerns like climate change, ozone depletion, loss of biodiversity, etc. taking place in normal circumstances and further elevated during the rigorous damage caused by armed conflicts. The air pollution arising from war weapons and airstrikes, intense destruction to water supply, sanitation and industrial infrastructure, are only some of the ways in which the environment is impacted in such circumstances. It would be extremely difficult for any state,

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[2] CHRIS ARMSTRONG, A BLUE NEW DEAL: WHY WE NEED A NEW POLITICS FOR THE OCEAN (New Haven, Yale University Press, 2022).; *Also* STEPHEN M. GARDINER, A PERFECT MORAL STORM: THE ETHICAL TRAGEDY OF CLIMATE CHANGE (Oxford, Oxford University Press, 1 ed. 2011).

[3] Gillian Brock and Nicole Hassoun, Global Justice, THE STANFORD ENCYCLOPAEDIA OF PHILOSOPHY (June 9, 2023), https://plato.stanford.edu/archives/fall2023/entries/justice-global.html.

let alone one that is severely affected and having very limited resources, to remediate such issues without the cooperation from other states. Hence, cooperation is crucial to address such issues. Even if not in a strict sense, considering all these factors, it is evident that the issue at hand can at least be classified as a global concern. In light of this, a global concern would also give rise to the existence of global duties. It can be contended that the argument Peter Singer gives in relation to a global duty to address global poverty[4], cannot in every aspect, but in a very broad impression, be applied here in the sense that his argument that we have a duty to assist the needy, regardless of their geographical proximity or not, can be held true in this regard as well.

B. Environmental Concerns in the ambit of Cosmopolitanism and Global Justice

What is the responsibility of a state towards reviving the environment of all the damage caused in its war? How can such responsibility be clearly established? And even if it can be established, what is the balance to be drawn between enabling a state with limited resources to utilise them for rebuilding its infrastructure, restoring economic capabilities, rehabilitating its people etc. and to utilise them for minimising and remediating the damage that is caused to the environment? Is there a duty that developed nations hold in such scenarios, seen as damage to the environment is ultimately a global concern requiring a multilateral effort? These complex questions make it all the more difficult to work through such situations and conflicts, and to a large extent, are still left unclear on a global level.

There is no singular definition of justice, only various perspectives which help broaden the understanding of this term. Principles of fairness and justice may be accepted as its considerations, although what would exactly be considered fair or just can again be disputed. While Amartya Sen may base this on capability equality, Rawls may prefer an answer more in lines of equality of condition. How a global concern will fit into these dimensions would require a thorough study. The concept of cosmopolitanism rests on the concept of a world community, of which all human beings are members who are entitled to equal respect and consideration, as opposed to being limited to only a rigid national identity. These members hold fellow feelings that we feel towards everyone and which unites all of us. A plausible relationship may exist between cosmopolitanism and the willingness to protect the

[4] PETER SINGER, FAMINE, AFFLUENCE AND MORALITY 229–43 (Philosophy and Public Affairs, 1972).

environment - these fellow feelings, along with other cosmopolitan values, might imbibe in a person a deeper concern for the world environment rather than one who holds strictly nationalist or patriotic values. Nationalism may only invoke concern for environmental issues to the extent their patriotic values allow, or at least a deeper sense of concern for national environmental issues. However, with the understanding that an environmental concern is ultimately a transnational and global concern, scholars argue that a global sense of belonging or an obligation to the citizens of the world, supported by cosmopolitanism, may favour a feeling of obligation towards the global environment.[5] An alternative understanding, however, is that nationalism may address environmental concerns in some nations, while the situation might be opposite in others based on the extent of nationalist identity individuals feel.[6] Developed nations, to the extent that their consumption in the environmental sphere is higher, owe a duty to the same extent towards the ones whose share in the sphere is diminished.[7] This burden-sharing is also dependent on the basis of global justice, reliant on principles of fairness and just-ness, where benefits and burdens are mutually shared. Ultimately, the cosmopolitan theory can support global environment issues only when there is a burden-sharing, a sense of global moral obligation across nation-states and consent, and such a situation, at least currently, is far from reality.

III. EXISTING INTERNATIONAL LEGAL FRAMEWORK AND ITS EFFECTIVENESS

Protection of the environment is partially addressed by international environmental law, laws of war, international humanitarian law, general international law and other local laws of affected countries. Hence, there are direct and indirect legislations which offer protection of the environment during armed conflict. Several UN treaties have provisions to this effect, such as the World Heritage Convention in 1972. "*Jus in bello*" (the law in waging war) or "International humanitarian laws" are ethical rules and legal 'codes of conduct' that are present to restrict or ban certain actions and/or weapons and to protect certain people or property from

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[5] Teena Gabrielson, *Green Citizenship: A Review and Critique*, 12(4) CITIZENSHIP STUDIES 429, 437 (2008)

[6] Lauren Contorno, *The Influence of Cosmopolitan Values on Environmental Attitudes: An International Comparison*, 17 RES PUBLICA - JOURNAL OF UNDERGRADUATE RESEARCH 14 (2012).

[7] Zev. Trachtenberg, *Complex Green Citizenship and the Necessity of Judgment,* 19 (3) ENVIRONMENTAL POLITICS 342 (2010).

the damage of conflicts. It indirectly attempts to also protect the environment the population lives in.

Customary international law follows the principle of proportionality in the sense that it means the force or weapons used must be reasonably proportionate to the achievement of a sensible military objective. Anything in excess of that would not only be unnecessary and unfair, but also cause undue damage to the environment.

a) The International Committee of The Red Cross (ICRC) is an organisation aimed at humanitarian protection and assistance in times of armed conflict, as well as promoting respect for and implementation of international humanitarian law. This makes it an institution of prime importance for environmental protection during armed conflict. The ICRC also led the adoption of the Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict[8] ("ICRC Guidelines") as updated in 2020, providing a summary of the existing law, work carried out, and aims for the future. These guidelines were further recommended to all states.

b) The Additional Protocol I[9] also holds relevance. In Article 35, paragraph 3 of the Additional Protocol 1, there is a specific prohibition as to using means of war which may cause widespread, long-term and severe damage to the environment. This three-standard test can be considerably difficult to establish. Article 55 also refers to protection of the natural environment against long-lasting damage and non-prejudice to the health of the population. However, in practice, the application of these articles is very limited.

c) The ENMOD Convention, 1976[10] is based on the aggressive exploitation of the environment. It is a crucial framework. Article II, paragraph 1 specifies the manipulation techniques that fall under this convention. And this manipulation used by the military or other hostile use by parties to the convention should not, as per Article

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[8] ICRC Guidelines, International Committee of the Red Cross (2020), www.icrc.org/en/publication/4382-guidelines-protection-natural-environment-armed-conflict.

[9] Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (1949).

[10] Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (1976).

I, have widespread, long-lasting or severe effects, and this is in relation to any other State Party. Notably, non-military or non-hostile use is not covered under this convention.[11] Additionally, if solely a state that is not party to the Convention is affected, it would not be covered. The subsequent articles of this convention also lay down important principles. Under this convention, states can make complaints before the UN Security Council.

d) Article 23 (g) and 55 of the Hague Regulations, along with Article 53 of the Geneva Convention (Fourth), prescribe some limitations on the occupying power with regard to property and its destruction. The Martens Clause in the preamble to the 1899 Hague Convention II specifies that in cases not covered by international treaties or customary law, the principles of international law which are acquired from principles of custom, humanity and public conscience would protect individuals. Today, certainly protection of the environment can broadly fall under the dictates of public conscience.

e) The Rome Statute of 1998 of the International Criminal Court classified intentionally with knowledge, causing widespread, long-term and severe damage to the environment in excess of the principle of proportionality, a war crime.[12] This is similar to the language used in the Protocol, but the major distinction lies in the two requirements here, which are that both intention and knowledge (element of *mens rea*) is required, along with violation of the principle of proportionality, i.e., excessiveness. Environmental factors need to be taken into consideration while determining the necessity and proportionality of pursuing military objectives.[13]

f) Article 2 para. 4 of Protocol III, annexed to the 1980 Convention on Prohibitions or Restrictions of the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate lays down a prohibition as to making forests or other plants, by incendiary weapons, the purpose of attack, subject to an exception of camouflage, cover, etc. The wording of the article is implicit of a limited scope, as it is only restricted to forests or other plants in a natural environment,

[11] M.J.T. Caggiano, *The Legitimacy of Environmental Destruction in Modern Warfare: Customary Substance over Conventional Form*, 20 BOSTON COLLEGE ENVIRONMENTAL AFFAIRS LAW REVIEW 479 (1993).

[12] Rome Statute of the International Criminal Court, 1998 § 8 (2) (b) (iv).

[13] ICJ REPORTS, Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons, 241, 29 (1996).

with the exception of fulfilling objectives like camouflage. Hence, it can be said that the practical application of this article is severely restrictive.

g) The UN General Assembly passed a resolution 47/37 directly regarding protection of the environment in times of armed conflict, and highlighting that such destruction is directly in contradiction of international law.[14]

Various MEAs such as the 1949 Geneva Convention IV, Convention of Third-Party Liability in the Field of Nuclear Energy (1960), and others have taken place. There are several treaties such as the Protocol of the Use in War of Asphyxiating, Poisonous or Other Gases & of Bacteriological Methods of Warfare, etc.

Recently, UN International Law Commission's draft principles on Protection of the Environment in Relation to Armed Conflict were adopted and appeared in the Yearbook of the ILC, 2022[15]. These principles complement the ICRC's guidelines, out of which rule 2 of the ICRC's is identified as a rule of customary IHL. Key recommendations have been made for parties to armed conflict, a fixed upper limit on the appropriate destruction caused has been drawn up, disproportionate damage in banned, and even non-state armed groups have been included in the range of IHL obligations in reference to protection of the environment. States have been directed to implement supplemental measures to protect the environment during armed conflicts, agreements relating to military forces and peace operations should be settled taking into consideration ways to prevent and restore the environment of the harm that is caused from such armed conflicts. The principles of proportionality and precaution shall be exercised, pillage and reprisals are prohibited, transboundary harm should be prevented and long-lasting environmental modification techniques should not be used by States. The United Nations work includes sustainable development and climate action. In 2015, the UN launched the Sustainable development agenda. The Rio Declaration laid down the principles of sustainable development and long-term environment protection for welfare of all generations.

It also revised Principle 21 of the Stockholm Declaration. Under Rio declaration, states are to cooperate in the development of international law in relation to liability for effects on the

[14] UN GAOR, Protection of the Environment in Times of Armed Conflict, G.A. Res. 47/37, UN Doc. A/47/49 46 (1992).

[15] Protection of the Environment in Relation to Armed Conflicts, II Yearbook of ILC A/CN.4/L.961 Add. 1 Ch. V (2022).

environmental damages caused by armed conflict, by virtue of Principle 24. The Rio Declaration, Stockholm Declaration and World Charter for Nature states that the state shall make sure that jurisdictional activities do not cause damage to the natural resources located in other States and nature is to be secured against war degradation.

IV. MAJOR INSTANCES OF ENVIRONMENTAL HARM DUE TO ARMED CONFLICT

A. Instances in history

If we take into account World War I and World War II, two of the deadliest wars in the history of the world, it provides us with a gritting example of the destruction brought and the horrendous costs we had to pay. It is well known that not only were millions of lives (of both soldiers and civilians) lost, the economic balance of the world was shaken, influenza spread rapidly, political/racial executions were carried out, social life changed, it led to economic depression and holocaust and it caused dissent among several nations. But although lesser realised, just as alarming are the consequences it left on the environment. There is an absence of sufficient data regarding detailed harm to the environment during these wars, but it is a given that wars of this magnitude are bound to cause damage. WWI substantially destroyed forests and altered the land and soil of Europe, more so due to being severely contaminated by the many artillery shells used in the war. P.S. Risdale, a forester in the U.S. Army during WWI, accounted northern France's trees "*that have not been blown down or cut through or shattered have been so badly damaged that they will die; others, pitted with bullet holes or wounded by other shot, are now open to disease or insect attack.*".[16]

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Subsequent conflicts also led to sea waters getting polluted, along with various experiments on atomic and nuclear weapons which gravely impacted the environment. However, the end of World War II was a turning point as for the first time ever, the need for an international body of nations to promote international cooperation and prevention of future conflicts was realised. Peace treaties were signed after WWII and most prominently the United Nations was founded and the Universal Declaration of Human Rights adopted. UDHR, although not legally binding, was the first Declaration to have globally established rights which were believed to be

[16] 22 P.S. RISDALE, SHOT, SHELL AND SOLDIERS DEVASTATE FORESTS 334 (American Forestry, 1916).

inherently entitled to all human beings and have subsequently also been referred to in various international treaties since its adoption.

Destruction of homes, environment and infrastructure, pollution and dislocation of people can be seen in wars subsequent to WWII as well. There are several examples in the 20th and 21st century itself. Though the exact extent of damage to the environment cannot be estimated, certain instances are available as data. The World Trade Centre explosion caused an atmospheric plume (toxic chemicals such as furans, metals, dioxins, etc.), where a large pile of smoking rubble burned for months. Dust particles from the attack spread far to cities miles away, exposure to which caused health issues. The United States' attack on Afghanistan in 2001 impacted thousands of villages and their surrounding areas where safe drinking water was compromised. Forest cover was also destroyed, and explosives caused pollution to air, soil and water.[17] Adding to the problem is the increasing number of people getting displaced. Land productivity is also damaged due to loss of vegetation cover. The war between Israel and Lebanon in 2006 involved bombing a power station near Beirut where damaged storage tanks leaked tons of oil into the Mediterranean Sea, affecting aquatic life. Some of the oil spill was burned, further causing air pollution. A major herbicidal programme was carried out during the Vietnam War, which destroyed approximately 14% of Vietnam's forests and degraded agricultural yield. Chemical spray, particularly harmful Agent Orange, was used and resulted in serious health issues and pollution. Even in 2013, chemical weapons used in Syria caused a number of casualties.

The environment in Iraq has been severely affected since the 1980s Iran-Iraq war, in which there was a high use of chemical and biological weapons, including a large number of oil tankers which spilled tons of oil in the sea[18]. This was the first time the UN Security Council had stepped in to refrain from actions that may endanger peace, security and marine life in the Gulf region. Along with this, the 1991 Gulf War, the impact of UN sanctions as well as the Gulf dispute also damaged the environment in Iraq. In a case, Armed Activities on the Territory

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[17] UNEP, Afghanistan: Post-Conflict Environmental Assessment, Switzerland, UNITED NATIONS ENVIRONMENT PROGRAMME (2003), (June 9, 2023), http://postconflict.unep.ch/afghanistan/report/afghanistanpcajanuary_2003.pdf.

[18] P. Antoine, International Humanitarian Law and the Protection of the Environment in Time of Armed Conflict, 32 INT'L REV. OF THE RED CROSS 517 (1992).

of the Congo (DRC v. Uganda) in 2005[19], the ICJ held that the Republic of Uganda as an occupying power in the *Ituri* district had failed to comply with its obligations to prevent acts of lootings, plundering and exploitation of Congo's natural resources and hence had violated its obligations of vigilance under international law (particularly stated in Article 43 of the Hague Regulations of 1907), which resulted in a duty of reparation, meaning compensation for the injury caused. This case gave recognition to the duty of a State to be vigilant in preventing acts of looting and plundering from occurring on grounds such as exploitation by occupying powers is illegal and that reparations are required for damage to the natural resources under the context of an armed conflict.

B. Recent instances

1. Russia-Ukraine War

The environmental magnitude of the Russian conflict in Ukraine is manifold and long-lasting, some even terming it as ecocide. Various forms of infrastructure, from airports to oil storages, have been set on fire leading to widespread smoke clouds and toxic fumes. In this regard, bombing of pharmaceutical, energy and chemical facilities or allegedly nuclear plants has also added to the pollution and can be questioned as being directed at military objectives and the criteria of proportionality in its regard. The head of the IAEA visited Ukraine in April, 2022 to issue nuclear safety assistance as Ukraine's nuclear power plants containing harmful radioactive substances were under danger[20]. A website, Eco Zagroza, to record the environmental damage committed by Russia was developed by Ukraine's Ministry of the Environment and Natural Resources in July, 2022, which showed that based on Ukraine's analysis, as of July, 2023, an estimated damage of €48.33 billion to the environment was inflicted by Russia. A tribunal on the crime of aggression against Ukraine, which includes the

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[19] *Armed Activities on the Territory of the Congo* (*Democratic Republic of Congo v. Uganda*), Judgement, ICJ Reports 168 (19 Dec., 2005).

[20] IAEA, Ukraine Nuclear Power Plant for Safety and Security Assistance!, Press Release (29 Mar., 2022), https://www.iaea.org/ newscenter/pressreleases/iaea-head-travels-to-ukraine-to-start-delivery-of-nuclear-safety-and-security-assistance.html

interconnection between war and damage to the environment, is to be established via the resolution adopted by the European Parliament in Jan., 2023.[21]

The loss of biodiversity, radioactive contamination, and severe damage to flora and fauna, effects of nuclear-warfare, release of hazardous substances, chemical pollution, destruction of forests, agricultural lands, infrastructure, marine environment, wildlife, are the multitude of ways in which air, water, soil and the environment as a whole has been damaged. The destruction of Ukraine's largest dam, Kakhovka Dam resulted in massive flooding, coupled with destruction of ecological areas such as protected wetlands are other major concerns that will have long-term impacts. Ukraine has been exploring ways to hold Russia accountable, however under the vast array of challenges such as collecting evidence, lack of sufficient precedents to such reparations, difficulties as to quantifying damage, etc., it is problematic. As both Ukraine and Russia are parties to the Geneva Conventions, Articles 35, 55 and 56 of Protocol I can come into play for the damage to the Kakhovka dam. The damage to water supply, such as the system from Dnipro River, has resulted in many people losing access to safe drinking water. Green reconstruction, although more of a necessity rather than a choice in the current circumstances, is essential but hurdled by the limitation of resources. UNEP also assisted the Ukraine Government in conducting environmental impact monitoring[22], and the Executive Director of UNEP stressed that massive international support would be required to restore the damage caused. This has also been highlighted in various other articles, and U.S. along with other countries[23] have committed large sums for assistance. This signals the global collective responsibility we hold, to our fellow human beings, and our global environment.

2. Israel-Palestine Conflict

The humanitarian crisis and the dangerously increasing number of people who are being injured and killed every day is in itself an alarming concern. Along with the ongoing conflict, the environmental impact that is looming is a cause for concern too. Israel and Palestine have

[21] EU, Resolution adopted on 19th January, 2023 (2022/3017(RSP)), C 214/109 (2023), https://www.europarl.europa.eu/doceo/document/TA-9-2023-0015_EN.html.

[22] UNEP, The Environmental Impact of the Conflict in Ukraine: A Preliminary Review (2022), https://www.unep.org/resources/report/environmental-impact-conflict-ukraine-preliminary-review.

[23] UNDP Press Release, New Coordination Centre to Assess Environmental Impacts of the War on Ukraine (Mar., 2023), https://www.undp.org/ukraine/press-releases/new-coordination-center-assess-environmental-impacts-war-ukraine.

long been among few of the most climate vulnerable territories. An environmental crisis has been developing in Gaza for years, and the current situation has only made it worse. The aggressive airstrikes and extensive number of bombs and detonations that have been used for attacking each other's territory in the Israel-Palestine conflict has led to massive release of chemicals and gases such as soot and greenhouse gas in the air, evident smoke clouds and loud thuds, and resulting in severe air pollution. The effect that this armed conflict has on the environment can be potentially long-lasting, affecting crops, water and air. Infrastructure such as sewage networks has also been destroyed. The current destruction of land is also severe, damaging soil quality as well as the ecosystem. Even before the current aggravations, in 2021, Israel uprooted thousands of trees.[24] Since the 1969 occupation by Israel, it has taken control of various water regions. Amidst this conflict, entry points for sending humanitarian aid are limited and the brutal attacks by Israel in the Gaza Strip have cut off supply of sufficient food, water and power, rendering many helpless. Israel has cut off water supply. Some people in Gaza have resorted to contaminated tap water.[25] These water, sanitation and climate change concerns are rising every day.

V. ONGOING OBSTACLES AND THE WAY FORWARD FROM A GLOBAL JUSTICE PERSPECTIVE

The essence of the way forward lies in a global collective effort and responsibility and it is this sense of collective responsibility that gives the normative backing to legal obligations. Over the years, international law and principles in regard to times of armed conflict have come up with a view to limit some of the damage caused by warfare by protecting populations, infrastructure and to some extent, the environment. There has been an increased acceptance of the environmental impacts that are suffered and hence grounds for extraterritorial obligations that can arise during armed conflicts with respect to the effects on the environment. However, the influence of several indirect variables such as political and economic factors still need to be more thoroughly determined.

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[24] Palestine Central Bureau of Statistics, Press Release (June, 2022), https://www.pcbs.gov.ps/post.aspx?lang=en&ItemID=4253.html

[25] Reuters, *In Gaza, People Resort to Drinking Salty Water, Garbage Piles Up* (Oct., 2023), https://www.reuters.com/world/middle-east/gaza-people-resort-drinking-salty-water-garbage-piles-up-2023-10-16.html

Moreover, many of these principles and treaties are not enforceable, countries therefore at times go on to neglect them during conflict. Due to this unenforceable nature, it poses a hurdle to ensure compliance and accountability. International humanitarian law may prove to be insufficient to protect the environment during armed conflict. The environment and inevitably us, continue to pay the price for lack of more stringent laws in this regard. Collecting evidence and quantifying the damage also becomes complicated. Although specifying the defaulting party is complex, the enforcement and punishment in situations of violation of laws is required but currently not so strict. Parties of the Geneva Conventions are obligated to enforce its provision and hold accountable those who don't, but nations have not been entirely willing to enforce these provisions.

The threat to our environment is beyond comprehension if we look at the potential of methods and weapons of war available with countries today. In practice, these laws have not been able to sufficiently protect or impose accountability on countries. Further, countries like Iraq, Afghanistan and others have suffered from violence and armed conflict to an extent beyond their capability to sustainably recover from it. Infrastructure has been destroyed, civilians have been largely displaced, and access to basic safe water and sanitation has been limited. In Yemen, destruction of water systems resulted in an epidemic of cholera in which many people suffered. The capacity of least developed or developing countries to cope with the damage that is caused to the environment is significantly limited, more so in the face of all the destruction caused to the economy, population and infrastructure.

The language of the laws currently in place have made them vulnerable due to its ambiguity and scope of loopholes being exploited by the military, as they find ways to unfairly differentiate between legitimate and illegitimate targets in their favour. Only few laws or declarations explicitly address protection of the environment during warfare or conflict. We must also consider whether military operations should be included in global attainment standards under multilateral environmental agreements. Military actions in the context of their consequent effects on the environment are ignored, hence a balance needs to be drawn between the two based on proportionality. A fundamental standard of necessity should be more strictly imposed, with the obligation to opt for the least harmful military means wherever possible.

Ecological considerations and the impact on the environment of modernised developments in the weapons and warfare equipment and experimentation, etc. should be taken into

consideration and kept within certain permissible limits as far as possible. A need for a body of law and for rules governing states which are not involved in the conflict but whose territorial environment may be particularly and severely affected by its impact should be looked into. Stricter adherence to the principles of proportionality and necessity should be adhered. In wake of the Russia-Ukraine War, some also promote the idea of drafting a new legal framework on ecocide. There is an urgent need to realise the correlation of international humanitarian law and international environment law, and their rules to be applied harmoniously. Hence, the applicability and interpretation of the ENMOD Convention, Protocol I of the Geneva Convention, and other international treaties should be read in harmonisation and given more clarity. Some forms of damage that are not covered by ENMOD or Protocol I, hence still permissible, should also be addressed. Cases which address violations of IHL and the States responsibility and liability towards the same have also been rare. Ultimately, from a legal perspective, ensuring compliance and strengthening implementation is a fundamental goal in all aspects.

Legal framework can only go as far as states and individuals take it. 'Law' and its specificities can lay out the well-defined international obligations, however, global justice allows for capacities beyond this clear allocation to flourish. The question is then not what one state owes another, but what we owe to each other as human beings. While cosmopolitanism and the idea of a single global state is far-fetched, the basic tenets of this theory of a global collective responsibility remain true. Along with this, the existing high level of interaction amongst states further assists in normative guidance to assist. The environmental damage due to armed conflicts is not limited only to the involved states, but is transnational in nature. While the state itself has a duty to remediate the harm caused, the gravity of such conflicts is such that no substantial restoration can take place without the collective efforts of all. Hence, a collective duty of nations arises. A practical example of this wherein various nations are assisting in dealing with the environmental damage is in the Russia-Ukraine War, but expansion is needed. Although there is a growing realisation of the need to address the environmental aspects of armed conflicts, it is yet to be met with equally sufficient actions to address the issue. In the wake of the multiple conflicts taking place across the world, the impact of which will be felt in the world, the duty of nations, from an international justice perspective, and the duty of all individuals, from a global justice perspective, to help out, in their respective capabilities, is at the forefront of sustainable environment practices. There are two approaches to how this duty

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or responsibility can be divided, one that is based on the capabilities and factors such as power, collective ability, etc.[26], and the other based on remedial responsibilities, where there is a connection, causal role, benefit derived, or capacity, etc.[27] to assist.

VI. CONCLUSION

Without normative guidance and the desire and feeling of collective responsibility towards addressing this issue, the legal framework alone cannot succeed. As a global concern, states must take up the global responsibility to attend to the issues of environmental harm arising due to armed conflict. This is of particular relevance in the current world scenario where environmental degradation is a glaring reality and armed conflicts are taking place in several states, further enhancing the problem. The legal framework aspect of current laws are either somewhat ambiguous or not adequately complied with, or both. Lack of proper and sufficient information on all levels about the harmful effects of armed conflicts on our surroundings and environment leads to continued neglect. The threat to protection of the environment that nuclear and chemical weapons as well as explosives pose need to be adequately assessed as they are largely capable of harm. It is important that we must also take into consideration the vulnerabilities of various countries, as many do not have sufficient resources to recover rapidly post war within reasonable time.

Yet, the most important need at the ground root level is the need for all nations to realise and address environmental damage as a global issue. This is to be supplemented with properly enforceable international law. We must question whether the existing laws and treaties are sufficient in protecting the environment during armed conflicts and limiting the damage caused to it or whether we need new laws in place, along with states collectively joining in and taking responsibility to mitigate the harm. The international humanitarian laws present today can only be useful if properly carried out. If more stringent laws cannot be placed, focus should be on making sure the existing laws are adopted and complied with as many states as possible. There is a strong need to ensure compliance with the rules of IHL. It remains to be seen how effective the newly drafted principles will be in the coming years.

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[26] IRIS MARION YOUNG, RESPONSIBILITY FOR JUSTICE 134 (Oxford: Oxford University Press, 2011).

[27] DAVID MILLER, NATIONAL RESPONSIBILITY AND GLOBAL JUSTICE 67 (Oxford: Oxford University Press, 2007).

Further thought should also be given to the suggestion given by some experts at the CDDH that nature reserves should be declared demilitarized zones in the event of conflict. It is the need of the hour that we must focus on coming together to support and rebuild the suffering environmental capacities. This also requires adherence to and implementation of the rules. Its importance cannot be neglected, for the current or future generations. Cooperation is key as damage to our natural environment is dangerous for all parties to the conflict. The international community must realise that protecting the environment benefits all and the recent deterioration of the environment only makes it more important to strengthen the standards of protecting the environment. There is a global collective responsibility we hold, to our fellow human beings, and our global environment, to work together.

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Interstellar Governance: Legislation for Space Commercialization and Extra-terrestrial Ventures across India and Beyond

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Abstract: *We humans have been transcending the confines of what we think and pursue, the world since time immemorial has seen the creation of great inventions. The journey of exploration has extended outside earthly bounds. Outer space has been a subject of curiosity for major powers of the world, missions have been sent to space by these powers to secure dominance over interstellar activities. Looking at these developments, the international treaties, rules and statutes have been framed, and regulated by organisations such as the United Nations. The present scenario indicates a strong need for laws pertaining to space, especially in the wake of hyperactive commercialisation taking place in domestic and international spheres.*

The purpose of this article is to explain the way in which a necessity of elaborated space legislation is required, and how these laws can be incorporated in the Indian context, given the prevalence of the privatisation process being carried on in the Indian space industry. The authors herein suggest the presence of uniform legislation with regard to these endeavours, India possessing one of the largest space agencies of the world requires a robust framework to enhance and govern the role of corporate and private entities by virtue of amending and updating the present statutory mechanism.

Keywords - Space Industry, International Treaties, Space Laws, Commercialisation, Framework, Legislations, Statutory Mechanism

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I. INTRODUCTION

Law in its definition indicates a model of conduct for human beings in accordance with the accepted social construct. Laws are constructed to imbibe a structured way of dealing with resources, practices, and processes and imbibing the social values of justice and answerability in the human population. Regulations and statutes related to Interstellar activities carry a similar motive. Space Laws, as the term suggests are national and international regulations and treaties which are designed to regulate and govern various aspects of our activities regarding outer space. This includes addressing the evolution and power of the technology developed and designed to empower our research of outer space. Space laws also facilitate the process of dispute settlements over the contradictory views over the policies on research and utilisation of outer space by different nations and organisations. Space Laws were developed over the

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course of an increased interest of various institutions in the exploration of outer space. They have been utilised as a regulatory mechanism to govern the extent of exploration and utilisation of outer space by nations. Space Laws are a rather contemporary aspect of Law and have not been concretely defined. The United Nations Office for Outer Space Affairs defined Space laws as: *'body of law applicable to and governing space-related activities'.*

Outer space has always been a keen area of interest and exploration for human beings since the coming of technology into their hands. This keen interest in exploration went from the scope of science being interested in the contents of outer space to further development of this curiosity which led to the start of the commercialisation of space. The beginning of commercialisation of space began with the advancement of satellite technology and the coming of telephone and television technology. In the initial days, this technology consumed most of the usage of outer space. However, as research flourished, it was discovered that satellite technology had much wider uses than radio and television only. The usage of this technology was further expanded and the sciences of Global Positioning, Remote Sensing, and Geographical Information Systems came into the picture. These technologies have reached far ahead in recent times and have been utilised for the assessment of weather and climate patterns across continents, mapping and location services such as Google Maps. Satellite technology has also been utilised for military purposes by nations through the launching of nation-specific satellites into space. This has proven beneficial for security and travel purposes. This information has also been utilised for education purposes.

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The outer space has no longer been just a horizon for science to expand to, it has actually become a whole new business and commercial ecosystem. This shows through the heightened interests of a lot of nations in the global reach into the utilisation of outer space for their individual purposes. Due to these advancements in research and achievements of nations in the area of space, various nations came up with legislations and legal frameworks in the form of Space Policies. Space Policies may be defined as the administrative and legal framework constructed to specify a nation's interest, strategy and goals regarding outer space and related activities. However, in recent times there has been the observation of an increased interest of private for-profit organisations into activities related to outer space. Private organisations have taken on many projects related to research and development to further the horizons in the area of outer space and have been supported by the governments of nations. Since these organisations have a much faster pace of working, they are outperforming governmental

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organisations. This is therefore making a much clearer way for the growing privatisation of the outer space business diaspora.

Space Research and development has picked up its pace in India over the last decade as well. India has achieved a lot in the area of Space, some shining examples of this being the success of the Chandrayan-3 lunar landing on the southern hemisphere of the moon in August 2023. Since then, India has come into the limelight as a potential dominating nation in terms of the outer space diaspora. India has also announced the Chandrayan-4 mission which aims to land on the far side of the moon and bring back lunar samples. These are a part of India's Space Vision 2047, which is a celebration of a century to India's independence from British rule. These achievements have been substantial in itself. However, India still lacks the part of commercialisation and privatisation of outer space since a considerable part of India's space activities are government-controlled and private organisations are yet to set foot into this field fully.

II. EVOLUTION OF THE INTERSTELLAR CAPACITY OF THE WORLD

Human Beings have had a long history of exploration and curiosity for outer space. The Extra-terrestrial has been a part of history, considering its importance in the faith and legends of religions and cultures all across the globe. The exploration of the extra-terrestrial bounds was in fact mentioned in French and British Literature across the 17th and 18th centuries. One of the first scholars to lay down practical principles of spaceflight was Russian mathematician Konstantin Tsiolkovsky. In his article 'Exploration of Cosmic Space by Means of Reaction Devices' in 1903, Tsiolkovsky laid down the principles of Spaceflight.[2] His work had a great impact on space research in Russia and Europe. Other research pioneers in the field include Goddard, who worked as a physics professor at Clark University, Massachusetts and gave the world the gift of liquid-filled rockets. These achievements by previous scholars were further enhanced when Hermann Oberth put a practical pinpoint on the principles and theories discussed and, in his book, "The Rocket into Interplanetary Space" explained the mathematical theory of rocketry and made the suggestion of using the same in the construction of actual space stations to facilitate the launching of space devices into the outer space. His work was

[2] Konstantin Tsiolkovsky, Exploration of Cosmic Space by Means of Reaction Devices, *Britannica;* https://www.britannica.com/science/space-exploration/History-of-space-exploration.html (Last Visited April 7, 2024)

considered very crucial in space development in Germany as it motivated the creation of Space clubs, one of them being the VfR: Society for Space Travel. The topic of the initiation of Space Launches is often related to the launch of Sputnik. However, when it is intricately analysed, the initiation of successful space launches started with the successful launch of the V-2 Ballistic Missile by Nazi space scientists in 1942. This was seen as a huge military development since V-2 was launched during the time of World War II and was aimed to be used as a weapon in Western Europe.

The success of V-2 captured the eyes of the two power blocs which emerged by the end of World War II, the USA and the USSR. Both the blocs saw the control of Space launch abilities as a medium of power. This was particularly exaggerated due to the ongoing cold war between the two blocs. Both countries initiated full-fledged efforts into outer space research. Joseph Stalin has taken a keen interest in this matter and appointed Dr Sergei Korolev as the head of the space programme of the nation. Korolev was said to be obsessed with the concept of space exploration and travel. With this, the USSR successfully launched the world's first military satellite Sputnik on October 4th 1957. Sputnik marked a revolution in the world as it represented the USSR's strategy of indigenous technology for communication and military advancement. The USSR also made a significant achievement with Vostok I which was the first spaceflight programme. They launched the Vostok 3KA space capsule in April 1961 with cosmonaut Yuri Gagarin, who is considered the first human being to be launched in space.

The USSR's rapid pace of space exploration put the USA in a position of discomfort. The USA announced that they would be the first to land on the surface of the moon. In mid-1944, the USA launched Operation Paperclip through which they provided a new identity to 116 nazi scientists. They recruited Dr. Werner Von Braun through this operation gave him the position of Director, Marshall Space Flight Centre, NASA. Dr. Braun was the person behind the idea and the design of the V-2. They successfully designed and launched the world's first Intercontinental Ballistic Missile Atlas A and the Saturn V rocket which took Neil Armstrong, Aldrin and Collins to the moon in July 1969. Following the lines of the two power blocs, countries like France, Japan and China also took to the exploration of outer space. These countries launched satellites all through the late 20th century.

In recent times, the advancement of technology has led to countries furthering their horizons in the field of space research. The diaspora of space achievement has gone from sending

satellites for military and communication purposes to exploring resources on the moon and conducting research on the possibility of life sustenance on planets like Mars. The point of commercialisation and privatisation can be seen under the newly introduced concept of Space Tourism. This includes the idea of orbital and suborbital flights which was put forward in 2021 by Richard Branson and Jeff Bezos. This concept includes an aerospace vehicle which takes off like an aircraft from spaceports on the Earth, surges upwards like a rocket into outer space across the Kamran Line and then returns to the Earth landing back like an aircraft. This concept has been made possible due to the use of 5G Communication technology which has advanced in recent times.

A. International Regulating Bodies and Legal Policies

It is said that Progress can never be made without Regulation. This comes true under a lot of lenses in the global scenario, particularly the lens pointing to Outer Space. Therefore, as a revolution of research and expertise grew in the field of outer space, so did the need to impose national and international regulations in order to protect their people and work. This also makes room for peaceful dispute resolution since access to outer space cannot be limited through boundaries. After the world war, when the two superpowers were racing against each other in the field of space research and achievements, it was felt that this may lead to yet another military confrontation within the blocs. None of the countries leaned towards this as the world was already suffering the immense impact of the World War. Therefore, there were peaceful negotiations which were mediated by the United Nations Organisation.

Thereafter, in November 1957, the USA and USSR agreed that Outer Space included the Moon and celestial bodies. According to the terms of UNGA Resolution 1148 (XII) dated 14th October 1957, it was agreed that activities for the research, exploration and use of outer space, including the Moon and celestial bodies would be undertaken for peaceful purposes. This negotiation interpretation of peaceful purpose was for non-aggressive purposes activities in outer space were made subject to international law, including the UN Charter. The UN Charter Article 2(4) protection ensured that neither would be subject to threats of terrestrial aggression and, should such an event happen, UN Charter Article 61 ensured that each retained the right

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of self-defence.[3] With the objective of enforcing Space legislations and regulations, two new institutions dedicated to outer space were established at the UN:

1. **UNOOSA: Office For Outer Space Affairs**

The United Nations Office for Outer Space Affairs (UNOOSA) works to promote international cooperation in the peaceful use and exploration of space and in the utilisation of space science and technology for sustainable economic and social development. The Office assists any United Nations Member States in establishing legal and regulatory frameworks to govern space activities and strengthens the capacity of developing countries to use space science technology and applications for development by helping to integrate space capabilities into national development programmes.

2. **UNCOPUOS: Committee on Peaceful Uses of Outer Space**

The Committee on the Peaceful Uses of Outer Space (COPUOS) was set up by the General Assembly in 1959 to govern the exploration and use of space for the benefit of all humanity: for peace, security and development. The Committee was tasked with reviewing international cooperation in peaceful uses of outer space, studying space-related activities that could be undertaken by the United Nations, encouraging space research programmes, and studying legal problems arising from the exploration of outer space. The Committee has two subsidiary bodies: The Scientific and Technical Subcommittee and the Legal Subcommittee, which were both established in 1961.[4] The setting up of the UNOOSA and the UNCOPUOS resulted in the formulation of five major treaties which have a huge impact on the global space laws to this day. These treaties are as follows:

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i. **The Outer Space Treaty, 1967**

The Outer Space Treaty, 1967[5] holds a fundamental place in the Space Laws of the world. It embarks on the basic documents, policies and other legal documents which have been agreed

[3] Ranjana Kaul, *Legal Dimensions of commercialisation of space*, VIVEKANANDA INTERNATIONAL FOUNDATION, 9 (2023), https://www.vifindia.org/sites/default/files/Legal-Dimensions-of-Commercialisation-of-Space.pdf (Last Visited April 7, 2024)

[4] UNOOSA, *Committee for Peaceful Uses of Outer Space* , https://www.unoosa.org/oosa/en/ourwork/copuos/index.html (Last Visited April 7, 2024)

[5] The Outer Space Treaty, 1967; January 27, 1967; 61 I.L.M. 386; 610 UNTS 205.

upon by states through national and international negotiation. All the major powers of the world including Russia, the United States, China, the United Kingdom, France and Germany are parties to this treaty. It is in Article I of this treaty establishes that all activities related to outer space will be for peaceful purposes. A particular emphasis may be given to Articles VI, VII AND VIII of this treaty. Article VI establishes the principle of international responsibility of states for national space activities, whether such activities are carried out by governmental agencies or by non-governmental entities. Articles VII and VIII of the Outer Space Treaty contain rules on liability for damage and jurisdiction and control over space objects.

ii. The Rescue and Return Agreement, 1968

Article V of the Outer Space Treaty includes regulations regarding the assistance and help provided to astronauts in case of emergencies like dangerous activities, emergency landings and mental and physical distress. This article formed the basis for the Rescue and Return Agreement of 1968[6]. This agreement basically enlists the situations under which help should be provided to the astronaut by the state.

iii. The Liability Convention, 1972

This convention was based on Article VII of the Outer Space Treaty. This convention specifies the international liability of the launching state in case some damage is caused by the launched space object. The Liability Convention, 1972[7] puts forward the issues of the nature of the damage caused, the place where the damage was caused and the type of liability which resides over the launching state. This convention was put forward on the issue of the possible dangerous nature of space activities and objects which may inflict a certain degree of damage to another state.

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iv. The Registration Convention, 1975

The Registration Convention, 1975[8] is based on Article VIII of the Outer Space Treaty. This convention basically states that the States have to convey certain relevant information about

[6] The Rescue and Return Agreement, April 22, 1968 , 19 U.S.T. 7570, 672 U.N.T.S. 119, 7 I.L.M. 149

[7] The Liability Convention, March 29, 1972 , 24 U.S.T. 2389, 861 U.N.T.S. 187, 10 I.L.M. 965

[8] The Registration Convention, January 14, 1975, 28 U.S.T. 695, 1023 U.N.T.S. 15, 14 I.L.M. 43

the objects being launched into space by them as a way to ensure the safety levels of those objects. This also lowers the chances of any unwanted weapons being planted into orbit.

The Registration Convention establishes a double system of registration, either in a national registry or in the international register held by the U.N. Secretary-General. A key difference between the two is that, while the former is only accessible upon permission of the state of registry, the latter is publicly available to all states. This fact makes the international registry held by the U.N. Secretary General, a crucial source of information about man-made objects orbiting Earth.

v. The Moon Agreement, 1979

The Moon Agreement, 1979[9] is one of the most recent agreements. It establishes regulations regarding the exploration of the moon and the exploitation of its natural resources. This is essential since the moon has been the centre of space research since the beginning. This agreement lays special focus on the commercial exploitation of the resources of the moon.

B. Privatisation of Space

The human race and the world are on the path of utilising space beyond defence, security and military functioning, we have witnessed the creation of a commercialised space, wherein private entities are stepping into the space research and exploration industry, which erstwhile was a state's official government's domain. Building and maintaining satellites which primarily has been the responsibility of the government space agencies has observed a drastic shift to the private and commercial players taking the lead in offering these services to the official agencies across the globe. The hassle of establishing a network of satellite-based communication, and major earth, climatic and weather analysis is now taken over by commercial vendors and suppliers.

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The interest of the private players has led to an exponential increase in commercial activities. The leading privately funded space companies in this sector are Space Exploration Technologies Corporation (SpaceX), and Blue Origin LLC, Led by space barons Elon Musk and Jeff Bezos, these companies have popularised space in the private sector. They develop reusable boosters, launch civilians as well as commercial satellites into orbit, and deliver cargo

[9] The Moon Agreement, 1979; December 18, 1979, 1363 U.N.T.S. 22, 18 I.L.M. 1434

to low Earth orbit.[10] Overall commercial activity in space quadrupled in growth from $40 billion in 2005 to approximately $423 billion in 2020.[11]

The active involvement of the business giants has made us contemplate, whether would it be convenient to say that in the near future extraterrestrial activities would be monopolised by commercial space. The age of revolution has seen the development and evolution of how people travelled, starting from the use of domesticated animals to ships, and trains and at a later stage through aerospace. This rapid change suggests, "Is the idea of space travel and tourism a far-fetched idea?" "Or is it going to be the new reality?" Private space travel will commence, and missions to Mars and, the moon are not a fiction anymore, it is unhurriedly becoming a fact. The initiative of Space X in collaboration with NASA (National Aeronautics and Space Administration) has launched ventures, wherein it is sending its commercial astronauts to space. The Crew Dragon Spacecraft, funded by business tycoon Jared Isaacman, who also funded its first private spaceflight in 2021, will record history by making the first-ever commercial spacecraft excursion outside the spacecraft missions like Crew Dragon with Artemis II mission (manned mission to lunar surface).

Space X's Starlink, cooperation with NASA initiative by Blue Origin, Boeing, and Virgin Galactic marks the beginning of a new chapter of commercial space travel. For ages there has been enormous cross-border trade between the countries which made the world a "global village" for trade, the recent trend has demonstrated the conversion of space too into a trading arena, a marketplace where products can be marketed and sold with concepts like "space for earth economy." In 2019 95 % of the $366 billion in revenue earned in space was from this sector, the concept includes goods and services produced in space for use on Earth.[12] Revenue from commercial activities constitutes 78% of the total space economy, a consistent trend seen in previous years. The global space economy's continued robustness is attributed to $427.6 billion in revenue generated by commercial space ventures. Particularly noteworthy is the

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[10] Bangkok bank Innohub, *Space Race 2.0: The Next Era of Commercial Space Ventures* (May 9, 2023) , BANGKOK BANK, available at: https://www.bangkokbankinnohub.com/the-next-era-of-commercial-space-ventures/(Last Visited April 7, 2024)

[11] Svetla Ben-Itzhak, *Companies are commercializing outer space. Do government programs still matter?* https://www.washingtonpost.com/politics/2022/01/11/companies-are-commercializing-outer-space-do-government-programs-still-matter/(Last Visited April 7, 2024)

[12] Matthew Weinzierl & Mehak Sarang, *The commercial space age is here,* (February 12, 2021), https://hbr.org/2021/02/the-commercial-space-age-is-here(Last Visited April 7, 2024)

growth observed in the communications sector, fuelled by increased demand for satellite broadband services. This segment saw its revenue rise to $28 billion, marking a 17% increase from the $24 billion recorded in 2021. Furthermore, there was a significant uptick in satellite manufacturing for commercial purposes, with a 35% increase in satellites launched into orbit from 2021 to 2022.[13]

The sector entails global observation, satellites, internet and telecommunications structures. The private partnerships have seen tremendous growth in space activities, numerous companies are entering into contracts with international space agencies for fulfil the needs of these space agencies, Made In Space's $74 million contract for 3-D print metal beams for use on NASA's spacecraft, Maxian technologies' $142 million contract for tools to be used in low earth orbit spacecraft, space tourism programmes launched by Jeff Bezos, Elon Musk and others, which will fly through sovereign aerospace (governed under Chicago Convention, 1944), then into outer space (governed under Outer Space Treaty, 1967) which prohibits the application of sovereign will have a significant impact on the international space laws treaty regimes.[14]

We all are inhabitants of this data-driven world, which entails our personal details, preferences, shopping choices, favourite movies, and loved clothes, everything is stored and revolves around a network of businesses which advance with data for strong market hold with their marketing campaigns, online algorithms, luring the targeted customers to buy products and services provided by these companies. The circulation of data takes place through satellites encircling the orbit. According to Morgan Stanley "The global space industry is expected to generate revenue of $1.1 trillion or more in 2040 from the current $350 billion."[15] The system of satellites makes the web accessible to billions of people which is helping farmers, urban planners, and other professionals in improving and restructuring the existing infrastructure. PNT satellites (position, navigation, timing) render greater efficacy in maintaining farming

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[13] Space Foundation Editorial Team*, Space Foundation Releases The Space Report 2023 Q2, Showing Annual Growth of Global Space Economy to $546B* (July 25, 2023), SPACE FOUNDATION , https://www.spacefoundation.org/2023/07/25/the-space-report-2023-q2.html (Last Visited April 7, 2024)

[14]Ranjana Kaul, *Legal Dimensions of commercialisation of space*, VIVEKANANDA INTERNATIONAL FOUNDATION, 13 (2023), https://www.vifindia.org/sites/default/files/Legal-Dimensions-of-Commercialisation-of-Space.pdf (Last Visited April 7, 2024)

[15] Knowledge at Wharton Staff, *Why Big Business Is Making a Giant Leap into Space* (June 4, 2019), KNOWLEDGE AT WHARTON, https://knowledge.wharton.upenn.edu/article/commercial-space-economy.html (Last Visited April 7, 2024)

methods and techniques. "What does this entail?" In agriculture, the use of satellite imagery and remote sensing assists farmers in monitoring crop health, predicting yields, and refining irrigation and fertilisation methods. In the energy sector, satellite data aids in resource exploration, power grid monitoring, and enhancing energy production. In logistics, space data helps in tracking traffic patterns, optimising fleet operations, and improving overall efficiency. As novel business models emerge and space data utilisation expands, it will reshape global commerce and trade, propelling the space sector beyond exploration towards unlocking the full potential of data and value-added content. Companies must grasp these insights today to develop their space data strategies for the future. PNT systems, encompassing GNSS like GPS, support various applications in aviation, transportation, logistics, and infrastructure like cellular networks and energy grids. Based on findings from BIS Research, the global PNT technology market reached a valuation of $961.7 million in 2020 and is anticipated to achieve $8.3 billion by 2031, with a CAGR of 22.45%.[16] Project Kupier of Amazon, one web satellite in partnership with Airbus is planning to launch thousands of satellites into orbit, envisioning to provide high-speed broadband data to every community and nation, this constellation of super advanced technology would bolster the space industry economy, as Anoop Menon says "This data-driven aspect when coupled with the rest of the space industry ecosystem could make it more robust."[17]

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2. Considering modern developments while updating the legal framework

The rules and treaties set by the United Nations do not deal with the contemporary issues of space tourism, space mining, and construction activities in ISS (International Space Station), Therefore there is no dedicated set of space laws for these endeavours, and this arises a need of legislations and legal framework for the corporate drivers outgoing into space. The hyperactive space race led by private companies shall be governed by the involvement of nations and international organisations. Ownership in outer space shall be a task of collective partnership of different nations and international bodies which can create a regulatory framework for ownership in outer space, laws and enactments pertaining to this shall be

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[16] *Latest Developments in the PNT Technology Applications across the* Globe (Sept. 7, 2022), BIS RESEARCH, available at https://bisresearch.com/news/latest-developments-in-the-pnt-technology-applications-across-the-globe. (Last Visited April 7, 2024)

[17] Knowledge at Wharton Staff, The Business Case for Space (June 26, 2019), BRINK, https://www.brinknews.com/the-business-case-for-space/. (Last Visited April 7, 2024)

formulated after a negotiation by the majority of nations, which will create a path for a peaceful and efficient space exploration and commercialisation projects. Nations instead of emphasising their local laws incentivising their own domestic space commercialisation programmes shall also lay focus on the bigger picture, international space research and establishments, helping the governments to align their goals with those of other countries, preventing cross-border conflicts, enhancing their technological infrastructure, synchronising the policies and laws related to modern corporate plans of the space industry. The Outer Space Treaty, notably in Article II, emphasises the optimistic principle that 'outer space' is beyond the realm of national appropriation through claims of sovereignty, use, occupation, or any other means.

The expeditious commercialisation has made a scope of startups and relatively newer companies to pursue the mission of landing outside the earth with their modern, unique and unconventional targets and strategies, these startups require intense capital to fulfil their aspirations to enter into the space market since they are comparatively new in the game, their credibility and goodwill is less as compared to the already established giants, creditors needs to be assured that companies dreaming of going into the marketplace existing outside the bounds of the earth are provided certain safety nets in the form of standard authority, conventions, regulations for crediting, sourcing, insolvency etc. and there are agencies and bodies supervising the whole process. Large banks should be playing a role in pressing their needs for rules in governing the process involved in this industry. The World Economic Forum's Global Risks Report 2022 underscores the expanding and competitive landscape of commercial activities in outer space, driven by enterprises worldwide. With many of these entities achieving self-sufficiency in launch capabilities, distinct and functional multilateral agreements are imperative to regulate rights and obligations in outer space. These agreements should transcend voluntary norms, aiming for enforceable legal frameworks.[18]

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The evolution of humans, civilisations, geographical structures, and lifestyle, displays a very vital aspect of what outcomes evolution can produce, we all can take a guess, “Exploitation!” Whenever there are discoveries and inventions, the resources are drained out in excessive and exploitative ways, fossil fuels, petroleum, diesel, coal, and minerals, all reflect a living example

[18] Scott Atkins, *The commercialisation of outer space* (June, 2022), NORTON ROSE FULBRIGHT, https://www.nortonrosefulbright.com/en-in/knowledge/publications/102a426e/the-commercialisation-of-outer-space#:~:text.html. (Last Visited April 7, 2024)

of what over-utilisation of various resources is, the economy extending beyond our planet, which is the space for earth economy utilises the products found in space for their use on earth. The environmental concern of outer space must be taken into consideration by space regulatory bodies and nations to recognise the need for legislation and laws, highlighting the limits and boundaries within which the private players and official agencies should act. Enhanced regulation is imperative for safeguarding the environmental integrity of outer space. With an increasing number of actors utilising outer space, the necessity for comprehensive regulation becomes evident. Similar to airspace, the establishment of a regime for space traffic management is indispensable. Additionally, stakeholders in outer space activities must recognize that it is in their own commercial interest to establish regulations aimed at mitigating and remediating space debris. It represents the choice between fostering a more stable international development and legal order with promising economic prospects or risking the loss of outer space's commercial potential and its viability for future human endeavours. Thus, proactive measures must be taken to establish a robust regulatory framework that fosters responsible and sustainable practices in outer space utilisation.

Opening the gates for business has made this large growing sector a competition ground with companies, start-ups, tech firms, business tycoons and giants being the key players in the ring. This massive competition demands for regulatory and ethical structure to enforce the laws related to monopoly, antitrust, malpractices and other competition laws, pertaining to the interstellar jurisdiction. Globally, nations shall provide seamless resolution in matters involving disputes between private players with regard to activities carried on beyond the bounds of this planet, in conformity with international laws and treaties. One promising area for collaborative efforts, both in terms of norms-based approaches and formal international cooperation, lies in space situational awareness (SSA) and space traffic management (STM). Establishing new agreements regarding SSA and STM would enhance transparency regarding the activities of different space actors, mitigate concerns about the dual-use nature of technologies, improve the precision of on-orbit operations, and alleviate worries regarding the management of orbital debris. Moreover, there is a pressing need to implement improved traffic management practices and regulations to prevent incidents in space.[19]If approached with care

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[19] Sophie Goguichvili *et. al., The Global Legal Landscape of Space: Who Writes the Rules on the Final Frontier? (October 1, 2021),* WILSON CENTER, https://www.wilsoncenter.org/article/global-legal-landscape-space-who-writes-rules-final%20oand,related%orbital%20debris%20management. (Last Visited April 7, 2024)

and foresight, the exploration and utilisation of space could yield unparalleled opportunities for economic growth and sustainable development.[20]

III. INDIA'S SPACE LEAP: EMBRACING COMMERCIALIZATION AND THE CALL FOR STRONGER SPACE POLICY

For centuries, countries have been in the race of trade, gaining power and dominance over the resources spread across the globe. In recent times, this race has extended its jurisdiction outside the confines of this planet and a new race has started in a ground called the 'outer space'. Developed nations are marching to gain their share in space, India which is one of the fastest growing nations of the world through its projects and programmes is progressing in the field of space research and exploration. Successful space missions have been conducted in the past, including *Chandrayaan* 1 and *Mangalyaan,* making India the first Asian nation to reach Martian orbit, India's first solar mission - Aditya L-1, G-SAT 24, ASAT missile test, *Chandrayaan* 3, and other upcoming missions such as Gangayaan-1, Human spaceflight to low- earth orbit, NISAR, in collaboration with NASA, Venus orbiter mission- *Shukrayaan* are the initiatives glorifying the country's stance as a leading player in space technology and demonstrating what India's potential to reach to the heights of space exploration and scientific discoveries. Recently, India created history by launching a record 104 satellites into earth's orbit on February 15, 2017.[21]

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India stands as a potential player in the international space market with its effectiveness in launching satellites and rockets in optimal and cost-effective ways. The technological advancements which ISRO (Indian Space Research Organisation) has inculcated in its missions have brought astounding outcomes to India's space sector. The nation is transitioning towards establishing itself as a cost-effective hub for space launches, providing significant returns to its space sector, steering in an era of privatisation and commercialisation, it is expanding its capabilities in exploration and scientific research. It seeks to incentivise its proficiency in

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[20] U. Tejonmayam, *ISRO creates history, launches 104 satellites in one go* (Feb 15, 2017), THE TIMES OF INDIA,https://timesofindia.indiatimes.com/india/isro-sets-history-launches-104-satellites-in-one-go/articleshow/57159734.html (Last Visited April 7, 2024)

[21] *Ibid.*

making satellites and providing launch services through the drastically developed and tested polar satellite launch vehicle (PSLV) by ISRO.[22]

A. Government and its Arms: Charting the Course for Effective Governance

The space market is regulated and controlled by the government, there is centralisation of the industry with major funding and investments from the government directed and managed by the office of the Prime Minister (PMO). Discovering the prowess of establishing communication satellites by the live telecast of the Olympic Games, Tokyo, 1964, across the Pacific by Syncom-3, an American satellite, Dr. Vikram Sarabhai, also known as the father of the Indian space programme, realised the effectiveness of these satellites, with this the space research and scientific activities were initiated in India. From its inception, the Indian space program has been well coordinated, establishing two key operational systems, INSAT- Indian satellite for telecommunication, television, broadcasting and meteorological services, and IRS- Indian remote sensing satellite for monitoring natural resource and disaster management support.[23]

The key mechanisms regulating the space industry in India are ISRO, Antrix Corporation Limited (ACL) and other legislations pertaining to space laws and rules. Antrix, the commercial wing of ISRO acts as a party with whose permission, agreements and contracts are formed regarding the launching services, foreign entities and organisations are required to form an agreement with Antrix to acquire services of launching. Since its beginning in 1969, the ISRO has led the way in space exploration and satellite technology with an aggregate of 124 spacecrafts missions completed entailing 17 satellites engineered by private entities or students. ISRO has launched 432 foreign satellites till now.[24]

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B. Current Policies for Space Research and Development in India

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[22]Vikas, *Space Programmes of India* (July 7, 2022), VIKASPEDIA, https://vikaspedia.in/education/childrens-corner/science-section/space-programmes-of-india.html (Last Visited April 7, 2024)

[23] Express Web Desk, *Indian Space Missions 2024: Full list of significant space missions by ISRO* (February 28,2024), THE INDIAN EXPRESS, https://indianexpress.com/article/trending/isro-india-space-missions-full-list-9183521.html (Last Visited April 7, 2024)

[24] Free Law, *The Need for Space Legislation in India* (28 October, 2022), FREE LAW, available at: https://www.freelaw.in/legalarticles/The-need-for-space-legislation-in-India.html (Last Visited April 7, 2024)

India has entered the space commercialisation sphere with a significant number of capabilities in the last decade, as of recent times it is being recognised as a potential power in the global scenario of space research. Therefore, owing to the growth of space exploration potential of India, the following space policies were put into place for regulation activities:

1. ISRO Act of 1969

Dr. Vikram Sarabhai is considered as the Founding Father of the Indian Space Programme. Confident in India's potential for space exploration, he convinced and sought a brilliant team of scientists, anthropologists and communicators to spearhead India's space research. After this, the Indian National Committee for Space Research (INCOSPAR) was set up in 1962 under the Department of Atomic Energy. This was subsequently replaced by the India Space Research Organisation (ISRO) in August 1969. The Government of India established the Department of Space (DOS) in June 1972 and ISRO was put under the DOS in September 1972.[25] The ISRO Act of 1969 serves as the comprehensive legal basis for the functioning of the Indian Space Research Organisation. It is the primary legal framework governing India's Space Programme.

The ISRO Act defines the objectives of ISRO, which include promoting the development and application of space science and technology for national development. It also outlines the powers and functions of ISRO, empowering the organisation to undertake research, development, and other related activities in the field of space technology.

2. SATCOM Policy, 1997

The use and exploration of space capacity of nations took significant raise when satellite technology was initiated for military, communication and entertainment purposes. India's satellite communication sector is primarily government controlled. The Satellite Communication Policy, 1997 was enacted to allow Indian and Foreign entities to lease the satellite capacity of INSAT and to move towards the privatisation of satellite communication.[26] While both foreign and domestic entities were allowed to give services in India, the use of

[25] Indian Space Research Organisation (ISRO), *Genesis,* https://www.isro.gov.in/genesis.html#:~:text=Subsequently%2C%20Indian%20Space%20Research%20Organisation.html (Last Visited April 7, 2024)

[26] Laxmikumaran and Sidharan Attorneys, *Satellite Communications Policy in India- Time to revisit and Revise* (July 23, 2014) https://www.lakshmisri.com/insights/articles/satellite-communications-policy-in-india-time-to-revisit-revise.html (Last Visited April 7, 2024)

domestic satellites was given preferential treatment. However, the scope of this policy was quite limited with respect to the kind of satellite systems permitted. This policy also fell short since it mandated the entities go through a lot of administrative authorities, making the process time consuming and complicated. This discouraged and restricted a lot of global companies from operating in India. The SATCOM Policy of 1997 was replaced by the SATCOM Policy of 2000.

3. SATCOM Policy, 2000

The government realised the insufficiencies of the SATCOM Policy 1997 and in November 2000, it came up with 'Norms' to implement the policy. These norms specified the scope of the policy while preference was still being given to Indian Satellites. The SATCOM Policy, to this day, is the only legal provision governing the functioning of the Satellite System in India. The policy outlines the principles for the establishment, operation, and regulation of satellite communication systems in India, ensuring efficient utilisation of the available spectrum and encouraging private sector participation.The norms provided that such "registered Indian companies" having foreign investment "not exceeding 74%" shall be permitted "to establish and operate satellite systems".[27]

4. Technology Transfer Policy of ISRO

The Indian Space sector has advanced to great lengths since its inception. The technology and knowledge regarding outer space are much more significant and accurate now. ISRO shares these know-how with other industries of the country through its resources so as to facilitate the development of the industrial sector of India through the multiplier method as they quote. The process of sharing this information is called Technology Transfer. Recognising the potential for the space programme to generate a multiplier effect in terms of returns to industry and economy at large, from long-term investments made, it was realised that "spin-off" or fall-out returns and their multiplier effect could be many times the direct returns from investment in mission-oriented high technology programmes such as space technology. In order to facilitate this technology transfer, ISRO created a public sector company called the New Space India Limited (NSIL) in 2019, whose major objective is to act as a link between ISRO and the industry and facilitate the transfer of technology from ISRO to other private companies.

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[27] *Ibid.*

5. Remote Data Sensing Policy

This policy provides that for operating a remote data sensing satellite from India, due permission and licensing from the concerned authority will be necessary, as a national commitment and as a "public good" The government assures a continuous/improving observing/imaging capability from its own Indian Remote Sensing Satellites (IRS) programme. This policy provides that the Government of India, through the nodal agency, will be the sole and exclusive owner of all data collected and received from the IRS.[28] All users will be provided with only a licence to use the said data and add value to the satellite data. Government reserves the right to impose control over imaging tasks and distribution of data from IRS or any other Indian remote sensing satellite when it feels the necessity of doing so owing to activities concerning national security or under its foreign policies. The National Remote Sensing Centre of the ISRO is vested with the powers of acquiring and disseminating data from both Indian and foreign satellites.

6. Geospatial Information Regulation Bill, 2016

The term Geospatial refers to the location and composition of a place or a geographical feature on or inside the surface of the earth. The Geospatial Information Bill seeks to regulate the acquisition, publishing and usage of geospatial information in India. This bill also regulated the depiction of geographical boundaries and features on the map of India, this bill also puts strict penalties in case of breach of any procedure established under the act. It was basically proposed to safeguard the information and sovereignty of the Indian subcontinent.

7. Indian Space Policy, 2023

The Indian Space sector has always been under the hold of government authorities, with little contribution from private enterprises due to the many restrictions imposed on their functioning. The Indian space policy of 2023 indicates the Indian Government's vision to give private enterprises certain freedoms over space research and technology, this policy has been put into place to encourage the process of privatisation of the space industry of India and allow private enterprises to carry out end-to-end activities, from developing technology to launching

[28]Indian Space Research Organisation, *National Remote Sensing Centre; Brief Note;* https://www.nrsc.gov.in/EOP_irsdata_Policy/page_1?language_content_entity=en#:~:text=As%20a%20national%20commitment%20and,data%20collected%2Freceived%20from%20IRS.html (Last Visited April 7, 2024)

satellites to operating space stations. The privatisation of the Indian space industry has become a must now. The global space economy is currently valued at about USD 360 billion. Despite being one of a few spacefaring nations in the world, India accounts for only about 2% of the space economy.[29] The private players of the space industry such as SpaceX and Blue Originals have revolutionised the space industry. Therefore, the coming in of private players is bound to produce a positive impact on the Indian space industry as well. It is well known that the Constitution of India is the principal legal framework, giving legitimacy to the actions of the government and of other concerned authorities. This is applicable to the space industry as well. Hereby, the following constitutional provisions support the legal framework for the space industry:

ARTICLE 51: Promotion of International Peace and Security[30]

The State shall endeavour to—

a) promote international peace and security

b) maintain just and honourable relations between nations

c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another

d) encourage settlement of international disputes by arbitration

Article 51 provides for the state to honour international peace and create a national policy in coherence with international law in order to maintain cordial relations with global entities. The enactment of space laws in India is in accordance with international space treaties and for the peaceful research and experimentation of space technology where other nations are on the same page with respect to the risks and rewards related to the same.

ARTICLE 73: Extent of Executive Power of the Union[31]

Subject to the provisions of this Constitution, the executive power of the Union shall extend—

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[29] *Indian Space Policy 2023: Provisions and Gaps* (May 12, 2023) *available at* https://www.drishtiias.com/daily-updates/daily-news-editorials/indian-space-policy-2023-provisions-and-gaps.html (Last Visited April 7, 2024)

[30] INDIA CONST. art. 53.

[31] INDIA CONST. art. 73.

a) to the matters with respect to which Parliament has the power to make laws; and

b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty on agreement: Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

Until otherwise provided by Parliament, a State, and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has the power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

Article 73 grants the government the powers to make legislation by virtue of any treaty, which includes international space conventions and treaties, in parallel to which Indian Space laws have been constructed.

ARTICLE 253: Legislation for giving effect to international agreements[32]

Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

Article 253 also talks about the Indian Government's power to implement and draft legislation in the country to implement a global convention or treaty. The Indian Government is doing so in the sphere of space laws, owing to the Outer Space Treaty and other authorising treaties to which the nation has consented.

C. Public- Private Innovation: Global Partnerships, Investments and Start Ups.

The Indian space industry has an enormous potential to accommodate private and commercial ventures, advancing the vision of space discoveries and related manoeuvres to the next step. Opening the doors for private companies, supervised by key government agencies, would take

[32] INDIA CONST. art. 253.

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forward the development of the space programme and boost India's dominance over the category. The economic influence of this goal will bolster the nation's financial and economic growth prospects, and the large Indian market will attract huge foreign investments taking a leap in competition with major international organisations and entities. Global collaboration has invariably made a robust position for entering into major bilateral agreements which have facilitated exponential trajectories for the countries getting into such partnerships. In India, the government has sole control over the space sector. In a notable development encouraging India's 'Make in India' initiative, ISRO has recently delegated satellite production to the private sector for the first time, moreover, a contract was made last year with an Indian start-up for launching a satellite bound for the moon. These initiatives signal towards establishment of a private space industry, fostering enhanced collaborations and innovations. A clear framework is essential for seamless coordination among stakeholders, mitigating conflicts and ensuring accountability in case of incidents.[33]

Recent progress reports display a collaboration, the Indian- European partnership, both India and Europe have a huge potential for collaboration. India's GSAT 31 was launched by a French facility, Ariane, similarly, Spot 6 and Spot 7 satellites of France were launched on Indian PSLV. National governments, besides accommodating government-government partnerships shall pave the way for the interaction of commercial entities playing a role in manufacturing earth observation and communication satellites, defence security, navigation, remote sensing and monitoring systems, which would create a room for an increasing number of public-private collaborations. The era of private investments and global partnerships has pronounced the entry of entrepreneurial ventures, and the start-up culture has penetrated the burgeoning space sector. The Indian start-up landscape has reflected astounding figures. According to Union Minister Dr. Jintender Singh, the number of space startups has surged from just one in 2014 to 189 in 2023, as per the DPIIT Startup India portal, Dr. Singh also noted that investments in Indian start space startups reached $124.7 million in 2023. Dr. Singh emphasised that the current Indian space economy is valued at around $8.4 billion, comprising 2.3% of the global space economy with the implementation of the Indian Space Policy 2023; projected that the Indian space economy could reach $44 billion by 2033; the pivotal role of the private sector in

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[33] Monica Shaurya Gohil, *Need for Comprehensive and Robust Indian Space Laws*, ILI LAW REVIEW, 63 (2021)

achieving the goal, and foreseeing their involvement in satellite manufacturing service provision and ground system manufacturing.

The enhancement of space-related education and activities begins at the grass root level to educate students and budding scientists. A national committee IN-SPACE (Indian National Space Promotion and Authorisation Centre) is formed envisioning the promotion of space technology across educational institutes in India. IN-SPACE has signed 45 memorandum of understanding with NGE'S, these agreements aim to facilitate the development of space systems. The upcoming Indian National Space Promotion and Authorization Centre (IN-SPACE), expected to become operational within the next six months, is expected to play a pivotal role in the facilitation of private sector engagement within the Indian space sector. Tasked with evaluating the diverse needs and demands of private entities, including educational institutions and research centres, IN-SPACE will collaborate with ISRO to address these requirements effectively. This effort aims to ensure that private players have access to the necessary infrastructure, resources, and data essential for conducting various space-related activities.

D. Need to Draft Comprehensive Space Laws in India

Commercialisation of the extra-terrestrial pursuits indicated the beginning of a revolution highlighting missions and projects to space. The outer space would not just be a place for scientific exploration and research but a striding industry, showcasing growth and potential for a new market, increasing the technological and economical capabilities of the world. Current developments such as space tourism and commercial space flights extended by the private companies exemplify the aforementioned claim. The beginning of this commercial wave shall be supplemented with relevant legal and legislative frameworks governing these endeavours. India is short of the legal framework required for regulating, controlling and supervising the process of privatisation, there are only a few laws and acts which regulate the space-related endeavours in India, including the ISRO Act of 1969, National Remote Sensing Centre (NRSC) guidelines of 2011. More emphasis and focus shall be concentrated towards establishing relevant statutes and laws which need to be instilled. These laws are necessary to control the programs pursued by the advancing Indian space industry. Contracts, agreements, licensing, duties, taxation, insurances, dispute resolution, and authorisation shall be topics of discussion while framing the domestic laws. Opening up of new avenues for commercial players and

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opening decks of stringent control will promote these companies to set up their own manufacturing units, make communication satellites, catering to both national and international consumers, thus a uniform space legislation controlling these courses of action can be devised. Rules relating to any unforeseen mishappening should be taken into account while framing the laws so as to protect the consumers, environment and national security in case of any damage made while undertaking these pursuits.

Moreover, the intricacies surrounding the protection of intellectual property rights pose notable legal challenges despite India's advancements in the space, there remains a wide bridge in creating a robust framework to safeguard both domestic and external intellectual property rights, it is therefore imperative to amend and update the Indian Copyright Act of 1957 to reflect contemporary developments in the space sector while the Information Technology Act of 2000 offered some relief regarding the electronically transmitted information. The absence of a dedicated framework for the protection of data can leave the country vulnerable, thus urgent efforts are needed from the government to enact the Personal Data Protection Bill of 2019. [34]India, guided by Article 51 and Article 253 of its Constitution, should enact legislation to promote public-private partnerships and accelerate technological advancement while boosting domestic manufacturing. Furthermore, revisions to the Satellite Communication Policy of 1997 and the Remote Sensing Data Policy of 2011 are necessary to meet evolving challenges. However, caution is warranted to prevent excessive regulation, which could discourage investment and drive potential investors to jurisdictions with more favourable regulatory environments, such as Luxembourg, Japan, Canada, Dubai, Singapore, Russia, and the United States of America (USA).[35] The pressing need for drafting an efficient set of laws related to space and a rapid privatisation of the space market. Elaborate space policy is a sine qua non for uplifting India's dominance as an eminent space-faring nation capable of expanding its horizon for the development of space technology.

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IV. CONCLUSION

The diaspora of outer space has been a matter of curiosity for human beings since the beginning. This may have arisen from several cultures taking their legends and regulations

[34] Monica Shaurya Gohil, *NEED FOR COMPREHENSIVE AND ROBUST INDIAN SPACE LAWS*, ILI LAW REVIEW, 63 (2021).

[35] *Supra* note 25

from the constituents of outer space. The rise of technology played a considerable part in converting man's curiosity to knowledge through exploration, experimentation and innovation. The global stance over outer space is a constantly changing one, this started from the western world engaging in strengthening their potential and scientific capabilities to constructing a room for leading players participating in the race to space. The extra-terrestrial pursuits have witnessed inception of a revolution entailing an ever-increasing role of commercial players, public-private partnerships and global collaborations, similar to establishing any industry, a strong foundation has been laid in making of an industry, extending its jurisdiction outside earthly affairs. Whenever industrialisation and the creation of a market space are registered, there is an observance of private entities taking the lead. This marks the necessity of framing relevant laws, statutes and legislative frameworks to regulate practices carried on in the market. Drafting laws specific to space is the need of the hour, noting the rapid developments taking place including commercial space trips, space mining, communication satellites, and indicates the facilitation of these laws by international bodies and organisations.

India is one of the newer nations in the global space research scenario. Over the past two decades, it has picked up its pace around space achievements and has received global recognition in the environment of the space commercial sector. However, India's space sector needs a significant push to compete against the bigger players of the industry in terms of its share in the global space diaspora. The Indian Space sector is still majorly government-controlled and hence receives considerably lesser investments due to limited interest from the global private players, this arises the need for proper balance between private and public players of the country in order to bring an equilibrium in economic, commercial and administrative competence with respect to the global counterparts.

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Family Matters: The Socio-Legal Importance of Maintaining Conjugal Rights of Prisoners in India

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Abstract: *This paper examines the issue of recognition of conjugal rights for prisoners in India. While the Supreme Court has not conclusively ruled on the matter, the High Courts have given varied judgments. The primary aims of this piece are to analyse approaches taken in other countries and discuss challenges to reforming policies in India. It first discusses the impact of denying conjugal visits on prisoners, raising social, legal and ethical arguments on the issue. Drawing from studies on women prisoners in the US and inmates in Nigeria, the paper highlights how denial of such rights can negatively impact prisoners' mental health and increase risk of sexual violence or disease within prisons. International standards like the UN Standard Minimum Rules for the Treatment of Prisoners emphasise maintaining family bonds. However, current Indian policies restrict family contact and do not recognize conjugal visits. The paper then analyses policies in countries like the US, Canada, Germany, and Kenya that have recognized conjugal rights to varying extents. Challenges to reform in India include overcrowding in prisons, lack of reliable data, and social stigma against prisoners. However, evidence suggests conjugal visits could help reduce prison violence and recidivism while strengthening family ties and post-release rehabilitation. The paper concludes by recommending reforms like liberalising parole, designating visitation areas, implementing committee recommendations, and recognizing rights for all relationships (including same-sex couples as they have already been decriminalised). Such recognition of conjugal rights is seen as progressive for prisoner welfare and justice administration as well as from a human rights perspective.*

Keywords: *Prison Statistics India Report 2021, UN Standard Minimum Rules for the Treatment of Prisoners, Modernisation of Prisons Project, Model Prisons Manual, 2016, All- India Committee on Jail Reforms.*

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I. INTRODUCTION

Quite recently, the Hon'ble High Court ("HC") of Delhi sought the Government's reply on a PIL for securing conjugal rights for Delhi's prisoners. [1]The Hon'ble HCs of Punjab & Haryana and Madras have already upheld the need for these rights. As cited by the Hon'ble Madras HC, a resolution was also passed by the Central Government which deemed prisoners' conjugal visits to be a right instead of a privilege.[2] Such discourse and discussion induce one to delve into questions like: what exactly are conjugal rights? Why should or should not they apply to prisoners? Are they a fundamental right or subject to the states' penological interests?

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[1] *Amit Sahni v. Govt. of NCT, Delhi and Anr* W.P.(C) 6666/2019, Delhi HC, (2019)

[2] The Express Web Desk, *What is the status of conjugal rights for prisoners in India*?, THE INDIAN EXPRESS (Jan. 25, 2018, 5:00 pm) https://indianexpress.com/article/what-is/what-is-the-state-of-conjugal-rights-for-indian-inmates-5038969.html. (Last Visited April 7, 2024)

Beginning with the question of conjugal rights, conjugal rights are defined as the right of a spouse to marital intercourse and society of the other spouse.[3] It must be noted therefore that conjugal rights are inherent in the institution of marriage itself. They are not only about sexual intercourse but rather encompass the sharing of common life, pleasures and challenges of marital life together.[4] There has not been a conclusive judgement by the Hon'ble Supreme Court on the matter of the conjugal rights of prisoners and HCs have given varied judgements on the matter. Apart from such much-needed judicial intervention, this issue, though having a significant impact, has largely been overlooked by successive governments of India and has been overshadowed by larger concerns of prisoners such as overcrowding,[5] undertrial prisoners[6] and long pendency of cases,[7] etc. Being a part of the state list in the constitution,[8] recognition of such rights is considered a policy matter of the state and not the Judiciary.[9] However, a dearth of empirical research and findings, lack of infrastructure and resources, lax implementation of judicial guidelines, security and other concerns inhibit national recognition of such rights.

In view of these concerns, one begins to contemplate several pertinent questions regarding the challenges in the way of such implementation, and the legal and social ramifications of bestowing conjugal rights on the prisoners in our country. Furthermore, a comparative analysis of such rights with countries across the globe could prove useful in understanding their significance and inculcating their effective interventions in our own country to enhance the welfare measures of our people. Thus, given the foregoing, the primary objective of this study is to advocate for the recognition of the conjugal rights of prisoners in India. It envisages bringing forth social, legal and ethical arguments to signify the importance of the same and

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[3] Earl Jowitt, *Dictionary of English Law'* (1959) 453.

[4] POONAM PRADHAN, FAMILY LAW LECTURES (Lexis Nexis 2021) 156.

[5] Vignesh Radhakrishnan & Rebecca Rose Varghese, *Indian jails are overflowing, in 26 States prisoner count exceeds capacity,* THE HINDU (Oct. 15, 2022, 1:07 pm) https://www.thehindu.com/data/data-indian-jails-are-overflowing-in-26-states-prisoner-count-exceeds-capacity/article65998284.ece.

[6] Varghese Radhakrishnan, *70% prisoners in India are undertrials, THE* HINDU (Sep. 11, 2020) https://www.thehindu.com/data/data-70-prisoners-in-india-are-undertrials/article32569643.ece.

[7] *UN 'disturbed' by the death of Indian activist Stan Swamy in jail,* ALJAZEERA (Jul. 6, 2021) https://www.aljazeera.com/news/2021/7/6/un-disturbed-by-death-of-indian-activist-stan-swamy-in-jail.

[8] INDIA CONST., Sch. 7, List II.

[9] *Jasvir Singh and Anr. v State of Punjab and Ors.* (2015) Cri LJ 2282.

showcase that such recognition may have in store potential benefits for both individuals (prisoners) and society. Thus, it attempts to promote a rational understanding of the issue and bats for legislative reforms and augmentation.

The scope of the study would encompass several dimensions, including a human rights perspective of the prisoners' rights and an exploration of the contribution of such recognition towards their rehabilitation and successful reintegration into society. By way of a sample study of the prison manuals and rules of 10 varied states of India along with the Model prison manual ("MPM") released by the Government in 2016, the current status of the provisions for the conjugal rights of prisoners will be studied. An analysis of the socio-legal importance of such recognition along with a comparative analysis of the approaches adopted by different countries in this context will also be involved. While delving into the challenges in the way of such reforms, an endeavour shall be made to provide suggestions regarding the same. Accordingly, the approach would be to look into three aspects. First, the current legal position regarding the conjugal rights of prisoners in India. Second, the potential benefits of bestowing such rights. Lastly, the international standards for such rights foreign countries have recognised and whether any such foreign policy measure be adopted in India as well.

II. LITERATURE REVIEW

A. Journal Articles

1. Goyal (2018)[10] in the article "*Conjugal Rights of Prisoners*" mainly discusses the two ways in which such rights can be granted (parole or visits) and the arguments in favour and against the aforementioned rights in the Indian context, in light of legal precedents, comparisons with foreign authorities and provides meaningful suggestions for providing the rights. However, she doesn't develop counterarguments to the challenges posed and doesn't delve into how foreign policy measures in this regard could be useful in an Indian context.

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[10]Shruti Goyal, *Conjugal Rights of the Prisoners*, MANUPATRA (2018) http://docs.manupatra.in/newsline/articles/Upload/22A58DF8-EA77-472B-B0B5-F06ECDF5EB61. _Goyal_Dr. _Asst._Prof._57-73_Family.pdf . (Last Visited April 7, 2024)

2. Sufrin, Roth, et al. (2015)[11] in their research paper provide meaningful insights into the challenges faced by female prisoners, focusing on reproductive health and rights and highlighting the dearth of reliable, national empirical data on the theme. However, considering the vast social and legal disparities in the context of prisons in India and the USA, since the study focuses on women in the USA, it cannot be identically applicable to the prisoners in India. Yet, inferences can certainly be drawn from findings which may be common to women in both countries.

3. Lawan, Shuaib, et al. (2016)[12] explore the sexual health, desires and coping mechanisms of prisoners in Nigeria, highlighting the adverse impact of deprivation of conjugal rights amongst both the inmates and their spouses. The piece provides much-needed empirical findings and ground realities which are consequential in policy formulation and human rights activism for incarcerated individuals. Yet, since the study is limited to Nigeria, it may not be as identically applicable to India and thus, considering the significant findings of the study, calls for similar research projects in Indian Jails as well.

4. Cavan and Zamans (1958)[13] compared several countries and found in their study (completed more than six decades ago), the importance of a humanitarian approach towards prisoners and highlighted the positive impact of prisoners' conjugal rights on their social, moral and overall well-being. The paper presents significant findings even today, yet its lack of research in India leaves some questions unanswered.

5. Vibhute (2016)[14] in his article emphasises the importance of extending fundamental and human rights, especially to people sentenced to capital punishment. The author beautifully presents a case for securing the right to rehabilitation and social

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[11] Carolyn Sufrin et al*, Reproductive Justice, Health Disparities And Incarcerated Women in the United States,* PERSPECTIVES ON SEXUAL AND REPRODUCTIVE HEALTH 213 (2015).

[12] Umar M. Lawan et al., *Sexual Health of Prison Inmates: A Case Study of Kano Central Prison, North Western Nigeria,* AFRICAN JOURNAL OF REPRODUCTIVE HEALTH 98(2016).

[13] Ruth Shonle Cavan et al., *Marital Relationships of Prisoners in Twenty-Eight Countries,* THE JOURNAL OF CRIMINAL LAW, CRIMINOLOGY, AND POLICE SCIENCE 133 (1958).

[14] K. I. Vibhute, *Right to Human Dignity of Convict Under 'Shadow Of Death' And Freedoms 'Behind The Bars' In India: A Reflective Perception,*JOURNAL OF THE INDIAN LAW INSTITUTE 15 (2016).

reintegration of prisoners. Though the article forms a basis for the argument of securing the rights of prisoners, it doesn't discuss the conjugal rights of prisoners specifically.

B. Newspaper articles

1. Bajpai, Taak, et al. (2022) delve into the contemporary questions surrounding these rights from a legal perspective. However, they do not take any side or develop any arguments for/against the topic or present any empirical findings, comparative analysis or social dimensions of the same.[15]

2. The Indian Express (2018)[16] in its piece comprehensively discusses the current position of such rights, providing examples of foreign countries and deliberating upon the development of the concepts through legal precedents. Yet, the article stopped short of developing any solid arguments for/against these rights, providing any concrete recommendations or empirical findings in this regard.

III. THE CURRENT POSITION IN INDIAN PRISONS

As per the Prison Statistics India Report 2021,[17] the total number of prisoners is 5, 54,034, up from 4, 88,511 last year and 4, 81,387 in 2019. Thus, considering the large number of imprisoned individuals in the country which has been showing an increasing trend, it can be observed that *prisoners form a considerable group amongst themselves.* Also, it is reasonable to assume that most prisoners would have some social relation i.e., family, friends, relatives, etc. outside the prison. Thus, *the impact on prisoners implies a considerable impact on the Indian population as a whole*. Furthermore, *more than 70%* of the prisoners belonged to the 18-50 age group which is generally construed as the sexually-active age group. Therefore, owing to their large proportions, it is visibly crucial to give due regard to their conjugal rights.

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[15] G.S. Bajpai et al., *Explained: The debate around Conjugal Visits for Prisoners*, THE HINDU (Dec. 7, 2022) https://www.thehindu.com/news/states/explained-the-debate-around-conjugal-visits-for-prisoners/article66236287.html. (Last Visited April 7, 2024)

[16] The Express Web Desk, *What is the status of conjugal rights for prisoners in India?* THE INDIAN EXPRESS (Jan. 25, 2018); https://indianexpress.com/article/what-is/what-is-the-state-of-conjugal-rights-for-indian-inmates-5038969.html.(Last Visited April 7, 2024)

[17] National Crime Records Bureau, *Prison Statistics India,* (2021); https://www.ncrb.in/data/prison_statisitices_India_2021.pdf. (Last Visited April 7, 2024)

Adding on, the attempts made to reduce the crowd in prisons haven't ameliorated the situation much. Even though the actual capacity of prisons has increased by 2.8%, the total capacity still stands at 4, 25,609 in 2021, falling short of capacity for more than 50,000 prisoners, thus leading to overcrowding.[18] Such overcrowding is known to have serious adverse impacts on the overall well-being of prisoners. Furthermore, as has been stated, only 1,918 convicted prisoners have been rehabilitated in 2021, while no data has been availed on the number of successful social integration upon release. A provision of conjugal rights can help to improve rehabilitation rates and social reintegration of prisoners as will be discussed further on.

A. Sample Study

In a cursory study of prison manuals, rules and official websites of 10 varied states from all parts of India, namely, Odisha, Mizoram, Rajasthan, Haryana, Punjab, Goa, Madhya Pradesh, Maharashtra, Karnataka, and Tamil Nadu, the following observations can be made:

1. Even though the official websites of some of these States provide for periodical family visits of less than or equal to 45 minutes, no manual/rules (even manuals as recent as 2020 or later) incorporate recognition of "conjugal rights/visits" for any class of prisoners.
2. The manuals of some states do not even mention family visits/interviews while most states do not even allow for private visits by family members without the supervision of some prison officer, seriously impeding the prisoners' right to privacy.
3. No document includes conjugal rights as a ground for parole or furlough. Thus, as was observed in the case of *Jasvir Singh*,[19] the petitioner had to be provided with such a right under Article 21 of the Constitution[20] owing to the absence of a provision for the same.
4. Most manuals/rules have incorporated ideals of human rights/human dignity. However, it seems ironic that no recognition of the right to privacy or conjugal rights in essence, which have been declared to be a part of the United Nations Standard Minimum Rules for the Treatment of Prisoners ("UNSMRTP").[21]

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[18] *Ibid.*

[19] *Supra* note 8.

[20] INDIA CONST., art. 21.

[21] The United Nations Standard Minimum Rules for the Treatment of Prisoners, Dec. 17, 2015, G.A. Res. 70/175

5. Even in the MPM released by the Ministry of Home Affairs ("MHA") in 2016,[22] although there are few provisions for maintaining familial ties, there is no recognition of conjugal rights.

2. The relevant provisions include:

1. Family visits

a) All the prisoners are to be provided with reasonable facilities to see or communicate with their friends, families and relatives every fortnight.[23] However, such meetings shall be in interview rooms, that too for not more than half an hour.[24] Such visits are *privileges* which are contingent upon the good conduct of the prisoner and subject to the permissions of the supervising prison officer.[25]

2. Parole/Furlough:

a) The manual recognises that the conduct of a prisoner during incarceration may be improved if paroles are provided.[26] Further, provisions related to the release of prisoners should be liberalised to maintain a harmonious relationship with the outside world.[27]

b) While convicts have been entitled to parole and furlough, undertrial prisoners have been deprived of any provision of parole or furlough[28] and their interviews shall at least be within the sight of a prison official,[29] thus leaving no privacy for the undertrials to spend time without the constant apprehension of surveillance. This negates the essential requirement of privacy and subsequently conjugal rights in essence. Taking into account that 77% of all prisoners in 2021 fall under this

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[22] *Supra* note 11.

[23] *Ibid.*, rule 8.01.

[24] *Id.,* rule 8.16.

[25] *Id.,* rule 8.05.

[26] *Id.*, rule 19.01.

[27] *Id.,* rules 19.02 (i), 19.03.

[28] *Id.,* rule 19.06.2.

[29] *Id.,* rule 8.22.

category,[30] such deprivation of more than one-third of incarcerated individuals is unjust and contradicts international standards to which India has assented (dealt with later).

c) It is further stated that such release by way of parole is a legal right of every *eligible* prisoner,[31] leaving the government with the discretion to debar prisoners or withdraw such concessions.

By and large, it can be thus observed that there is no recognition of conjugal rights in any manual/rules, including the MPM of the central government. The provisions for prisoners' contact with the outside world and family are also restricted to a great extent. One recognised way through which suicide rates and murders between inmates can be brought down (from 150 and 11 respectively),[32] is by strengthening one's emotional health via more meaningful family and conjugal contact. Thus, there is a need to liberalise the concerned provisions for the betterment of prisoners not just on paper rather in actuality.

IV. THE STANCE OF THE INDIAN JUDICIARY

The rights of prisoners were duly recognised and consolidated in *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*[33] wherein prisoners' entitlement to all fundamental and legal rights except for those which cannot be exercised owing to incarceration was upheld. In the landmark *Sunil Batra* judgement[34], the Apex Court had held that imprisonment doesn't mean farewell to the Fundamental Rights of the individual. However, in the absence of any mention of conjugal rights in any statute or rule book in India and that of a conclusive verdict by the Hon'ble Supreme Court of India, there have been varied and conflicting views on these rights by different HCs.

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The Hon'ble HC of Punjab and Haryana had already upheld these rights way back in 2015.[35] The State was directed to constitute a Jail Reforms Committee. A former Judge of the HC, a

[30] *Supra* note 18.

[31] *Supra* note 10, rule 19.

[32] *Supra* note 18.

[33] *Francis Coralie Mulin v. The Administrator, Union Territory of Delhi* AIR 1981 SC 746, 1981.

[34] *Sunil Batra v. Delhi Administration and Ors*. AIR 1579, (1980)

[35] *Supra* note 8.

Social Scientist, and an Expert in Jail Reformation and Prison Management were recommended to be its constituents, to formulate a scheme for bringing in facilities for conjugal and family visits for categories of prisoners, befitting the beneficial nature and reformatory goals behind the measure. *The right to procreation survives incarceration* and cannot be denied on the grounds of not being mentioned in the concerned rule books or statutes. Such deprivation amounts to a grave violation of Article 21 of the Constitution,[36] read with the Universal Declaration of Human Rights ("UNDHR").[37] However, the Hon'ble Court, recognising that its regulation to be a matter of policy and the sole prerogative of the state, subjected the right to reasonable restrictions and the penological interests of the state.

The Hon'ble Madras HC supported unmonitored conversations between a prisoner and the spouse as well and read down the provision which prevented the same in a recent case,[38] The Hon'ble Court emphasised the importance of scrupulously maintaining the dignity and privacy of the prisoners when meeting with their spouse, rightly upholding the conjugal rights of incarcerated individuals. The right to life is not confined only to good people, but also to people like prisoners, murderers and traitors.[39] Section 122 of the Indian Evidence Act[40] was also referred to which deals with the privileged nature of communication between spouses, to reject the argument of the prosecution that the meeting can take place only in the presence of escort police. It has also been held by the Hon'ble Madras HC that conjugal rights even include specific purposes like infertility treatment and that such rights can be claimed by convicts if they fall under the grounds of extraordinary relief. Further,

"Conjugal visits of the spouse of the prisoners is also the right of the prisoner…even though the wife is not under incarceration, but a suffering person outside the prison on account of the marital relationship with the prisoner and her legitimate expectation to have a child cannot be declined".[41]

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[36] *Supra* note 19.

[37] Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217A.

[38] *Rahmath Nisha v. Additional Director General of Prison,* (2019) SCC OnLine Mad 1782

[39] Inhuman Conditions in 1382 Prisons (II), In re, (2016) SCC Online SC 1090.

[40] The Indian Evidence Act, 1872, s.122.

[41] *Meharaj vs. The State and Ors*, MANU/TN/0226/2018.

Back in January 2010, the Bombay HC had directed the state executive to look at the possibility of allowing sexual engagement of inmates with their spouses inside prison premises as a preventive step, in place of spending crores to tackle the AIDS menace in jails.[42]

Contrarily, the Hon'ble HC of Andhra Pradesh refused to provide such rights in prison premises given the adverse impact on other inmates who would not have been extended such benefit and supported the usage of paroles/temporary releases for the purpose.[43] Thus, the Hon'ble Court didn't deny the existence of such a right but rather disagreed with only a way of seeking and fulfilling the same.

V. COMPARATIVE ANALYSIS WITH OTHER COUNTRIES AND INTERNATIONAL STANDARDS

While there exist certain common standards adopted by international organisations like the United Nations which recognise the basic prisoners' rights, different countries have adopted varied approaches towards prisoners' conjugal rights.

A. International Standards

The rights of prisoners have been recognised internationally in several instances, including under the International Covenant on Civil and Political Rights ("ICCPR") [44] and the UNDHR.[45] The conjugal rights of prisoners have been specifically recognised as part of the UNSMRTP, adopted unanimously by the United Nations General Body Assembly, in 2015.[46] Being one of the most recent international documents in this regard and since the rules are inspired by the existing covenants themselves, dealing specifically with the prisoners, the discussion here is limited to these rules.

1. United Nations Standard Minimum Rules for the Treatment of Prisoners[47]

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[42] DHNS, *Bombay HC favours 'protected' sex in jails*, DECCAN HERALD (Jan. 14, 2010,), https://www.deccanherald.com/india/bombay-hc-favours-protected-sex-2468476. (Last Visited April 7, 2024)

[43] *G. Bhargavi vs. State of Andhra Pradesh*, MANU/AP/0566/2012.

[44] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

[45] *Supra* note 38.

[46] *Supra* note 20.

[47] *Ibid.*

The Revised Rules, known as "Mandela Rules" incorporate ideals inspired by international covenants and documents including the ICCPR and others.[48] It strongly emphasises on holistic care of incarcerated individuals and also confirms that it is the *responsibility of the state* to deliver comprehensive health and well-being to those imprisoned.[49] It recognises conjugal visits for prisoners and promotes gender equality, dignity and fair and safe access to such visits under rule 58. It includes the prohibition of family contact as a practice that expressly violates human dignity and that such prohibition is not to be a part of disciplinary sanctions or restrictive measures under rule 43. Under rule 103, the prisoners are to be allowed to send a portion of what they earn to their family- an act that essentially maintains a prisoner's involvement in his household and thus, can be construed to be a recognition of one's conjugal and familial rights. Rule 106 expresses the need to give due attention to maintaining and improving relations between a prisoner and his/her family and as per the next rule, consideration has to be given to the prisoner's rehabilitation and post-release future and reintegration.[50] Therefore, the rules set standards for ensuring the dignity and well-being of prisoners which are considered to be minimal in their eyes but unfortunately are still a distant dream for prisoners in India.

B. Position In Other Countries

Countries across the globe including Canada, Germany, Philippines, Russia, Spain, Saudi Arabia, Denmark, etc. recognize such rights to varied degrees. Some of the notable ones whose policies/research can be incorporated into the Indian context are as follows:

1. European Countries

Conjugal rights to prisoners are provided under the European Convention on Human Rights[51] of which all member states are signatories. For instance, France allows visits twice a week for conjugal purposes. Spouses can meet the inmates every week for an hour in New Zealand allowing spouses. Spouses are given visitation rights (without any supervision) on a Sunday

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[48] Convention on the Elimination of all forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; Convention against Torture and other Cruel, Inhuman or Degrading Treatment, Dec. 10, 1984, 1465 U.N.T.S. 85.

[49] *Supra* note 47.

[50] Kasey McCall-Smith, 'United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)' International Legal Materials (2016) 1180

[51] Convention for the Protection of Human Rights and Fundamental Freedoms, Oct. 2, 2013, Rome, 4.XI.195

every month in Sweden, along with home and private visits, hence coveted to be amongst the most liberal countries in this regard.[52]

2. Israel and Brazil

Both countries have already gone as far as recognising same-sex conjugal rights and allowing same-sex conjugal visits. Since same-sex relationships have been decriminalised in India[53] and the relationship and adoption rights of such couples have been recognised as well,[54] the implementation of same-sex conjugal visits should also be considered.

3. The USA

Though federal prisons disallow conjugal visitations, some states have such facilities in the USA. The oldest program at the Mississippi State Penitentiary in Parchman was functional since 1918 where visits every two weeks were allowed which could last up to three days. While the programs in California, New York, Washington and Connecticut are functional, the ones in New Mexico[55] and Mississippi[56] no longer exist.

i. *Case study*: Parchman Penitentiary, Mississippi

The facility allowed an hour-long private visit with their spouse. Initially, the prison functioned as a work camp where mostly black inmates were used as free farm labour akin to slaves. The workers were allowed private time as the warden at that time believed that allowing workers to have sex with spouses/prostitutes induced them to labour harder. Gradually, as the facility developed as a prison, the original intention of allowing such conjugal visits was to control inmates. Such visits increasingly became an unlikely barometer of racial mores and the evolution of society where married same-sex couples could also participate (in prisons in

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[52] David A. Ward, *Inmate Rights and Prison Reform in Sweden and Denmark,* THE JOURNAL OF CRIMINAL LAW, CRIMINOLOGY, AND POLICE SCIENCE 240 (2018).

[53] *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

[54] *Supriyo v. Union of India,* (2023) SCC OnLine SC 1348.

[55] Joseph K. Kolb, *New Mexico to eliminate conjugal visits for prisoners*, REUTERS (Apr. 17, 2014) https://www.reuters.com/article/us-usa-prisons-newmexico-idUSBREA3F2.html (Last Visited April 7, 2024)

[56] Kim Severson, *As Conjugal Visits Fade, a Lifeline to Inmates' Spouses Is Lost,* THE NEW YORK TIMES (Jan 12, 2014) https://www.nytimes.com/2014/01/13/us/with-conjugal-visits-fading-a-lifeline-to-inmates-spouses-is-lost.html. (Last Visited April 7, 2024)

California[57] and New York as well). When the program was about to be closed, a piece in the New York Times highlighted the plight of the spouses to whom such meetings meant a lot and was an important part of maintaining their relationship with their spouses. One of those women expressed disheartenment as her choice of having a child with her incarcerated husband was being taken away. Interviewed women also brought up a noteworthy point that conjugal visits were not about sex but rather about having some solace and private time in the prison system today where every letter is opened, every call monitored and regular visits are crowded.

ii. *Case study***:** Incarcerated Women in the USA

Research on incarcerated women in the USA (2015)[58] highlighted myriad problems gravely affecting the reproductive and mental health of imprisoned women including practical barriers to abortion care, shackling during labour, barriers to family planning, etc. and reiterated the significance of maintaining relationships outside of prisons for their mental health and community ties. One of the noteworthy observations of this significant study was,

"what happens to women behind bars reflects the politics of reproduction in the United States. Furthermore, to ameliorate these injustices, reproductive health care providers and advocates must work not only to improve access to reproductive health services for women while they are incarcerated but also to promote policy changes that invest in women's lives outside of prison or jail; such efforts will reduce the likelihood of women's being incarcerated and will strengthen the health and well-being of marginalized women, their families and their communities."

4. Kenya

Quite recently, the HC of Meru denied the petition for providing conjugal rights to a couple in the prison premises owing to deficiencies in the current set-up of prisons. Consequently, in the present conditions conjugal rights cannot be enjoyed without causing prejudice to the rights and freedoms of others. Thus, yet again the court denied only a way of providing conjugal

[57] *Calif. gay, lesbian inmates get conjugal visits*, NBC NEWS (Jun. 2, 2007, 3:16 pm) https://www.nbcnews.com/id/wbna18994457.

[58] Carolyn Sufrin et al., *Reproductive Justice, Health Disparities and Incarcerated Women in the United States* PERSPECTIVES ON SEXUAL AND REPRODUCTIVE HEALTH 213 (2015).

rights, however duly recognising them under the right to life[59] and reproductive health rights[60] even though their Prisons Act didn't include any provision for conjugal rights.[61]

5. Nigeria

Case study: Kano Central Prison, North Western Nigeria

A study conducted to examine the sexual health and experiences of inmates revealed significant findings, including the fact that over 80% of inmates reported frequent sexual urges, leading to unnatural sex, non-consensual acts and the spread of diseases like AIDS. Over 10% of inmates faced sexual violence and harassment, which is much higher than the prisons in the USA where conjugal visits are allowed. The research, thus, brought forth the importance of addressing their sexual needs, recognising it is a basic human desire and called for laws against sexual violence in prisons and conjugal rights and visits/furloughs.

VI. POTENTIAL BENEFITS OF PRISONERS' CONJUGAL RIGHTS

The idea of prisoners' conjugal rights is gradually and progressively being accepted by countries worldwide on various social and legal grounds, strengthening the case for recognition of these rights.

A. From a Social Perspective

Conjugal visits being a significant factor in the *preservation of family bonds,*[62] Family visitation programs can prove to be strong incentives for good behaviour, reduction of sexual activities amongst prisoners and help in the strengthening of the prisoners' families.[63] The social stigma and labelling due to the crime and the long detachment from family and loved ones hinder a prisoner's post-release reintegration into society.[64] Psychologists, psychiatrists,

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[59] KENYA CONST.., art. 26.

[60] KENYA CONST., art. 43.

[61] Sharon Mwende, *No room for intimacy! Court denies man conjugal rights in custody* THE STAR (Oct. 19, 2023) https://www.the-star.co.ke/news/2023-10-19-no-room-for-intimacy-court-denies-man-conjugal-rights-in-custody/.

[62] P. Muthumari v. Home Secretary (2018) SCC OnLine Mad 3304.

[63] *Supra* note 14.

[64] J. Varghese & V. Raghavan, *Restoration of Released Prisoners to Society: Issues, Challenges and Further Ways; Insights from Kerala, India*, INTERNATIONAL ANNALS OF CRIMINOLOGY 61 (2015).

prison reforms and academics have been suggesting conjugal visits to be helpful in a smooth return to normal life post-release for years now.[65] Mental health specialists believe that feelings of frustration, stress, resentment and heart-burnings can be brought down and humans are *better constructed* if conjugal relationships are provided for, even rarely. Keeping inmates in touch with their families and spouses also brings down criminal behaviour inside prisons.

Various pieces of research have shown conjugal visits reduce the frequency of prison riots, and decline recidivism, sexual crimes and homosexual conduct. The rates of sexual assault and rape in the prisons of the USA where conjugal visits are allowed were found to be lesser than that of prisons that prohibited conjugal visits. Thus, given appropriate policy initiatives, homosexual activities which lead to an increase in the spread of AIDS and sexual violence can be attenuated in prisons.[66] Moreover, considering the increasing cases of mental, the wide-ranging emotional benefits of recognising the conjugal rights of prisoners, it may serve as a quite economical[67] and additional supportive methods to the existing mental health measures being undertaken by the government for prisoners. Just like any other individual, prisoners would also wish to express issues they encounter, with their life partners as well as with their social relations.[68] Consequently, it may also help in bringing down the suicide rates in prisons.

Furthermore, as the spouses of the prisoners of the Parchman facility had stated above,[69] conjugal visits are not just about sex but about having some unmonitored time with their partners and prove quite helpful in maintaining family and conjugal relationships outside the prison. The significance of such private visits is accentuated as in the present *mulakat system,* meetings do not extend beyond 20 minutes and are conducted in bustling spaces, reducing the possibilities of emotional gains.[70] The new initiative of *e-mulakat* cannot match the emotional proximity and dimension of physical affection like holding hands which is an important facet

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[65] *Supra* note 18.

[66] SJ D'Alessio et al., *The Effect of Conjugal Visitation on Sexual Violence in Prison*, 38(1) AM J CRM JUST 13 (2012).

[67] *Supra* note 43.

[68] *Ibid.*

[69] *Supra* note 60.

[70] Sukanya Shantha, *Long Waits, Hostile Staff: Prison Mulakats Take a Toll on Family Members of Those Incarcerated*, THE WIRE (Dec 28, 2020), https://thewire.in/rights/prison-meeting-visitors-tiss-study.

of a conjugal relationship. Also, the scheme has not been implemented universally in all prisons and is marred with digital barriers.

B. From A Legal Perspective

From a legal perspective, as has been mentioned before, the deprivation of these facilities is seen as a violation of the *right to life of prisoners*[71] and international covenants like the UNSMRTP.[72] Such recognition not only ensures enforcement of the fundamental human rights of those incarcerated but also their spouses who suffer without any wrongdoing on their part; denying conjugal rights to prisoners is an infringement of the *right to procreate*, which has been duly recognised as part of the foremost and fundamental right to life by the hon'ble judiciary. International covenants and subsequently the MPM, 2016[73] duly recognise the *right to dignity* of prisoners. Accordingly, it falls upon the authorities to allow prisoners periodical interaction with their family and friends along with undertaking adequate measures for their rehabilitation and reintegration into society, to ensure their social wellness and dignity post-release. Since it has been proven that conjugal visits are an effective measure of effecting these results, it would be inept to not recognise such rights in the interest of the prisoner and in accordance with the objectives of prison authorities.

Furthermore, as has been laid down in the UNSMRTP, whereby conjugal visits are allowed, the authorities are responsible for ensuring equal and fair access to dignified and safe spaces for all prisoners to exercise their conjugal rights.[74] Such dignified access may ideally also include some private time with their loved ones, away from the constant surveillance of officials as only then can the emotional essence of such visits be fulfilled. Furthermore, prisons function on the idea of restitution and are meant to help rehabilitate deviant individuals' lifestyles, aiming for their reintegration into society. Conjugal visits recreate a sense of normal living for the incarcerated for a short period, providing them security and encouragement to stay on the right track, further lessening prisoners' tendency to break prison rules and regulations. Thus, recognising conjugal rights can be a significant measure in improving the

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[71] *Supra* note 36.

[72] *Supra* note 47.

[73] *Supra* note 11.

[74] *Supra* note 47, rule 58 (2).

effectiveness of the restitutive mechanism of imparting justice while also aiding in the administration of prisons.

VII. OVERCOMING CHALLENGES

Several arguments and challenges are posed in the way of recognition of prisoners' conjugal rights, which mainly include the following:

A. Burden on the exchequer

One of the arguments presented by the elected representative of Mississippi who stressed upon the closing of the Parchman Program was that it created a burden on the exchequer. Since the prisoners are there to pay their debt, conjugal visits are unwarranted.

The argument of the representative seems to be at odds with the idea of restitutive justice where the primary aim is to rehabilitate prisoners and not to make them pay for their wrongs. Moreover, the women who were being deprived of such visits were ready to pay the defray costs of such relatively inexpensive and infrequent visits and also drew attention to the unwarranted deprivation of their essential right to have children. A simple yet effective counter argument was provided by the women who were being deprived of these rights.

B. About being unfair to children born and the undesirability of single-parent families

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A same-size-fits-all approach cannot apply to all families. Children raised by same-sex couples, single parents or extended family members might as well thrive as well as in traditional family set-ups. Furthermore, the reproductive rights and the right to choose the spouses of the prisoners cannot be done away with. Therefore, instead of imposing such a blanket ban, a case-to-case evaluation might balance both sides of the spectrum.

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C. Lack of infrastructure and Overcrowding

A welfare state must not shed off its responsibility of safeguarding the conjugal rights of prisoners, which is recognised as an important legal right, on such a ground which may require resources and effort but is not unattainable. Moreover, as part of the Union Government's ongoing efforts to develop the infrastructure of prisons to resolve problems like overcrowding (along with the projects of state governments), giving due regard to the development of facilities for exercising conjugal rights of prisoners shall be an effective and rather economical

measure to attain the objective of augmenting correctional administration through skilling, rehabilitation and *behaviour change* programmes,[75] while making sure that all prisoners are provided fair and equal access. Also, till the time such facilities cannot be provided for in the prison premises, the rules for granting furlough/parole to prisoners must be duly liberalised to include conjugal visits as a valid ground.

D. Contraband smuggling

To prevent any unethical exchange including contraband smuggling, measures can be taken to properly check the spouses and the prisoners before and after their visits and can be reasonably looked after as part of existing security measures; strengthening anti-corruption laws to prevent any collusion on the part of prison authorities must also be looked into. However, depriving prisoners of their rights owing to such a possibility might not be fair and agreeable.

E. Existence of more pressing concerns

Another argument that can be presented is that there exist more pressing concerns about prisoners which require primary attention. The existence of even larger concerns in our prisons doesn't imply that other issues such as this, which affect the mental health of both the prisoners and their families outside to a great extent and are not manifested directly, should be kept aside. Instead, a provision for such rights would reduce and mitigate the quantum of the larger challenges, including but not limited to the spread of diseases like HIV, sexual crimes, suicides, attempts of jail-breaking, etc. Also, it would be more feasible to insert the provision of conjugal rights together with other larger reforms when an overhaul of prison rules and guidelines is already underway in several states.[76]

VIII. SUGGESTIONS

As the Hon'ble Madras HC had suggested, a committee must be set up to address the issues pertaining to conjugal visits in prisons.[77] Firstly, liberalising the usage of parole/ furlough for

[75] PIB Delhi, *Implementation of Model Prison Manua*l MINISTRY OF HOME AFFAIRS (Mar. 15, 2023, 4:54 pm) https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1907161. (Last Visited April 7, 2024)

[76] '*Tamil Nadu, Karnataka showed most improvements in prison administration, Uttar Pradesh least: Report* THE NEW INDIAN EXPRESS (Feb. 8, 2022, 9:09 pm)https://www.newindianexpress.com/nation/2022/Feb/08/tamil-nadu-karnataka-showed-most-improvements-in-prison-administration-uttar-pradesh-least-report-2416977.html.

[77] *Supra* note 18.

exercising conjugal visits of prisoners can be one of the most economical and undemanding ways of ensuring these rights. Further on, there can be various ways of providing facilities within/around the prison premises. Open-air prisons or prisons without bars, along the lines of Rajasthan's Sanganer open camp where convicts are selected and allowed to reside with their families is a quite lenient and effective measure to enhance social integration and instill a sense of self-discipline and family responsibility among prisoners. Other ways, like the introduction of the 'Parivar Mulakat (Family Visit)' programme in the Ludhiana Central Jail and allowance of conjugal visits for inmates in Punjab prisons from September last year where exist specifically designated rooms in the premises where inmates can have face-to-face meetings with their near and dear, can also be explored to suit the needs and feasibility of the concerned prison.

Next, even though the government has worked[78] on the structural and policy changes which were recommended by the All-India Committee on Prison Reforms, chaired by Justice Mulla,[79] (considered to be the most comprehensive report on the reformation of prisons as of yet), the recommendations must be further implemented to all prisons possible, especially in the context of open-air prisons and conjugal rights. Furthermore, since the Hon'ble Supreme Court has already decriminalised same-sex relationships[80] and allowed adoptions amongst such couples as well,[81] The concept of conjugal rights of prisoners must be extended to include such lawful relationships between same-sex couples, taking insights from countries like Israel where the same has already been enforced.

The MHA has already been working on the "Modernisation of Prisons" project, (2021-2026) which aims to strengthen the security infrastructure and modernise prison equipment. As part of the project's objective to augment correctional administration through skilling, rehabilitation and *behaviour change* programmes,[82] due regard should also be given to providing necessary facilities for exercising the conjugal rights of individuals, as such exercise would certainly have

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[78] Ministry Of Home Affairs, *Implementation of the Recommendations of All-India Committee on Jail Reform (1980-83)* (Vol.1, 2003)

[79] Government Of India, *Report of the All-India Committee on Jail Reforms 1980-83* (1983)

[80] *Supra* note 58.

[81] *Supra* note 18.

[82] *Supra* note 79.

a positive contribution towards the realisation of this objective. Furthermore, since a majority of states (18 as of March 2023)[83] have confirmed the adoption of the MPM 2016, the inclusion of conjugal rights in the MPM itself might prove to be an efficient way for national implementation of the right. Additionally, to ensure that no illicit exchange of contraband smuggling or the like is executed during conjugal visits, augmenting the security infrastructure and strengthening anti-corruption measures to prevent any collusion on the part of the prison authorities may also be looked into.

IX. CONCLUSION

By and large, it can be observed that recognising the conjugal rights of prisoners is a noteworthy progressive step towards the welfare of incarcerated individuals. The solutions to the questions posed can be implemented fairly easily; the challenges presented against the provision of conjugal rights are not out of hand and can be resolved. Moreover, given the vast benefits of providing conjugal rights to prisoners for better administration of justice and in the interests of society as a whole, the state must recognise such rights, ending unwarranted deprivation of those who are imprisoned. A series of legal and policy reforms would be needed to align our prison system with progressive constitutional values and international obligations. Being committed to the principles assented to under the international covenants and law, a recognition of such rights would further strengthen and uphold the universally acknowledged basic human rights and dignity, including those who are deprived of their liberty. However, this is not to suggest that the right is absolute, but rather it is an alienable part of the right to life of every individual to which incarceration should not be an arbitrary barrier. Proper implementation of conjugal visits should involve the required oversight and monitoring to ensure compliance with the protocols and maintain the safety and security of all prisoners.

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[83] *Ibid.*

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An Attempt at Identification of Jurisdictional Dissonance in the Indian Tribunal System

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Abstract: *This legal research article delves into the complexities surrounding jurisdictional dissonance within the Indian legal framework, particularly concerning the Armed Forces Tribunal and the Central Administrative Tribunals. Under Articles 323A and 323B of the Indian Constitution, various tribunals have been established by legislation to address specific categories of disputes, including matters related to armed forces recruitment and service. However, inherent flaws in the legislation governing these tribunals have led to confusion and ambiguity regarding their respective jurisdictions. Through a detailed analysis of relevant case law and statutory provisions, this article highlights the challenges faced by aggrieved individuals in navigating the jurisdictional landscape, particularly in cases where recruitment procedures or service matters intersect multiple tribunal jurisdictions. It critically examines legal precedents and legislative lacunae, ultimately advocating for a comprehensive review of existing legislation to ensure equitable access to justice for all armed forces personnel and individuals affected by administrative decisions.*

Keywords: *Tribunals, Multiple Tribunal Jurisdictions, Dissonances and Challenges*

I. INTRODUCTION

Articles 323A and 323B of the Indian constitution allow the parliament to, by legislation, establish administrative tribunals[1] and tribunals for 'other matters' respectively, in order to provide for adjudication of certain matters.[2] Empowered by the aforementioned provisions of the Indian constitution, the parliament has indeed, in discharge of its duties established several tribunals to address specific categories of disputes. Examples of the same are the Armed Forces Tribunal (hereinafter referred to as 'AFT'), the establishment of which was provided for by the Armed forces Tribunal Act of 2007 (hereinafter referred to as 'AFT act').[3] The Administrative Tribunals Act of 1985 (hereinafter referred to as 'AT Act'), which provided for the establishment of administrative tribunals in various states;[4] Section 252 of the Income Tax Act of 1951 establishing the Income Tax Appellate Tribunal;[5] and Section 408 of the Companies

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[1] INDIA CONST. art. 323A cl. (1), inserted by The Constitution (Forty-second Amendment) Act, 1976.

[2] INDIA CONST. art. 323B cl. (1), inserted by The Constitution (Forty-second Amendment) Act, 1976.

[3] The Armed Forces Tribunal Act, 2007, §4.

[4] The Administrative Tribunals Act, 1985, §4.

[5] The Income Tax Act, 1951, §252.

Act of 2013 establishing the National Company Law Tribunal.[6] There are countless more examples of the same.

The above-mentioned constitutional provisions which provide for the establishment of said tribunals by means of legislation, also permit the law which establishes these tribunals; to specify their jurisdiction,[7] and exclude the jurisdiction of all courts except that of the apex court under Article 136.[8] However, no legislation passed is flawless or all-encompassing. Complications with regards to jurisdictions specified under these legislations may arise often. These complications could be classified under two categories. Wherein two different legislations have granted two different bodies jurisdiction over the same category of disputes, or; wherein the dispute is such that it fails to fall under the jurisdiction specified by any legislation. Rather, it would be more apt to say the jurisdictions of several bodies are phrased such that they may entirely skirt a particular class of issues.

This article aims to highlight and address an issue vis a vis jurisdiction of the Central Administrative Tribunals (hereinafter referred to as 'CAT') and AFT falling into the second category mentioned above. While the issue itself may seem extremely niche and rather hyper-nuanced, the purpose it serves is to point out one of possibly many loopholes and flaws with the legislations establishing and governing said tribunals so grave that they leave an aggrieved party devoid of a chance to even seek relief. The objective is to examine in great detail the interplay of jurisdiction of some of these tribunals to point out legislative faults so as to warrant a more detailed and meticulous examination of other legislations where similar flaws are likely to be found. The flaw in question with regards to jurisdiction is possibly best depicted in the form of a question: What forum should an individual aggrieved by the recruitment procedure of the armed forces (such as army, navy, air force etc.) approach? Prima facie, one would think to approach tribunals like AFT due to the name's sake (*Armed Forces* Tribunal), or CAT since it has the jurisdiction to deal with matters concerning recruitment to an 'All-India Service'.[9] The issue at hand however is far more complex than it appears. However, it becomes clear if

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[6] The Companies Act, 2013, §408.

[7] INDIAN CONST. art. 323A cl. (2)(b), inserted by The Constitution (Forty-second Amendment) Act, 1976; INDIAN CONST. art. 323B cl. (3)(b), inserted by The Constitution (Forty-second Amendment) Act, 1976.

[8] INDIAN CONST. art. 323A cl. (2)(d), inserted by The Constitution (Forty-second Amendment) Act, 1976; INDIAN CONST. art. 323B cl. (3)(d), inserted by The Constitution (Forty-second Amendment) Act, 1976.

[9] The Administrative Tribunals Act, 1985, §14(1)(a).

the jurisdiction of each individual tribunal is dealt with separately and then the conclusions pieced together to form a bigger picture.

1. Jurisdiction of the AFT

a) Section 14 of the AFT act outlines AFT's jurisdiction in matters pertaining to service, termed as 'service matters' and excludes such matters from the jurisdiction of all courts apart from those of the High Courts and Supreme Court under article 226 and 227 of the constitution.[10]

b) It is noteworthy that the jurisdiction of this act for service matters covers only persons which fall within sections 2 of the Navy Act 1957, the Air Force Act 1950, the Army Act of 1950 each.[11]

c) *'(o) "service matters", in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service….'*

d) Leaving out of its jurisdiction, members of other forces as they are subject to different legislations. For instance, personnel enrolled in the Coast Guard would be subject to the Coast Guard Act of 1978.[12] Therefore, section 14 and 15 of the AFT act, if interpreted literally, would imply that the jurisdiction of AFT is limited to only those armed forces of the union falling within the ambit of the Army, Air Force, and Navy acts.

e) Regardless of the observation above, it is pertinent to note that the AFT act nowhere makes use of the word 'recruitment,' therefore denying the existence of a prima facie jurisdiction vis a vis the issue at hand. However, not falling within exclusions listed under section 3(o), it also does not conspicuously exclude recruitment from AFT's jurisdiction.

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[10] The Armed Forces Tribunal Act, 2007, §14(1).

[11] The Armed Forces Tribunal Act, 2007, §3(o).

[12] The Coast Guard Act, 1978, §3.

f) A more definite answer to the conundrum can be found in *Union of India through Secy, & Ors v. Kapil Kumar*.[13] The facts of the case give rise to a question similar to the one considered in this article. The respondent in the case participated in a recruitment rally for the position of a soldier held by the Indian army, wherein he was declared medically unfit. However, in a review medical examination, he was declared fit, post which he appeared for and cleared a written examination thereby being empaneled in the merit list. The case of the respondent was that he had not been issued a letter of appointment and not been dispatched for further basic military training. Aggrieved by the same, he instituted a suit before a civil judge in Meerut. Upon advisement, the respondent herein withdrew the civil suit and filed a writ in the High Court of Allahabad, seeking an order in the nature of mandamus directing the respondents therein (appellants herein) to provide the appointment letter and send the petitioner for further training. The dispute was transferred by the Single Judge to the AFT at Lucknow under section 34 of the AFT act. The special appeal in question arose as a challenge to the judgement mentioned above to transfer the proceedings to AFT Lucknow.

g) The court held that the jurisdiction of AFT under section 14 of the AFT act was limited to 'service matters' as defined in section 3(o) of the same act. It was pointed out that the basic requirement for an issue being a service matter is that (within the meaning of this act) it can only arise in relation to persons who are subject to the Army Act 1950, Navy Act 1957, or the Air Force Act of 1950. The court relied on the judgement of the apex court in *Union of India v. Colonel G.S. Grewal*[14] held that if this requirement had been satisfied, the next essential ingredient to attract jurisdiction under section 14 must be that the subject matter of the dispute constitutes the definition of 'service matter' as defined in section 3(o).

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h) Since a person who is calling into question the decision due to which he was not enrolled in the service, it ex facie means he was not yet enrolled as a member of the armed forces, hence not falling within the ambit of the Army, Navy and Air Force Acts. This would automatically put him out of the purview of section 3(o) and his dispute would not be classified as a 'service matter'; thereby the jurisdiction under section 14

[13] *Union of India Through Secy. v. Kapil Kumar* (2015: AHC:1-DB).

[14] *Union of India v. Colonel G.S. Grewal*, (2014) 7 SCC 303.

will not apply. The same was the finding of the court in *Union of India v. Kapil Kumar*,[15] holding that the Army Act of 1950 is applicable to only certain persons,[16] and that a person not yet enrolled, does not fall under the ambit of section 2 of the said act.

i) Therefore, it becomes clear from the above that such a matter pertaining to recruitment would under no circumstance, fall within the jurisdiction of the AFT, even if the recruitment in question is to the exclusive services to which the act applies.

2. Jurisdiction of CAT

Another authority before which the aggrieved has appeared in such matters is CAT. Ex facie, the AT act at its outset denies the application of the provisions contained within the act to *'any member of the naval, military or air forces or of any other armed forces of the Union'*.[17] The same has been taken cognizance of, and applied by the principal bench of CAT in *Smt. Namrata Singh v. Union of India.*[18] The petitioner and another appeared for recruitment for post of sub-inspector in the Central Industrial Security Force (hereinafter referred to as 'CISF'). They passed the written examinations, physical endurance tests, and medical tests, then appeared for the interview; however, their names were not listed under the final selection list. Aggrieved, they approached the high court by way of writ petition. The counsel for the respondents alleged that the matter fell in the jurisdiction of CAT. Since the petitioners did not oppose this averment, they were allowed to withdraw with liberty to approach CAT which is how the matter ended up before the principal bench.

The principal bench pointed out that pursuant to section 3 of the Central Industrial Security Force Act,[19] CISF too was an 'armed force of the union', and therefore when read with section 2(a) of the AT act, was beyond the jurisdiction of CAT. It pointed out two key details.

'7… Thus, if the matter is examined in the light of statutory provisions, as reproduced above, we are of the view that the provisions of Section 2 (a) of the Administrative Tribunals Act, 1985 is fully attracted in the instant case and the jurisdiction of this Tribunal is ousted, as the

[15] *Supra Note* 13.

[16] The Army Act, 1950, §2.

[17] The Administrative Tribunals Act, 1985, §2(a).

[18] *Smt. Namrata Singh v. Union of India*, O.A 2384/2011 & O.A. 2387/2011).

[19] The Central Industrial Security Force Act, 1968, §3.

grievance raised by the applicant and the matter which is required to be decided in this case is relating to the recruitment and appointment of the applicants as Sub Inspector in CISF which organisation admittedly is Armed Forces of the Union. Thus, according to us, this Tribunal has got no jurisdiction to entertain the matter on this point.'[20]

'...the disputes in regard to recruitment and conditions of service of members of the armed forces of the Union are outside the purview of the Act. Mere membership of the armed forces of the Union is not enough to oust the jurisdiction of the Tribunal... '[21]

Therefore, there seem to be two conditions which must be satisfied to invoke the jurisdiction of CAT.

A. One must not be a member of an organisation labelled an 'armed force of the union', or be subject to any other exceptions under §2 of AT act, and;

B. The dispute must pertain to recruitment and service matters.

As stated above, mere membership to an 'armed force of the union' by itself does not oust the jurisdiction of CAT. The same can be explained with an example.

'...Let us take the case of a person who had held a civil post under the Union of India, resigned from the said post and became a member of the armed forces of the Union. If after his becoming a member of the armed force of the Union, he applies to the Tribunal to recover arrears of pay in regard to the civil post held by him, can his application to the Tribunal be rejected on the ground that he was a member of the armed force of the Union on the date of the application? The answer can only be No. The reason is that the dispute which he has raised has nothing to do with his membership of the armed forces of the Union. Suppose, a member of the armed forces of the Union after his retirement from the armed force is appointed to a civil post under the Union. If he has any dispute regarding his conditions of service as an erstwhile member of the armed force of the Union, he would not be entitled to invoke the jurisdiction of the Tribunal as the dispute relates to his conditions of service as the member of the armed forces of the Union even though on the date he invokes the jurisdiction of the Tribunal, he was not a member of the armed forces of the Union. Hence, on a true interpretation of Section 2 (a) of the Act, we

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[20] *Supra*, Note 18.

[21] *Id.*

hold that the Act does not apply to matters relating to recruitment to armed forces of the Union and to service matters of members of the armed forces of the Union."[22]

The conclusion of this 2011 case was that jurisdiction of CAT was ousted when it came to deciding matters pertaining to recruitment to the 'armed forces of the union' which include the Indian Army, Indian Navy, Indian Air Force, CISF, Central Reserve Police Force, Border Security Force, Railway Protection Force, Coast Guard and the like. The principal bench directed the applicants to *'8…approach the proper forum for redressal of their grievances'* without specifying what this 'proper forum' is. It becomes pertinent to point out that statutorily, neither AFT nor CAT have the jurisdiction to entertain such matters, and the High Courts, of the opinion that such a matter must be presented before CAT encourage writ petitions presented before them to be withdrawn. In such a case, before what forum should an aggrieved present his case?

II. RECENT DEVELOPMENTS

The aforementioned Smt Namrata judgement of the principal bench[23] has been relied on time and again to oust the jurisdiction of CAT in matters pertaining to service and recruitment to armed forces.[24] Even otherwise, when not relied upon, several other judgements have only served to uphold and confirm the point made in *Smt Namrata v. Union of India (supra*).[25] More recently, in *Kapil Gurjar v. Ministry of Railways*, a similar matter arose before the principal bench.[26] The applicant had challenged an order declaring him 'unfit' for the post of sub-inspector in the railway protection force. The bench referred the matter to an appropriate larger bench asking whether such a matter fell under the jurisdiction of CAT. The three-member bench held that even though RPF is an 'armed force of the union' the applicant had not yet been appointed to any post under the RPF. Concluding from the same, the bench observed that such a person cannot be termed to be a 'member' of such a force therefore failing to fall within the exception to jurisdiction outlined by section 2(a).

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[22] *Id.*

[23] *Id.*

[24] *Ch. Appalaraju v. Ministry of Railways,* O.A. 021/01189/2015); Hansraj v. Union of India O.A. 2646/2011).

[25] *Swati Yadav v. Ministry of Railways,* O.A. 200/01077/2019).

[26] *Kapil Gurjar v. Ministry of Railways*, O.A. 42/2020).

The court declared the matter to be within its jurisdiction based on the following observations.

(1) RPF was labelled an 'Armed Force of the Union' by way of an amendment. This means it was not initially intended to be an 'Armed Force of the Union'.

(2) RPF is an integral part of the railways, and all posts under theIndian Railways unequivocally fall under the jurisdiction of CAT.

(3) Group 'A' officers under the RPF are recruited through the 'Civil Services Examination' held by the Union Public Services Commission (UPSC). Therefore, CAT has jurisdiction over recruitment of group 'A' officers.

(4) The bench found it 'absurdly anomalous' to 'wash their hands off their jurisdiction' pertaining to similar matters of group 'B' and 'C' officers of the same organisation .

The Kapil Gurjar case, therefore is the first instance of deviation from the law set by precedents preceding it. It established that CAT can have jurisdiction over recruitment matters despite the organisation being labelled an 'Armed Force of the Union'.

The points about jurisdictional dissonance made above are further highlighted by a ruling of the Central Information Commission (hereinafter referred to as 'CIC'). In *Sandeep v. CPIO Coast Guard Headquarters*, the appellant had sought information along three distinct lines.[27]

(1) Can the Coast Guard, being an 'Armed Force of the Union' and being administered by the Ministry of Defense (hereinafter referred to as 'MoD'), approach the AFT?

(2) Can the Coast Guard approach CAT where governed by CSS rules?

(3) If neither CAT nor AFT is approachable by the Coast Guard, what tribunal can it approach for resolution and redressal of issues/grievances related to service matters?

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The appellate authority validated the answers of the CPIO against which the appeal was filed. The answers pointed out that even though the coast guard is an 'Armed Force of the Union', and it is administered by the MoD, it cannot approach the AFT for service-related issues, since only personnel from Army, Navy, and Airforce fall under the jurisdiction of AFT. Additionally, civilian posts under the coast guard are governed by CCS (CCA) Rules and therefore fall under the jurisdiction of CAT. The question at hand is which authority one should approach for

[27] *Sandeep v. CPIO Coast Guard Headquarters*, File no.: (2019) CIC/INDCG/A655178.

resolution of grievances in service matters of non-civilian persons employed or looking to be employed at an organisation titled the 'Armed Force of the Union of India'.

Pankaj Kumar v. Staff Selection Commission also further reiterated the position. The case involved a matter wherein the applicant applied for the post of sub-inspector in Delhi Police and Central Armed Police Forces (hereinafter referred to as 'CAPF'). Post clearing all stages of the selection process on merit, his appointment was rejected due to failure to meet the medical criteria set out, due to a tattoo on the forearm.[28] The application was challenged on the issue of jurisdiction since CAPF too is an 'Armed Force of the Union'. The bench, citing the Kapil Gurjar case (supra), held that the jurisdiction of CAT extended to 'various CAPF and other uniformed forces of the Union of India'.[29]

Ravinder Kumar v. Staff Selection Commission also highlights important facets of the issue. Akin to the Pankaj Kumar case (supra), the petitioner herein had applied for candidature to several posts under various paramilitary services, and the Delhi police. The order of CAT impugned before the Delhi high court, rejected the application on grounds of having no jurisdiction, relying upon the definition of 'Armed Forces' and on account of section 2(a) of the AT act.[30] The High Court however, overruled the impugned order directing CAT to consider the application on merits; based on the following grounds:

(1) The CAT had initially ruled that it lacked jurisdiction to hear the petitioner's case based on a narrow interpretation of Section 2(a) of the Administrative Act, 1985. This section likely defined the scope of the CAT's jurisdiction, particularly regarding which types of cases it could adjudicate. However, the court disagreed with this interpretation, indicating that the CAT had misapplied or overly restricted its jurisdictional mandate.

(2) The court observed that even though the Staff Selection Commission (SSC) had conducted examinations or recruitment processes for various positions, at least one of them, if not more, fell under the categories specified in the Administrative Act, 1985. This implies that some of the positions advertised by the SSC were subject to the

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[28] *Pankaj Kumar Vs. Staff Selection Commission*, Government of India Ministry of Personnel, Public Grievances & Pensions, (2022) MANU 0927.

[29] *Id* at para 8.

[30] *Id*.

provisions of this Act, which likely conferred jurisdiction to the CAT over matters related to those positions.

(3) By dismissing the impugned order, the court effectively upheld the petitioner's right to access justice through Article 226. The court's decision to set aside the CAT's ruling and direct it to reconsider the application on its merits ensured that the petitioner's recourse to Article 226 remained intact. Thus, the connection to Article 226 provided a valid ground for challenging and ultimately overturning the CAT's decision.

(4) Article 226 of the Indian Constitution serves as a legal provision allowing individuals to seek judicial intervention from the High Courts for various purposes, including the enforcement of fundamental rights and the redressal of grievances.[31] The petitioner's argument rests on the premise that if the Central Administrative Tribunal (CAT) refuses to entertain their case or denies jurisdiction, it effectively blocks their access to seeking remedy from the High Court under Article 226. The CAT, being an administrative tribunal, serves as the first point of contact for individuals seeking redressal for administrative grievances. If the CAT declines jurisdiction or refuses to hear a case, it restricts the petitioner's ability to access higher judicial avenues. In essence, the denial of jurisdiction by the CAT equates to a denial of access to the constitutional right enshrined in Article 226. It impedes the petitioner's ability to seek relief from the High Court, which serves as the ultimate authority for resolving legal disputes and enforcing constitutional rights. Therefore, the connection to Article 226 provides a valid ground for challenging the CAT's decision and underscores the importance of ensuring unfettered access to judicial remedies for individuals seeking justice.

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III. CRITICAL ANALYSIS

Upon a critical analysis of the legal positions discussed above, the following issues come to light.

A. Jurisdiction of AFT

The limitation of the Armed Forces Tribunal's (AFT) jurisdiction to only the Army, Navy, and Air Force, as stipulated by the legislature in the AFT Act, presents a perplexing scenario. While

[31] INDIA CONST. art 226.

the judiciary has adhered to this limitation without contest, the rationale behind such a restriction merits scrutiny. The ostensible purpose of AFT is to adjudicate on service matters concerning armed forces personnel, a category that extends beyond the Army, Navy, and Air Force to encompass other armed forces of the Union. Therefore, the legislative omission of these additional armed forces from AFT's jurisdiction appears arbitrary and lacks a discernible justification. This legislative lacuna warrants examination and potentially calls for legislative review to ensure equitable access to justice for all armed forces personnel under the purview of AFT.

B. Jurisdiction of CAT

Section 2(a) of the Administrative Tribunals Act excludes certain persons, including members of the naval, military, or air forces, from the applicability of the Act. However, legal precedents, such as Union of India v. Colonel G.S. Grewal and Union of India v. Kapil Kumar, establish a critical interpretation of this provision. They emphasize that individuals challenging decisions affecting their enrollment in the armed forces are not yet members of those forces and thus fall outside the ambit of Section 2(a). This interpretation logically extends to all armed forces of the Union, implying that challenges to recruitment decisions are valid within the jurisdiction of CAT. Therefore, the exclusion of armed forces personnel from CAT's jurisdiction, as per Section 2(a), appears untenable in light of established legal principles.

Undoubtedly, the language used in Section 2(a) of the AT Act lacks precision and clarity. The phrase ‘any member of the naval, military or air forces or of any other armed forces of the Union’ is broad and open to interpretation. The absence of specific criteria or definitions to determine who qualifies as a ‘member’ of the armed forces leads to ambiguity and inconsistency in its application. This ambiguity gives rise to a restrictive interpretation of the provision such as in Ravinder Kumar v. Staff Selection Commission (supra). Consequently, as discussed above, the restrictive interpretation of jurisdictional provisions in both AFT and CAT Acts has significant implications for access to justice. By excluding certain categories of individuals from seeking redress through administrative tribunals, the law may inadvertently deprive them of effective remedies for grievances related to recruitment and service matters. This raises concerns about fairness and equality before the law, particularly for individuals serving in less recognized or specialised armed forces.

C. Exclusion of Jurisdiction

The line of argument in the Ravinder Kumar case, of CAT's declination of jurisdiction of refusal to hear the case being restrictive to the right enshrined in article 226 appears to be an invalid argument. While the argument ex facie seems grave and of great constitutional importance, the position has already been elaborated upon by various cases adjudicated by the Apex court. The argument essentially stems from articles 323B (3)(d) of the constitution instructing that no other court apart from the Supreme court shall have the jurisdiction to entertain any matter that otherwise falls within a tribunal's jurisdiction.[32] Further, section 28 of the AT act also states that only the Supreme Court, under article 136, or any authority under the Industrial Disputes Act of 1947 may be entitled to exercise jurisdiction over recruitment or service matters. This legislatively ousts the jurisdiction of the various high courts under articles 226, 227 and that of the Supreme court under article 32. This ouster of jurisdiction is an outright violation of the principle of judicial review under articles 226/227 and 32.[33]

To understand the gravity of this violation, it becomes pertinent to mention the Kesavananda Bharati case, while overruling the *I.C. Golaknath v. State of Punjab*[34], introduced the basic structure doctrine and held that article 368 does not allow the parliament to amend the basic structure of the constitution.[35] Additionally, *Indira Gandhi v. Raj Narain* established that rule of law is a part of the basic structure of the constitution and that rule of law relied on effective judicial review; therefore, by proximity making judicial review part of the basic structure too.[36] This position was then reiterated and clarified in *Minerva Mills v. Union of India*, which held explicitly while ruling, that judicial review is a constitutional feature protected from amendment by the basic structure doctrine.[37]

Therefore, from the above analysis of the various landmark case laws, it becomes apparent that article 323A (2)(d), article 323B (3)(d), and section 28 of the AT act infringe upon judicial review, which is protected from amendment by the basic structure doctrine. Therefore, the provisions listed above are unconstitutional. In *Kihoto Hollohan v. Zachillhu,* where the

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[32] *Supra* Note 8.

[33] L. *Chandra Kumar v. Union of India*, (1997) AIR 1125.

[34] *I.C. Golaknath v. State of Punjab,* (1967) 2 SCR 762.

[35] *Keshavnanda Bharti v. State of Kerala*, (1973) 4 SCC 225.

[36] *Indira Gandhi v. Raj Narain*, (1976) 2 SCR 347.

[37] *Minerva Mills v. Union of India*, (1980) AIR 1789.

constitutionality of the 10th schedule was challenged, the 5-judge bench voided the provision excluding the decision of a speaker in matters of disqualification from judicial review.[38] The principles evolved over years of judicial precedents were applied in *L. Chandra Kumar v. Union of India* along with the doctrine of severability, to distinguish the provision compromising judicial review by excluding jurisdiction and declaring it void.[39] The case held the following;

'100…Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution…'[40]

However, the court also clarified that:

'100…All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Court's even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal…'[41]

The conclusion of this analysis is two-fold.

(1) The tribunal remains the court of first instance for all matters falling within its jurisdiction, and litigants cannot approach the high courts without first exhausting the remedy available with the tribunals.

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[38] *Kihoto Hollohan v. Zachillhu*, (1992) 1 SCR 686.

[39] *Supra* Note 33.

[40] *Ibid.*

[41] *Ibid.*

(2) The only option where litigants can directly approach the high court is wherein the petitioner is challenging provisions of the statute establishing the particular tribunal.

The criticisms outlined above underscore the need for a comprehensive review of existing legislation governing tribunal jurisdiction. Reforms should aim to address inconsistencies, clarify ambiguous language, and ensure that jurisdictional provisions align with principles of fairness, equity, and access to justice for all individuals, regardless of their affiliation with different armed forces of the union.

Additionally, as discussed above, articles 323A and 323B form the basis for establishment of such tribunals. It becomes pertinent to note that the jurisdiction of all courts, with the exception of the Supreme Court, is excluded with regards to matters which fall within the jurisdiction of the tribunals established by law.[42] Cases like Kapil Gurjar (supra) and Pankaj Kumar (supra) have established that CAT does indeed have jurisdiction over recruitment and service matters pertaining to posts under 'Armed Forces of the Union'. This would mean that in accordance with article 323B (3)(d), no other court apart from the Supreme Court has the jurisdiction to entertain such matters. This essentially brings into question the validity of judgements given out by high courts where the petitioner approached the high court without exhausting the remedies available, such as in *Vinayak Sharma v. Indian Coast Guard* by the Delhi High Court.[43] The facts of the case were similar to the cases discussed above, wherein the candidature of an applicant for the post of Assistant Commandant with the Indian Coast Guard was rejected, and said rejection challenged before the High Court of Delhi.

IV. CONCLUSION

The intricate analysis conducted in this research article sheds light on the intricate web of jurisdictional dissonance plaguing the Indian tribunal system, particularly concerning the Armed Forces Tribunal (AFT) and the Central Administrative Tribunals (CAT). Through an in-depth examination of statutory provisions, judicial interpretations, and recent case law, it becomes apparent that the existing legal framework suffers from inherent flaws and inconsistencies, posing significant challenges to individuals seeking redress for grievances related to armed forces recruitment and service matters. The jurisdictional limitations

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[42] *Supra* Note 8.

[43] *Vinayak Sharma v. Indian Coast Guard*, (2023) MANU 4149.

delineated in the AFT Act present a conundrum, confining the tribunal's purview to only specific branches of the armed forces, thereby excluding numerous other armed forces personnel from its ambit. This restrictive interpretation raises fundamental questions about the equitable dispensation of justice within the armed forces community and underscores the urgent need for legislative review and reform. Similarly, the exclusionary provisions embedded within the CAT Act, as elucidated by legal precedents, create a jurisdictional maze, often leaving aggrieved individuals stranded without recourse. The ambiguous language and broad interpretations surrounding the exclusion of armed forces personnel from CAT's jurisdiction highlight the pressing need for clarity and consistency in tribunal legislation. Moreover, the constitutional validity of provisions curtailing the jurisdiction of high courts and the Supreme Court in matters falling within the purview of administrative tribunals presents a constitutional quandary. While administrative tribunals serve as crucial avenues for administrative justice, the preservation of judicial review is paramount to safeguarding constitutional rights and ensuring accountability within the tribunal system.

In light of these critical issues, it is imperative for policymakers and legal stakeholders to undertake a comprehensive review of existing legislation governing tribunal jurisdiction. Reforms should aim to bridge jurisdictional gaps, clarify ambiguous provisions, and uphold principles of fairness, equity, and access to justice for all individuals affected by administrative decisions. By aligning legislative frameworks with constitutional principles and international best practices, India can strengthen its legal infrastructure, enhance institutional integrity, and foster greater trust in the judiciary. Ultimately, the pursuit of justice requires a concerted effort to address jurisdictional dissonance and ensure that no individual is left behind in the quest for legal remedies and redressal.

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Citizenship Amendment Act: Examining its Impact As A New Hope or Despair!

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Abstract: *The Citizenship Amendment Act or CAA is many things at the same time a political promise, a new hope, persecuted migrants, a long pending demand, and a controversial law. The Citizenship Act 1955 has been amended several times since its enactment, 2019 being the latest one, this amended act was not enforced until the year 2024 on the eve of elections making it the first religion-based citizenship test, which fast-tracks the process of acquiring Indian citizenship on meeting certain conditions. The controversy surrounding this amendment act is that the law has created two tiers of citizenship in India: non-Muslims and Muslims, which resulted in widespread protests, and sectarian violence, killing scores of people, and wounding hundreds. The law states that if any people from any of the five communities namely Hindus, Sikhs, Parsis, Jains, and Christians, belonging from these three countries namely Pakistan, Bangladesh, and Afghanistan had entered India before 31.12.2014 their process of acquiring Indian citizenship would be fast-tracked, this is the law on which the controversy and misinterpretation lie. This paper will delve deep into the myths and facts about the law, whom would this law benefit, and who would be discriminated against if at all any.*

Keywords: *Citizenship, Religion-based, Fast-track, Amendment, Controversy*

I. PRELUDE

The Citizenship (Amendment) Act, 2019 creates a pivotal stage in the legislative history of India. It reshapes the narratives of the concept of citizenship within its geographical frontiers. The statute has been enacted as an amendment 'version' of the legislation, Citizenship Act, 1955 and it introduces some key changes to the process related to naturalization by providing benefits to the 'minorities' section facing religious hostility in the neighbouring countries of India, namely, Afghanistan, Bangladesh and Pakistan.

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By setting the platform of eligibility for citizenship to the individuals belonging to the religion of Hindu, Sikh, Buddhist, Jain, Parsi and Christian, those who have faced ill-treatment in the nations mentioned earlier, the statute embedded a spirit of the notion of inclusivity and compassion. Further, the statute which came into effect in the month of March, 2024 also tried

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to provide a safe haven for all those who are in need. It streamlines the citizenship acquisition process by lowering the requirement of residency from the term of eleven years to five years.[1] The propagation of the Citizenship (Amendment) Act, 2019 from its very inception in the year 2016 to its eventual passage in the month of December, 2019 underscores the compound interplay between the legislative pathways and the societal narrations. The traces of the statute were way back to the growing tensions related to the illegal migration, specifically from Bangladesh which led to make amendments to the laws governing citizenship.[4] The recent provisions reflect a delicate balance between addressing security concerns and the promoting the values of humanitarianism along with the view of religious pluralism.

II. PRINCIPLES RELATED TO CITIZENSHIP

In India, there are two kinds of people, firstly the citizens who are full-time members of the Country and who enjoy all the rights granted by the grundnorm of the country and in return have several obligations which are the duties owed by them towards the state. Secondly, there are the aliens, in the legal aspect, they are the foreign-born resident who is the citizen of the country where they reside, by birth or naturalization, and who is still a citizen or subjects of other countries.[2] Countries around the globe have established several systems and rules that govern the accreditation of citizenship, the major ones being by birth, naturalization, or marriage. Most countries including India conform to the two following systems namely *'Jus Soli'* which means by birth in a country citizenship can be acquired also known as birthright citizenship. *'Jus Sanguinis'* means a person acquires citizenship through descent or blood ties, that is through parents or ancestors and where he/she is born is irrelevant.[3]

III. CONSTITUTIONAL PROVISIONS RELATED TO CITIZENSHIP

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[1] *India: Citizenship Amendment Act is a blow to Indian constitutional values and international standards* (April 7, 2024, 2:12 PM), https://www.amnesty.org/en/latest/news/2024/03/india-citizenship-amendment-act-is-ablowto-indian-constitutional-values-and-inte.html; *CAA Is A Parliamentary Recognition Of Neighbourhood Situation*: Sources; https://www.ndtv.com/india-news/caa-is-a-parliamentary-recognition-of-neighbourhood-situationsources5231281 (April 7, 2024, 2:45 PM)

[2] Atasi Ghosh, *What We Talk about When We Talk about Citizenship in India,* https://thewire.in/law/what-we-talk-about-when-we-talk-about-citizenship-in-india.html. (April 7, 2024, 7:45 P.M.)

[3] *Ibid*

The articulation of citizenship in India's Constitution was a conscientious process, filled with debates, and considerations, and influenced by colonial heritage and the aftermath of Partition, the makers of the Constitution drafted a unified citizenship structure inclusive of the safeguards of the citizens against the illegal immigrants. Part II of the Indian Constitution from Article 5-11 deals specifically with the concept of citizenship, though there is no clear definition of citizenship that has been provided under the Constitution. Citizenship is the subject matter of the Union list specified in the 7th Schedule and Parliament alone holds the power of making laws relating to citizenship.[4]

a) Article 5- Citizenship at the commencement of the Constitution

- Persons who were domiciled and born in India were given citizenship
- Citizenship was also given to
  - People domiciled in India but not born in India, but either of their parents had taken birth in India.
  - Anyone who has ordinarily resided in India for five years immediately before the commencement of the Constitution.

b) Article 6- Citizenship of certain persons migrated from Pakistan

- People who migrated to India before the date of 19 July 1949 were considered citizens of India if either of their parents or grandparents had been born in India.
- People had to go through the process of registration if they migrated to India from Pakistan if they had entered after the above-specified date.

c) Article 7- Citizenship of some persons migrated to Pakistan

- Any person who has migrated from the territory of India to Pakistan shall not be a citizen of India, but
- If that said person returns under the permit for resettlement or permanent return issued by or under the authority of any law, then he will be considered an Indian citizen.

d) Article 8- Persons of Indian Origin residing outside India

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[4] *Constitution of India*, 1950.

This article mentions that any person of Indian origin residing outside India, or either of whose parents or grandparents were born in India could register themselves as an Indian citizen with Indian Diplomatic Mission.

e) Article 9- Single Citizenship

This article asserts the notion of single citizenship. It states that any person who had voluntarily acquired the citizenship of a foreign State will no longer be a citizen of India.

f) Article 10- Continuation of Citizenship

This article reaffirms that any person who has received Indian citizenship under any of the provisions of Part II of the Indian Constitution shall continue to be a citizen and will be subjected to any law made by the Parliament of India.

g) Article 11- Citizenship as a subject matter of Union List

This article mentions that any laws regarding the acquisition and termination of citizenship can only be made by the Parliament of India.

All the above factors do not in themselves grant the citizenship status of India to the individuals, but fulfilling those conditions makes the individual eligible for the application process of acquiring citizenship.

IV. HISTORICAL BACKGROUND OF THE INDIAN CITIZENSHIP ACT

The concept of Indian citizenship came into the limelight post India's Independence in 1947. Before that period, during British colonial rule, Indians were not granted any individual citizenship rights and were categorized as British subjects. The status was regulated by the British Nationality Act of 1914 until it was revoked in 1948. The partition of India in 1947 resulted in notable population movements between India and Pakistan which demanded a framework for determining the citizenship of India. In its inception, the Constituent Assembly addressed this matter to regulate the citizenship of migrants. Eventually, the Indian Parliament passed the Citizenship Act 1955, which laid down the specific and clear provisions and the eligibility criteria for acquiring Indian citizenship.[5]

[5] *A Critical Analysis of the Citizenship Act, 1955* https://legalvidhiya.com/acriticalanalysis-of-the-citizenship-act-1955/html. (April 8, 2024)

V. NEED FOR THE CITIZENSHIP ACT OF 1955

The Citizenship Act of 1955, is also referred to as the Indian Nationality which holds notable importance as a key piece of legislation that depicts the interconnection between individuals and the nation of India. This legislation is the main authority deciding the eligibility criteria for Indian citizenship, putting forward the privileges, obligations, and commitments with acquiring citizenship of the country. This Act was passed by the Indian Parliament on 30th December 1995 and stands as both important and foundational legislation that defines the boundaries of Indian citizenship, with a pivotal role in safeguarding the welfare and the liberties of Indian citizens.[6] There are several modes provided under this act through which Indian citizenship can be acquired and determined by fulfilling the diverse circumstances, majorly there are four methods:

☐ Birth- Any individual born within the geographical limits of India by default qualifies for Indian citizenship, but certain circumstances need to be met. Citizenship under this head can be acquired only if these criteria are fulfilled:

- Any person born in India on or after 26.01.1950 but before 01.07.1987 is an Indian citizen irrespective of the nationality of their parents.
- Any individual born in India between 01.07.1987 and 02.12.2004 is a citizen of India provided that either of his or her parents was an Indian citizen at the time of that specific individual's birth.
- Any person born in India on or after 03.12.2004 is a citizen of India only if both the parents of the said individual are Indians or at least one parent is an Indian citizen and the other is not an illegal migrant at the time of his or her birth.[7]

☐ Registration- Any individual with Indian lineage can apply for the citizenship of India through this method. Citizenship under this can be acquired only if these criteria are fulfilled-

- A person who is of Indian origin and who resided in India for seven years can apply for the registration.

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[6] *Ibid*

[7] *Id.*

- Any individual who is married to an Indian citizen and is ordinarily residing in India for seven years before applying for registration.
- Minor children of persons who are citizens of India.[8]

☐ Descent- This method of acquiring citizenship is provided only to persons who are born outside India, but whose parents are of Indian origin. Citizenship under this head can be

- Any individual born outside India on or after 26.01.1950 is a citizen by descent if his or her father was a citizen of India by birth.
- Any person born outside on or after 10.12.1992 but before 03.12.2004 then if either of his parents is a citizen by birth.
- If the individual is born outside, India on or after 03.12.2004 can acquire citizenship only on the declaration from his or her parents that the minor does not hold a passport of another country and his or her birth is registered at an Indian consulate within one year of that individual's birth.[9]

☐ Naturalization- Any person can acquire citizenship of India through this method if he or she is an ordinarily resident of India for 12 years (12 months preceding the date of application and 11 years in aggregate out previous 14 years.)

This period of 11 years out of the 14 years has been reduced to five years out of the 14 years in the Citizenship Amendment Act 2019.[14]

VI. REQUIREMENT FOR THE AMENDMENT ACT OF 2019

The Citizenship Act, 1955 had been amendment through the Citizenship (Amendment) Act, 2019 which highlights several changes. The amendment statute allows certain groups of individuals particularly belonging to these communities Hindu, Sikh, Buddhist, Jain, Parsi or Christian communities from neighbouring three countries, such as Afghanistan, Bangladesh or Pakistan to be eligible to apply for the citizenship in India, if they have entered India on or before the 31st day of December, 2014 and subject to meet certain criteria by making change in the provision of Section 2(1)(b) of the Citizenship Act, 1955 which dealt and defined the

[8] *Id.*

[9] *Id.*

concept of 'illegal migrant'.[13] Thus, the new legislation aims to streamline the concept of citizenship and its procedure related to it much easier for the 'undocumented immigrants' to stay and acquire the citizenship right of India. The amended legislation reduced the requisite period of 'naturalization' from the term of eleven years to five years for all the applicants belonging to the specified religions contributes towards facilitating the integration of these communities into the society and soil of India. Further, important to be noted that the 'cut-off' date of the entire procedure has been fixed on and from 31st January, 2014 which ensures that those who have been living in India for an extended period and also subject to have faced persecution in their home countries are given the opportunity to regularize their status and to become a citizen of India.[10]

The Citizenship (Amendment) Act, 2019 apart from providing citizenship, also provides a ambience of security by closing all legal proceedings regarding the 'illegal' migration to the eligible individuals. Insertion of a new provision, *Section 6B* in the Citizenship Act, 1955 apart from outlining the process of granting certificate of registration, also includes provision for the abatement of pending proceedings upon the conferment of citizenship on that individual. The amended statute is also required to address the status of Overseas Citizens of India (OCI) cardholders. Section 7D of Citizenship Act, 1955 deals with the cancellation of registration granted to the Overseas Citizens of India. However, the amended legislation directs that OCIs can lose their status, after giving the opportunity of being heard, if there is any violation of the laws of this Act. This in turns highlight that statute also create the ground that the individuals should have to abide by the laws and regulations of this country and in turn it fosters the sense of responsibility as well as accountability among the foreign citizens having Indian origin. The Citizenship (Amendment) Act, 2019 thus reflects a pragmatic and humanitarian approach to handle the refugee problem along with making a balance between safeguarding the national interests and ensuring compliance with the legal rules and procedures.

VII. REASONS FOR THE DELAY IN THE IMPLEMENTATION

The Citizenship (Amendment) Act, 2019 was passed by the Parliament of India on 11

[10] *Citizenship Amendment Act (CAA) 2019 - Background & Controversies* https://byjus.com/free-ias-prep/citizenship-amendment-bill-2019/ (April 15, 2024)

December, 2019 and it received the Presidential assent on the very next day i.e. December 12, 2019. However, the Government of India took a month time to notify it in the official gazette on 10 January, 2020. From then onwards, the implementation of the Citizenship (Amendment) Act, 2019 has been marred by a series of delays and subsequent extension sought by the Ministry of Home Affairs (MHA) from the Parliamentary Standing Committees on Subordinate Legislation in Lok Sabha and Rajya Sabha. Finally covering a delay of 1,521 days to frame rules for Citizenship (Amendment) Act, 2019, on March 11, 2024 the Ministry of Home Affairs (MHA) notified the Citizenship (Amendment) Rules which would lead to the implementation of the Citizenship (Amendment) Act, 2019.

The concerned authority justified that their stand for the prolonged delay in the implementation of the amended statute. They pointed towards the impact of the Covid-19 pandemic which harmed the normal operations and also created challenges in the procedure of drafting and finalizing the necessary rules and regulations. Further, the decision of the government to notify about the rules just before the declaring of the announcement of the schedule of the Lok Sabha election added criticisms.[11]

VIII. THE MISCONCEPTIONS SURROUNDING THE CITIZENSHIP AMENDMENT ACT OF 2019

This specific amended legislation has been the centre of debates, controversies, protests, and in the limelight since its inception in the year 2019. On March 11, 2024 the central government notified the Citizenship Amendment Rules 2024 to implement the CAA after four years since its enactment. The Union government notified to process the applications under CAA both at State and in Union territories, but before this there are several misconceptions which needs to bust. The misconceptions are as follows:

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a) CAA is against the secular structure of the Constitution: The amendment faced severe backlash as it instils in the minds of the people that this legislation underscores the idea of secular structure embedded in the Constitution of India as it only favours certain specific communities and discriminate the Muslims who are not considered as the vulnerable and unprotected groups in any part of the world.[12]

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[11] Why is India's Citizenship Amendment Act so controversial; https://www.aljazeera.com/news/2024/3/12/why-is-indias-citizenship-amendment-act-so-controversial.html *(April 13, 2024)*

[12] Indian Citizenship (Amendment) Act, 2015

b) Citizenship Act,1955 is repealed: People has conceived the notion that the amendment act is a separate legislation than that of the principal act of 1955. Thus, it underscores a repercussion that the repealing citizenship Act of 1955 would cause distress among the migrants who are could have been eligible to acquire the citizenship under the mentioned criteria in the previous act.

c) CAA is discriminatory against the Muslims: Another misconception regarding the Citizenship (Amendment) Act, 2019 is that it treats Muslims unfairly. As, it is mentioned in that amended statute that it would provide citizenship for individuals from minority groups such as, Hindus, Sikhs, Buddhists, Jain, Parsis, Christians and there is no mention of Muslims, thus critiques say that as there is no mention of 'Muslims' so probably Muslims those who have fled from religious persecution in Pakistan, Afghanistan and Bangladesh and arrived India on or before the mentioned date would probably not get citizenship.

d) CAA will create mass influx: As per the opinion of some critique, CAA would trigger a mass influx among the people those who came as a migrant from the Bangladesh, Afghanistan, Pakistan. Stringent protocol to receive citizenship acts as a catalyst for this opinion. Thus, there is a sudden upsurge of fear among the migrants.[13]

e) CAA is against the federal structure of the Country- This misconception is that the amended law is against federalism and that State is being denied the right to make any law upon citizenship and only Parliament is making all the changes and State is being debarred from making any law.

All these misconceptions not only created confusions or tensions among the migrants those Subsequently became eligible to get the citizenship, it also created a panic and chaos which ultimately lead to a dead end and unnecessary commotion. But the government through its response clarified several of the misapprehension which led to this hue and cry.[14]

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IX. RESPONSE FROM THE GOVERNMENT

The misconceptions mentioned earlier had been clarified from the part of the government with proper justification and the centre clarified that it gives the utmost priority in upholding the

[13] *Ibid*

[14] CAA myths Busted: MHA Clears Air, says 'Indian Muslims Need Not Worry'; https://www.firstpost.com /india/caa-myths-mha-indian-citizenship-muslims-13748277.html (April 13, 2024)

rights of the citizens of India without having any biasness upon any religion and kept the focus on granting Indian citizenship to those individuals who had faced religious ill-treatment in the countries namely Afghanistan, Pakistan, Bangladesh. The responses of the misconceptions are:

a) CAA upholds the 'secular fabric' of the nation- The idea of secularism is a rooted concept in the soil of our nation. Secularism is the basic structure of the Constitution, and if any law violates the principle of secularism, then it would be void and would never be implemented. Further as per the response of the government CAA provides relief to the ill-treated migrant minorities from the humanitarian ground, without having any alteration in the status of the existing citizens of the nation.[15]

b) CAA is only an amendment to the existing law of 1955- The amended legislation of 2019 did not make Citizenship Act, 1955 obsolete. It had only altered six provisions of the principal Act of 1955. As a result, it not extended the ambit of citizenship but created a stage of legal humanitarian migration which was lacking in the main act.[16]

c) CAA is not an 'anti-Muslim' law- Mr. Amit Shah, the Hon'ble Home Minister of the Government of India stated in an interview that he believes it is the moral and constitutional responsibility of the government to give shelter to all those people who once were the part of 'Akhand Bharat' and faced sufferings of religious tyranny. He further added that the three countries are the Muslim countries and therefore there is a less chance of persecution of Muslims in those countries and the minority communities face a lot of religious persecution. Also, India unlike the other three countries is a secular nation and nobody is discriminated against any religious here, also the Muslims can become eligible under the principal law of 1955 if they fulfil any of the criteria of acquiring the citizenship.[17]

d) CAA does not grant automatic citizenship**:** The amended legislation clearly mentions that those who have entered India on or before December 31, 2014, everyone would not get the citizenship automatically but only the naturalization process's tenure has been reduced for those mentioned minority and it only makes then eligible for acquiring

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[15] *Ibid*

[16] *Ibid*

[17] *Id*

citizenship. The eligible individuals would still have to go through the stringent process of verification to get the citizenship of India. Therefore, the fear of the mass influx is baseless.[18]

e) CAA is not against the federal structure- The Constitution of India under Article 11 clearly mentions that the Union that is the Parliament holds the sole power to make laws as citizenship is the subject matter of the Union list under Schedule VII. Therefore, the states in no way can make laws in any matter surrounding citizenship.[19]

X. LOOPHOLES IN THE LAW

The Citizenship (Amendment) Act, 2019 may be considered as the first instance in the recent era where the 'refugee legislation' has been shaded by the notion of 'biasness' and 'prejudice'. The amended statute pay attention to the historical context of the Partition of India in 1947. Hence, by considering the ambit of the statute, the communities those who have been affected by the Partition can be referred as the 'special religious groups' (SRGs)[20] and specifically, the amendment statute grants aid to those 'SRGs' those who came to India with or without proper documents before the mentioned date i.e. 31st December, 2014. Among many loopholes, firstly, the mentioned 'cut-off' date has been fixed on December 31, 2014. However, the date itself creating a vague stand point as there is no proper explanation from the part of the Government for fixation of that date and it is obvious that it can't be said that after the mentioned date there would be a less chance of been persecuted of the specified minority communities from the three neighbouring countries.

Secondly, CAA grants the citizenship to the individuals from the mentioned country citing them as the individuals from the minority community who has faced religious tyranny but the amended statute failed to acknowledge the fact that there are Muslims victims also in the neighbouring countries of India namely, the Rohingya Muslims in Myanmar, Ahmadiyya Muslims in Pakistan, Hazara Muslims in Afghanistan, Tamils in Sri Lanka still have to wait

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[18] *Id*

[19] *Id*

[20] *India Needs a Proper Refugee Law, Not a CAA Suffused With Discriminatory Intent,* (April 14, 2024) https://thewire.in/law/india-needs-a-proper-refugee-law-not-a-caa-suffused-with-discriminatory-intent.html (April 14, 2024)

for the period of 11 years under the 1955 Act to become eligible for acquiring the Indian citizenship.

Thirdly, though there are constitutional provisions which guides the concept of 'citizenship, but the amended legislation faced challenges on the ground that it is violative of Article 14 of the Constitution of India. Though before the Court of Law, the concerned authority i.e. the Union Government of India would not only be tested just for picking the three neighbouring countries to retain the Muslims out of the sphere but also it has created strong ground of uncertainty among the various other eligible classes as mentioned earlier by without notifying any proper rules or guidelines for them which somehow reflects an 'unequal' treatment.

Fourthly, the Citizenship (Amendment) Act, 2019 also has another loophole that it is exempted in the regions which fall under the Sixth Schedule of the Constitution of India, deals with autonomous tribal-influenced areas in the State of Assam, Meghalaya, Tripura and Mizoram.[21] Also, the statute is also not applicable to the States which have inner-line permit regime, such as Arunachal Pradesh, Nagaland and Mizoram. As these regions are largely populated with a tribal population, so, this loophole creates a tension in socio-cultural aspect. As a consequence of these loopholes, the Citizenship (Amendment) Act, 2019 has been a subject matter of debate and controversy.

XI. ANALYSIS OF THE LAW

CAA endorses the principle of humanitarianism and upholds India's stand as a preserver of religious freedom and minority rights, by providing citizenship to the persecuted minorities seeking refuge in India from neighbouring countries. This legislation reinforces the dual principles India holds as a fundamental right for all individuals that is equality before the law and equal protection of the law, which is ultimate equity done to all irrespective of what religion they belong to. The analysis of the amended legislation involves the examination of its aims and objectives, application, and implementation within the frontier of this diverse nation by dissecting its social fabric. Considering the humanitarian ground, the statute boosts the potential to make alterations to the democratic ethos of India. Though there is a space for 'selective acceptance,' the Citizenship (Amendment) Act, 2019 elevated the gesture of

[21] What are the drawbacks of CAA; https://byjus.com/ias-questions/what-arethedrawbacks-of- caa/#:~:text= Mizoram.html (April 14, 2024)

humanitarianism by setting its aim to provide citizenship to the persecuted communities from three neighbouring Islamic countries. It purports the easiness of granting citizenship to all those eligible people, who have traditionally and historically faced religious persecution by accelerating the process of naturalization. However, the exclusion of Muslims from the amended procedure posed significant legal as well as ethical questions and at the same time undermined the principles of equality correlated with the idea of non-discrimination and the notion of secularism embedded in the Constitution of India.

Proponents argue that the Citizenship (Amendment) Act, 2019 does not exert influence on the secular character of our nation as it does not prohibit Muslims or any religious communities from applying for the citizenship of India through the prevalent legal channels. However, preferential treatment which is explicit for certain religious groups over others raises a concern regarding the true application of the spirit of secularism in the future pathways of this system. Citizenship (Amendment) Act, while providing citizenship to eligible candidates excludes illegal immigrants who without any reason or proof of refugee status are staying within the territory of India. This exclusion is done so that the national security of our country is maintained and those specific individuals do not become a threat to the security of our nation in the near future, therefore this Act also tends to radicalize the stringent process for giving citizenship to only the eligible residents who came to India on or before 31st December 2014.

The amended legislation endorses India, taking proactive steps to protect ill-treated individuals in the international arena. Though India asserted the role of a guardian in the global Perspective by extending the Act through its amendment as a shelter for minorities, nevertheless, the modified statute intrigued international criticism for subverting commitments of India towards the norms and guidelines of the international humanitarian block as it included non-refoulment and non-discrimination through the act of potentially isolating India from the global democratic circle. Despite certain pros and cons in the Citizenship (Amendment) Act, 2019, the legislation is one of the needs of an hour. The issue of 'illegal migrants' has been properly addressed and apprised in the law.

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XII. CONCLUSION

The Citizenship (Amendment) Act, 2019 holds a balance between the security of the nation and the humanitarian ground protecting the rights of every individual across the globe steered by the principles of justice, equity, inclusivity and secularism. To further expand the ambit of

the debate related to the Act, it confronts more with the burden of the population over its present state of over 141.72 crores. So, the administration needs to have strict hands in the implementation of the legislation with proper scrutiny before allowing individuals in this nation. To quote Nelson Mandela, *"To deny people their human rights is to challenge their very humanity"* – this is the notion which CAA uplifts by providing citizenship to people who are in dire need of it due the tyranny which they had faced in their own countries and to protect their basic needs.

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The Role of Public Policy in the Interpretations and Enforcement of Force Majeure Clauses in Commercial Contracts in India: A Critical Analysis of Section 32 and 56 of the Indian Contracts Act 1872

Janhavi Deo Yadav[*]

Abstract: *This research paper aims to critically analyse the effects of public policy in the interpretation and enforcement of force majeure clauses in commercial contracts, with a specific focus on the consequences for contract performance and the future legal implications within the framework of sections 32 and 56 of the Indian contract Act 1872. In order to analyse the ambiguity in the definition of an "extraordinary event" a mixed approach has been taken relying majorly on secondary data sources and following a textual analysis method in order to reach at plausible solutions to the ambiguity. Relying on it the author argues that the vague nature of the term extraordinary circumstances in force majeure clauses and the further absence of specific provisions dealing with such clauses in commercial contracts has led to a lot of issues in the implementation of law. Thus, the author seeks to investigate and analyse the influence of public policy principles on the interpretation and enforcement of existing force majeure clauses in commercial contracts and to further assess the implications of contractual performance and legal considerations under section 32 and 56 of the Indian Contract Act 1872, along with the growing need of proper statutory provisions to deal with such contracts. Thus, the author through the course of these arguments claims that there should be proper legislative amendment to the Indian Contract Act, 1872 in order to provide explicit definitions of the term "extraordinary events" within the context of force majeure, encompassing specific criteria such as un-foreseeability and the inability to control or mitigate the event's impact, further these amended provisions should be clearly worded to avoid any future anomalies and they should also explicitly include pandemics and future epidemics as extraordinary events in their definition, acknowledging their unique characteristics and impact.*

Keywords: *Ambiguity, Contractual Obligations, Consequences, Extraordinary Event, Pandemic.*

I. INTRODUCTION

Public policy has long been recognised as a basis on which a court may refuse to enforce the terms of a contract, despite these terms having been freely and voluntarily agreed to by the parties. It has now become a firmly established mechanism of judicial control over contractual enforcement, but despite this, the power provided by the doctrine is often criticised because it entails the application of value-laden and seemingly subjective policy considerations, including those of fairness, justice and equity, and therefore has the potential, when applied indiscriminately, to result in contractual uncertainty.

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At its most fundamental level, public policy serves as a mechanism through which society, mediated by the legal system, can maintain a degree of control over the agreements made between individuals. While individuals generally have the freedom to enter into contracts with whomsoever they choose and on terms they find agreeable, the courts retain the authority to reject contract terms when they conflict with public policy.[2] In this sense, public policy, when considered in isolation, lacks substantive meaning or content. As noted by Sutherland, it functions as a collection of general principles and specific rules within contract law. It is the examination of these contract law principles and rules, often referred to as policy considerations that allows the courts to give depth and substance to the concept of public policy.[3] On the other hand, force majeure clauses are typically included by lawyers to safeguard their clients' interests, especially in transactions involving public entities that can raise concerns related to public policy or public morality. In such scenarios, the choice of governing law for the contract may become less significant. In addition to it, other unforeseeable events such as port closures or environmental problems prevalent at the ports of loading and unloading of cargos may also take place. In such circumstances contracts are usually deemed to have been frustrated. [4]

II. SCOPE AND EXTENT OF 'PUBLIC POLICY'

At its most fundamental level, public policy represents a mechanism through which society guided by the legal system, can exert a degree of control over the contractual relationships among individuals. While individuals enjoy the freedom to enter into contracts with whomsoever they choose and on terms they see fit, the courts, guided by the principle of freedom of contract, generally uphold these agreements. However, they also retain the authority to decline enforcement of contract terms that run contrary to the principles of public policy. In essence, public policy, when viewed in isolation, may lack substantial meaning or content. As noted by Sutherland, it functions as a collection of general principles and more specific rules within contract law. It is the examination of these contract law principles and

[1] Matthew Kruger, The Role of Public Policy in the Law of Contract, Revisited, 128 S. AFRICAN L.J. 712 (2011).

[2] *Ibid*

[3] Walter Gellhorn, Contracts and Public Policy, 35 COLUM. L. REV. 679 (1935).

[4] Marel Katsivela, Contracts: Force Majeure Concept or Force Majeure Clauses, 12 UNIF. L. REV. n.s. 101 (2007).

rules, often referred to as policy considerations, that empowers the courts to provide depth and substance to the concept of public policy.[5]

In the case of *The Driefontein Consolidated Mines Ltd. v. Janson (1901)*[6], the court held that an agreement is deemed unlawful if it contradicts the principles of public policy. The doctrine of public policy is rooted in the maxim *"ex turpi causa non oritur actio"* which essentially means that an agreement contrary to public policy is null and void as public policy is a concept that lacks a precise, fixed definition, it is dynamic and subject to change often determined at the discretion of the court.[7] The court holds the authority to interpret public policy, but if the terms of the contract violate public policy, and still both the parties have consented to them, they possibly cannot go forward with it as they can't be legally enforced.

In *Central Inland Water Transport Corporation V. Brojo Nath Ganguly(1986)*[8], while considering the scope and essentials of *Section 23*[9] the court came to the opinion that the Indian Contracts Act does not define the expression of *"public policy"* or *"opposed to public policy"*. Thus the dispute in this case was centred on the validity of an exemption clause absolving liability for negligence. The appellant argued for contractual enforcement, while the respondent contended that such clauses contravene public policy. Although the court ruled the case in favour of *Brojo Nath Ganguly*[10], stating that exemption clauses voiding liability for negligence are against public policy, and further underscored that the "*fundamental legal principles and fairness cannot be overridden by contractual agreements that negate responsibility for wrongful acts*."[11] Thus the Supreme Court in this case delivered a unanimous decision, asserting that contractual clauses excluding liability for gross negligence or wilful acts are void due to public policy concerns. Though lacking a majority-minority division, the case

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[5] *Eastwood* v *Shpstone* 1902 TS 302; *Robinon v Randfontein Estates GM Co Ltd* 1925AD 173: M-*, All"oy and Researci (SA) (Pt) Ltd, Ellis* 1984 (4) SA874 (A) at 891; *Sasfin (Pty)Ltd v Beukes 1989* 1 SA 1 (A); *Barkhizen* v *Napier* 2007 *(5)SA323* (CC).

[6] A. L. Smith, M. R., The *Driefontein Consolidated Mines Ltd. v. Janson* (1901), Times L.R., Vol. XVII., 605.

[7] Charles Chatterjee & Anna Lefcovitch, Considering the Rationale of Incorporating Force Majeure Clauses in Commercial Contracts between the Parties to a Commercial Contract, 14 INT'l. IN-House Counsel J. 1 (2021).

[8] *Central Inland Water Transport Corporation V. Brojo Nath Ganguly* AIR (1986) SC 1571

[9] Indian Contract Act, 1972

[10] *Supra note* 8

[11] *Supra note* 393.

established the principle that "*contracts cannot override fundamental legal principles when they infringe upon equitable considerations, thereby ensuring fairness and upholding public policy standards within contract law."*[12] This case highlighted the importance of not allowing contracts to undermine principles of fairness and justice.

Further the Delhi High Court further in the case of *Union of India v. M/s N.K. Garg & Co.*[13], held that: *"any agreement by which a party is deprived of interest (any legitimate claim) would be rendered void for being immoral and violative of public policy."*[14] Through these precedent cases, it is clear that the Court has consistently recognized the importance of incorporating public policy principles into the implementation of laws. Therefore, it is necessary for laws related to contractual relations or commercial contracts to be framed based on the principles of public policy. This ensures just decisions that do not infringe upon the rights of any parties involved. Given that commercial contracts often involve numerous individuals as contractual parties, it becomes even more imperative to have laws that address such matters through the lens of public policy.

III. PHILOSOPHICAL JUSTIFICATION BEHIND FORCE MAJEURE CLAUSE IN A CONTRACT

The term "force majeure" is defined in Black's Law Dictionary as an unforeseeable and uncontrollable event. It is a contractual provision that allocates the risk of loss if performance becomes impossible or impracticable, particularly as a result of an event that the parties could not have foreseen or controlled. While Indian statutes do not provide a specific definition or process to deal with such force majeure clauses, the Section 32 and 56 of the Indian Contract Act, 1872 addresses situations where a contract is contingent on an event that becomes impossible, rendering the contract void.[15]

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From a contractual perspective, a force majeure clause offers temporary relief to a party, allowing it to suspend the performance of its obligations under the contract when a force

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[12] *Ibid*

[13] 2015 (224) DLT 668

[14] Umakanth Varottil, Contract Depriving a Party of Interest: Immorality and Public Policy, INDIACORP LAW, December 16, 2015

[15] Poorvi Sanjanwala, Kashmira Bakliwal, "what is force majeure?" The legal term everyone should know during Covid-19 crisis, The Economic Times, *available at*: https://economictimes.indiatimes.com/small-biz/legal/what-is-force-majeure-the-legal-term-everyone-should-know-during-covid-19-crisis/articleshow/75152196.cms

majeure event occurs. The concept of force majeure has its origins in English law, with notable development in the case of *Taylor v. Caldwell*[16] which initially recognized that in maritime and state laws, force majeure has applicability across various legal systems.[17] However, under common law, it is not automatic and must be invoked by the parties involved in a contract. But it is the lack of universally accepted definition of force majeure that has led to these multiple interpretations of force majeure clauses, making it challenging to establish a standard force majeure clause in both theory and practice. Force Majeure is essentially a contractual provision where contracting parties agree to excuse delays or the inability to meet specific time-bound obligations by the other party in the event of unforeseeable and significant occurrences that are beyond ordinary human imagination.[18]

Moreover, the scope of force majeure is not exhaustive, and events like the COVID-19 pandemic continually test its boundaries. Consequently, the disputes regarding the application and extent of force majeure are common. In most cases, contracts specify circumstances that should be assessed contextually as force majeure. But at its core, a force majeure event is often associated with *"Acts of God"* due to their obvious reasonable insensibility, inconceivability, and supernaturalism. However, some force majeure events can be human-induced, including government actions which may encompass wars, policies, and regulations, which too can sometimes result from Acts of God. For instance, government responses to Acts of God, such as a pandemic for instance, may lead to preventive measures that obstruct the fulfilment of contractual obligations among parties.[19] Thus, understanding the concept of force majeure varies across jurisdictions, with different approaches. In Common law practice, as there is typically no general definition for this concept.[20] Instead, the interpretation of force majeure often hinges on the specific national laws in place. As a result, what qualifies as a force majeure event can vary depending on the terms of individual contracts and the legal jurisdiction in

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[16] (1863)122 ER 309.

[17] *Oil Plunges Below Zero for First Timein Unprecedented Wipeout*, BLOOMBERGLAW, https://news.bloomberglaw.com/environment-and-energy/oil-plunges-below-zero-for-first- time-in-unpreceden-wipeout.

[18] Cosmos Nike Nwedu, The Rise Of Force Majeure Amid The Coronavirus Pandemic, NATURAL RESOURCES JOURNAL , Winter 2021, Vol. 61, No. 1 (Winter 2021), pp. 1-18

[19] *Supra note* 7

[20] *Supra note* 6

question?[21] It's also crucial to note that a force majeure clause cannot be implied or invoked into a contract; as it must be expressly provided by the parties because does not operate in void, on the assumption of default by unspecified events and under any principles of unwritten rules. Even when a contract includes a force majeure provision without conditions or subsequent steps for it to be invoked, parties may find themselves navigating the complexities of litigation or arbitration, depending on their chosen method of dispute resolution.[22]

IV. EVALUATION OF ISSUES RELATING TO FORCE MAJEURE CLAUSE IN A COMMERCIAL CONTRACT AMID EXTRAORDINARY CIRCUMSTANCE

There is no particular section present in the Indian laws that deals with the area of force majeure contacts specially in the area of commercial contracts. But over the past few years specially since the rise of COVID 19 across the world, various debates have been raised regarding the ambit of the term "*extraordinary circumstances"* and whether or not it can include circumstances of a pandemic as well? And if it can then what will be the remedies that may be provided during the course of such events? In India the laws on force majeure events is embodied under Section 32 and 56 of the Indian Contract Act. 1872. Section 32 of the Contract act deals with *"contingent contracts"* which states that *"to do or not to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void."* Further Section 56 of the Contract acts enshrines the *Doctrine of frustration* or *impossibility of contracts,* which provides that *"a contract to do an act which, after the contract is made, becomes impossible or unlawful or, by reason of some event which the promisor could not prevent, becomes void when the act becomes impossible or unlawful."*[23]

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[21] Logan Johnson & Benjamin Cohen, *Coronavirus and Force Majeure: Who is Liable*? SHJ LAW FIRM: INSIGHTS (March 4, 2020), https://shjlawfirm.com/2020/03/04/coronavirus-and-force-majeure- who-is-liable.html.

[22] RobertM.Finkeletal.,*COVID-19:DraftingForceMajeureClausesinLightoftheCOVID- 19 Pandemic* (April 14, 2020), https://www.wilmerhale.com/en/insights/client-alerts/20200413-drafting- force-majeure-clauses-in-light-of-the-covid-19-pandemic.html

[23] Preetam D'Souza and Ranjit Mahishi, "COVID 19 : IMPACT OF FORCE MAJEURE IN INDIAN COMMERCIAL CONTRACTS", Kochhar & Co., *available at:* https://kochhar.com/wp-content/uploads/2021/08/COVID-%E2%80%93-19-IMPACT-OF-FORCE-MAJEURE-IN-INDIAN-COMMERCIAL-CONTRACTS.pdf

It is with the aforementioned provision of the Indian Contract Act, 1872 that parties can plead impossibility of performance of contracts and consequently frustration of a contract on account of any extraordinary event, which may be beyond the control of the parties. Commercial contracts are any legally binding agreements between two or more parties, which regulate the business relationships between individual or businesses where each party has agreed to perform some act or to refrain from doing certain other act. They are mostly written contracts or documents, which may be verbal as well under certain circumstances. However, commercial contracts define specific obligations of each party involved and outline the repercussions if any of the terms and conditions are not adhered to. These contracts are essential for businesses and organizations, aiming to ensure that legal agreements facilitate the realization of the contract's full benefits. The contract outlines all the critical factors, including the terms and conditions. And a breach of such contract takes place when one party fails to meet their contractual obligations.[24]

Commercial contracts almost always include a force majeure clause, and the circumstances under which this provision can be invoked is also stated which mostly include general events of *Acts of God*. But there are also some contracts which include certain *catch- all phrase* such as *"any other cause whatsoever"* or *"beyond the control of the respective party",* and it is under such provisions that ambiguity in implementation of law arises, as to what can be considered as an acceptable situation to breach one's contractual obligations. Further, Section 56 of the Indian Contract Act, 1872 or the "*doctrine of frustration"* was laid down in India by the Supreme Court decision on the case of *Satyabrata Ghose v. Mugneeram Bangur & Co. (1954)*[25] wherein the Court established that "*if a contract explicitly or implicitly includes a provision enabling the discharge of performance in specific situations, the contract's dissolution will follow the terms outlined within the contract itself."* In such instances, the legal framework of Section 32 of the Act is applicable. However, if frustration occurs outside the boundaries of the contract, it falls under the purview of Section 56.[26]

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[24] *Ibid*

[25] 1954 SCR 310

[26] Prakriti Syngal and Pranav Kaushik, 'The Interplay Between Section 32 And Section 56 Of The Indian Contract Act, 1872,' S&A Law Offices, available at: https://www.mondaq.com/india/litigation-contracts-and-force-majeure/1307648/the-interplay-between-section-32-and-section-56-of-the-indian-contract-act-1872

The findings of the Supreme Court in the above case was further upheld and reaffirmed in the *Energy Watchdog and Ors. vs. Central Electricity Regulatory Commission and Ors.*[27] case where the supreme court emphasized on the concept of force majeure, that "*it should be interpreted narrowly and should not be extended to cover events that could have been anticipated."* It further highlighted that, for an event to be considered under the definition of an extraordinary event it must be reasonably beyond human control and must not be reasonably foreseeable. This case significantly gave more clarity on the interpretation of force majeure contracts and helped in improving the quality of regulatory decision-making process, as it demarcated the boundaries for the use of such regulatory power.[28]

One common challenge in implementing commercial contracts arises when interpreting events that fall within the scope of *catch-all clauses*. These clauses are often broadly worded, requiring the state to assess each situation on a case-to-case in order to determine what falls under their provisions. For instance, the COVID-19 pandemic is an example of such an event which led to the disruption of various commercial contracts, leading to subsequent concerns among the parties involved. It is thus crucial to distinguish whether the non-performance of a contract is a result of an "*extraordinary event"* or a deliberate act to benefit one party, specially in cases like the COVID-19 pandemic, where some parties may have deliberately invoked *force majeure* provisions to escape the execution of their contractual obligations, even in the cases where their actions might have been motivated by self-interest.

Therefore, making this distinction is essential to ensure fairness to both parties, as even if an event like COVID-19 falls under a *force majeure* clause, it's important to remember that it alone does not automatically absolve a party from their contractual obligations. The force majeure event must directly impact the non-performance of the contract, and the party seeking to rely on it should also be obliged to mitigate the impact and explore alternative means of fulfilling their obligations.

It is possible that complex issues may arise when determining this causal link between events, particularly in situations where the immediate and direct cause is not the COVID-19 pandemic itself but rather actions taken by authorities in response to it, such as lockdowns, curfews, or

[27] MANU/SC/0408/2017

[28] *Supra note* 27

restrictions on movement of people and goods. Thus depending on the language of the *force majeure* clause, such governmental actions may be considered as a separate or independent *force majeure* event that justifies non-performance of a contract.[29] Therefore, a force majeure clause, if present in the contract, should require parties to make reasonable efforts to fulfil the contract through alternative means. Even if there is no express provision, the party invoking a force majeure event to excuse non-performance must demonstrate that they were unable to meet their obligations despite taking steps to mitigate the impact of the force majeure event.[30]

V. CASE STUDY ON FORCE MAJEURE CLAUSE IN A COMMERCIAL CONTRACT WITH SPECIAL REFERENCE TO COVID-19

The impact of a force majeure event on a contract can result in various outcomes. Some commercial contracts may necessitate a high threshold of "impossibility" for contract termination, permitting one party to terminate the contract only if the obligations are fulfilled which becomes genuinely impossible. In contrast to this, other contracts may include provisions that enable parties to temporarily suspend specific obligations during the course of the situation.[31] They may also provide for suspension in cases where, although performance is technically possible, it remains impractical or commercially unfeasible.[32] The emergence of COVID-19 in 2020 for instance gave birth to a lot of debates as to whether a pandemic would be an acceptable, legitimate reason to raise a *force majeure* defence in commercial contracts. These debates relatively drew inferences from different premises that tend to focus mainly on one side of an argument without considering the other side of whether or not COVID-19 can at all be considered as a classical *force majeure* event or not.

The key components of the current debates revolve around: (a) the specific language and terms within a contract that might allow the invocation of force majeure due to COVID-19; (b) the presence or absence of a force majeure provision in the contract; (c) whether the grounds for excusing performance encompass a pandemic or related circumstances; and (d) whether the contract includes a stipulation for formal notice, and if so, whether this notice requirement has

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[29] Adarsh Saxena, Aditya Sikka & Drishti Das, FORCE MAJEURE IN THE TIMES OF COVID -19, Cyril Amarchand Mangaldas blogs, April 30,2020

[30] *Ibid*

[31] *Supra note* 17

[32] *Ibid*

been fulfilled.[33] However, there have been a lot of contrary opinions by various researchers about the matter at hand which have made its way into various articles revolving around the issue of if COVID 19, if it can be considered as a force majeure event and whether or not it can permit one party to terminate their contract under such clause. Therefore, this paper takes a different approach of understanding the implications in the enforcement of such contracts on the contracting parties.

As we know that the pandemic has been an event that could not have been predicted before its outbreak and thus it has caught various parties involved in any such contracts off guard, due to which multiple contracts specially commercial contracts dealing in shipments and trade were left in array dur to the various restrictions imposed by different countries across the globe. The World Health Organization (WHO), also declared 2019-nCoV as previously unknown to humanity until its identification in Wuhan, ChinaTherefore not only was the containment of COVID-19 beyond the control of any of the parties, but the development of a curative vaccine for the pandemic became beyond the scope of mainstream scientific knowledge.[34]

During this time, the various restrictions imposed by countries around the world on movement and trade, resulted in the nullification of numerous commercial contracts due to non-implementation. Which, in turn, gave rise to various legal issues among the contracting parties, primarily due to the fact that the definition of an "*extraordinary event*" within force majeure clauses was completely vague and unclear, as to what can be an extraordinary event under which a party can be excused from its contractual obligations, which made the implementation of the clause although more difficult as it became complicated to determine which party actually could take the support of the clause and which party just wanted to use it as a medium to escape the implementation of their obligations. Thus, the uncertainty stemming from the lack of proper legislative frameworks governing such clauses added to these debates. These debates contributed highly in determining and highlighting the necessity to enact specific laws which can prevent any similar issues from happening in the future, and the ways to achieve

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[33] Michael W. O'Donnell & Aimeé Vidaurri, *Critical issues facing essential suppliers in the COVID-19 pandemic* (April 2, 2020), available at: https://www.nortonrosefulbright.com/en/ knowledge/publications/ 049b6458/ critical-issues-facing-essential-suppliers; Brain Perrott, *Coronavirus: Can it be a Force Majeure Event*? February 2020, available at: https://www.hfw.com/Coronavirus-Can- it-be-a-Force-Majeure-event-Feb-2020.

[34] *Supra note* 11

this objective is by making certain changes to existing laws related to commercial contracts, including necessary provisions, and making essential adjustments to ensure legal clarity.

VI. RECOMMENDATIONS

Certain steps to remove the ambiguity in law and enhance the clarity in the definition of an "*extraordinary event*" within *Sections 32 and 56 of the ICA, 1872*, pertaining to force majeure clauses, and to address the absence of adequate compensation provisions based on public policy principles for potential future pandemics like COVID-19, could include:

a. Legislative Amendment: this is a necessary step which the legislatures should take considering the anomalies that arose during the COVID -19 in the implementation of force majeure clauses in commercial contracts due to the absence of a specific provision in law dealing with such events could have led to such debates being avoided. Moreover the clause dealing with such *extraordinary events* should be explicitly added to the Indian Contract Act, 1872 which should further encompass certain specific criteria's, such as un-foreseeability and the inability to control or mitigate the event's impact to broaden the definition. Such new legislations should also be based on public policy principles in order to ensure proper implementation of law.

b. Incorporate Pandemics: The amended provisions and such contracts laws should also include pandemics or any such epidemics that may arise in the future as an extra-ordinary events under the definition of a *force majeure* event, acknowledging their unique characteristics and impact, to avoid any such future ambiguities in the implementation of law.

c. Clarity in Clauses: Clear and comprehensive wording should be used while drafting of force majeure clauses in contracts, specifying the types of events that trigger them, their consequences, and any compensation provisions in case of such events. Such laws should also provide comprehensive penalties and regulation provisions for proper implementation of the law, in order to avoid cases as that of the COVID -19, which led to various inadequate decisions by the court of law due to the ambiguity in law.

d. Public Policy Principles: The framework for compensation provisions for the parties pleading under force majeure clauses, should be based and further developed on *public policy principles*, which can be invoked even in the absence of a clear force majeure

clause. This framework should address situations like pandemics and provide guidelines for equitable compensation to the parties.

e. Dispute Resolution Mechanism: Certain dispute resolution mechanism should be established that addresses issues arising from such force majeure events or contract infringement cases, as this measure can help the parties in out of court settlements and speedy trials, preventing the parties from the hassle of going to the courts and would further help them reach a common consensus on such contractual issues.

VII. CONCLUSION

The interplay between public policy, force majeure clauses, and their interpretation in commercial contracts forms a complex and vital component of contract law, gaining particular relevance in the context of extraordinary events like the COVID-19 pandemic. Interpreting these clauses can pose challenges, with variations based on contractual language and laws, leading to disputes and ambiguities. In India, Sections 32 and 56 of the Indian Contract Act, 1872, primarily govern the legal framework for force majeure, addressing situations where a contract becomes impossible to perform due to unforeseen events and offering a basis for pleading the impossibility of performance. Nevertheless, these provisions are not exhaustive, leaving room for interpretation and application.

A prominent challenge in the domain of force majeure is posed by catch-all phrases such as *"any other cause beyond the control of the respective party,"* which are often included in contracts. These broadly worded clauses require individual assessment on a case-by-case basis, contributing to the ambiguity surrounding what qualifies as a legitimate reason for breaching contractual obligations. The COVID-19 pandemic has notably intensified these debates, with parties grappling over the applicability of force majeure and the extent of its coverage.

To address the prevailing challenges and uncertainties in force majeure, particularly in the context of extraordinary events like pandemics, several recommendations have been proposed. A legislative amendment to the Indian Contract Act 1872, is suggested to provide explicit definitions of "extraordinary events" within the context of force majeure, encompassing specific criteria such as un-foreseeability and the inability to control or mitigate the event's impact. These amended provisions should also explicitly include pandemics and future epidemics as extraordinary events, acknowledging their unique characteristics and impact. Clarity in contractual clauses is another crucial aspect, emphasizing the use of clear and

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comprehensive language in force majeure provisions that specify the types of events triggering them, their consequences, and compensation provisions. Moreover, a framework based on public policy principles for compensation provisions should be developed, even to be invoked in the absence of a clear force majeure clause.

In essence, the legal landscape involving public policy, force majeure clauses, and their interpretation within commercial contracts is a dynamic and evolving arena. The experiences and lessons drawn from the COVID-19 pandemic underscore the necessity for legal clarity and preparedness to tackle unforeseen challenges, thus ensuring a harmonious balance between contractual freedoms and the values of society. These recommendations aim to contribute to a more robust and equitable legal framework, alleviating ambiguities seen in previous cases and improving the quality of regulatory decision-making, all while upholding the paramount principles of fairness and justice.

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LEGISLATIVE COMMENT

The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023: A Legal Appraisal

Rakesh Kumar Maurya[*]

In the last decade, the manifold growth of gig economy has changed the traditional employer-employee relationship and working conditions in the labour market in India. Most of the gig workers work independently at their workplace on the same terms and conditions as permanent employees, but they don't get all the benefits of social security as provided to latter. There are few schemes relating to social security as framed by the Central Government are mostly applicable to general workers, and inadequately to the gig workers. As per NITI Aayog report, 77 lakh workers were engaged as gig workers which may increase up to 2.35 crore in 2029-30.[1] Half of the population (around 47%) of gig workers are engaged in medium skilled work, nearly 22% gig workers are engaged in high skills and approximate 31% gig workers are engaged in low skilled jobs.[2] In India, the Rajasthan Government for the first time, enacted a separate legislation as *'The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023'*[3] (hereinafter referred as the RPBGW Act) relating to Platform Based Gig Workers (PBGW) on 24 July, 2023 which received assent of the Governor on 12 September, 2023.

The preamble of this Act provides its objective as 'to constitute a PBGW Welfare Board; to establish a PBGW Welfare Fund; register the PBGW and aggregators in the State; and to provide the guarantee of social security to PBGW.' Accordingly, it establishes PBGW Welfare Board, PBGW Welfare Fund and Welfare Fee ensures the registration PBGW and aggregators under this Act. It includes the provisions relating to the rights of PBGW, grievance, appeal, interest, penalties, recovery of welfare fee, account and audit. It provides tracking and monitoring through a digital platform of all transactions done by aggregators and PBGW, small

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[1] India's Booming Gig and Platform Economy Perspectives and Recommendations on the Future of Work, Policy Brief, June 2022; *available* at: https://www.niti.gov.in/sites/default/files/2022-06/Policy_Brief_India%27s_Booming_and_Platform_Economy_27062022.pdf (last access on 10 April 2024)

[2] *Ibid*

[3] The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 [The RPBGW Act]

or big ones. This applies to aggregators operating in Rajasthan and any service or work being carried out by a person who falls under the definition of PBGW.

The RPBGW Act defines many terms which are mostly used in gig economy. Such as, 'Gig Worker' means 'a person who works outside the purview of traditional employer-employee relationship and earn on the basis of contract laying down the rate of payment.'[4] 'Aggregator' means 'one which connects the buyers of goods and services to seller of goods and services and also manage one or more coordinators who providing services.'[5] Besides, 'Platform' means 'arrangement of work of online transaction between the persons giving the goods and services and the person receiving the goods and services.'[6] However, RPBGW Act doesn't define the 'social security' as provided in the Code of Social Security (CSS), 2020. Overall, this Act has certain important features related to legal protection to gig workers and institutional mechanisms to support their welfare in the State of Rajasthan. The essential features are outlined herein as below:

Constitution of Platform Based Gig Workers Welfare Board: The State Government has to constitute a board, make provisions regarding meeting of the board, its powers, duties and functions, appoint officers and employees with salary and allowance. The State Government has to constitute a board known as 'Rajasthan PBGW Welfare Board'[7] which will consist of the Labour Minister as a chairperson, Secretary of the Labour Department as a convener and Secretaries of the IT Department, Social Justice and Empowerment, Department of Transport and Department of Finance as members. Besides, the State Government has to nominate two members from PBGW, two members from aggregators, two members, one from civil society and one from other field interested. The nominated members of the Board will hold their post as a member for three years. In this constitution of the Board, there should be at least two representatives from 'Union of Gig Workers'. In this context, it may be observed that such Board cannot work independently from the Government because of chairperson and convener of Board are part of Government.

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[4] *Ibid*, Sec. 2

[5] *Id.*

[6] *Id.*

[7] *Id*, Sec. 3

The Board will meet for transaction of business according to the rules laid down at such time and place as decided, but at least once in six months. All decisions will be taken by majority of members present and voting. In case of equality of votes, chairperson or presiding person will cast vote.[8] The quorum for meeting of the Board will be fifty percent. The power, duties and functions of Board are manifold and include, to: ensure registration of PBGW, aggregator; connect welfare fee deduction with functioning of aggregator's application; establish the system of deduction of fee; establish monitoring system for the welfare fee deducted duly from aggregators, monitoring the scheme for social security of registered PBGW and give policy suggestions,; ensure that the PBGW get benefits of social security; protect the rights of PBGW and time resolving the disputes; engage with Union working for the rights of PBGW and talk to them about the welfare of PBGW; establish a committee for formulation, review and implementation of schemes.

Registration of PBGW and Aggregators: All the aggregators will provide data to the State Government and all the PBGW registered on the different platform will automatically register with the State Government. The State Government will prepare a database that include the employment details with different aggregators. It does not matter how short period they engaged with aggregators. Any PBGW connected with different aggregators will be given them unique ID working in the State. Similarly, the State Government will prepare a register of aggregators working in the State by the officer appointed in this behalf by the State Government. The list of aggregators will be available on the portal. All PBGW will have the right to get them registered and then, a unique ID will be given to each of them. This will enable them to access the social security schemes based on contributions, along with opportunity to hear grievances and participate as a representative of PBGW in the Board.

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PBGW Fund and Welfare Fee: The RPBGW Act provides the constitution of fund[9], welfare fee[10] and 'account and audit'[11] in chapter IV. The State Government will constitute a fund known as 'RPBGW Social Security and Welfare Fund' for the welfare of PBGW and money

[8] *Id,* Sec. 4

[9] *Id,* Sec. 10

[10] *Id,* Sec. 11

[11] *Id,* Sec. 12

will be credited into the fund from welfare fee received under section 11, along with grants received from State Government and all other sources which applicable. The State Government will decide at what rate of percent the amount of welfare fee deducted from aggregators for each transaction related to PBGW and also in what manner the fee will be collected. The State Government will prepare annual statement of accounts and balance sheet and the accounts of the fund will audit by the Accountant General of State and forward the audit report to the State Government.

Grievances, Appeals and Recovery of Welfare Fee: The State Government will appoint a Grievance Redressal Officer (GRO) under this Act. Any PBGW aggrieved under this Act may file petition in regarding entitlements, payments and other benefits to GRO or file on portal their complaint. The GRO pass order of redressal after hearing parties. Any aggrieved person from appeal may file within ninety days. If any aggregator does not pay the welfare fee, it will be recovered as arrear of land revenue. If any aggregator fails to pay welfare fee, they will liable to pay simple interest at the rate of twelve percent per annum[12] on the money from the date it became due till the amount is paid. If any aggregator fails comply any provisions of this Act or contravenes it, the State Government may impose a fine up to five lakhs for first time and subsequent contravention up to fifty lakhs. If fine is not paid can recovered as Rajasthan Land Revenue Act, 1956. Further, all the transaction made by aggregator will be connected with the CTIMS (Central Transaction Information and Management System) which would be monitored by the Board and activities managed by the State Government. Each payment made to the PBGW and deduction of welfare fee will be recorded on CTIMS. Any money spent by the State Government on welfare activities of PBGW that should be available on the CTIMS. The Board will prepare report of its activities in a year and submit it to the State Government.[13] If there is any other law, provision of this Act will supplement that law, not in derogation. No suit, proceeding or other legal actions would lie, who acted in good faith. The State Government will have also power to make rules.

In sum, this is the very first legislation for PBGW by a State which is significant in many aspects. It provides some legal and institutional mechanism to protect the rights and benefits of the PBGW. The constitution of PBGW Board, social security and welfare fund, welfare fee,

[12] *Id,* Sec. 16

[13] *Id,* Sec. 19

audit by State accountant are good features of this Act. But at same time, there are many shortcomings in this Act as well. *Firstly,* the Board have only two representatives from PBGW which is very less. *Secondly,* the Board is not independent from Govt. officials majoritarian. *Thirdly,* the fine imposed on any aggregators will be decided by the State Government officials. The amount of fine imposed on any aggregators should be decided by the Board. *Fourthly,* the cost of audit should not be paid from PBGW Social Security and Welfare Fee. *Fifthly,* the social security to PBGW depend upon the frame of scheme but why the legislator does not make for social security provisions in the Act. Despite these all shortcomings, it is important that there is separate legislation for Gig workers, provisions for welfare fund and welfare fee which contributed by aggregators and the Government, but utilized for Platform based gig workers. Taking motivation from the State of Rajasthan, the other State Governments are also in process of making legislation for gig workers in their own States.

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BOOK REVIEW

Justice R.V. Raveendran, "*Anomalies in Law and Justice",* Eastern Book Company, Lucknow, 2024, Pp. 500, Hardcover: Rs. 1245/-

*Reviewed By Atul Yadav**[1]

In a rapidly globalising world, the concepts of law and justice have become more crucial than ever. They form the bedrock of democratic societies ensuring that individuals and institutions are held accountable, rights are protected, and social order is maintained. The interconnectivity brought about by globalisation ensures that legal systems and judicial practices are no longer insular; they must adapt to international norms, treaties, and human rights standards. In this context, "Anomalies in Law and Justice" by R.V. Raveendran is a seminal work that addresses critical gaps and inconsistencies in the Indian legal system and its judicial process. The book is significant for readers who seek to understand the intricate problems that hinder the administration of justice in India. The book in hand keeps itself apart from other works on the same topic, in terms of its authoritative voice and the practical insights it offers. Unlike theoretical treatises, this book draws from real-life cases and the author's firsthand experiences within the judiciary. Justice Raveendran's candid analysis and the specific examples he provides offer a depth of understanding that is both compelling and instructive. The book does not just identify problems, but also suggests actionable reforms, making it a crucial resource for anyone involved in the legal system.

The book is structured in a clear and logical manner, spanning approximately 500 pages and divided into two parts, each containing five chapters. Each chapter delves into specific aspects of the legal and judicial system, providing a comprehensive overview and detailed analysis. The introduction sets the stage by outlining the importance of addressing anomalies in the legal system and the author's motivations for writing the book. The next chapter deals with challenges to the justice delivery system in India and also offers some practical solutions like promoting ADR mechanisms and highlighting the collaborative role of state, judiciary, the bar and common people in this regard. The third chapter deals with corruption at various levels in judicial organs and how to contain it using multifaceted approaches and strategies including using existing and emerging technologies. It underscores how corruption acts as a barrier to

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accessing justice, especially for marginalised and disadvantaged groups as well as its far reaching negative impact on public trust. The fourth chapter deals with parliamentary democracy and electoral reforms and how they both can be strengthened in India using innovative mechanisms like recall of elected representatives, compulsory voting, prescribing minimum qualification for candidates, education and awareness campaigns, prohibiting candidates with serious criminal history and convictions, etc. The fifth and final chapter of the first part of the book contains some musings on desirable characteristics in leaders and public representatives and how to cultivate them.

The second part of the book is specifically dedicated to judges and lawyers. Chapter one is based on how to become a good judge and contains valuable insights and ethical guidance for new judges. Chapter two contains valuable insights on reasoned decision making, statutory interpretation and judgement writing. Third chapter of this part discusses the strengths and weaknesses of the precedent system and how it can be effectively utilised in justice dispensation. The fourth chapter is dedicated to alternative dispute resolution mechanisms such as mediation and conciliation. The last and final chapter deals with certain issues pertaining to arbitration in India and offers some solutions in the form of MED-ARB or mediation-arbitration.

Strengths of the book include author's authoritative insight, practical examples, comprehensive coverage, and actionable recommendations. The author's extensive judicial experience as a Supreme Court Judge provides deep, credible insights. Real-life case studies and examples make the analysis relatable and concrete. The book covers a wide range of issues, providing a holistic view of the anomalies in the legal system. Most importantly, the author offers specific, practical suggestions for reforms. Some weaknesses include the dense legal jargon and most focus only on judicial perspective and little on intersectional or multidisciplinary approach. The use of legal terminology may be challenging for readers without a legal background. While rich in judicial insight, the book could benefit from incorporating more viewpoints from other stakeholders such as public servants, law enforcement agencies, policymakers, and civil society.

Notwithstanding, this book is an invaluable resource that provides a wealth of information and critical analysis beneficial for further academic research and study on issues concerning law and justice. Detailed case studies and real-life examples serve as valuable case studies for legal

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education and research. It also has a great prospect for legal professionals including advocates, judges, and policymakers. Judges and advocates can gain insights into the systemic issues that need addressing for more effective justice delivery. Policymakers can use the book's recommendations to formulate policies that address legal and judicial anomalies. Legal practitioners can enhance their understanding of the systemic issues and contribute to reform efforts.

Overall, this is a significant contribution to the discourse on legal reforms in India. The book's detailed analysis, practical insights, and actionable recommendations make it an essential read for anyone involved in the legal system. The author, with his extensive experience as a Supreme Court Judge of India, brings a unique perspective to the discussion, making this book essential reading for legal scholars, practitioners, and policymakers. While it has its challenges, particularly for non-legal readers, its overall utility in driving meaningful reforms and improving the administration of justice is undeniable. This book is not only a critique but a roadmap for creating a more effective and equitable legal system in India.

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Shweta Vishwanathan, *Simply, Legal! Torts,* Eastern Book Company, Lucknow, 2021, Hardcover, Pages-188, Rs.245/-

Reviewed By Supriya[*]

Studying torts is like trying to find the keys to social harmony and justice especially when it comes to carelessness and damages. It is a voyage through the complex network of interpersonal relationships, where each move has an impact. Comprehending tort law enables people to effectively negotiate the intricate web of rights, obligations, and responsibilities that affect customers, professionals, and citizens alike. In contemporary times, the relevance of torts blazes like a blockbuster epic, casting a spotlight on the intricate dance between rights and responsibilities in our interconnected society. With this context adding to her own part of contribution in this Torts law Jurisprudence, Ms. Shweta Vishwanathan, a renowned Assistant Director, Sports Authority of India has made remarkable and timely publication of a book titled as *"Simply, Legal! Torts (2021)."*

The book at hand finds a special place alongside works that have already been published as Medha Kolhatkar's, '*Torts and Consumer Protection Act, 2019'* in 2022, Dr. S.R. Myneni's *Law of Torts & Consumer Protection* in 2020 and John Cooke's *Law of Tort* in 2019. It differs from other tort law literatures to explain the concepts, features, and intricacies of the core field of law in a clear, readable, and analytical way that is helpful for interpreting. The book is divided into seventeen chapters that cover a variety of topics including what constitutes a tort, legal damages and remedies that may be obtained under it, vicarious liability, trespassing, the idea of negligence, strict and absolute liability, and how torts relate to other laws before concluding.

The first question posed in the book is, "What exactly is torts?" This is answered succinctly with a picture of a girl named Ritu slapping a bystander, signifying damage to that person's reputation. The first chapter begins by outlining the importance of "reasonable care" and outlining the key components of a "tort." The second chapter includes visual representations of legal maxims such *Injuria Sine Damno and Damno Sine Injuria*, which are based on well-known cases like *Ashby v. White (1703)* and *Gloucester Grammar School, In re, (1410).* Afterwards third chapter discusses tort remedies, namely damages and injunctions, with the legal maxim "*Ubi Jus Ibi Remedium*" and different categories of damages for different wrongs.

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In the fourth chapter, the topic of general defences was covered. A humorous cricket match between Australia and India was used to illustrate the idea of "*volenti non fit injuria*" when a cricket ball struck a bystander.

Chapter Five focuses on the idea of vicarious liability in accordance with the maxim *Qui Facit Per Alium Facit Per Se*. It does this by clarifying the relationships between partners in a partnership firm, as well as those between a principal and an agent. In Chapter six, the topic of defamation is covered in general. It includes an explanation of the varieties of defamation, such as libel and slander, as well as the various defences that are asserted against it, including truth or justification and fair remark. The topic of fraud and negligent misstatements is covered in Chapter Seven, along with an explanation of new terminology like *tort of deceit, tort of malicious falsehood* and tort of passing off along with its exceptions. Besides, Chapter Eight breaks out the various forms of trespassing into three sections. The tort of trespassing on someone else's property and trespassing on land and its remedies including the right of re-entry, mesne profits, eviction action, etc. It is made clearer in the following Chapter nine (Malicious Prosecution) that a tort combines civil and criminal law. Explaining its five key components using the case of Mr. Hari who reports his servant for breaking and entering his store.

In this context, Chapter Ten addresses Nuisance, explaining to the public what constitutes a nuisance as well as its forms and components with the aid of seminal instances like *Christie v. Davey* (1893). The Tort of Negligence is covered in Chapter Eleven, with the well-known case of *Donogue v. Steveson* (1932) serving as an example and holding the manufacturer accountable for its negligence. It outlines the two categories of negligence (composite and contributory), the Bolam Test, and theories of alternative danger. Chapter twelve, which further discusses remoteness of damage and explains the *Novus Actus Interveniens* using the historic Wagon Mound case to illustrate the requirement of reasonable foresight! In-depth discussions of occupiers of dangerous premises and cattle trespass are covered in Chapter thirteen, which addresses the idea of keeper liability for goods, animals, and dangerous premises. The topic of Strict and Absolute Liability is covered in Chapter fourteen with *Rylands v. Fletcher (1868)* case.

In Chapter fifteen, "Death and Torts," the author raises an important query: "What happens if a tort is committed and the plaintiff or defendant passes away?" She explains how a personal right of action expires with the person based on the common law doctrine of *Actio Personalis*

Moritur Cum Persona! In order to make the laws of contracts and the Indian Penal Code easier to read, this Chapter Sixteen, on Tort Law, has a side-by-side combination of other laws. The book concludes with the last chapter seventeen with a section that explores the significance of tort law in holding people accountable for their civil actions. In addition, it provides some insight into other relevant laws like the Motor Vehicles Act of 1988 and the Consumer Protection Act of 1986.

The book is superbly written and beautifully laid out to explain the ideas and features of this foundational area of tort law. But the book's structure varies from chapter to chapter in terms of material and scope. Compared to chapters four and eleven, chapters three and twelve contain far less pages. In comparison to the quantity of noteworthy cases, the book placed greater attention on the theoretical portion. Unlike other books, it is written more in the form of speeches. In addition, compared to the previous volumes, the content is shorter and covers fewer themes. This book does not address all the emerging decisions and notions. Nevertheless, this book offers thorough and understandable views on several crucial areas of tort law through case laws from various jurisdictions explained in the context of India, as well as statutory legislation and norms. Every chapter concludes with a summary recap, which facilitates speedier revision. One of the best things about this book is the visual portrayal of the ideas along with a few instances. It is easy to understand for those who are not formally initiated into the legal profession, as well as for those who are novices in the field and possibly even for seasoned attorneys.

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