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I extend my warmest greetings and sincere appreciation to Maharishi Law School for coming up with the idea of this Law Journal. I am assured of the fact that, through this initiative, a wide range of knowledge sharing will be promoted. This Journal is of significant importance, and I commend the team for their efforts in bringing it to fruition.

In today's transcending world, the function of education has changed from teaching to learning which casts a mutual responsibility upon the institution as well as students and researchers to make education a canon loaded with power and progress.

The Maharishi Law School offers a conducive environment for the development of not only efficient lawyer but also cosmopolitan individuals dedicated advancing universal jurisprudence. The institution foster close interactions among students, scholars and thinkers from around the world. I invite more scholars to share their knowledge and wisdom in this journal, and express heartfelt gratitude to those who have generously contributed.

Wishing the best for the future.

Ajay Prakash Shrivastava

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FROM THE DESK OF VICE CHANCELLOR



Prof. (Dr.) Bhanu Pratap Singh

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Maharishi University of Information Technology

“Do not fight the darkness, let the light in and the darkness will disappear”, as per the teachings of Maharishi Mahesh Yogi Ji, we should bring in the light rather than fight the darkness. Bringing in another element always help overcome the challenges and thus this Journal is an excellent medium for working on solutions and bringing in the light of awareness.

It is a matter of great prestige and honour that Maharishi Law School has come up with the initiative of its own Law Journal which encompasses a plethora of research and knowledge. Imparting fruitful education has always been the motto of our school and a step towards this direction is evidence of sincerity in our mission.

I believe in three methods as suggested by (Confucius), we may learn wisdom first, by reflection, which is noblest, second by imitation which is easiest; and third by experience, which is the bitterest. The legal education scenario globally has witnessed a significant change in approach and remarkable growth. In an increasingly interconnected world, our university prepares students and scholars to navigate the complexities of global legal systems. This Journal will provide an enriching experience to researchers as well as budding lawyers to bring in their ideas and suggestions onto paper. I am extremely enthralled to look into its further volumes with more vigour and enthusiasm.

Prof. (Dr.) Bhanu Pratap Singh

Vice-Chancellor

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FROM THE DESK OF DIRECTOR GENERAL



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National Awardee for Excellence in Education and Training, Rajarishi, Manav Ratna, Kavi Shiromani, Adhyatma Martand, Sarswati Samman, Best Higher Education Professional Edu Tech Award, Distinguished Member of International Council of JURISTS, Distinguished Guest Speaker Malviya Mission

Indeed So gratifying to write the message for the fourth issue of our LAW SCHOOL annual Journal LAW and SOCIETY having scammed the thematic focus of diversified papers. Great job done by the editor Prof KB ASTHANA and his member Asst. Prof Dr. Deependra Pathak !

Yet other features are the inclusiveness with reference to the topics and authors. The inclusiveness is marked in selection of themes and status of authors. Topics relate to children; family and different segments of SOCIETY with reference to applicable LAWS in justifiably exemplifying the title of the Maharishi JOURNAL of LAW and SOCIETY and status of the authors ranges from students to Asst Professors; Associate Professors and Professors. Such a feature of INCLUSIVENESS is generally missing in such peer review journal. KEEP IT UP is my salutation to the editorial team!

Intellectual stimulation is yet another feature as I discovered while scanning the text of papers as are being published. Those who happen to peruse the texts inside this volume will find the text equally stimulating. The editorial team will surely await the due feedback from the scholars who will receive the copy of the journal!

Wishing exciting and enjoyable reading
Dear All !

O P Sharma

FROM THE DESK OF DEAN ACADEMICS



Dr. Trapy Agarwal

Dean Academics

Maharishi University of Information Technology, Noida

Dear Readers

It is with delight that I extend my heartfelt congratulations to Maharishi Law School for its very first edition of Law Journal. The pursuit of knowledge has evolved into a dynamic, ongoing endeavour, compelling individuals across spectrum, from budding students to seasoned educators and researchers, to engage in a perpetual journey of skill enhancement and knowledge enrichment. I am thrilled to see how this Journal will bring in various scholarly inputs across the arena.

Anticipating the diverse array of submissions from young, enlightened scholars, who are poised to shape the future landscape of legal domain, I see immense enrichment and worthiness. I extend my utmost well-wishes and urge everyone to embrace the spirit of inquiry and scholarly pursuits.

I am hopeful of witnessing triumphant editions of this Journal in future. I believe that this Journal will serve as an invaluable platform for both students as well as scholars to showcase their visions and aspirations. With unwavering optimism, I wish the entire team behind the curtain a resounding and unequivocal success.

Dr. Trapy Agarwal

Dean Academics, Noida Campus

FROM THE DESK OF EDITOR



Prof. (Dr.) K. B. Asthana

Dean, Maharishi Law School
Editor, Maharishi Journal of Law & Society

Dear readers,

It is my great pleasure to welcome you to the Maharishi Journal of Law & Society. As the Editor, I am thrilled to present the latest research, analysis, and commentary on issues related to law and society from distinguished scholars and experts in the field.

Our rigorous peer-review process ensures that the scholarship we publish is of the highest quality and relevance to our readership. We also encourage submissions from scholars and practitioners at all stages of their career, and from a wide range of disciplines, to foster a multidisciplinary and inclusive approach to legal scholarship.

The Maharishi Mahesh Yogi National Law Festival, held at the Noida Campus, epitomized a celebration of legal scholarship, innovation, and camaraderie. Bringing together law students, scholars, and practitioners from across the nation, the festival served as a platform for intellectual exchange and exploration of contemporary legal issues. Attendees engaged in moot court competitions, Judgment Writing, Legislative Drafting and Client Counseling for showcasing their talents and honing their advocacy skills.

As Editor, I am committed to maintaining the highest standards of editorial integrity and professionalism. I believe that our journal has a vital role to play in shaping the future of legal scholarship, and I am excited to be a part of this dynamic community of scholars, readers, and contributors. I must thank to the contributors, research scholars, professors, advocates, management, advisory board and editorial board for their valuable contribution and support.

Prof. (Dr.) KB Asthana

Dean, Maharishi Law School

Editor, Maharishi Journal of Law & Society

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HUMAN RIGHTS AND CHALLENGES IN PRISONS

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Abstract

In modern society, defending human rights comes with many difficulties. Human rights are commonly considered to be a collection of fundamental freedoms that people from different parts of the world have decided to be necessary. These include the freedom from torture and other harsh or inhumane treatment, the right to life, the right to a fair trial, the freedom of speech, the freedom of religion, and the right to health, education, and a living standard that is adequate, the challenges of Inequality. The exercise of one's human rights is subject to others upholding those rights. For instance, when exercising one's right to free speech, one should do so without violating another's right to privacy. The major objective of the study is to deal with Constitutional Governance and Prison Reforms. The legal system's efficacy depends upon the functional competency of its procedural law. This research paper will provide all the essentials of plea-bargaining and prison reforms. Prison reforms include international human rights norms, judiciary, and the changes, the problem of overcrowding and sanitation, and health and human rights. The information used for this study's qualitative paper is from a number of books, papers, and related documents about human rights. According to R.C.Lahoti, "Procedural law cannot betray the substantive law by submitting to the subordination of complexity".¹

Keywords: Human Rights, Constitutional Governance, Prison Reforms, Plea-bargaining, International human rights norms.

¹ Dhannalal v. Kalawatibai, (2002) 6 SCC 16 at p.28 AIR 2002 SC 2575 at 2579.

1. Introduction

Human rights are now a prominent topic in global politics and academic research on international relations. Remedial laws support to substantive rights.² According to V.R.Krishna Iyer,J. procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice since the court is meant to do justice.³ Legal systems have been experimenting with improving the justice delivery system to make it more timely and efficient from the beginnings of civilization to the present day. The incorporation of Article 39-A into Part IV of the constitution to advance equal justice for everyone is a surface step.⁴ As a characteristic of the justice delivery system, the rights of the accused, victims, and parties to a civil lawsuit are now being well organized. The Plea-bargaining system was introduced in Cr.P.C. Prison reform is also a goal that is being attempted. The effort would become successful only if the remedial institutions, mechanisms, and procedures evolved by the legal system also vigorously support the benevolent aim, thus, the legal procedure can hardly afford to be an empty formality.⁵ The human rights approach in the criminal justice system has made a substantial contribution to social change. Accused persons are entitled to a number of different rights that generally fall within the parameters of justice, fairness, and reasonable legal procedure, which were highlighted in the Maneka Gandhi case. These rights apply from the initial stage of arrest to the final stage of acquittal or release after punishment.

2. Prison Reforms

Imprisonment is the situation of serious incarceration of human rights undertaken for the protection of larger social interests and the human rights of others. The Indian Constitution's List II, Schedule VII lists prisons and their management as State Subjects. Prison facilities are divided into numerous levels, including central jails, district jails, sub-jails, women's jails, borstal schools, open jails, and special jails. The jail population has dramatically expanded over the past few decades, posing problems with security, health and hygiene, overcrowding, and other factors. To keep the person in imprisonment is the corrective method so that in the future the

² *Ubi jus ubi remedium* (where there is right , there is a remedy)

³ State of Punjab v. Shamlal Murari (1976)1 SCC719: AIR 1976 SC 1177

⁴ Article 39-A, "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 by reason of economic or other disabilities.

⁵ Justice S.B.Sinha, " Access to Justice and Judicial Reforms"(2006)1 Journal of Law and Social Policy 1at p.8.

person will not commit any kind of crime. Jails were designed according to the male prisoner but the woman also started to commit the crime so there is a need for a special type of jail but insist of that special cell they are kept in the same infrastructure which was designed for the male prisoner. As Compared to the male prisoner, women are more sensitive and they need the distinct type of facilities that they deserved to be as a woman and which fall in the basic right it is the duty of the concerned department and the authorities to implement these rights and nobody is allowed to curtail these rights. Due to their vulnerability and economic disadvantage, women are more likely than men to be held pending trial because they cannot afford bail or legal representation. The mostly women the prisoner are charged with petty offenses and they did not commit any serious offense which would affect society at large compared to the male prisoner they are not able to avail their legal assistance and the result is that they continue in the prison and live their lives in the vulnerable conditions. The prison reform committee, of 1836 reported the unsanitary conditions of the jail, the lack of medical facilities, and there was no separate compartment for women prisoners. The prison inquiry committee suggested appointing a civil surgeon for the prisoners. The Prisoner Act of 1870 advised the composition of the jail staff. In the year 1892, An All India Committee was constituted on prison reforms. The main objective was to maintain discipline and security within the prison. The report of the Indian jail committee (1919-1920) advised the reform of prisoners through education, socialization, humane treatment, and vocational training.⁶ In *Rudal Sah v. State of Bihar* the unlawful detention of 14 years even after trial court's order acquittal. In *T.V.Vatheeswaran v. State of Tamil Nadu*,⁷ it was held that Article 14,19,21 of the Indian Constitution is also available to the prisoners and the prisoner's wall should not be kept out of fundamental rights. Article 14 discusses equality before the law and equal protection of the law. It contemplates that like should be treated alike and also discuss reasonable classifications. Article 19 of the Indian Constitution guarantees six freedom to all citizens, but Article 19 (1)(g) i.e., to practice any profession to carry on any trade, occupation, or business, is not available to the prisoners. Article 21 of the constitution says that "no person shall be deprived of his life or personal liberty except according to procedure established by law." There are few rights which is provided by Article 21 , they are right to free legal aid (legal aid was included by 42nd Amendment Act, 1975 as one of the directive principle of state policy under

⁶ See, for discussion, M.J. Sethna, *Society and Criminal* (2nd Edn. Kitab Mahal Bombay 1964) at pp. 294-95.

⁷ 1983 (2) SCC 68.

Article 39-A of the Indian constitution), right to speedy trial, right against cruel and unusual punishment(in *Kishore Singh v. State of Rajasthan*,⁸ it was held that the use of third-degree torture by police is the violation of Article 21 .) right of fair trial and right to live with human dignity.

The post-independence era witnessed the formation of model jail rules, enhanced vocational training, the scope of jail visits, periodic supervision, and the introduction of a wage system. The basic object was to change the culture i.e., cruelty to humanism. Justice A.N. Mulla headed the All India Committee of jail reform.

3. Plea bargaining

The objective is to bring reform in procedural law, for bringing truth and justice in individual cases. Delay resulting in a denial of justice is a serious infirmity of the judicial system. In *Hussainara Khatoon v. State of Bihar*,⁹ it was observed, “it is a sad reflection on the legal and judicial system that the trial of an accused should not even commence of the trial is bad enough: how much worse it could be when the delay is as long as 3 or 5 or 7 or even 10 years. Speedy trial is the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes a denial of justice.”

According to Black Law Dictionary, Plea bargaining is a process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant pleading guilty to the lesser offense.¹⁰ Justice A.K. Sikri in one of his articles emphasizes the importance of negotiating process that would bring all the competing factors for consideration including the knowledge about lesser included offenses and a reasonable understanding of sentencing guidelines so that the outcome would be roughly as fair as the trial outcomes.¹¹ In a general sense, Plea bargaining allows the parties to agree on the outcome and settle the pending cases.

⁸ AIR 1981 SC 62.

⁹ (1980) 1SCC93:1980 SCC (Cri) 35:AIR1979 SC 1360.

¹⁰ Bryan A. Garner and Henry Campbell, *Black's law Dictionary*(6th Edn., West Publishing Co.,New York1990)at p.1173.

¹¹ Justice A.K.Sikri, “Reforming Criminal Justice System: Can Plea-Bargaining Be The Answer?” (2007) *Nyaya Deep* 39.

Following are the advantages of Plea bargaining-

- It avoids the uncertainty of criminal trial.
- It minimizes the risk of undesirable results for either side.¹²
- It enables speedy disposal of cases.
- It reduces the load of the cases.
- It avoids the inconvenience of engaging lawyers, and spending money.
- It protects the reputation against unnecessary publicity.¹³

There are a few disadvantages also-

- That the Plea bargaining System puts strong pressure on defendants to plead guilty to crimes that they know they did not commit.
- That it depends on the bargaining by negotiating.
- That it emboldens the prosecutor to overcharge.
- That the constitutional right conferred on self-incrimination, right to know about the evidence, and right to cross-examination of the witness would be disturbed.

The statutory scheme is based on Law Commission Report. The Parliament enacted the scheme of Plea bargaining and incorporated it in Chapter XXI-A Section 265-A to 265-L of the criminal procedure code. It was amended and came into effect on 5th July 2006. Plea-bargaining is not applicable to offenses for which the punishment of death or imprisonment for life or imprisonment for a term exceeding 7 years has been provided. It is also not applicable to socio-economic cases or any offenses committed against a woman or a child below the age of 14 years. Following are the offenses that the Government has listed in the statute, which are- dowry, indecent representation of women, sati, domestic violence, and SC/ST protection against atrocities.

The procedure begins with the filing of an application before the magistrate. It contains a brief description of the cases. The court shall examine the accused before the camera. It is the duty of the court to ensure that the entire process is completed voluntarily. The court shall award compensation to the victim. Here the judgment is final and no appeal lies. The statement of the accused is not to be used in other cases.

¹² 142nd Law Commission Report,1991.

¹³ Justice A.K. Sikri ,op. cit.,at p.48.

4. Human Rights and Modification

The Constitution of India protects the right of human beings to live with dignity. These rights are available to prisoners also. The reason behind this idea is that every human life is precious and irrespective of their circumstances, they should be treated with dignity.

According to Article 10 (1) of the ICCPR 1996¹⁴, "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the person." Separating juveniles from adults and those who have been convicted of crimes is also being considered. As per rule 58 of the UN Standard Minimum Rules for the treatment of prisoners and Related Recommendation, 1955 "the purpose and justification of a sentence of imprisonment or similar measure derivative liberty are to ultimately to protect society against crimes." The rule is to provide accommodation, personal hygiene, proper clothing, bedding, medical service, and contact with the outside world, religion, and books.

U.N. General Assembly (1975) protect all person from torture and other cruel, inhumane treatment. Article 8 proves the right to complain in case any person alleges that he/she has been subjected to torture or other cruel, inhumane treatment by public officials. Article 1 provides for an impartial investigation even if there is no formal complaint for torture. The definition of torture is given in The Convention Against Torture and other Cruel Inhuman and Degrading Treatment or Punishment, 1984. The definition of torture is to inflict physical or mental giving pain or suffering. All the torture shall be treated as a criminal act. The judicial approach to prisoners' rights is also part of human rights activism.

In *Sunil Batra v. Delhi Admn.*,¹⁵ Justice Iyer observed, "conviction for a crime does not reduce the person into a non-person whose rights are subject to the whim of the prison administration and, therefore, the imposition of any major punishment within the prison system is conditional upon the observance of procedural safeguard." The traditional view that prisoners do not have rights was rejected.

In *State of Maharastra v. Prabhakar Pandurant Sanzgiri*,¹⁶ it was held that the prisoner had the right of reading and writing books while in jail available to them,

¹⁴ International Covenant on Civil and political Rights.

¹⁵ (1978)4SCC494:1979:1979SCC(Cri)155, V.R.Krishna,J.

¹⁶ AIR1966 SC 424:(1996)1SCR 702.

under Article 21. In *Suresh Chandra v. State of Gujarat*,¹⁷ the penological innovation in the shape of parole to check recidivism was recommended for liberal use.

The increasing population is the problem of overcrowding in jails. Indian prisoners are now crammed with prisoners. There is an absence of sanitation, medical facility, and many more things. In the famous case of *Rama Murthy v. State of Karnataka*,¹⁸ Hansarria, J. observed that while in jail communication with the outside world gets snapped with the result that the inmate does not know what is happening even to his near and dear ones. This causes trauma. Communication between kith and kin is necessary. Rule 549(4) of the Manual for the superintendence and Management of jails, which is applicable to Delhi, provides that every prisoner under a sentence of death shall be allowed such interviews and other communication with his relatives, friends and legal advisers as the superintendent thinks reasonable. In *Sheela Barse v. Union of India* the court observed that journalists should have access to information and should be permitted to visit jails, children's house, and remand homes.

5. Conclusion

The maxim that "if every saint has a past, every sinner has a future." has a basis not only in legal philosophy but also in legal rules owing to the trust of human rights. In *Mohd. Giasuddin v. State of A.P.*,¹⁹ it was observed by V.R. Krishna Iyer, J.: "if the psychin persepective and the spiritual insight we have tried to project the valid, the police bully and the prison drill can not 'minister to a mind diseased' are tone down the tension, release the repression unbend the prevention, each of which shows up as debased deviance, violent vice and behavioural turpitude. it holds out better curative hopes." The major goal is promoting justice to the victims of the crime. Prisoners are the victim of the violation of fundamental rights. The Prisoners Act 1894 also contains provisions for the welfare and protection of prisoners, these should be implemented properly.

According to the UN Declaration, the basic principles of justice for the victims of crime and abuse of power (1985) says that the term victim include any person who, individually or collectively, has suffered harm, including physical and mental injury, emotional suffering, economic loss. Here the victims are entitled to the mechanism of justice and prompt redress for the harm suffered the present law has

¹⁷ AIR (1976) 1SCC 645 : 1976 SCC(CRI)145.

¹⁸ (1997) 2 SCC 642 : 1997 SCC (Cri.) 386.

¹⁹ (1977) 3 SCC 287 : 1977 SCC (Cri.) 496.

no adequate focus on victim's effective participation in trial and appeal. The state and the centre will need to implement them in order to ensure that the prisoner's life inside the prison runs well. Having all of the recommendations on paper or by the appropriate committees is not the solution. There are many prisoners who experience frequent violence that was inflicted by their fellow inmates or by their officials, thus there should be a proper solution to their concerns and they should also receive justice inside the prison.

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- State of Maharashtra v. Prabhakar Pandurant Sanzgiri,- AIR1996

CHILD LABOUR RIGHTS IN INDIA: ISSUES AND CHALLENGES

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Abstract

In India, it's common to see children start working at a very young age. Many of them must labour to support their families, and some families look to them to carry on the family business from an early age. India has always supported the legislative, constitutional, and developmental steps needed to end child labour in the country. The judiciary's stance to child labour in India is praiseworthy. It has revolutionized India's situation about child labour. It has consistently worked to broaden and enhance the legal system in order to meet the expectations of both the Indian people and the Constitution's drafters. It has issued magnificent rulings repeatedly to end the issue of child labour in India. However, despite all the legal protections, our worldwide commitment, the country's declarations in the Constitution, and other legal safeguards, child labour is still a terrible reality today. The percentage of child labour in the nation's labour force continued rising over time because of a lack of political will and practical solutions to address the issue. This article focuses on how important it is for child-related laws, rules, and regulations to be effectively implemented in practice rather than only on paper.

Keywords –Child labour Act, Fundamental Rights, Forced Labour, Hazardous employment.

1. Introduction

Hon'ble Justice Subbha Rao¹, has correctly said that social justice in India must start with the kid when discussing child labour. A sensitive plant has little chance of developing into a robust and useful tree if it is not given enough nutrition. Therefore, the welfare of children should be given top priority in the legal system.

¹ SubbaRao, J., *Social Justice and Law*, Delhi: National Publishing House, 1974, p.4.

The Supreme Court has been instrumental in addressing the issue of child labour and has demonstrated its concern for it by putting certain professions or procedures under court order through the direct application of constitutional laws. India's human rights law is grounded in the Constitution; Article 21 is sometimes referred to as the "Magna Carta" of human rights. Every human being has the right to life and liberty guaranteed by this article. As per the Indian Constitution, the right to life and liberty is an immensely valued and cherished privilege.

2. Legal framework on Child labour

There are several laws against child labour in India, and the government has formed a number of committees, subcommittees, and commissions to investigate ways to stop child labour in the community. In addition to this, there are further ILO conventions to stop this issue.

There are 259.6 million children in India between the ages of five and fourteen as per the 2011 Census². 10.1 million of them, or 3.9% of all children, are employed as "main workers" or "marginal workers." Furthermore, almost 42.7 million youngsters in India do not attend school.

The Indian Factories Act of 1881 was the first piece of law in India to protect against child labour. This was done by the British government in power to reduce production in Indian industry by enacting certain legal constraints.

It may be argued that the International Labour Organization's adoption of numerous Conventions and Recommendations has had an impact on India's labour laws, particularly the country's child protection laws. In addition to the safeguards found in the Constitution, several legislative actions offer legal protection to children working in a variety of industries.

The efforts and concepts resulting from the discussions and suggestions of several committees on child labour were brought to fruition with the passage of the Child Labour (Prohibition and Regulation) Act (1986). Among them were the National Commission on Labour (1966-1969), the Sanat Mehta Committee (1984), and the Gurupadaswamy Committee³ on Child Labour (1979).

² https://www.ilo.org/newdelhi/whatwedo/publications/WCMS_557089/lang--en/index.htm last visited on 18th August 2019.

³ Dipak Das, *Child Labour in India – Rights, Welfare and Protection*, 2011.

3. Child labour laws in India

Following its liberation from colonial domination, India enacted several laws pertaining to child labour as well as constitutional rights.

The Indian Constitution forbids child labour under the age of 14 in mines, factories, or other dangerous jobs, as stated in the Fundamental Rights and the Directive Principles of State Policy (Article 24).⁴

Since India has a federal system of government, both the federal government and the state governments have the authority to enact laws regarding child labour. Among the significant changes in national legislation are the following:

- **The Factories Act of 1948** forbids hiring minors less than 14 in any factory. The law also imposed restrictions on who, when, and how long pre-adults between the ages of 15 and 18 might work in factories.
- **The Mines Act of 1952** forbids hiring minors under the age of eighteen in mining operations.
- **The 1976 Bonded Labor System Abolition Act** forbids all forms of bonded labour, including the forced labour of children. Additionally, it views forced labour that pays less than the minimum wage as bonded labour as a crime that can be prosecuted.
- **National Policy on Child Labor, 1987**, India developed a national policy regarding child labour. This policy aims to use a step-by-step and incremental approach, emphasizing the rehabilitation of kids who work in dangerous jobs. It called for the rigorous enforcement of child labour laws in India in conjunction with development initiatives aimed at tackling the underlying causes of child labour, such as poverty. In spite of these initiatives, child labour continues to be a significant issue for India⁵.
- **Child Labour (Prohibition and Regulation) Amendment Act, 1986** The Act is the result of numerous Commissions' recommendations. It has eliminated the previous two laws, which dealt with child labour and numbered. The Act was passed with the dual goals of outlawing and regulating child labour, which are mutually exclusive because prohibition and regulation do not

⁴ Constitution of India ,1950.

⁵Ashagrie K (1993). "Statistics of Child Labour," Bulletin of Labour Statistics 3: 11-24.

have the same meanings. Furthermore, it does not conflict with the goal of achieving the constitutional gold. The International Labour Organization (ILO) was founded in 1919 with the goal of ending child labour, but this is a difficult and drawn-out process. The Act of 1986 primarily forbids the employment of minors in specific professions and procedures, and it regulates hazardous labour, working hours, required vacation time, pay, and other aspects of the workplace. It forbids hiring minors under the age of 14 for dangerous jobs that are listed on the law's list. The list was updated in 2016 after being increased in 2006 and 2008 once more. The Act outlined the Inspector's responsibilities under the 1986 Act regarding the workers' age, employment, and other matters in the event that they lack a birth certificate. Additionally, the Act of 1986 stipulates that any action taken in violation of any of the Act's requirements will result in penalties.

- **Child Labour (Prohibition and Regulation) Amendment Act, 2016** The purpose of the Act, which the Parliament approved to update the main Act, is to align the current legislation with the Right to Free and Compulsory Education Act 2009, so ensuring that children between the ages of 6 and 14 years old do not face obstacles in their elementary primary education. The President of India has ratified the Act 2016 as of July 29, 2016. The new Act of 2016 has the following features: it forbids minors under the age of 14 from working in any place, dangerous or not, other than family businesses, without compromising their education. The Child and Adolescent Labour (Prohibition) Act of 1986 was renamed as the Child Labour Amendment Act of 2016.

The new definition of an adolescent was introduced by the Act. Children who are between the ages of 14 and 18 are considered adolescents and are not employed in dangerous jobs, as stated in the previous Act. Although there are now only three dangerous jobs and procedures instead of the previous 83, this number could rise, or fall based on notifications from the national government. Despite any provisions of the Criminal Procedure Act, child labour is now prohibited by the Act and is considered a crime. Any violation of the Act is punishable under its provisions, including repeated offenses, though parents are permitted some reprieve.

4. Principal Articles of the Constitution having an impact on Child Rights

- Article 14: No one shall be denied equality before the law or equal protection under the law anywhere in India.

- Article 15: shall not treat any person unfairly This article does not prohibit the State from implementing specific measures for women and children. Article 15, Clause (4) states that nothing will stop the State from creating specific provisions for the advancement of any citizens who belong to socially and educationally disadvantaged groups, as well as for Scheduled Castes and Scheduled Tribes.
- Article 19: (1) Every citizen shall have the following rights: (a) freedom of speech and expression; (b) the ability to organize groups or unions; (c) the freedom to travel about India without restriction; and (e) the right to live and settle anywhere on Indian territory.
- Article 21: No one may be deprived of their life or personal freedom unless a legally prescribed process is followed.
- Article 21 A: To ensure that all children between the ages of six and fourteen years exercise their right to free and compulsory schooling. A new Article 21(A) was added by the 86th Constitutional Amendment Act of 2002, guaranteeing children between the ages of 6 and 14 the right to free and compulsory education. The same Amendment Act amends Article 45, the State Policy's Directive Principle, to include provisions for early childhood care and protection up to the age of six. Under New Article 51(a), it is also declared a Fundamental Duty of parents and guardians to give children between the ages of 6 and 14 the opportunity to receive an education.
- Article 23: Prohibition of the trafficking of persons, begging, and other like kinds of forced labour
- Article 24 prohibits hiring children under the age of fourteen for hazardous jobs such as working in mines or factories.

5. Directive Principles of State Policy

- Article 39 (e): It states that children are not harmed throughout their early years and not compelled by financial need to choose careers that are inappropriate for their age or strength.
- Article 46: It states that the Scheduled Castes and Scheduled Tribes, in particular, as well as the weaker segments of society, will have special attention given to their educational and economic interests.

- Article 47: Enhancing public health and enhancing the standard of living and nourishment of the populace.
- Article 51A: (k) Parent or guardian shall give his child, or, as the case may be, ward, between the ages of six and fourteen, chances for education.

In 1974, India passed a National Policy for Children, stating that children were the country's most valuable resource. Following the World Summit for Children in 1990, the Indian government enacted a National Plan of Action for Children in 1992⁶, outlining objectives for the following ten years. It likewise ratified the CRC in 1992, and since then, it has extensively discussed the steps taken to protect children's rights in its Periodic Country Reports to the UN Committee on the Rights of the Child.

6. Right to education for child labourers and other abused children

Even with the passage of the Right of Children to Free and Compulsory Education Act, 2009, which mandated that all children between the ages of 6 and 14 attend school, a significant proportion of children remain unemployed, working as bonded or child labor, and falling prey to various forms of exploitation, including sexual abuse and human trafficking. The purpose of the RTE Act⁷ is to rescue these kids from the clutches of abuse and send them to school. Still, it's a difficult task.

It's crucial to remember that it's difficult to save a child from a trafficker's grasp or from a workplace. As a result, it's essential to enlist the aid of the law and the organizations charged with carrying it out.

Under specific provisions of the Juvenile Justice Act, the police can lodge a case against the employer immediately. According to these provisions, if a child is engaged in any dangerous work, or is not paid his wage, it is a punishable offence. The accused can be booked both under the Bonded Labour Act and the Juvenile Justice Act. The labour department can book the person who has been accused of employing child labourers under the Child Labour (Prohibition and Regulation) Act, 1986⁸. Under the Bonded Labour System (Abolition) Act, 1976⁹, a child can be

⁶ Anker R (2000). "The Economics of Child Labour: a framework for measurement," *International Labour Review* 139(3): 257-80.

⁷ Cain M (1981). "Risk and Insurance: perspectives on fertility and agrarian change in India and Bangladesh," *Population and Development Review* 7(3): 435-74.

⁸ The Act aims to regulate the working conditions and hours of child workers. It also prohibits children under the age of 14 from working in hazardous industries. The Act was amended in 2016.

rescued from labour and rehabilitated.

7. Judicial Pronouncement on Child Labour

The Supreme Court ruled that Article 21 covered the protection of workers' health and strength, as well as the protection of men, women, and young children from abuse, replacing the liberal interpretation of the article that had been adopted in *Maneka Gandhi v. Union of India*¹⁰ and *Francis Coralie Mullin v. Union Territory of Delhi*¹¹. The court ruled that Article 21 covers educational facilities as well as opportunity and resources for kids to grow up in a healthy way, with freedom and dignity.

In the case of *Peoples Union for Democratic Rights v. Union of India*¹², also referred to as the "Asiad workers case," the Supreme Court was made aware of the employment of minors under the age of 14 in construction. It was decided that since building is an obviously dangerous field, it is imperative that no form of construction labour permit the employment of minors younger than 14 years old. Aside from the requirements of International Labour Organization Convention, there is Article 24 of the Constitution which even if not followed up by the appropriate legislation, must operate and construction work is unquestionably a hazardous job. Justice P.N. Bhagwati has held this in reference to Article 24.

It is evident that no youngster under the age of 14 may be permitted to work in construction due to a constitutional ban. Furthermore, the Employment of Children Act of 1934 explicitly prohibits the employment of any kid under the age of 14 in the construction industry.

Bhagwati J., R.S. Pathak, and Amarendra Nath Sen JJ. rendered another important ruling in *Labourers, Salal Hydro Project v. State of Jammu and Kashmir*¹³ to safeguard the interests of numerous young labours engaged in dangerous construction work. The court ruled that law alone is insufficient to address this issue because it is an

⁹ The Act aims to abolish the bonded labour system and prevent the exploitation of weaker sections of society.

The act defines bonded labour as a system of forced labour where a debtor agrees to provide services to a creditor.

¹⁰ AIR, 1974, SC 597.

¹¹ (1941) I SCC p.604.

¹² AIR 1942 SC 1473.

¹³ (1943)2 SCC 141.

economic one. It will be hard to end child labour if there is poverty and destitution in the nation.

The Court acknowledged that it is not conceivable to completely outlaw child labour given the current socioeconomic conditions, and that in fact, a significant portion of the public may not find such a step to be socially or economically acceptable. For this reason, Article 24 restricts the use of child labour to industries including mining, factories, and other dangerous jobs. The Central Government was instructed to convince the labour to enrol their kids in a local school and make arrangements for the payment of school fees as well as the provision of free books and other amenities like transportation. Additionally, the Court recommended to the Central Government that "any time it embarks on a construction project that is anticipated to endure for a while, It should state that children of construction workers who live on or close to the project site should have access to educational facilities. The Central Government may handle this on its own, or if it assigns a contractor to handle all or part of the project, the contractor's contract may include the necessary provisions for this purpose.

Regarding the use of child labour in the beedi industry, several claims were made in *Rajangam, Secretary, Dist. Beedi Workers Union v. State of Tamil Nadu*¹⁴. These claims included the use of child labour and the non-application of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, as well as the manipulation of employee records and non-payment of appropriate dues for work performed. In addition, the Court acknowledged that labour exploitation in the beedi industry is widespread and recommended that "every worker, including children, if employed, should be insured for a minimum amount of Rs. 50,000 and the premium should be paid by the employer.

Under the ruling in *M.C. Mehta v. State of Tamil Nadu and others*¹⁵, the Supreme Court permitted minors to work in jobs that were forbidden, such as fireworks. In addition, the Supreme Court ruled in *M.C. Mehta v. State of Tamil Nadu and others*, also referred to as the "Child Labour Abolition Case," that minors under the age of 14 are not permitted to work in mines, hazardous industries, or any other type of employment. The Supreme Court "Suo motu" took the cognizance of the incident of an accident at one of the Sivakasi cracker factories, in which many children were reported dead, when its news was released in the media. The Court issued specific

¹⁴ AIR 1993 SC 404.

¹⁵ AIR 1997, SCC 243.

instructions on how compensation had to be paid. A committee of advocates was also established to tour the region and provide a report on different matters.

Environmentalist and lawyer M.C. Mehta¹⁶ filed a writ under Article 32 of the Indian Constitution because the match and fireworks businesses in Sivakashi, where children were employed, were flagrantly violating children's fundamental right against exploitation (Article 24). The Court went on to say that making pyrotechnics and matches is dangerous and can result in mishaps, sometimes even fatalities. Thus, it provided guidelines for enhancing the standard of living for youngsters working in factories, taking into account the clauses found in Articles 39(f) and 45 of the Constitution. "It is a stark reality that in our country like many others, children are exploited a lot," the Judges added. It was noted that each and every employer should be required to pay compensation of Rs. 20,000 for each child hired against the Act's rules; if the state fails to provide the adult child's family member another job, it will have to pay Rs. 5,000.

Both sums will be sent to the Corpus Welfare Fund, the proceeds of which will support the welfare and educational needs of children whose parents have been laid off.

The judges did, however, clarify that they were not giving the state instructions on how to assign jobs to the adult members at this time. Rather, they were letting the authorities handle the situation.

Factory inspectors were instructed to ensure that children working in non-hazardous sectors worked no more than four to six hours a day, that the children attended school for at least two hours a day, and that the employers covered the whole cost of the child's education.

With reference to Section 14 of the Child Labour (Prohibition and Regulation) Act, 1986, the Supreme Court noted in the aforementioned *M.C. Mehta case*¹⁷, "Taking guidance therefrom, we are of the view that the offending employer must be asked to pay compensation for every child employed in contravention of the Act a sum of Rs.20,000/-and the inspectors, whose appointment is visualized by section 17 to

¹⁶ Shri M C Mehta is a renowned Indian environmental lawyer and activist whose tireless efforts have significantly impacted the environment, rivers, forests in India.

¹⁷*M.C Mehta v. State of Tamil Nadu and Other*, (Child Labour Abolition Case) 6 SCC 756; 1997SCC (L& R) 49; AIR 1997 SC 699.

secure compliance with provisions of the Act, should do this job." This was done to inform the developing restitutive jurisprudence. The inspectors designated under section 17 would ensure that the relevant employer paid Rs. 20,000/-for each child worked in breach of the Act's provisions. This amount could be deposited into a designated fund.

In a landmark decision in *Bandhua Mukti Morcha v. Union of India*, the Supreme Court made significant observations in order to protect the interests of bonded child labourers. Hence, it is imperative that the State Government, whoever holds that position, acknowledge the existence of bonded labour and take all necessary steps to end it.

In the *Neeraja Choudhary v. State of M.P.*¹⁸, the Court further declared that "rehabilitation is necessary after identification and release of bonded labour, as without rehabilitation they would be driven by poverty, helplessness, and despair into serfdom once again." This is perhaps even more significant than simply identifying and releasing bonded labours. The Supreme Court noted in a different ruling in *Bandhua Mukti Morcha v. Union of India*¹⁹, that children under the age of 14 were employed in the carpet industry in the State of Uttar Pradesh, according to a public interest lawsuit. The Supreme Court-appointed Commissioner/Committee's reports verified the forced labour of numerous minors, primarily from Bihar who were brought in as SCs and STs, in the State's carpet-weaving hubs. The Court decided that the State owed it to the kid to offer socioeconomic justice as well as opportunities and supports for the healthy development of his personality.

In a landmark judgement, the Karnataka High Court examined the problem of ending child labour in the sericulture sector, particularly in the silk saree business, where many children between the ages of five and eight were employed. Although this business is not mentioned in the Child Labour Act schedule, the court established the standard of hazardous work. For labour to be considered hazardous, it must either involve intrinsic risks to children's health or create unfavourable working conditions for them. The Court concluded that all jobs that seriously impair a child's health and prevent him from contributing to society in a healthy way ought to be classified as hazardous industries. It instructed the Labor Commissioner to send out notices for the proper response, to the deviant establishments. The Court

¹⁸ AIR 1944 SC 1099.

¹⁹ AIR 1984,SC 802.

revealed some startling information about the State Administration's inappropriate use of money that the Central Government had released.

The courts have noted the value of education for child labours in several rulings. Since compulsory education and laws against child labour are related, the establishment of compulsory education must come before the outlawing of child labour. The Constitution's Article 24 prohibits children under the age of 14 from working. Article 45 is an addition to Article 24 since it mandates that a child be kept busy in an educational facility if they are under 14 and cannot work. Article 45 has now been modified. The Supreme Court discussed education as a fundamental right and stressed its significance in *J. P. Unni Krishnan v. State of Andhra Pradesh*²⁰.

It is evident that the right to education has been acknowledged as a human right in a number of international agreements. The Mohini Jain case set in motion the process of shaping the right to education as a fundamental right, which was further reinforced by the Unni Krishna case, which held that the right to education is a basic right that emanates from the right to life guaranteed by Article 21 of the Constitution. Up until the age of 14, every child and citizen is entitled to free education; after that, the right is subject to the state's financial resources. In *TMA Pai Foundation v. Union of India*²¹, the 11-judge Supreme Court constitutional bench affirmed and sustained this ruling. In the year 2002, the Indian Constitution through its 46th Amendment Act, has made "Right to Education a Fundamental Right". The State is obliged to duty bound to provide free and compulsory education to all children of age 6-14 years in such manner as the state may by law determined.

8. Conclusion

The Indian Constitution assigns states' judicial branches the sacred obligation of defending citizens' rights to life and liberty. However, American Realist Jurisprudence holds that judges not only interpret the law, but also create it. This idea intensifies and gains momentum as well. If we examine how a state's judicial branch has operated over the past 70 years, particularly in the aftermath of the emergency, we will find that the Supreme Court and High Courts served as watchdogs. It is a commendable move that the Supreme Court took in its ruling on the social issue of child labour, focusing not only on preventative measures but also on creating a thorough framework for the rehabilitation of these youngsters.

²⁰AIR 1993 SC 2174, 1993 AIR SCW 463; (1993) I SCC 645, JT 1993(I) SC 474.

²¹AIR 1996, SC 2652.

Despite laws intended to prevent children from working in dangerous jobs or jobs that are harmful to their health, many profit-seekers continued to abuse children for their own advantage. In India, the judiciary has been instrumental in advancing the welfare of children. It has taken the initiative to better the child's circumstances and prevent exploitation. The judicial duty makes it abundantly evident that children's access to an education is essential to their full development as individuals. The judiciary has so consistently taken proactive measures to protect them from the exploitative practices of their employers, such as establishing guidelines for their health and medical facilities and regularizing their working hours and compensation. The states have even been instructed by the judiciary that it is their responsibility to establish an atmosphere where in accordance with the mandate of our constitution, the child workers can have the opportunity to grow and develop in a healthy manner with complete dignity.

Child labour persists despite all legal efforts, national and international commitments, and declarations made in the country's Constitution. The percentage of child labour in the nation's labour force continued rising over time because of a lack of political will and practical solutions to address the issue. The atrocity of child labour has not only endured, but has grown deeply ingrained.

ANALYSING LABOUR LAW COMPLIANCES OF STARTUPS IN INDIA FROM 'EMPLOYERS AND EMPLOYEES' PERSPECTIVES

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Abstract

During COVID-19, an effort of the State Governments/Employers to relax the working hours of the workers/employees to overcome the setback to Indian Economy due to the said virus was lamented and forbade by the Hon'ble Apex Court heavily in a landmark case of Gujarat Mazdoor Sabha. Additionally, in the year 2022, large corporations as well as small businesses in India experienced widespread layoffs. This had a significant impact on the booming startup and tech industries, which were forced to review their progress that they had made in terms of hiring human resources over the previous few years in light of changing economic conditions and modern business models.

Startups must make sure that local regulations are followed because breaking the law harms both the employer's reputation and the company's bottom line. Because of this, any restructuring and reorganisation of the company or its employees should adhere to the regulatory criteria for startups. Compliance norms are statutory requirements that a corporation is required to abide with. India's labour regulations must be followed in accordance with the local legislation. The Indian government recently put policies into place to make it simpler for start-ups to comply with local regulations. One of these initiatives entails granting start-ups that satisfy certain requirements a three-year exemption from several labour rules. The goal is to free up start-ups from the burden of compliance regulations so they may concentrate on expansion and development.

It is crucial to remember that start-ups will still need to abide by a number of fundamental labour rules, such as those pertaining to minimum salaries and workplace safety. This paper examines the development in labour law compliance requirements for startups in great detail from both the employer and employee sides.

Keywords: Labour Law, Employment Law, Compliances, Startups

1. Introduction

There exists quite an immense distinction when it comes to these two words – Law ‘of’ Labour and Law ‘for’ Labour. The foremost one provides more control to the employer while the latter one provides less control to the independent contractor. Considering Indian Labour Law Regime to be more of Law ‘for’ Labour, relaxations in the Compliance norms are proposed by the Government for the startups. Startups are merely nothing but concretisation of different bright ideas that surface in one’s mind and if these concretisations of ideas are not protected or legally or financially supported, then result in failure making our nation devoid of any entrepreneurship and entrepreneurs.

Compliance norms are statutory required standards and regulations that a company must observe. Compliance with labour regulations in India must be done in line with the laws of the nation. The Indian government has announced steps to make it simpler for start-ups in the nation to comply. One of these solutions is enabling start-ups that satisfy specific criteria to be exempt from some employment restrictions for up to three years. The goal is to allow start-ups to focus on growth and development rather than compliance concerns.¹

It is vital to stress that start-ups will still be required to follow certain key labour rules, such as those governing minimum salaries and workplace safety. However, the destiny of startups has always been contentious. Some of them survived, while others perished. Ideally, entrepreneurs who understood how to use low-cost skilled labour and money from national and international investors rose to the top. India presently has one of the world’s largest startup ecosystems. The Make in India initiative has surely inspired a number of young entrepreneurs to embark on their entrepreneurial path.

While it is thrilling to create a new firm, it is important to remember that startups, like other business organisations, must follow a few legal requirements. These enterprises are not free from such duties simply because they are new to the market. Furthermore, adhering to such regulations would only enable companies to remain

¹ Sustained Government efforts result in increasing the number of recognized Startups from 452 in 2016 to 84,012 in 2022, MINISTRY OF COMMERCE AND INDUSTRY, PIB (Dec, 07, 2022), <https://pib.gov.in/PressReleasePage.aspx?PRID=1881495>.

stronger and more stable in a dynamic industry. For example, one of the most important criteria that must be followed in new enterprises is labour rules.

This would also assure staff safety and well-being. Knowing the labour regulations in depth would be beneficial in running the company without facing any legal ramifications. The Ministry of Labour and Employment has advised the states, union territories, and central labour enforcement agencies to implement a compliance regime based only on self-certification. It also advised that start-ups be regulated in accordance with existing labour laws.

The benefit of adhering to these standards is that start-ups that provide a self-declaration for conformity with the prescribed labour laws within the first year of operation will not be investigated under the corresponding legislations.

2. Definition of Start-up

A notification released by the Department for Promotion of Industry and Internal Trade of Ministry of Commerce and Industry; an entity shall be considered as a Startup if it satisfies all the following conditions:

“

1. *Only for the ten years from its date of incorporation or registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India.*
2. *Turnover of the entity for any of the financial years since its incorporation/registration has not exceeded one hundred crore rupees.*
3. *Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.*

*However, that an entity formed by splitting up or reconstruction of an existing business shall not be considered a 'Startup.'*²

² Notification G.S.R. 127(E), available at:

https://dpiit.gov.in/sites/default/files/notification_Definition_StartupIndia_06July2021.pdf (last visited on Aug. 09, 2023).

Previously, a startup was defined as a company that was founded or incorporated in India little more than five years ago and had a yearly turnover of not greater than Twenty-Five crores in the preceding fiscal year. It must use technology or intellectual property to drive the creation, implementation, or commercialization of new items, processes, or services. As long as the new business is not formed by splintering or reorganising an existing one, and if the prior fiscal year's turnover surpasses Twenty-five crores or if it has been finished five years following creation or registration.

3. Exemption from Labour Law Compliances to the Startups

It has been suggested that if such start-ups produce self-declaration for conformity with nine labour rules within the first year of operation, there would be no examination under these labour laws, wherever applicable. The labour laws that will be discussed are as follows:

1. The 1996 Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act:

The Act is focused with regulating the employment and working conditions of construction employees. It focuses mostly on the safety measures that must be implemented for the wellbeing of the workers.³

2. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979:

The Act was drafted to provide an overview of interstate worker circumstances. The purpose of the Act is to protect and safeguard employees who provide services outside of their own countries. The Act has two primary functions. First, it protects the interests of migrant interstate workers, and second, it allows companies to engage employees from outside the state when qualified or unskilled labour is scarce inside the same state.⁴

3. The Payment of Gratuity Act, 1972:

³ The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

⁴ The Payment of Gratuity Act, 1972.

When an employee's services are ended, a gratuity payment is made to the employee. It is a one-time payment made as a symbol of gratitude for services performed by the employee to the employer. The gratuity payment must be made within 30 days of the employee's last day of work.⁵

4. The Contract Labour (Regulation and Abolition) Act, 1970:

The Act's goal is to control the working conditions of contract labourers in factories and industries. The Act also discourages and seeks to eliminate hazardous working situations. The Act requires the major employer to offer different amenities to employees such as canteens, restrooms, adequately illuminated and ventilated places for employees who are forced to halt at night on the job site, separate latrines and urinals for men and women, first-aid facilities, and so on.⁶

5. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952:

This statute essentially mandates that an employee contribute to a fund for his or her future after retirement. However, according to the Act, the workers' provident fund is required for all employees earning less than \$15,000 a month. Both parties contribute 12% of the base wage to the Provident Fund.⁷

6. The Employees' State Insurance Act, 1948:

The Act provides guidance to employees in times of sickness, accident, or maternity leave. The Act applies to factories that employ more than ten people at any given time. Both the company and the employee contribute to the insurance here. To build the insurance fund, the employer contributes 4.75% and the employee bears 1.75% of total compensation. The Act formerly applied to employees earning less than Rs. 15,000 per month, but it has recently been raised to Rs. 20,000.⁸

These start-ups must file self-certification using the Startup mobile app, which allows entrepreneurs to fill out the necessary forms and facts on the application

⁵ The Contract Labour (Regulation and Abolition) Act, 1970.

⁶ The Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

⁷ The Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

⁸ The Employees' State Insurance Act, 1948.

itself or on the internet portal. Returns will only be reviewed after the second year, for a period of up to five years after the units are founded, provided a credible and verifiable grievance of violation has been made in writing and authorisation has been received from higher authorities.

Such start-ups are obliged to produce self-certified reports from the second year onwards, up to 5 years after the units are established, and will be examined only when a genuine and verifiable complaint of violation is lodged in writing and authorisation has been received from higher authorities. The nine labour laws are as follows:

1. The 1947 Industrial Disputes Act:
This act's provisions call for the investigation and resolution of all workplace disputes. The provisions of this act are intended to ensure industrial peace and harmony by establishing the machinery and procedures for investigating and resolving industrial disputes via discussions. This legislation also includes measures for compensating workers for unfair labour practises on the part of the employer or a trade union.⁹
2. The Trade Unions Act, 1926.¹⁰
3. The Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996.¹¹
4. The Industrial Employment (Standing Orders) Act of 1946:
This act's main objective is to give workers with adequate understanding of their work environment. The statute simply mandates businesses to define all of the employment circumstances that their employees will face once they leave their jobs.¹²
5. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.¹³
6. The Payment of Gratuity Act, 1972.¹⁴

⁹ The Industrial Disputes Act, 1947.

¹⁰ The Trade Unions Act, 1926.

¹¹ The Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996.

¹² The Industrial Employment (Standing Orders) Act, 1946.

¹³ The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

7. The Contract Labour (Regulation and Abolition) Act, 1970.¹⁵
8. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952.¹⁶
9. The Employees' State Insurance Act was passed in 1948.¹⁷

In the context of environmental laws, startups that fit into the white category, as defined by the Central Pollution Control Board, would be authorised to self-certify compliance; nevertheless, random inspections would be conducted in such circumstances.

Environmental laws from which exemption is provided under the current scheme:

1. The Water (Prevention & Control of Pollution) Act, 1974.¹⁸
2. The Water (Prevention & Control of Pollution) Cess (Amendment) Act, 2003.¹⁹
3. The Air (Prevention & Control of Pollution) Act, 1981.²⁰

4. How Labour Codes will affect the Startups

1. INDUSTRIAL RELATION CODE, 2020 (IR Code)

The definitions of the terms 'employer,' 'worker,' and 'workman/employee' will affect how industrial relations law is administered. In the IR Code, the terms 'industry,' 'employer,' 'employee,' and 'worker' have been redefined. The notions of "fixed-term employees" and "re-skilling fund" were introduced by the IR Code. Section 2(o) of the IR Code defines "Fixed Term Employment" and stipulates that the working hours, remuneration, allowances, and other benefits must be the same as for a permanent worker doing the same or equal job.²¹ Fixed-term employees are also eligible to benefits such as gratuity after one year of service. Fixed-term employment at a startup may allow the employer to bring in the necessary skills and time.

¹⁴ The Payment of Gratuity Act, 1972.

¹⁵ The Contract Labour (Regulation and Abolition) Act, 1970.

¹⁶ The Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

¹⁷ The Employees' State Insurance Act, 1948.

¹⁸ The Water (Prevention & Control of Pollution) Act, 1974.

¹⁹ The Water (Prevention & Control of Pollution) Cess (Amendment) Act, 2003.

²⁰ The Air (Prevention & Control of Pollution) Act, 1981.

²¹ The Industrial Relations Code, 2020 § 2(o).

The criterion for using standing orders

Standing orders controlling workers' working conditions are required under the IR Code for industrial businesses with more than 300 employees. This obligation was also included in the Industrial Employment (Standing Orders) Act, although it only applied to businesses with more than 100 employees. As a consequence, it will no longer be essential for startups with fewer than 300 employees, and employers will be able to control and arrange the employees' handbook/ manual in a way that suits them.

The three primary legislations relevant to the resolution of labour disputes contained in the IR Code are the Industrial Dispute Act, the Trade Union Act, and the Industrial Employment (Standing Orders) Act. Startups must self-certify under all three parts of the IR Code, according to the Ministry of Labour and Employment's Advisory.²²

2. OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020 (OSH CODE)

The OSH Code applies to all businesses with 10 or more workers. The OSH Code mandates that employers establish a safe working environment for their employees, give appointment letters, and notify the proper authorities in the event of an accident that results in an employee's death or significant bodily damage.

Only one registration is permitted

The OSH Code has introduced the 'one registration' option for employers to electronically register the premises with the relevant authorities in order to harmonise the numerous registration procedures under several laws.

The 2020 OSH Code comprises 13 labour rules controlling health, safety, and working conditions. Startups, according to our understanding, must comply with all requirements covered by the OSH Code, 2020; nevertheless, under the OSH Code, 2020, Startups will be exempt from labour inspections under the BoCW Act, CLRA, and ISMW Act.²³

²² Self Certification, <https://www.startupindia.gov.in/content/sih/en/startupgov/self-certification.html> (last visited on Aug. 10, 2023).

²³ The Occupational Safety, Health & Working Condition Code, 2020.

3. SOCIAL SECURITY CODE, 2020 (SS CODE)

Many early-stage company employers find it difficult to provide crèche services. The SS Code permits businesses to contract a third-party crèche facility or pool their resources to construct a shared crèche rather than having a separate crèche for each enterprise.

Adding 'gig workers' and 'platform workers'

The SS Code has expanded its scope to include previously excluded workers in the unorganised sector such as gig workers, platform workers, and aggregators, with the primary goal of establishing a social security fund such as a provident fund and employee state insurance for all workers.

The SS Code contains nine fundamental labour rules that control employee social security. While startups must follow the SS Code, if they self-certify, they are exempt from inspection under the Gratuity Act, ESI Act, and EPF Act for a period of five years.²⁴

4. CODE ON WAGES, 2019

The Wage Code and the Social Security Code have unified the notion of 'wages,' which was formerly interpreted differently under separate labour legislation. A 'wage' is defined in the Wages Code as any remuneration, whether in the form of salaries, allowances, or otherwise, expressed in terms of money or capable of being expressed in such terms, that would be payable to a person employed in respect of his employment or work done in such employment if the terms of employment, express or implied, were fulfilled, and includes basic pay, dearness allowance, and retaining allowance, if any. Allowances shall not exceed 50% of the employee's entire income, according to the Wages Code. If the allowance amount exceeds 50%, the excess forms part of the remuneration. The change in the definition of wage under the Earnings Code and the Social Security Code requires the employer to change the employee's pay structure such that the basic + DA+RA equals 50% of total earnings. It impacts employee costs because it affects employer contributions. The Payment of Wages Act of 1936,²⁵ the Minimum Wage Act of 1948,²⁶ the Payment

²⁴ The Social Security Code, 2020.

²⁵ The Payment of Wages Act, 1936.

²⁶ The Minimum Wage Act, 1948.

of Bonus Act of 1965,²⁷ and the Equal Remuneration Act of 1976,²⁸ are all incorporated into the Wages Code. According to our understanding, startups are obligated to follow the Wage Code without any exceptions.²⁹

5. Analysing The Compliance Exemption From The Perspective of Employees

However, it is critical to emphasise that, while these measures may ease some of the compliance load for startups, they do not jeopardise employees' rights and safeguards. Startups are still subject to basic labour rules such as minimum wage legislation, safety restrictions, and anti-discrimination laws. Employees at startups, like employees in any other business, have the right to fair treatment, fair salaries, safe working conditions, and other labor-law safeguards.

Workmen: The Industrial Disputes Act of 1947 ("IDA") governs the resolution and investigation of industrial disputes. This Act also defines a 'workman' as a person employed or paid to do skilled or unskilled labour, physical or technical labour, and/or clerical work in an industry. Persons in management or supervisory positions are likewise prohibited under the IDA. The pay requirement for coverage in the "Workman" category for employees in a supervisory function is INR 10,000 (Indian Rupees Ten Thousand) per month.

Before modifying the working conditions of its employees, such as pay, holidays, leaves, and working hours, IDA requires firms to follow specific procedures. It also governs layoffs, closures, retrenchments, and the transfer of businesses. Non-workers' terms and conditions, such as job termination, are governed by state-specific Shops and Establishments legislation.

Workers in a factory are subject to the regulations of the Factories Act, 1948,³⁰ which govern their working circumstances such as leaves, weeks off, hours of work, and so on. Contract labor/third-party employees are likewise recognised and protected under the new legislation.

²⁷ The Payment of Bonus Act, 1965.

²⁸ The Equal Remuneration Act of 1976.

²⁹ The Code on Wages, 2020.

³⁰ The Factories Act, 1948.

The classification of the workforce is critical for startups in India to resolve and plan the organization/reorganization of the workforce in order to draw out human resource activities such as recruiting and firing and consultatively establish HR policies.

Technicalities of Employment Contracts - implicit terms and the way in which a contractual agreement is entered into: In India, an employer-employee relationship might be explicit or implied, oral or written. Forming an employment contract, on the other hand, is a common practise to avoid any conflicts or disagreements between the parties over the terms of work. Certain states' Shops and Establishments Acts compel companies to provide appointment letters to their employees. Statutory-mandated terms and conditions of employment are often the bare minimum of legal standards that employers must meet.

Benefits from Social Security: Employers must abide by all social security requirements. Employees' Provident Funds and Miscellaneous Provisions Act of 1952 requires every company with 20 or more employees to make suitable payments to the employees' provident fund on behalf of each employee earning less than INR 15,000 per month.³¹ Other laws, such as the Employees' State Insurance Act of 1948, the Payment of Gratuity Act of 1972, and the Maternity Benefit Act of 1961, address medical and disability benefits, retiral benefits, and benefits for women during pregnancy and after childbirth.

Employee handbook, HR policies and procedures: Indian labour laws may not cover all areas of work. For example, restrictions on dual employment are confined to certain industries and employee activities. Employee social media policies are not particularly addressed under Indian employment regulations. As a result, detailed HR policies and guidelines are required to outline the norms and regulations for employee employment.

Rights and Recognition of Trade Unions: The Trade Unions Act (TU Act) of 1926 establishes the process for registering trade unions as well as some legal features of registered trade unions.³² Maharashtra has enacted state-specific legislation that

³¹ The Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

³² The Trade Unions Act, 1926.

allows trade unions to be recognised. According to the TU Act and the IDA, trade unions may negotiate with employers the terms and conditions of employment of workers in industry, including pay, and sign settlement agreements. Furthermore, the TU Act protects registered trade unions from criminal conspiracy charges, civil court litigation, and any activities carried out in support of trade conflicts.

Discrimination as a Legal Basis and Employee Protection from Discrimination:

The Indian Constitution prohibits discrimination against persons based on their gender, religion, caste, ethnicity, or place of birth. To achieve these aims, laws prohibit employment discrimination against members of protected classes, such as individuals with disabilities, transgender people, and HIV positive people, and offer routes for legal redress. Likewise, tailored policies have been put in place to encourage the employment of specific categories of individuals. The Maternity Benefit Act of 1961 (Maternity Benefit Act), for example, attempts to establish a supportive work environment for all female employees by providing paid maternity leave and other benefits.

There are sexual harassment rules and remedies available. Companies are required under the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (“PoSH”) to develop a policy against sexual harassment of women and make it widely known within their workplaces.³³ Every organisation with ten or more workers should have an internal committee to investigate allegations of sexual harassment filed by women. Furthermore, the employer must organise periodic awareness programmes for employees to educate them on the provisions of the PoSH Act.

Transfer of Employee Rights in a Business Sale and the Retroactive Effects of a Business Sale Contract:

Only the entity’s ownership structure would change as a result of the buyer obtaining shares in the case of a share sale; the employer would stay unchanged. As a result, no employee consent will be required in the case of a share sale. However, if the transaction involves the sale of an asset or business (together with any related employees), the employees’ approval must be obtained before their job is transferred to the buyer, who would be a new employer.

³³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

Employee rights, including any special rights granted to them under a collective bargaining agreement, will be preserved after the sale of an asset or business (unless commercially agreed otherwise), including the right to retrenchment compensation and gratuities based on the length of continuous service rendered.

Successful completion of termination of employment Unless the employee was fired for proven misbehaviour, the employer is obligated to offer the affected employee with notice of termination (or pay in lieu of notice). According to the IDA, an employer must offer at least one month's notice (or pay in lieu of notice) (Notice of Retrenchment) to a worker who has been continuously employed for at least one year.³⁴ The notification duties of non-workers shall be determined by the State-specific Shops and Establishments Act and the terms of their employment contract.

Statutory registries and return filing:

In India, labour laws oblige employers to keep certain statutory registers and records and to make returns with the labour authorities.

The Government of India and state/territorial administrations have streamlined and relaxed compliance requirements for startups recognised by the Department of Promotion of Industry and Internal Trade. Self-certification of compliance with some labour rules and eased inspection of businesses have aided startups in complying with employment laws.

6. Analysing Compliance Exemption from the Perspective of the Employer

Eased Provident Fund (PF) Norms: Startups may have eased standards for their employees' contributions to the Employee Provident Fund (EPF). This can help firms better manage their cash flow, especially in the early phases when resources are few.

Decreased Inspections: To maintain compliance with labour rules, startups may experience decreased inspection frequency or leniency in inspections in particular situations. This might save startups time and money when dealing with regulatory agencies.

³⁴ The Industrial Disputes Act, 1947, § 25N.

While these exclusions might help entrepreneurs and employers, they should not be utilised to abuse workers or deny them their rights and benefits. Labour laws are intended to safeguard the interests of employees, and businesses must nevertheless guarantee that their staff is treated fairly and ethically.

7. Conclusion

The Labour Codes will usher in a dramatic transformation in India's labour legal environment, and in order to comply, startups must adapt their practises appropriately. Startups must reconsider their compensation structure in light of the new definition of "wages." Startups must also pay strict attention to guidelines in order to be alerted by the government. Since the labour codes have not yet been declared, the government is considering some of the changes brought about by the labour codes, such as the 50% restriction on allowance under the Wages Code and the threshold on the number of employees in a business being reduced to 100 from the anticipated 300 under the IR Code.

It is apparent that the exemptions granted to Startups do not free them from complying with the aforementioned employment regulations. However, the exemption includes a time of incubation for Startups to become familiar with employment rules and the enforcement authorities.

A REVIEW OF WOMEN-CENTRIC LAWS

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Abstract

In our society, women are perceived as weak. They are expected to be quiet since they lack a voice of their own. The women themselves are aware that they are a burden to their parents, which makes them feel unworthy and causes them to have low self-esteem. The status of women in society serves as a barometer for the level of progress in a given nation. Additionally, it shows the degree of civilization on which that nation's culture had developed. She is being handled like a product. It consistently endures discrimination and bigotry from men. Due to a variety of reasons that are all dependent on gender, women are more likely than men to experience various forms of severe treatment. A woman must deal with occurrences of rape, infanticide, and sex-related crimes because they are women. We revere women in the form of "devi," we respect them and are frightened of them in the form of "chandi," we even honour our mothers and value them above all else, and we even love them as daughters, but when it comes to the wife, she is always viewed as an outsider in the family and receives little to no of the respect and love that she deserves. In the last few years, there have been many significant changes in the practice of law. This paper discusses crimes against women that take place on a daily basis in society, including domestic abuse, sexual assault, and cruelty by legislation.

KEYWORDS- Dowry, Cruelty, Domestic Violence, Sexual Assault, Maintenance.

1. Introduction

Because of their dependence on the male population, women are viewed as a vulnerable group in society. The rights of women have never been respected by society, even in the past. The Puranas, mythologies, and religious literature are hesitant to accord women the same status as men. The majority of the time, women are thought of as childbearing machines. They are the pleasure dolls that men hold in their hands. One of the Sanskrit texts, the Manu Dharma Sastra, almost treats women like domesticated animals. It has implanted the notion that maintaining virginity and purity is the sole path to God in the minds of women.¹ Indian history's ancient era was a time of great prosperity for women. They were treated equally to males. Purdah was not observed by them. Additionally, they took part in male-only social, religious, and ceremonial events.² They were regarded with awe and veneration. The union of two souls that occurs in marriage is not merely a question of convenience. In nearly every aspect of life, a woman was a man's companion in his deeds, thoughts, joys, and aspirations. Their education and upbringing received the proper consideration. They were intelligent and courageous women like Gargi, Maitreyee, Kaikeyee, Sita, Draupadi, and Kunti.

A glimmer of optimism for women's life appeared throughout the British era. They arrived to study at schools, colleges, and universities while passing out purhad. Women started to recognise their importance in the national cause and the rebuilding of New India as modern education became more widespread. However, the situation for women in India is still appalling. It is paradoxical that despite progression and progress in many spheres of life, women are now seen as less valuable than males. They are not given the proper treatment.

However, the situation for women in India is still appalling. It is paradoxical that despite progression and progress in many spheres of life, women are now seen as less valuable than males. They are not given the proper treatment. They still lack education and training. They are victimised by violence in addition to being exploited and mistreated. A significant number of women continue to experience numerous abuses despite the existence of numerous laws designed to protect their rights, the expansion of female educational opportunities, and their growing economic independence.

¹ S.L. Khurana, *History of ancient India*, 281 (Allahabad Press).

² Bharat Mehta, *History of Ancient India* (Sylvester Publication, 3 edn., 2010).

2. International Perspective on The Protection of Women's Rights

A few developed nations have concentrated on the perilous situations of women since the First World War. Many nations do not allow them to vote. The majority of women pass away during childbirth. To treat their medical issues, no preventative medications have been given. The majority of women live in poverty and illiteracy throughout Asia and Africa. Some of the initiatives for the advancement of women around the world have been accepted by the League of Nations. But the lack of funding makes these remedies ineffective. The Second World War was broken off in the meantime and continued for five years. Fewer individuals are dying. There are numerous injuries. The main issue in almost all nations is poverty. The gap between the wealthy and the poor has grown.

I. The Universal Declaration of Human Rights, 1948

The United Nations adopted a charter in 1948 guaranteeing human rights to all people worldwide in light of the conditions. Later, conventions were convened in America, Africa, and Europe to adopt human rights for the people living on those continents. For the benefit of world citizens, a number of covenants have been accepted to grant civil, political, social, and economic rights. The position of women has then been discussed and evaluated. A number of instruments have been approved to defend women's human rights.

"Every human being is born free and with equal rights to dignity. They should behave towards one another in a brotherly spirit because they have reason and conscience".³

The most beautiful thing that God has ever created is a woman. Despite being given the highest position in terms of strength, she frequently finds herself on the losing end in society. This is not limited to rural places; skyscrapers and upscale clothing can also be seen doing it. Rape incidents, domestic violence, and other horrors are on the rise at an alarming rate today. Because of this, they find it very challenging to recognize their unalienable rights and to assert them in line with them as society changes.

The United Nations shall not impose any restrictions on the eligibility of men and women to participate in any capacity and under circumstances of equality in

³The Universal Declaration of Human Rights, 1948, art. 1.

its major and subsidiary institutions, according to the following language from Article 8 of the Charter.⁴

The women's human rights can be categorized as under:

- Right to equality,
- Right to education,
- Right to life with dignity,
- Right to liberty,
- Political Rights,
- Right to Property,
- Right to equal opportunity for employment,
- Right to free choice of profession,
- Right to livelihood,
- Right to get equal wages for equal work,
- Right to protection from gender discrimination,
- Right to protection from inhuman treatment.

II. Convention on The Political Rights of Women, 1953

The General Assembly approved the first international document devoted solely to women's rights in 1952. The Convention on the Political Rights of Women was responsible. It was stated in this Convention that women would have the right to vote in all elections on an equal footing with men, without any form of discrimination,⁵ as well as the right to occupy public office and perform all public duties specified by national law, on an equal footing with males.⁶

III. Convention on Consent to Marriage, Minimum Age For Marriage And Registration of Marriages, Of 1962

Then, in order to specifically outlaw child weddings and protect the idea of free consent to marriage,⁷ Minimum Age for Marriage,⁸ and Registration of

⁴ *Ibid*, art. 8.

⁵ Convention on the Political Rights of Women, 1953, art. 1.

⁶ *Ibid*, art.3.

⁷ Convention on Consent to Marriage, Minimum Age For Marriage And Registration of Marriages, Of 1962, art. 1.

⁸ *Ibid*, art. 2.

marriages⁹ and the Convention on Recommendation of the Subject of 1965 were established.

IV. Declaration on the Elimination of Discrimination Against Women , 1967

The United Nations General Assembly passed the Declaration on the Elimination of Discrimination Against Women in 1967, which incorporated criteria and concepts pertaining to women's rights in all areas of society and family life into a single document.

The General Assembly enacted the Convention against All Forms of Discrimination against Women on December 18, 1979. This legally binding document broadened and embraced the Declaration's tenets. This Convention aimed to eliminate prejudice that denied or restricted the equality of women in the political, economic, social, and civil spheres. According to the wording of this Convention, the State Parties agreed to provide recurring reports on the steps they take to implement its provisions.

V. World Conference of The International Women's Year 19 June-2 July 1975, Mexico City, Mexico (The First World Conference on Women)

The International Year of Women was declared by the General Assembly in 1975. It was an enhanced United Nations action to support equality, complete inclusion of women in development activities, and appreciation of women's contribution to promoting global peace. The United Nations-sponsored World Conference on Women took place in Mexico City from June 19 to July 2, 1975. Over 1000 representatives, of which roughly 70% were women, attended this conference. These officials spoke for 133 different states. In 1975, they ratified the Mexico Declaration on the Equality of Men and Women and Their Contribution to Development and Peace.

The Declaration contained seventeen guiding principles, it was emphasised that States specifically had a duty to create ways and means to ensure that women could participate fully in society, and that Men also have duties related to family life. The General Assembly of the United Nations declared the Decade of Women in response to a recommendation made at the 1975 World Conference of the International Women's Year in order to aid in the execution of the global action

⁹ *Ibid*, art. 3.

plan. Requirements for efforts to remove long-standing barriers to women's advancement were outlined in the World Plan and the accompanying Resolutions to ensure that women are fully equal to men in all sectors. Equality, development, and peace were the guiding principles of the women's decade.

VI. World Conference of The United Nations Decade For Women 14-30 July 1980, Copenhagen, Denmark (The Second World Conference on Women)

Another World Conference was held in Copenhagen from July 14 to July 30, 1980, to review the accomplishments of the goals outlined in the 1975 Plan of Action, to suggest activities for the second half of the Women's Decade, and to call for a subsequent World Conference to assess the progress in 1985 of the measures that the General Assembly had endorsed in 1980.

VII. World Conference To Review And Appraise The Achievements of The United Nations Decade For Women 15-26 July 1985, Nairobi, Kenya (The Third World Conference On Women)

In July 1985, there was a conference held to review and evaluate the accomplishments of the UN Decade for Women. In this Conference, 9 157 States are represented. The Forward Looking Strategies were accepted by all without dissent. In order to advance the status of women in relation to the Decade's objectives, namely equality, development, and peace and the sub-theme of employment, health, and education, these strategies called for regular monitoring of their implementation and regular consideration by the Commission on the Status of Women of reports on the progress made and concrete measures implemented at national, regional, and international levels.

3. Protection Under Constitution Of India

Economic, Political, and Social justice for all are among the values found in the Preamble of the Indian Constitution. The equality of women has been established by these ideas. There is no law that can be passed that violates the Indian Constitution because it is the mother of all laws. The Indian Constitution demonstrates a tremendous deal of care for both women and children. The Constitution gave all laws their authority, and it treated everyone equally regardless of caste, race, sex, or religion. The Fundamental Rights are outlined in Part III of the Constitution and must be upheld in court by writs issued under Article 32 by the Supreme Court of India or Article 226 by the appropriate High Courts.

The right to equality for all citizens, regardless of caste, colour, sexual orientation, or place of birth, is discussed in Article 14 of the constitution.¹⁰

State of Kerala and Ors. v. Indian Young Lawyers Association and Ors.,¹¹ the Hon'ble Supreme Court of India ruled that denying entrance to women of any age to temples violates their fundamental rights under articles 14, 19, and 25 of the Indian Constitution.

The legislative branch, the executive branch, and the judicial branch each have a portion of the state's sovereign power. The judiciary interprets the laws and upholds citizens' legal rights and obligations. The legislature enacts legislation. All of them are required under the constitution to carry out and uphold the "fundamental rights" and put into practice the "Directive Principle of State Policy". The Parliament has passed a number of legislation on its own to defend women from discriminatory practices and male exploitation.

According to Article 15(3) of the Constitution, the State is allowed to create specific provisions for women, improve their social, economic, and political fairness, and grant them voting rights.¹² The State frequently invokes Clause (3) of Article 15, which allows for special provisions for women and children, and the courts have consistently maintained the legality of the gender-favoring special measures in legislation or executive orders. That merely means that the Government has the authority to enact any specific laws for women in order to elevate their status, and that doing so is not discriminatory. The Indian Constitution's Article 39(d), which reads in part, "It is the obligation of the state to give equal remuneration for equal work to both men and women, provides for the protection of women as well."¹³ Women have been given this special advantage since the Constitution's drafters were aware of the unfair treatment women have received in India since antiquity. The fact that they have physical characteristics and perform tasks that disadvantage them in the struggle for survival is another justification for establishing special provisions for them.¹⁴

¹⁰ Constitution of India, art. 14.

¹¹ (2019) 11 SCC 1.

¹² *Ibid*, art. 15(3).

¹³ *Ibid*, art. 39(d).

¹⁴ *Muller v. Oregon*, 52 L.Ed. 551 as Quoted in J.N. Pandey, *Constitutional Law of India*, 100 (Central Law Agency, 26th Edn., 1994).

4. Dowry Prohibition Act 1961

The dowry has evolved through time into a chronic illness that affects every aspect of society and has extended to other groups, despite the fact that at first these societies did not have a custom of accepting dowries. The bride's in-laws started treating the bride cruelly and torturously when she refused to pay up in order to satisfy their need for the dowry. She was beaten, subjected to mental torment, burned alive, or coerced into taking her own life. The Indian Parliament approved the Dowry Prohibition Act in 1961 to put an end to the pervasive social disease of dowry. According to Article 44 of the Indian Constitution, which establishes the notion of a uniform civil code, this act is applicable to all communities in India.

In the case of *Vakas v. the State of Rajasthan*,¹⁵ the Supreme Court stated that, "The acceptance and payment of dowry must be controlled by society as well as by the effective application of the Act." In order to counter this threat, society must devise strategies.

According to Section 2 of the Dowry Prohibition Act of 1961, "Dowry" is now defined as any property or valuable security given or agreed to be given, directly or indirectly-

- (a) by one party to the marriage to the other party to the marriage, or
- (b) by parents of either party to the marriage, or by any other person to either party to the marriage, or to any other person; in connection with the marriage of said parties," whether at the time of the wedding or at any point after.¹⁶

It was decided in *Pawan Kumar v. State of Haryana*,¹⁷ that, " not every circumstance calls for agreement. Constant requests for a TV and a scooter were interpreted as requests related to marriage, hence such requests would be regarded as dowry".

The provisions of this act include penalties for anybody who requests or gives dowry prior to, following, or at the time of marriage.¹⁸

¹⁵ AIR 2002 SC 2830.

¹⁶ Dowry Prohibition Act , 1961, s.2.

¹⁷ AIR 1998 SC 958.

¹⁸ *Ibid*, ss.3,4.

5. Indian Penal Code, 1860

The Indian Penal Code is the uniform law that applies to everyone on Indian territory. Many of the provisions in this code provide protection for women against a variety of violations. Law is a dynamic notion that evolves in accordance with societal demands. As is frequently stated, if the legislation does not alter to reflect social trends, it will become worthless. Every time a change is necessary, the law must be updated. Numerous changes have been made by the numerous criminal amendments, such as the Criminal Amendment Act of 2018, which increased the penalty for rape in accordance with the 2012 Protection of Children from Sexual Harassment Act.

I. Dowry Death (Section 304b)

The Dowry Prohibition (Amendment) Act, 1986 introduced a new crime known as "Dowry Death" under Section 304B of the Indian Penal Code with effect from November 19, 1986, in response to the rising number of dowry fatalities and the need to eradicate such immoral practices.

Ingredients of Section 304 – B of I.P.C. are as follows:

- When the death of the woman is caused under abnormal and suspicious circumstances caused by burns or any other bodily injuries
- Within 7 years of the marriage.
- The death is caused in relation to the demand for dowry.
- The expression of Soon before her Death
- The woman was subjected to cruelty or harassment by her husband or any of the relatives of her husband.

Marriages are made in heaven is a proverb, the Honourable Supreme Court noted in *Kamlesh Panjiyar v. State of Bihar*.¹⁹ In the prospect of entering her groom's home and discovering a new world filled with love, a bride departs from her parents' home for the marriage residence. Along with her recollections, she also leaves behind her maiden name, gotra. She anticipates both a daughter and a daughter-in-law. Sadly, the dreams are dashed by the disturbing increase of cases involving harassment of newlywed girls for dowry. In-laws are seen as outlaws because they committed acts of terrorism that shattered the marital home.

¹⁹ 2005 Cri. L.J. 1418 (S.C).

According to the Honorable Supreme Court, "Demand for any asset with a connection to the marriage, whether property or valuable security, is dowry demand," in the case of *Bachi Devi v. State of Haryana*.²⁰ It is irrelevant as to how or why the demand came to be made. The accused may therefore be deemed accountable for dowry death in accordance with section 304-B of Indian Penal Code, 1860.

II. Voluntarily Causing Grievous Hurt By Use Of Acid, Etc. (Section 326 A)

Section 326-A defines the offence of knowingly using acid or another drug to inflict grave bodily injury. This section addresses the following: Inflicting burns, permanently or partially altering the appearance of a person's body, disabling a part of that person's body, causing grievous harm by administering or throwing acid, or inflicting harm by any other means.²¹

III. Voluntarily Throwing or Attempting To Throw Acid (Section 326 B)

The following actions are considered criminal under this section which include Throwing or attempting to throw acid on anyone, administering acid to anyone, or attempting to use any other method with the intent to cause permanent, partial, or other damages, such as deformity, burns, maiming, or disfigurement or disability, or to cause grievous harm.²²

IV. Assault or Criminal Force To Woman With Intent To Outrage Her Modesty (Section 354)

Anyone who assaults a woman or uses unlawful force against her with the intent to offend her modesty or with knowledge that he will likely do so is punishable by imprisonment of either kind for a time that may reach two years, a fine, or a combination of the two.²³

In the case of *Ram Kripal S/O Shyam Lal Charmakar v. State of Madhya Pradesh*,²⁴ it was determined that the standard to assess whether a woman's modesty has been violated is whether the offender's action might be interpreted as one that is capable of shocking a woman's sense of decency.

²⁰ (2011) II Cri. L.J. 1634 (S.C.).

²¹ Indian Penal Code , 1860, s. 326 A.

²²*Ibid*, s. 326 B.

²³*Ibid*, s.354.

²⁴ 2007II Cri.L.J 2302(S.C)

V. Sexual Harassment (Section 354 A)

This section covers the various types of sexual harassment, such as unwanted physical contact and advances involving explicit sexual overtures; demands or requests for sexual favours; the showing of pornography against the will of a woman; and remarks with a sexual undertone. Violators are subject to penalties under this act and are guilty of the offence of sexual harassment.²⁵

VI. Assault or Use Of Criminal Force To Woman With The Intent To Disrobe (Section 354 B)

Anyone who assaults a woman or uses unlawful force against her with the intent to offend her modesty or with knowledge that he will likely do so is punishable by imprisonment of either kind for a time that may reach two years, a fine, or a combination of the two.²⁶

VII. Voyeurism (Section 354 C)

Any man who witnesses or photographs a woman performing a private act in a setting where she would typically expect to be unobserved by the perpetrator or by any other person acting at the perpetrator's direction and publishes such information shall, upon conviction, be punished by imprisonment of either description for a term that shall not be less than one year but may extend to three years, as well as by fine and imprisonment for public indecency.²⁷

VIII. Stalking (Section 354 D)

Stalking is a crime, and any man who stalks a woman by following her around and making repeated attempts to get in touch with her for a romantic relationship despite her obvious lack of interest or by keeping track of how she uses the internet, email, or any other form of electronic communication will be sentenced to one to three years in prison on their first conviction. They will also be required to pay a fine.²⁸

²⁵ *Ibid*, s.354 A.

²⁶ *Ibid*, s.354 B.

²⁷ *Ibid*, s.354 C.

²⁸ *Ibid*, s.354 D.

IX. Kidnapping , Abducting Or Inducing Woman To Compel Her Marriage (Section 366)

The person who kidnaps, abducts, or induces any woman – married or not – with the objective of forcing her into marriage was penalised under this provision.²⁹

X. Rape (Section 375)

“A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions: –

(First) – Against her will.

(Secondly) – Without her consent.

(Thirdly) – With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

(Fourthly) – With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

(Fifthly) – With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly) – With or without her consent, when she is under sixteen years of age. Explanation. – Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

(Exception) – Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.]”³⁰

²⁹ *Ibid*, s.366.

XI. Cruelty (Section 498 A)

"If a woman is subjected to cruelty by her husband or a family member of her husband, that person faces up to three years in prison and a fine in addition to their punishment".³¹

Cruelty can be seen as causing physical or emotional suffering to the point that it is extremely difficult for the wife to remain with her husband. This is due to the occurrences of pain and abuse she experienced during the aforementioned relationship. Cruelty can also be seen as the expression and lack of regret behind a treatment that makes the spouse genuinely fear that her life will be destroyed and damaged if she stays with the husband. Thus, the marriage between the couple, their social and emotional well-being, their day-to-day communication, which commands the part of cold-bloodedness leading to excessively cruel treatment, are significant factors to consider when choosing the subject of cruelty.³²

In the case of *Gollins v. Gollins*,³³ Lord Reid had observed, "no one has ever attempted to give a comprehensive definition of cruelty and I do not intend try to do so. Much must depend on the knowledge and intention of the respondent, on the nature of his (or her) conduct, and on the character and physical or mental weaknesses of the spouses, and probably no general statement is equally applicable in all cases except the requirements that the party seeking relief must show actual or probable injury to life, limb or health. It is impossible to give a comprehensive definition of cruelty, but when reprehensible conduct or departure from normal standards of conjugal kindness causes injury to health or an apprehension of it, is, I think, cruelty if a reasonable person, after taking due account of the temperament and all the other particular circumstances would considered that the conduct complained of is such that this spouse should not be called on to endure it. I agree with the Lord Merriman whose practice in cases of mental cruelty was always to make up his mind first whether there was injury or apprehended injury to health. In the light of that vital fact the Court has then to decide whether the sum total of the reprehensible conduct was cruel. That depends

³⁰ *Ibid*, s.375.

³¹ *Ibid*, s.498 A.

³² *3Sarojkishanv. State of Maharashtra*, 1995 Cri LJ 340 (Born).

³³ (1964) AC 644.

on whether the cumulative conduct was sufficiently weighty to say that from a reasonable person's point of view, after a consideration of any excuse which this respondent might have in the circumstances, the conduct such that this petitioner ought not to be called on to endure it. The particular circumstances of the home, the temperament and emotions of both the parties and their status and their way of life, their past relationship and almost every circumstance that attends the act or conduct complained of may all be relevant".

The definition of cruelty varies depending on the parties' way of life, their economic and social circumstances, their culture, and the human values they hold dear, as determined by modern civilization's standards against the backdrop of our society's cultural heritage and traditions.³⁴

I. Constitutionality of Section 498a

S. 498A's constitutionality was contested in *Krishan Lal v. Union of India*³⁵ on the grounds that it disregarded Article 14 of the Indian Constitution. The argument for the challenge was that cruelty has a "ambiguous" and "discretionary" definition. However, the court determined that a spouse and his relatives constitute a "class apart" and "reasonable classification," particularly when a married woman is treated brutally. and that too inside the four walls of a house, hence it isn't a violation of Article 14 of the Constitution.

II. Section 498a IPC And 113a Indian Evidence Act, 1872

Physical torture is not the only form of cruelty. Depending on the circumstances in each instance and the evidence in the file, it will be possible to determine if the treatment one gave to another amounted to cruelty. There was no disagreement that the petitioner had been married to the other party for a considerable amount of time without having given birth to any children. In cross-examination, the opposing party implied to the petitioner that medical assistance was provided to cure her of barrenness. The petitioner refuted this. The opposing party has not shown any evidence to back up the medical intervention.

³⁴ *Raj Rani v. Subramuniam*, AIR 1990 Ker 1.

³⁵ 1994 CrLJ 3472 (P&H).

Therefore, it can be confidently assumed that the family members were aware of the petitioner's flaw and that the petitioner was also aware that she was unable to grant the family members' wish in that regard. Any misunderstanding with the petitioner would cause her to believe that she wasn't treated well because of the condition while she wasn't being treated to get it fixed.³⁶

6. Maintenance Under Section 125 Of The Criminal Procedure Code, 1973

The idea of maintenance is quite old, and society adopted this system specifically to help women. Regardless of faith, this section applies to all communities in India and is uniform in character. According to this provision, if a husband with sufficient resources neglects or refuses to provide for his wife, the woman may make a claim for maintenance under this section. The Hon'ble Supreme Court of India stated the same thing in its ruling in *Mohd. Ahmed Khan v. Shah Bano Begum*.³⁷ It was decided that because this section is uniform in nature and this uniformity strengthens national unity, the muslim woman is also entitled to maintenance under this section. A community's enlightened judges and attorneys viewed the Apex Court's current interpretation of the Mohammaden Law as the proper one.

In the *Hanifa v. Pathummal Baevi*,³⁸ case, Justice V. Khalid of the Kerala High Court described his agony in these words:

“Should Muslim wives endure oppression forever? Should their personal law continue to be so oppressive towards these poor wives? Can't it be changed in a way that will lessen their suffering? This abomination disturbs my judicial conscience. The query is whether the community's public opinion leader's conscience is likewise troubled”.

In the *Vidhyadhari v. Sukhrana Bai*,³⁹ the Supreme Court ruled that, “those who have been cohabitating as husband and wife for a reasonable amount of time are eligible to inherit property from a live-in spouse.”

³⁶ *Shyamabai v. S. Patel*, 1989 Cri LJ 1607 at 1609.

³⁷ 1985 (1) SCALE 767; 1985 (3) SCR 844; 1985 (2) SCC 556; AIR 1985 SC 945.

³⁸ 1972 KLT 512 at 514.

³⁹ Appeal (civil) 575 of 2008.

7. Protection Of Women From Domestic Violence Act, 2005

To end domestic abuse, the Central Government approved the "Protection of Women from Domestic Violence Act, 2005" on June 23, 2005. Domestic violence is extensively defined under this Act, and all of its manifestations—physical, economic, emotional, sexual harassment, and the demand for dowry—have been included in its purview.

The definition of "domestic violence" has been extremely broadly defined, embracing a number of actions and inactions such as "physical abuse, sexual abuse, verbal and emotional abuse, and economic abuse" as part of the phrase. The term "Cruelty" is not defined in the Act; instead, a broader description is offered and the term "Domestic Violence" is used. Physical torture is not the only form of cruelty. Depending on the circumstances in each instance and the evidence in the file, it will be possible to determine if the treatment one gave to another amounted to cruelty. There was no disagreement that the petitioner had been married to the other party for a considerable amount of time without having given birth to any children. During cross-examination, the opposing party implied to the petitioner that medical assistance was provided to cure her of barrenness. The petitioner refuted this. The opposing party has not shown any evidence to back up the medical intervention. Therefore, it can be confidently assumed that the family members were aware of the petitioner's flaw and that the petitioner was also aware that she was unable to grant the family members' wish in that regard. Any misunderstanding with the petitioner would cause her to believe that she wasn't treated well because of the condition while she wasn't being treated to get it fixed.⁴⁰

“Section 2 (s) of the DV Act defines “Shared Household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household”.⁴¹

⁴⁰ *Supra* note 36.

⁴¹ Protection of Women From Domestic Violence Act, 2005, s. 2(m).

An application for one or more reliefs under this Act may be submitted to the Magistrate by an aggrieved person, a Protection Officer, or any other person acting on their behalf.⁴²

According to Section 19 of the Act, if the Magistrate determines that domestic violence has taken place, the Magistrate may issue a residence order preventing the respondent from disturbing the aggrieved person's belongings in the shared household, or ordering the aggrieved person to leave the shared household, preventing the respondent or any of his relatives from entering the shared household, and forbidding the respondent from renegeing on his rights in the shared household.⁴³

According to section 20 of this act the Magistrate may order the respondent to provide financial assistance to cover the costs and losses sustained by the harmed party and any affected children as a result of the domestic violence.⁴⁴

In accordance with Section 21 of the Protection of Women from Domestic abuse Act of 2005, the Magistrate may order that the victim of domestic abuse or the person submitting the application on her behalf receive custody of any child or children.⁴⁵

According to Section 22 of the Act, the respondent will be held accountable for any damages or injuries, including mental torture and emotional distress, as determined by the Magistrate, and will be required to compensate the victim.⁴⁶

“The Magistrate may grant an ex parte order based on the affidavit of the aggrieved person under Section 18, Section 19, Section 20, Section 21 or, as the case may be, Section 22 against the respondent if he is satisfied that an application prima facie discloses that the respondent is committing, has committed, or there is a likelihood that the respondent may commit an act of domestic violence”.⁴⁷

8. Muslim Women (Protection of Rights on Marriage) Act, 2019

In the Muslim community, women are treated as puppets that men can manipulate

⁴² *Ibid*,s.12.

⁴³ *Ibid*,s.19.

⁴⁴ *Ibid*,s.20.

⁴⁵ *Ibid*,s.21.

⁴⁶ *Ibid*,s.22.

⁴⁷ *Ibid*,s.23.

to satisfy their lusts and pleasures. Even women are not permitted to testify in legal proceedings. Two women are equivalent to one witness for a man in the Qur'an. On the basis of humanistic ideas, improvements to the status of women have only been improved. Recent developments in women's standing are one of the biggest obstacles facing the feminist movement. The national constitution as well as several other laws around the world include provisions for equality and other equal rights claimed by women.

The triple talak is entirely prohibited by this law, which was written in response to the 2017 judgement of the Hon'ble Supreme Court of India in *Shayara Bano v. Union of India*.⁴⁸ According to section 3 of Muslim Women (Protection of Rights on Marriage) Act, 2019, uttering "Triple talaq" or "Talaq-e-biddat" is forbidden and null & void and then makes it punishable U/S 4 for three years.

9. Conclusion and Suggestions

The rights granted to women under various statutes must be made known to them. The problem is that the majority of women, particularly those living in rural regions, aren't even aware of their rights. They lack knowledge regarding the appropriate forum to approach and how to do so. There is a need for a facilitation centre, development programmes for women, and training for law enforcement personnel dealing with crime against women. Then, whether it is the police or the courts, government employees will be trained to be more sympathetic to the cause. Educating a girl about her rights alone will not accomplish the goal. Sensitization is required. Give them prompt instruction. Call for frequent reporting from them as well. Installing CCTV cameras in these workplaces may also be beneficial.

The cases relating to the women must be disposed off within the reasonable period of the time and there is no delay on the part of the investigating authorities and the courts. The courts should be used to accomplish the true purpose and intent of the law. And the most important as the citizen we should respect the women and they are treated equally as men and the society should also be made aware that they should behave in a way that improves the impact of the law, does not obstruct its application or effectiveness, and safeguards women from all forms of abuse.

⁴⁸ (2017) 9 SCC 1.

CHALLENGES IN LABOUR LAW WITH THE ADVENT OF ARTIFICIAL INTELLIGENCE: A LEGAL STUDY

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Abstract-

It is already being witnessed that working practices have changed as a result of digital technology. With the introduction of Artificial Intelligence (AI), we are only at the beginning of an unprecedented revolution that will impact both the labour and employment market as well as working relationships. The question is that how does AI affect professional relationships? It implies Labour law when we talk about working relationships. Labour law is a set of law made specifically for the purpose of protecting the relationship an employee and an employer holds with each other. The advent of AI has shaken this relationship in sectors such as hiring, performance, wage, termination etc. affecting various rights of the workers. These evident changes brought about by AI in the workplace should be governed by labour and employment laws. Now, the need of the time is to find out ways and the areas which need modification in labour legislation and employment rules, so that they can foresee and facilitate the transition to the new world.

This article attempts to provide precise and practical adjustments to allow a smooth transition into an AI-enabled workplace and briefly addresses the effects of artificial intelligence on labour and employment legislation. Additionally, it suggests adding clauses to protect workers from being fired arbitrarily for technological reasons and imposing a responsibility of restraint on the employer. In line with recent developments in other countries, it also suggests regulatory changes restricting companies' use of AI systems for hiring.

Keywords- Artificial Intelligence (AI), Labour law

1. Introduction

AI refers to the simulation of human intellectual functions by machines, particularly computer systems. Language processing and speech recognition are the primary foundations of AI. In order to function, AI, which is also regarded as a subfield of computer science, actually needs human intellect. Different methods to AI exist, but technological developments and breakthroughs are changing every aspect of the IT sector. The primary goal of artificial intelligence is to create intelligent machines. Labour is defined as any physical or mental activity performed by unskilled workers in exchange for money.

As AI systems replace human labour in a number of industries, the technological era is witnessing talks on "robotic rights" and "legal personhood to robots." Legislators in India haven't paid enough attention to the consequences for employment and human labour or the implications for labour rights. By 2025, automation could result in the loss of 85 million jobs, according to a World Economic Forum ("WEF") report.¹ There are many benefits to using artificial intelligence in the workplace. Less time will be spent working during product manufacturing. According to data gathered, the cost of producing a robot is less than the payment made to a worker in China for the same service. The robot can work nonstop for the entire day without getting sick, and the employer won't have to worry about any negative effects or threats. since it is not a live being but an artificially intelligent being.²

The rapid growth of technologies has had a negative effect on the labour market. A significant issue will be widespread unemployment, which will increase the number of people living in poverty. Also, AI might affect labour laws and worker safeguards. Workplace safety, pay-per-hour regulations, and discrimination are just a few of the topics covered by labour laws. In the

¹ *The Future of Jobs Report, 2020*, WORLD ECONOMIC FORUM (Jan. 29, 2023, 9:45 P.M), <https://www.weforum.org/reports/the-future-of-jobs-report-2020>.

² Bensha. C. Shaji and Angel Shaji, *Artificial Intelligence and its Impacts on Indian Employment*, IJLMS, 138 (2000).

workplace, AI systems have the potential to increase productivity and accuracy. However, if they are not carefully built and tested, they could unintentionally perpetuate discrimination or introduce new safety risks. The usage of AI in the workplace may potentially have an impact on employee perks and worker rights like workers' compensation.

2. Historical Development of Artificial Intelligence in Labour Industry

Machines abstract human thought into an artificial form and manipulate it. The introduction of this concept, which ultimately led to the invention of the computer, was a result of the idea regarding artificial intelligence that emerged during the course of advanced mathematical studies and logical applications by the classical philosophers and logicians behind every work. The concept of "artificial intelligence" emerged in the 20th century, which encouraged scientists to pursue the idea of developing a human assistant with an "electrical brain" or an artificially intelligent entity. Alan Turing suggested the Turing Test, often known as the imitation game.³ He argued that a computer can possess artificial intelligence if it imitates human behaviours under certain circumstances, and this test evaluates whether a computer is capable of thinking like a human being. John McCarthy initially introduced the term "artificial intelligence" in the year 1956.⁴

Initially, AI was introduced in the labour industry with the help of robots that were qualified to undergo repetitive task. This started as a result of the industrial revolution that came as a numerically controlled machine in the 1950s and then the coming of integrated circuits by the 1970s. Robotics and artificial intelligence are two very different types of technologies that assist men inefficiently replacing their labour and performing work for them. A subfield of computer science is artificial intelligence. While the field of technology known as robotics focuses on programmable robots. They are often autonomous or semi-autonomous and carry out the work on their own through a series of actions. Artificial intelligence (AI) can replace human

³ Gill Press, *A very short History of Artificial intelligence*, FORBES, (Dec 30, 2016, 09:09 A.M), [https://A Very Short History Of Artificial Intelligence \(AI\) \(forbes.com\)](https://A Very Short History Of Artificial Intelligence (AI) (forbes.com)).

⁴ Chris Smith, *The History of Artificial Intelligence*, *History of Computing*, 12 C.S.E.P. 2, 1-27, 2006.

intelligence in a number of situations, including task completion, logical reasoning, problem-solving, reading and writing. Now, robotics and AI are combined to create Artificial Intelligent Robots. AI programs are used to operate these robots.⁵

3. Legal Issues Upon the Introduction of Artificial Intelligence in the Employment Sector.

The future of work and employment have been significantly impacted by the incorporation of AI in the workplace. The automation of jobs has a substantial impact on employment. AI has the ability to automate boring, repetitive processes, which might boost output, save costs, and boost efficiency. However, this automation may result in job loss and employment displacement for those individuals who are replaced by machines. In industries like data analysis, software engineering, and machine learning, AI can also lead to the creation of new jobs and business prospects. Workers must obtain the new skills and credentials needed for these new professions in order to stay employable in the future. Workers must adapt to the changing nature of the labour market and acquire new skills to stay competitive.

3.1 Legal Issues

The use of AI in the workplace brings up a number of legal concerns and difficulties. These cover issues like the protection of workers' rights, job loss, and discrimination.

- a. **Protection of the rights of workers-** The preservation of workers' rights is one of the main legal challenges that arise from the use of AI in the workplace. Employees are entitled to privacy, a safe and healthy working environment, and fair compensation and benefits. These rights may be impacted by AI in different ways.

AI systems frequently gather a lot of personal data, including private data like financial and medical records. Privacy rules, such as the

⁵ Supra note. 2

California Consumer Privacy Act (CCPA) in the United States and the General Data Protection Regulation (GDPR) in the European Union, must be followed when handling this data. Employers who use AI systems must make sure they adhere to these laws and safeguard the privacy rights of their workers.⁶

AI can be used, for instance, to track employees' activities, such as productivity, behaviour, and communications. This surveillance may result in a breach of workers' privacy rights and a hostile work environment. Employers must make sure that the use of AI does not violate employees' right to privacy and that all employees are informed of any monitoring that occurs.⁷

- b. **Discrimination-** Certain groups of workers may continue to face prejudice if AI is used in decision-making. This prejudice could be motivated by considerations of colour, gender, age, or handicap. Employers must make sure that the application of AI does not result in discrimination and that employees have the opportunity to appeal any judgements made by the technology. Perhaps, such discrimination shall continue to occur until the algorithm used in it is trained with biased data.

For instance, AI may also be used to decide who gets hired, fired, or promoted. These choices could be based on algorithms that examine information about the performance, conduct, and credentials of employees. However, these algorithms may be biased and contribute to the continued discrimination of particular worker groups. Employers must make sure that using AI for decision-making does not

⁶ UTKARSH UPADHYAY, *THE IMPACT OF ARTIFICIAL INTELLIGENCE ON EMPLOYMENT LAW AND WORKER PROTECTIONS IN INDIA*, THE AMIKUS QRIAE, (JULY 10, 2023, 10:45 P.M), [HTTPS://THE IMPACT OF ARTIFICIAL INTELLIGENCE ON EMPLOYMENT LAW AND WORKER PROTECTIONS IN INDIA. - THE AMIKUS QRIAE](https://the-impact-of-artificial-intelligence-on-employment-law-and-worker-protections-in-india.-the-amikus-qriae).

⁷ Antonio Aloisi & Elena Gramano, *Artificial Intelligence is Watching You at Work: Digital Surveillance, Employee Monitoring, and Regulatory Issues in the EU Context*, 41 *CLLPJ* 101, 102-103 (2019),

result in discrimination and that employees have the opportunity to appeal any AI-generated conclusions.⁸

- c. **Job Displacement-** The possibility for job displacement is perhaps the biggest issue highlighted by the use of AI in the workplace. As AI systems become more capable of carrying out tasks that were previously done by humans, it's possible that both job losses and the nature of work may result.

This poses important legal and policy issues on how to safeguard employees who lose their jobs due to AI and make sure they have access to new opportunities and training. In order to handle the possible effects of AI on the labour market, several academics have stated that governments may need to implement new policies like universal basic income or retraining programmes.⁹

- d. **Liability-** Another important concern with AI in the workplace is liability. Especially if the AI systems injure or discriminate against employees, employers may be held liable for the activities of their systems. Employers are responsible for ensuring that AI systems are utilised ethically and responsibly and that they have the necessary safeguards in place to address any possible harm that their AI systems may create.¹⁰
- e. **Collective Bargaining-** Finally, concerns about collective bargaining and employees' rights to form unions and engage in collective bargaining are raised by the growing usage of AI in the workplace. It might be more challenging for employees to exercise their right to collective bargaining and bargain with employers about how AI would affect their jobs, pay, and working conditions as AI systems

⁸ *Ibid.*

⁹ *Supra* note 6 .

¹⁰ Aida Ponce Del Castillo, *Labour in the Age of AI: Why Regulation is Needed to Protect Workers*, ETUI (Jan. 24, 2020, 12:45 P.M), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3541002.

proliferate in the workplace. This can decrease workers' bargaining strength and result in a drop in labour standards.

In order to allay these worries, authorities may need to take into account new legal and regulatory frameworks that guarantee workers have a say in the creation and application of AI systems. For instance, some experts have proposed that companies may need to practise "algorithmic accountability" and exhibit greater openness regarding how their AI systems are developed, evaluated, and applied in the workplace. This could make it possible to preserve employees' privacy rights and prevent them from being vulnerable to discriminatory or biased judgements.

4. Laws Regulating Artificial Intelligence in India in the Field Of Labour Law.

India being a socialist and welfare country is always strict in the field of regulation of labour laws. The Indian labour laws are a set of legislative protections and guidelines offered to the country's working populace to ensure a harmonious interaction between employees and employers. The laws provided for labour can be used to resolve any issues or disputes. It primarily deals with minimum wage, health and safety, and resolving conflicts between employers and employees. There are two different types of employment laws: collective and individual. The purpose of collective labour law is to preserve the bond between the union, the employer, and the employee. Whereas, each state has its own labour laws to protect employees' rights at work. Recently, with the adoption of the three new labour codes in 2020, substantial changes were made to labour law. They were

- 1) The Industrial Relations Code, 2020¹¹
- 2) The Code on Social Security, 2020¹² and
- 3) The Occupational Safety, Health and Working Conditions Code, 2020¹³

¹¹ The Industrial Relations Code, 2020, No. 35, Act of Parliament 2020.

¹² The Code on Social Security, 2020, No. 36, Act of Parliament 2020.

¹³ The Occupational Safety, Health and Working Conditions Code, 2020, 37, Act of Parliament 2020.

Unfortunately, the new labour regulations do not include any provisions pertinent to India's impending shift to an automated economy, where the use of robots would significantly affect a wide range of labour rights. Future-oriented legislative changes must ensure that the regulatory structure is ready to deal with the shift to AI-enabled workplaces.

However, the fundamental law of the land and various other laws and regulation that are functioning in India has been successful in protecting workers' rights directly or indirectly. They are as follows:

- a. **Constitutional Laws in the protection of labours' rights:** The Indian Constitution includes a thorough discussion of issues relating to the dignity of human labour as well as specific provisions for the protection and safety of workers in Chapter III (Articles 16, 19, and 24) and Chapter IV (Articles 39, 41, 42, 43, 43A, and 54). The subject may be handled and administered by both the union and the state governments.
- b. **Information Technology Act, 2000:** The main legislation governing technology use in India is the Information Technology Act, 2000. The Act offers a framework for the use and control of digital signatures and electronic transactions, which are crucial to the creation and application of AI technology.¹⁴

The world has now become a global community where transactions may be done easily. The protection of intellectual property rights, personal data privacy, and aspect confidentiality are urgently needed. As a result, nations like India created strong rules and regulations to safeguard these private details. However, 93% of respondents to a 2018 survey on artificial intelligence and industrial stakeholders voiced concerns about data privacy.

¹⁴ Information Technology Act, 2000, No. 21 Act of Parliament 2000 (India).

The year 2018 saw a revolution in the area of data protection rights when the Supreme Court issued a landmark decision in the case of *Justice K.S. Puttaswamy v. Union of India*¹⁵, bringing informational privacy under the purview of the right to privacy and giving it the status of a fundamental right.

- c. **The Competition Act, 2002**¹⁶ - This law primarily limits the competition that develops in the commercial sector and prohibits the exploitation of dominating positions. The Competition Commission of India (CCI) upholds this law. This specific law forbids antitrust-related mergers and amalgamations, misuse of dominant position, and antitrust-related anticompetitive agreements. AI has the potential to be a factor that aids the business market in changing dominant positions and fostering rivalry between enterprises.

- d. **National AI Strategy:** The Indian government unveiled its National AI Strategy in 2018, which provides a path for the advancement and application of AI technology in the nation. The plan places a strong emphasis on the need for ethical and responsible AI use as well as the creation of a workforce with the necessary expertise.¹⁷

- e. **Personal Data Protection Bill, 2019:** The Personal Data Protection Bill, 2019, is currently under consideration in the Indian parliament and is being analyzed by a Joint Parliamentary Committee in 2020. The bill seeks to establish a framework for the protection of personal data and privacy in India. It includes provisions related to

¹⁵ Justice K.S. Puttaswamy v. Union of India (2017) 10 SCC 1 (India).

¹⁶ The Competition Act, 2002, No. 12, Act of Parliament 2002 (India).

¹⁷ *National AI Strategy*, INDIA AI, (April 29, 2023, 4:45 P.M),

<<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1557747>>

the use of AI technologies, such as the requirement for explicit consent for the collection and processing of personal data.¹⁸

- f. **Artificial Intelligence and Ethics Committee:** The Ministry of Electronics and Information Technology established the committee in 2020 to offer recommendations on how AI should be used ethically and responsibly in India. The group is made up of professionals from the academic community, business, and civil society.¹⁹
- g. **The National e-Governance Plan-** The National e-Governance Plan is a government effort that aims to enhance the delivery of public services through technology, particularly AI. The plan calls for the creation of AI-based solutions for numerous industries, including agriculture, healthcare, and education.²⁰

Thus, If we take a deeper look at Indian supplies compared to those found elsewhere in the world, we will see some significant parallels between the two sets of final products. India established its laws to address the needs of the nation on a domestic level. However, no international policies have yet been developed to look into the usage of AIs in cross-border concerns. There are a few provisions in the Information Technology Act, 2000 that address issues of foreign jurisdiction, but they are by no means sufficient. In order to develop stronger and more effective regulatory and regulations for AI, India might take inspiration from the more technologically sophisticated nations.²¹

¹⁸ *Personal Data Protection Bill*, MINISTRY OF ELECTRONIC AND INFORMATION TECHNOLOGY, (Jan. 15, 2023, 6:20 PM)2019 <<https://www.prsindia.org/billtrack/personal-data-protection-bill-2019>>

¹⁹ Steven Tiell, *Artificial Intelligence and Ethics Committee*. HARVARD BUSINESS REVIEW, (Feb. 24, 2023, 5:25 P.M), < Create an Ethics Committee to Keep Your AI Initiative in Check (hbr.org)>

²⁰ *National e-Governance Plan*, MINISTRY OF ELECTRONIC AND INFORMATION TECHNOLOGY, (April 15, 2023, 3:15 P.M) <<https://www.india.gov.in/spotlight/national-e-governance-plan-neGP>>

²¹ Arjun Kumar Ray & Aishi Chatterjee, *Impact of Artificial Intelligence and Robotics in the Labour Industry and need for AI regulations*, 5 IJLLR 228, 216-230 (2023).

5. Amendments Required in Labour Law Sector for Regulation of Artificial Intelligence

The above scenario depicts that the laws regulating labour industry is lacking in terms when AI comes into play. The author therefore goes on to suggest specific changes to Indian labour law under a number of different headings as a broad framework for defending workplace rights against "AI-invasion".

- a. **Amendment to the provisions of trade union:** At the onset a proviso to S. 2(m)²² of the Industrial Relations Code, 2020, which defines the term "employer," before outlining the changes to rules on trade unions.

It must state that notwithstanding anything contained in the Code an employer shall be interpreted to include any AI system/robot engaged in the capacity of an employer.

Every such robotic "employer" must be under human direction and supervision in order to deal with employees regarding collective bargaining for the purposes of S. 14 of the Code.

- b. **Legislative reforms for hiring of workers:** AI is increasingly being used to screen resumes and direct the hiring and firing process. Despite the fact that it has made recruitment easier and more time-bound, there are difficulties associated with its utilization.²³ In the US, a number of states have introduced legislation or already have it in place to control the use of AI in the recruiting process. For instance, the Illinois Artificial Intelligence Video Interview Act²⁴ offers several protections to prospective employees/workers, including a requirement for prior notice about the use of the AI

²² S. 2(n), The Industrial Relations Code, 2020, No 35, Act of the Parliament, 2020 (India).

²³ Joseph C.O' Keefe, Tony S. Martinez & Edward C. Young, *AI, Machine Learning and Big Data*, 2021, GLOBAL LEGAL INSIGHTS (2021), <https://www.proskauer.com/pub/artificial-intelligence-employment-law-risks-and-considerations>.

²⁴ The Artificial Intelligence Video Interview Act, (820 ILCS 42/).

system, disclosure of the AI system's features to the applicant, obtaining the interviewee's consent to use the AI system, etc.

India must also pass the Artificial Intelligence Video Interviews Act in light of the growing use of AI in hiring and recruiting. This Act includes, among other things, the following protections:

- 1) No use of an AI system shall be made without first obtaining the prior consent of the applicant.
- 2) Notice must be given to the applicant about what type of AI is being used in the recruitment process in advance.
- 3) The employer must take all necessary precautions to guarantee that the AI system is fair-minded and sufficiently accurate.

c. Amendment in the field of Termination, Lay-off, and Dismissal of Workers due to displacement of workers by AI system: Workers are protected under Chapter IX of the Industrial Relation Code, 2020²⁵ from layoffs, retrenchments, and the closing of industrial facilities. There is no explicit clause in the Industrial Relations Code, meanwhile, that addresses firing employees for being replaced by robots, computers, or AI systems.

Comparable provisions are found in the French Labour Code²⁶, where Article L. 1233-3 states that a dismissal shall be deemed to be made on economic grounds if it is made by the employer for one or more reasons unrelated to the employee, one of which includes technological grounds for dismissal.

Workers will be protected from arbitrary terminations based on technology by a parallel clause under the Industrial Relations Code, 2020. Further, the inclusion of such a provision may lead to the development of labour rights jurisprudence and create a new

²⁵ S. 40, The Industrial Relations Code, 2020, No 35, Act of the Parliament, 2020 (India).

²⁶ French Labour Code, Art. L. 1233-3.

obligation on employers, i.e., an obligation or duty to restrain or adapt an employee to the changed working environment, or alternatively, to provide for alternative employment or compensation.

The clause might provide that, any dismissal by the employer on technological grounds, shall provide prior notice of at least 30 days, and reasons justifying the dismissal.

In addition, the clause can state that every employer who discharges an employee for technological reasons must exercise reasonable restraint in terminating the employment relationship, and as far as is reasonably practicable, efforts shall be made to restrain and/or adapt the employee to the new working environment.

6. Conclusion and Suggestion

Since the use of AI in the workplace is a rapidly expanding field, it is crucial to make sure that it is morally and legally acceptable. Regulations, rules, and policies that control the use of AI at work are only a few examples of the various ways that statutory intervention in the use of AI in labour may take place.

Protecting worker rights is one area where statutory action may be required. In order to preserve the worker's privacy and dignity, AI may be used, for instance, to track employee productivity and performance. Before employing AI to monitor employees' performance or to make sure AI systems are open and understandable, companies may be required by statutory intervention to get the workers' permission.

Statutory intervention may be required by employers to make sure that their AI systems are designed and implemented in a way that avoids discriminatory outcomes. Statutory intervention may be necessary in order to prevent discrimination. AI may be used in the recruitment process to screen

job applicants, but this must be done in a way that does not discriminate against certain groups.

Last but not least, governmental action may be required to guarantee that the use of AI in the workplace is secure and does not endanger the health and safety of workers. In conclusion, government involvement in the use of AI in labour is required to guarantee that the employment of AI is morally acceptable, legal, and secure. It may call for rules, laws, and policies that oversee AI use in the workplace, safeguard employee safety, defend their rights, and forbid discrimination.

ROLE OF LAW COMMISSION OF INDIA IN REFORMING LABOUR LAWS IN INDIA

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1. Introduction:

“Labour is priceless, not gold” – Mahatma Gandhi¹

Labour law, also referred to as employment law, is a comprehensive framework of legal principles, administrative regulations, and past court decisions designed to protect the rights of individuals engaged in work and to set boundaries for both employees and their organizations. Its fundamental purpose is to govern the multifaceted relationship among trade unions, employers, and employees. Essentially, labour law delineates the rights and obligations of workers, union members, and employers operating in the workplace. The key areas covered by labour law typically encompass:

- a. Industrial relations, which involves aspects such as the recognition of Labour unions, the management of Labour-management interactions, collective bargaining, and the prohibition of unfair Labour practices.
- b. Workplace health and safety regulations, aimed at ensuring a safe and healthy work environment for all employees.
- c. Employment standards, which encompass various provisions like general holidays, annual leave, working hours, protection against unjust dismissals, minimum wage requirements, layoff procedures, and provisions for severance pay.

The Ministry of Labour & Employment in the Government of India plays a crucial role in safeguarding the interests of workers, especially those from underprivileged

¹ Vol. 8 D G Tendulkar, Mahatma 97 (2nd Edn. 1960).

sections. It aims to create a productive work environment and provides vocational skill training and employment services. The Ministry focuses on promoting welfare and social security for both organized and unorganized Labour through the implementation of Labour laws.

The ever-evolving nature of industrial, Labour, and general laws necessitates researchers to keep abreast of constant legislative changes and judicial pronouncements. This paper seeks to examine the significant impact of the Law Commission of India in reforming Labour laws. It will explore whether the Law Commission actively contributes to the enhancement and refinement of Labour laws or there is some other body which does the reform in this sector by meticulous analysis of judgments, articles, and reports.

2. Historical Background of Labour Laws in India:

The development of Labour Law was a result of the complex interaction between the demands of workers for better conditions and the right to unionize, and employers' interests in controlling Labour costs and limiting workers' impact. Workers sought improved treatment and the independence to form unions, while employers aimed to keep Labour expenses in check. Implementing Labour laws could surge costs for employers, either through negotiated wage increases or compliance with regulations like health and safety standards and equal opportunities. Furthermore, workers' organizations, such as trade unions, sometimes extended their scope beyond industrial matters, gaining political power, which was not always welcomed by employers. Therefore, the state of Labour law at any given time reflects an ongoing struggle between different societal interests.

The state of Labour law at any given time is a reflection of the ongoing conflicts and negotiations between various societal interests. The International Labour Organization (ILO) was one of the pioneering organizations dedicated to addressing Labour-related concerns. It was established as an agency of the League of Nations after the Treaty of Versailles², which marked the end of World War I. The aftermath of the war brought forth a focus on post-war reconstruction and safeguarding the interests of Labour unions, and these issues became significant for many nations

² Britannica, The Editors of Encyclopaedia. "Treaty of Versailles". Encyclopedia Britannica, 21 Jun. 2023, <https://www.britannica.com/event/Treaty-of-Versailles-1919>. Accessed 29 July 2023.

during and immediately after World War I. In Great Britain, the Whitley Commission played a crucial role in shaping Labour policies³.

Certain specific factors that were peculiar to India in influencing labour legislations are:

- Colonial Rule: Early Labour legislation in India was mainly driven by pressure from producers in Birmingham and Lancashire, as Labourer's working in Indian factories and mills were much cheaper compared to British Labour. These laws intended to protect the interests of British capitalists. Though these legislations incidentally profited Indian Labour, their main purpose was to safeguard British Economic Interests. The British Civil Servants brought the traditions of democracy and pragmatism, leading to laws like
 - A. the Workmen's Compensation Act, 1923⁴,
 - B. the Indian Trade Unions Act, 1926⁵, and
 - C. the Payment of Wages Act, 1936⁶, which followed the British model.

- National Leaders and Freedom Fighters: During the freedom struggle, nationalist leaders supported and advocated for protective Labour legislation. Their efforts led to the enactment of the Indian Trade Unions Act and the establishment of the Royal Commission on Labour. The promises made by these leaders for a more just social order after independence found expression in the Preamble, Fundamental Rights, and Directive Principles of State Policy in the Indian Constitution. Some of the major legislations enacted soon after the independence are:
 - A. the Employees' State Insurance Act, 1948⁷,
 - B. the Factories Act, 1948⁸,
 - C. the Minimum Wages Act, 1948⁹,
 - D. the Plantation Labour Act, 1951¹⁰,

³ Basdeo, Sahadeo. "The Role of the British Labour Movement in the Development of Labour Organisation in Trinidad 1929-1938." *Social and Economic Studies*, vol. 31, no. 1, 1982, pp. 40-73. JSTOR, <http://www.jstor.org/stable/27861975>. Accessed 29 July 2023.

⁴ ACT NO. 8 OF 1923.

⁵ ACT NO. 16 OF 1926.

⁶ ACT NO. 4 OF 1936.

⁷ ACT NO. 34 OF 1948.

⁸ ACT NO. 63 OF 1948.

⁹ ACT NO. 11 OF 1948.

¹⁰ ACT NO. 69 OF 1951.

- E. the Mines Act, 1952¹¹,
- F. the Employees Provident Fund and Miscellaneous Provisions Act, 1952¹²,
- G. the Payment of Bonus Act, 1965¹³.

However, the Trade Dispute Act of 1929 (Act 7 of 1929) was the earliest Indian law to govern the relationship between employers and workers. It included provisions to limit the rights of strikes and lockouts, but it lacked a proper mechanism to resolve disputes. After India gained independence, significant changes were made to this colonial legislation, as the nation aimed to establish a harmonious partnership between Labour and capital¹⁴.

In December 1947, a tripartite conference unanimously agreed on the principles of this partnership. It was decided that Labour would be provided with fair wages and working conditions, while capital would receive full cooperation from workers to ensure uninterrupted production and increased productivity, contributing to the country's economic development. As part of the agreement, all parties would observe a three-year truce period without resorting to strikes or lockouts.

Subsequently, the Industrial Disputes Act¹⁵, which came into effect on 1st April 1947, replaced the Trade Disputes Act of 1929. This new act has since remained in force and governs industrial relations in India.

3. Constitutional provisions of Labour Laws in India:

The Indian Constitution is equipped with numerous safeguards to protect the rights of workers. It serves as the foundation for employment and Labour laws in the country. The fundamental rights enshrined in the Constitution ensure equality before the law and prohibit discrimination based on factors like religion, caste, or sex. Additionally, the "Directive Principles of State Policy¹⁶" in Part IV of the

¹¹ ACT NO. 35 OF 1952.

¹² ACT NO. 19 OF 1952.

¹³ ACT NO. 21 OF 1965.

¹⁴ Richard MITCHELL, Petra MAHY & Peter GAHAN, The Evolution of Labour Law in India: An Overview and Commentary on Regulatory Objectives and Development, 1 Asian Journal of Law and Society 413-453 (2014).

¹⁵ ACT NO. 14 OF 1947.

¹⁶ The Directive Principles of State Policy (DPSP) in the Indian constitution are a collection of principles and ideals that the State must keep in mind while formulating policies and making laws. These principles were adopted from the Irish constitution, which drew inspiration from the Spanish constitution. While the Directive Principles offer guidance to the Indian government in matters of

Constitution urge the government to ensure citizens' right to livelihood, education, and fair and humane working conditions. The Constitution places a strong emphasis on social justice as a core objective of state policy, and these protective provisions guide the formulation of Indian industrial laws. As a result, both the Parliament of India and individual State legislatures have the authority to enact laws concerning these matters, provided certain conditions are met.

Industrial relations have a significant impact, not only on the interests of workers and management but also on the broader social and economic objectives that the State aims to achieve. As a result, it becomes the responsibility and duty of the State to oversee and regulate these relations in a manner that promotes a harmonious and constructive environment within society. By doing so, the State can ensure that industrial relations follow desirable and beneficial pathways for all stakeholders involved.

In developing economies, the government's regulations have a broader scope, and there is a higher level of oversight to ensure these rules are followed. This is particularly evident in countries with an excess of available labour. The state's primary objectives are to achieve reasonable economic growth and ensure fair distribution of its benefits. This task becomes even more intricate in a democratic country that upholds fundamental individual freedoms for its people. As a result, a developing country's government is not only concerned with the specific content of work-related regulations but also with creating rules pertaining to industrial discipline, employee training, employment practices, and other related areas.

The creators of India's democratic Constitution were well aware of these consequences as they aimed to establish a welfare state with a federal structure. They recognized the significance of Labour relations and hence the topic of "Labour" is listed in the "Concurrent List," which means both the Central and State Governments have the authority to create laws regarding Labour issues. However, certain matters are reserved exclusively for the Central Government to legislate on. This table clarifies the constitutional position of Labour jurisdiction.

governance, they are not legally binding and cannot be enforced by courts. However, In *Keshavnanda Bharati vs the State of Kerala* (1973) 4 SCC 225), the Apex Court placed DPSPs on the higher pedestal than Fundamental Rights. Ultimately in the case of *Minerva Mills vs. Union of India* (AIR 1980 SC 1789), the question before the court was whether the Directive Principles of State Policy enshrined in Part IV can have primacy over the fundamental rights conferred by Part III of the Constitution. The court held that the doctrine of harmonious construction should be applied because neither of the two has precedence to each other.

<u>Union List</u> <u>(Central Government)</u>	<u>Concurrent List</u> <u>(Central as well as State Government)</u>
Entry No. 55 Regulation of labour and safety in mines and oil fields	Entry No. 22 Trade unions, industrial and labour disputes
Entry No. 61 Industrial disputes concerning Union employees	Entry No. 23 Social security and insurance, employment and unemployment
Entry No. 65 Union agencies and institutions for "... vocational ... training ..."	Entry No. 24 Welfare of labour including conditions of work, provident funds, employers' invalidity and old-age pension and maternity benefits

The Indian constitution contains various acts and provisions designed to safeguard the rights of Labourers and ensure they are not exploited. Part III of the Constitution includes fundamental rights, such as Articles 14, 16, 19, 21, 23, and 24, which protect Labourers and provide them with a platform to voice their concerns.

In addition to fundamental rights, Part IV of the Constitution comprises the Directive Principles of State Policy, which include Articles 38, 39, 39A, 41, 42, 43, 43A, and 47. While these principles are not enforceable in a court of law, they guide the state in formulating policies that benefit the working class.

Collectively, Articles 39, 39A, 41, 42, 43, and 43A are often referred to as the "Magna Carta of the working class in India," as they lay down important principles to protect and uplift the interests of Labourers across the country.

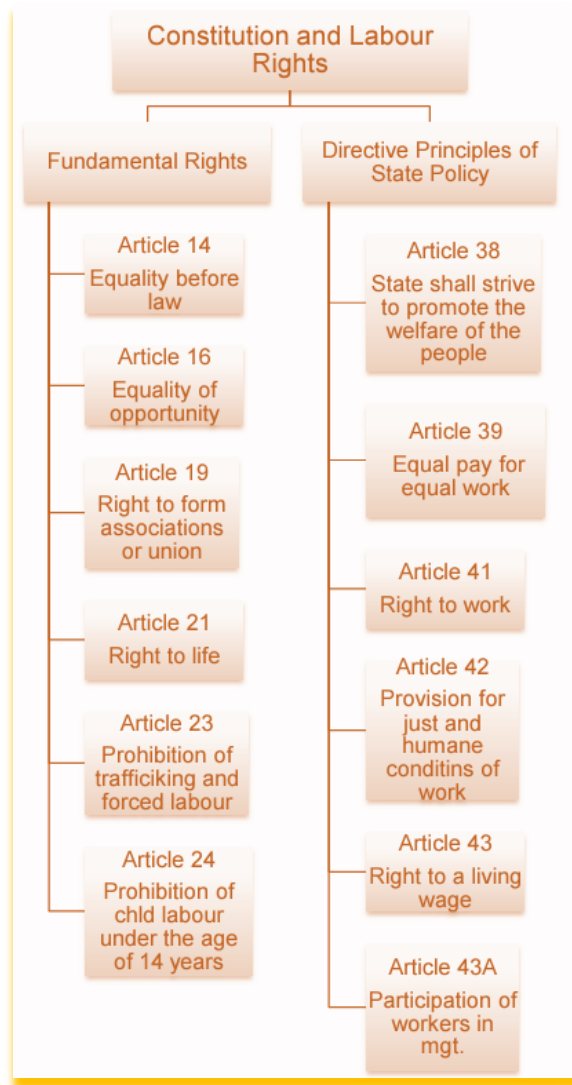


Fig.1¹⁷

4. Role of Law Commission:

After the Government of India Act, 1919 came into effect, legislative power was exercised by the Indian Legislature formed under that act. Subsequently, the Government of India Act, 1935 was implemented. When the Indian Independence Act, 1947 was passed, India became a Dominion, and the Dominion Legislature governed the country from 1947 to 1949 under the provisions of section 100 of the Government of India Act, 1935, as adapted by the India (Provisional Constitution)

¹⁷ The picture depicts the important Articles of the Constitution of India.

Order 1947. However, on 26th January 1950, the Constitution of India came into force, vesting legislative power in the Parliament and State Legislatures.

The Constitution of India introduced Fundamental Rights and Directive Principles of State Policy, bringing a new approach to law reform to fulfill the aspirations of the people and the requirements of a democratic legal system in a diverse society. Although the Constitution allowed for the continuation of pre-Constitution Laws (article 372)¹⁸ until they were amended or repealed, there were demands both inside and outside Parliament to establish a Central Law Commission. This commission

¹⁸ 372. Continuance in force of existing laws and their adaptation

(1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law

(3) Nothing in clause (2) shall be deemed

(a) to empower the President to make any adaptation or modification of any law after the expiration of three years from the commencement of this Constitution; or

(b) to prevent any competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause Explanation I The expression law in force in this article shall include a law passed or made by a legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas Explanation II Any law passed or made by a legislature or other competent authority in the territory of India which immediately before the commencement of this Constitution had extra territorial effect as well as effect in the territory of India shall, subject to any such adaptations and modifications as aforesaid, continue to have such extra territorial effect Explanation III Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this Constitution had not come into force Explanation IV An Ordinance promulgated by the Governor of a Province under Section 88 of the Government of India Act, 1935 , and in force immediately before the commencement of this Constitution shall, unless withdrawn by the Governor of the corresponding State earlier, cease to operate at the expiration of six weeks from the first meeting after such commencement of the Legislative Assembly of that State functioning under clause (1) of Article 382, and nothing in this article shall be construed as continuing any such Ordinance in force beyond the said period

would be responsible for recommending revisions and updates to the inherited laws to adapt to the rapidly changing needs of the dynamic country.

Responding to these demands, the Central Government established the First Law Commission in 1955, appointing Mr. M. C. Setalvad, the then Attorney-General of India, as its Chairman.

The Law Commission of India did not worked significantly towards the reformation of the Labour Laws. The Commission has prepared Twelve Reports and has submitted the same to the Ministry of Labour. However, the reports have either been not implemented i.e. they are pending or the Status of the reports are not known. The Law Commission of India's 225th Report on Amendment of Sections 7, 7A, and 7B of Industrial Disputes Act 1947 Making Advocates Eligible to man Labour Courts and Industrial Tribunals. 2009 had was not accepted by the Ministry.

It can be said that the Commission has worked significantly towards the Reformation of Labour Laws but they have not been given due weightage by the Government or the implementing agencies.

5. National Commission on Labour:

The Government of India established the National Commission on Labour¹⁹ with the primary aim of addressing and organizing various issues concerning the Labour force in the country. Its key purpose was to identify and implement effective solutions to the challenges faced by Labourers. Additionally, the commission was tasked with providing timely guidance and recommendations to the government, aimed at improving the working conditions and ensuring the rights of the Labour force are upheld.

The first National Commission on Labour, led by Justice P.B. Gajendragadkar, was constituted on December 24, 1966. After diligent work, the commission presented its comprehensive report to the government in August 1969, which extensively examined various aspects and challenges faced by the Labour force. The report offered valuable recommendations for both organized and unorganized sectors, leading to the implementation of effective measures.

¹⁹ Appointed by the Government of India Resolution No. 36/14/66-1&E, dated the 24th December, 1966, issued by the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment)

The main purpose behind establishing the National Commission on Labour was to ensure a well-organized system for industrial relations in the country and to address disputes through a proper legal framework. The commission maintains a close connection with the Ministry of Labour and reports to the Labour Department, working towards enhancing the overall conditions of the Labour force.

6. Dictate of the National Labour Commission:

The National Commission on Labour has been assigned the crucial task of proposing measures to improve the well-being of the Labour force. Empowered with the authority to investigate and analyze various aspects, the Commission aims to make meaningful recommendations that enhance the lives of workers. Its reports are directed to the Chief Labour Officer within the Ministry of Labour.

Among its significant responsibilities is to establish an efficient and inclusive process through extensive consultations with relevant authorities. This process aims to create a national platform that addresses all issues concerning the Labour force, backed by appropriate legal measures. Additionally, the Commission offers guidance to the Ministry of Employment and Social Welfare in thoroughly assessing the working conditions and welfare of Labourers across the entire country. The ongoing consultations and proactive approach taken by the Commission contribute to continuous improvements in the system and governance related to Labour affairs.

7. Implementation of the Recommendations:

Upon receiving the National Commission on Labour's report, the government acted promptly by devising a comprehensive implementation plan, which would be executed in different phases. Numerous recommendations and guidelines proposed in the report were approved by the government to ensure legal compliance and to address the various challenges faced by the Labour force.

The report emphasized the importance of empowering the Labour force by providing them with a platform to voice their concerns. The sufferings of the workers were diverse and required urgent legal and policy solutions. Recognizing the significance of the Commission's recommendations, the Ministry of Employment and Social Welfare, along with the Labour Ministry, showed a keen interest in the report.

To effectively implement the recommendations, a well-structured framework was developed. This framework involved initiating a consultation process to engage stakeholders and gather valuable inputs²⁰.

8. Law Commission of India *vis-à-vis* National Labour Commission:

The Law Commission of India is not a constitutional or statutory body but rather an executive body formed by a government order. Its primary purpose is to focus on legal reforms. The Commission serves as an advisory body to the Ministry of Law and Justice and is comprised mainly of legal experts.

Legal reforms have been an ongoing process in India for over 300 years. In the past, when religious and customary laws prevailed, the reform process was informal and lacked institutionalized bodies dedicated to law reform. However, starting from the 1800s, the government began establishing Law Commissions at various times. These commissions were entrusted with the task of recommending legislative reforms to clarify, consolidate, and codify specific areas of law where the need for such reforms was identified.

The First Law Commission of Independent India was set up in 1955, led by the then Attorney-General, Mr. M.C. Setalvad. Since then, twenty-one more Law Commissions have been appointed, each serving a three-year term. In 2020, the Union Cabinet approved the establishment of the 22nd Law Commission of India, which is expected to serve for a period of three years. The primary objective of this Commission, like its predecessors, is to continue the important work of legal reforms in the country.

However, From the 1940s to the 1970s, Labour policy centered on tripartism (involving government, employers, and workers) and safeguarding Labour rights. Starting from the late 1980s, there was a notable shift in policy discussions, aiming to justify a move away from protecting Labour rights and towards the deregulation of Labour laws. These significant changes in Labour policy agendas played a crucial role in the economic reforms of the early 1990s.

Jagjivan Ram, the Labour Minister at the time, took considerable effort to ensure that the First National Commission for Labour (FNCL) (presumably a Labour commission) was led by a pro-Labour judge and renowned jurist, Mr.

²⁰ T.K. Rajalakshmi, The new labour codes: Labour's loss, Frontline (23/10/2020), available at <https://frontline.thehindu.com/the-nation/labours-loss/article32749705.ece>, last seen on 29/07/23

Gajendragadkar. After retiring as Chief Justice, Mr. Gajendragadkar agreed to take on this assignment but requested to be based in Bombay to fulfill his duties as the Vice-Chancellor of the University of Bombay ²¹. He would travel to the Commission's office in Delhi for meetings as required.

The government had specific expectations from the Commission, which were outlined as recommendations that would shape Labour policy for many years to come. However, it was understood that not all of the Commission's recommendations could be immediately implemented by the government upon submission of the report. Instead, the recommendations were expected to have a lasting impact and would require ongoing efforts, not solely by the government, to bring them into effect.

9. Conclusion:

The role of Law Commission has been diminished in the area of Labour Reforms as the National Commission on Labour has worked significantly in the area of Labour Reforms. The National Commission on Labour having the status of a statutory body with the authority to propose changes in Labour laws, its impact on driving sustainable Labour reforms was substantial and influential. The government was committed to working towards improving the Labour conditions in the country, and the Commission's report played a pivotal role in guiding these efforts. Whereas the Law Commission of India is an independent body established by the Government of India. Its main responsibilities include identifying and recommending the repeal of outdated and unnecessary laws, proposing new legislations to implement the Directive Principles and achieve the objectives stated in the Constitution's Preamble. Additionally, the Commission provides its opinions on legal and judicial matters referred to it by the Ministry of Law & Justice. It also considers requests for research assistance from foreign countries and submits reports to the Central Government on various issues and research it undertakes. The Commission may be assigned other tasks by the Central Government as needed. Hence, the Commission was never asked to look towards the development of the Labour Laws and certain reports submitted by the Law Commission of India with reference to Labour Reforms have either not been implemented or had been rejected.

²¹ Gajendragadkar, "To the Best of my Memory", *Bhartiya Vidya Bhavan*, p. 293.

THE AI REVOLUTION AND THE SOUTH ASIAN LABOUR FORCE: TRENDS, RISKS, AND OPPORTUNITIES

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Abstract

The emergence of AI is beginning to transform South Asia's labour force by automating many traditional jobs. While AI presents many opportunities for increased efficiency and productivity, it also poses significant risks to employment and job security for regional workers. This paper explores the trends, risks, and opportunities for South Asian labourers with the advent of AI. We will examine the current state of AI technology, its impact on the labour market, and key challenges that must be addressed to ensure that AI is used for the benefit of all workers. Some key challenges that must be addressed include re-skilling workers whose jobs are at the risk of becoming automated, ensuring that workers can access new job opportunities created by the rise of AI, and developing policies that protect workers' rights

and ensure that employers do not exploit them. At the same time, we must work to ensure that AI is used for the greater good and that its benefits are shared equitably across society. It's a complex issue, but we have found various solutions that benefit everyone. By analysing all factors, we concluded that South Asian countries can leverage AI to enhance their economic development while ensuring that workers are not left behind.

In our research, we have dealt with AI and its opportunities and impact on South Asian labourers in the upcoming years. We have also dealt with government roles and what governments of these countries can do to skill their labour force. During research, we found out the root cause and solutions at the ground level.

KEYWORDS: *AI Technology, South Asia, Labour Force, Job Security, Worker's Rights*

1. Introduction

In recent times, AI has grabbed a critical role in daily life. AI means Artificial Intelligence, first coined in 1955 by computer scientist John McCarthy. AI is a man-made technology that can do tasks mostly done by humans. AI is used to make things easy and to limit time consumption through robots and computers. AI can do tasks that are even impossible for humans like multi-tasking at once without any break. AI is more capable in sports than humans. They can play chess, can solve mathematical problems in seconds. Rapid transformation in internet connections and technical knowledge leads to the development of AI in a more advanced way. AI can compose music, can create realistic texts and videos. Today AI is used in various fields like transportation, medicine, economics, and military technology. Russian President Vladimir Putin once mentioned that whoever becomes the leader in AI will lead the world because AI will play a critical role in the military¹. Due to the military use of AI-generated race all over the world. The emergence of AI Chatbots like ChatGPT and mobile applications are among the new trends of AI in the coming years. According to Grand View Research, the global market capitalization of AI in 2022 is \$ 136.55 billion and it is estimated that it will

¹Artificial Intelligence in South Asia and Implications for Pakistan - Strategic Vision Institute, STRATEGIC VISION INSTITUTE - (2020), <https://thesvi.org/artificial-intelligence-in-south-asia-and-implications-for-pakistan/#:~:text=In%20the%20South%20Asian%20context,a%20worth%20of%20%24%2050.0%20billio>n. (last visited Aug 7, 2023).

compound at annual growth of 37.3% from 2023 to 2030². In South Asia, India emerged as the dominant country in the field of AI. India is surrounded by two fronts i.e., Pakistan and China. India is actively investing in AI for military purposes as well as in other research and development projects. In the 2018-19 budget speech, the Hon'ble Finance Minister of India mandated Niti Aayog to run a nationwide AI program with the view to guide the research and development of new and emerging technology. Niti Aayog has decided to focus on five sectors which will benefit the most in society i.e., agriculture, health, education, smart cities, and smart mobility and transportation. Apart from India, Sri Lanka and Bangladesh also had plans for AI and released drafts. Sri Lanka drafted a policy called the "*Sri Lankan Association of Software and Service Companies*" (SLASSCOM) and also launched a draft policy of paper on June 26, 2019. This draft focuses on data regulation, investment, and private collaboration in developing plans for AI in the country. Sri Lanka policy paper is not yet in public but they just planned to focus on areas where India has already decided. Bangladesh has drafted a well-researched plan for the introduction of AI in the country. Bangladesh framed a proper timeline and formed a legal framework to regulate it. Bangladesh decided to target various sectors like manufacturing, agriculture, education, health, finance, and trade by using AI. Bangladesh made a policy for AI i.e., "*National Strategy for Artificial Intelligence*" to skill up their workforce and form a digital infrastructure. If we see Pakistan, the immediate neighbour of India, only focuses on education. Pakistan formed a policy named i.e., 'Presidential Initiative for Artificial Intelligence and Computing'. This policy aimed to drive a nationwide program for skill enhancement and foundational courses but it lacks national policy. Afghanistan one more Immediate neighbour of India has no policy due to political instability. While Nepal and Bhutan, both have no policy they will either join India or China to mark their spot in the AI race.³

Laborers' conditions in the whole of South Asia are very pathetic and exploitative. They are forced to work in factories on low wages. These labourers do hazardous works which cause illness, diseases and sometimes also leads to death. Laborers in

² Artificial Intelligence Market Size, Share, Growth Report 2030, GRANDVIEWRESEARCH.COM (2023), <https://www.grandviewresearch.com/industry-analysis/artificial-intelligence-ai-market> (last visited Aug 12, 2023).

³ AI Policy Development in South Asia: An Introduction, DIPLOMATIST (2020), <https://diplomatist.com/2020/09/03/ai-policy-development-in-south-asia-an-introduction/> (last visited Aug 5, 2023).

South Asia are mainly unskilled and uneducated, so they work in unorganized sectors that lead to exploitation in various ways like cost cutting, long hours of work, etc. Female workers form a large chunk of the workforce in South Asia and they work hand in hand with male workers but they were paid less in comparison to male workers. Those who work in privately owned companies have more or less the same condition. Due to the introduction of new machines and technological advancement, workers get fired from their respective jobs. Artificial Intelligence came as a nightmare for these workers. There is no proper way for the introduction of AI in the countries of South Asia which leads to unemployment which increases poverty.

2. Impact of AI on traditional jobs

AI has the potential to change the way we *live, work, and interact* with people. It will have a critical impact on health, agriculture, trade, and businesses as well as on the labour force. AI has risks and influences which will grow in the upcoming years. However, AI has a sufficient capability that can lead to risks of bias and discrimination in the workforce. It will destroy traditional jobs due to the growing need for a technically skilled workforce in the Information Technological (IT) sector. South Asia has the world's largest youth population in the world until 2040. According to *Henrietta Fore* (UNICEF Executive Director), he said that everyday 1 lakh youth population enter the labour market in South Asia but almost half of them are not fit for the 21st-century job requirements⁴. This century is a century of technology that demands technical knowledge, programming, Artificial Intelligence, and robotics but data shows that these labourers are unable to complete their secondary school. These unskilled labourers migrate to Arabs, Europe, and American countries in search of jobs where they become victims of exploitation. Due to advancements in technology, they are unable to get decent jobs to fulfill their needs and requirements.

With the development of AI, traditional workers are now operated by automated machines. AI is taking the place of Labourers. In Hyderabad (India), a restaurant has employed four robots to greet their guest. These robots serve them meals and they

⁴ More than half of South Asian youth are not on track to have the education and skills necessary for employment in 2030, UNICEF.ORG (2019), <https://www.unicef.org/press-releases/more-half-south-asian-youth-are-not-track-have-education-and-skills-necessary> (last visited Aug 6, 2023).

just need to charge for four hours. These robots can work throughout the day without any rest or delay. Several developments happened at many places where robots interact with people in their local languages.⁵ News anchoring is mostly done by humans but few news channels have released their own AI Anchors. India Today, an Indian news agency has released India's 1st AI Anchor, Sana on Aajtak news channel. AI Anchor Sana can read news in multiple languages.⁶ Apart from these developments, they need to be operated by humans. Both AI and humans can work together. AI has to come into the life of humans maybe today or tomorrow but it needs regulations. Governments of South Asia need to understand that the upcoming generation will be different from now. AI will do most of the jobs but without human intervention and knowledge, it would be a disaster for the whole human race.

3. Risks and challenges posed by AI on job security and worker's right

Employees must know their rights and be prepared to challenge unfair treatment.

- **Job displacement:** AI is already being used to automate many tasks and this trend is likely to continue. As AI advances, it can automate more and more jobs, displacing millions of workers. This can seriously affect the economy and the lives of individual workers.
- **Algorithmic bias:** AI algorithms are trained on data, and if that data is biased, the algorithm is biased. This can lead to AI systems making discriminatory decisions against employees, such as denying them jobs or promotions. This may violate the right of employees to equal opportunities and non-discrimination.
- **Data protection:** AI systems collect and use a lot of data about employees, such as performance reviews, social media, and location data. This information can be used to track employees, track their productivity, or even

⁵ Robots welcome guests at this new eatery in Hyderabad, THE SIASAT

DAILY (2019), <https://www.siasat.com/robots-welcome-guests-new-eatery-hyderabad-1465625/> (last visited Aug 11, 2023).

⁶ Electronics Media, Who is Sana AI Anchor

Robot?, ELECTRONICSMEDIA (2023), <https://www.electronicmedia.info/2023/05/08/who-is-sana-ai-anchor-robot/#:~:text=Though%20Sana%20cannot%20operate%20fully,human's%20characteristics%20and%20behavioural%20patterns.>

(last visited Aug 11, 2023).

discriminate against them. This may violate employees; right to privacy and data protection.

- **Lack of transparency:** AI systems are often opaque and difficult to understand. This makes it difficult for employees to understand how the systems make decisions about them, and it can also make it difficult to challenge what they think are unfair decisions. This may violate employees; right to transparency and accountability.
- **Increased stress and anxiety:** AI-enabled systems can be used to monitor employee performance in real time. This can increase stress and anxiety among employees, as they may feel constantly watched and judged. This can sometimes lead to mental health problems such as burnout or depression.

4. Laws Around the World that Protect the Rights of Workers Regarding Artificial Intelligence:

- **Equal Employment Opportunity Act⁷ (EEOA):** The EEOA prohibits employers from discriminating against employees based on race, colour, religion, sex, national origin, age, disability, or genetic information. This includes discrimination in hiring, firing, promotion, and other employment conditions.
- **Worker Adjustment and Retraining Notification⁸ (WARN) Act:** The WARN Act requires employers of at least 100 workers to give 60 days' notice of plant closings and layoffs. This gives employees time to prepare for job loss and find a new job.
- **Privacy Act of 1974⁹:** The Privacy Act protects individual's personal information from unauthorized collection, use, and disclosure. This includes

⁷ Equal Employment Opportunity Act of 1972, US EEOC (2019), <https://www.eeoc.gov/history/equal-employment-opportunity-act-1972> (last visited August 12, 2023).

⁸ WARN Act Compliance Assistance, DOL (2023), <https://www.dol.gov/agencies/eta/layoffs/warn> (last visited August 11, 2023).

⁹ Overview of the Privacy Act of 1974, JUSTICE.GOV (2014), [https://www.justice.gov/archives/opcl/conditions-disclosure-third-parties#:~:text=%E2%80%9CNo%20agency%20shall%20disclose%20any,%C2%A7%20552a\(b\).](https://www.justice.gov/archives/opcl/conditions-disclosure-third-parties#:~:text=%E2%80%9CNo%20agency%20shall%20disclose%20any,%C2%A7%20552a(b).) (last visited August 11, 2023).

information about employees, such as their social security number, health information, and performance reviews.

- **Fair Labor Standards Act¹⁰ (FLSA):** The FLSA establishes minimum wage and overtime requirements for most American workers. It also requires employers to provide meal and rest breaks and pay certain travel expenses.
- **Occupational Safety and Health Act¹¹ (OSHA):** OSHA sets safety and health standards for most American workplaces. These standards are designed to protect workers from hazards such as exposure to toxic chemicals, machinery, and falls.

5. Sanctions for Violations of Workers' Rights Related to AI:

- In violation of the *EEOA*, an employer can be fined up to \$300,000 for each violation. They may also be ordered to hire victims, reimburse wages, and provide other relief measures.
- For violations of the *WARN Act*, employers can be fined up to \$500 per day for each day they fail to give notice. They may also be required to refund wages and benefits to affected workers.
- In violation of the *Privacy Act*, an employer can be fined up to \$2,000 for each violation. They can also be found guilty of destroying illegally collected data and compensating victims.
- In violation of the *FLSA*, employers can be fined up to \$1,100 for each violation. They may also be required to reimburse the wages and interests of the workers involved.
- Violations of *OSHA* standards can result in fines of up to \$136,532 per employer for each serious violation. They may also be ordered to remedy the dangerous condition and pay the victim's medical bills.
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¹⁰ Wages and the Fair Labor Standards Act, DOL (2023), <https://www.dol.gov/agencies/whd/flsa> (last visited August 10, 2023).

¹¹ OSH Act of 1970 | Occupational Safety and Health Administration, OSHA.GOV (2021), <https://www.osha.gov/laws-regs/oshact/completeoshact> (last visited August 10, 2023).

6. Why is AI used by Companies instead of Labourers?

- **AI can Identify and mitigate risks:** AI can be used to analyse data and identify potential risks, such as fraud, cyberattacks, and natural disasters. This can help businesses to take steps to mitigate these risks and protect their assets.
- **AI can Make better decisions:** AI can be used to analyse data and make predictions. This can help businesses make better decisions about pricing, marketing, and product development.
- **AI can Create new products and services:** AI can be used to develop new products and services that meet the needs of customers. This can help businesses to grow and expand their market share.

The adoption of AI in South Asia is still in its early stages, but the potential benefits are clear. As AI technology continues to develop, we can expect to see even more businesses in the region adopting AI and reaping the rewards of increased efficiency and productivity.

7. Examples of successful Integration of AI in South Asian Industries which may lead to mass layoffs or create more jobs in coming years:-

- **Tata Steel:** Tata Steel is one of the largest steel producers in India. The company has been using AI to improve its operations for several years. For example, AI is used to predict when machinery is likely to break down so that preventive maintenance can be performed. This has helped to reduce unplanned downtime and improve efficiency. AI is also used to optimize production schedules and identify potential safety hazards.



¹² The Tata group. Leadership with Trust., TATA.COM (2023), <https://www.tata.com/> (last visited August 8, 2023).

ITC: ITC is a multinational conglomerate with interests in a variety of industries, including agriculture, manufacturing, and services. ITC has been using AI to improve its supply chain management for several years. For example, AI is used to predict demand for products, so that inventory levels can be kept optimal. This has helped to reduce costs and improve customer satisfaction. AI is also used to track the movement of goods through the supply chain so that any disruptions can be quickly identified and addressed.



- **Reliance Industries:** Reliance Industries is one of the largest conglomerates in India. The company has been using AI to improve its marketing and sales for several years. For example, AI is used to analyse customer data to identify potential customers and target them with personalized marketing messages. This has helped to improve the company's conversion rate and to increase sales. AI is also used to develop new products and services that meet the needs of customers.



- **HDFC Bank:** HDFC Bank is one of the largest banks in India. The company has been using AI to improve its customer service for several years. For example, AI is used to answer customer queries and resolve issues quickly.

¹³ ITC Ltd has diversified presence in FMCG, Hotels, Paperboards & Packaging, Agri-business and IT, ITCPORTAL.COM (2023), <https://www.itcportal.com/> (last visited August 7, 2023).

¹⁴ Reliance Industries Limited – Retail Markets | Telecom | Petroleum Refining & Marketing | Petrochemicals | Hydrocarbon Exploration & Production | Jio 4G | Reliance Shares, RELIANCE INDUSTRIES LIMITED (2015), <https://www.ril.com/> (last visited August 12, 2023).

This has helped to improve customer satisfaction and reduce the cost of customer service. AI is also used to detect fraudulent transactions and prevent money laundering.



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- **Flipkart:** Flipkart is one of the largest e-commerce companies in India. The company has been using AI to improve its product recommendations and to personalize the shopping experience for customers. For example, AI is used to recommend products that customers are likely to be interested in, based on their past purchases, and browsing history. This has helped to increase sales and to improve customer satisfaction. AI is also used to optimize the placement of products on the website so that customers can find the products they are looking for quickly and easily.



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- **AirAsia:** AirAsia is a low-cost airline that is headquartered in Malaysia. The company has been using AI to improve its flight operations for several years. For example, AI is used to predict passenger demand, so that aircraft can be optimally scheduled. This has helped to reduce costs and improve efficiency. AI is also used to monitor aircraft performance and to identify potential problems before they occur.

¹⁵ Essential Information - Media Kit in India | HDFC

Bank, HDFCBANK.COM (2013), <https://www.hdfcbank.com/personal/about-us/news-room/media-kit> (last visited August 11, 2023).

¹⁶ Online Shopping India Mobile, Cameras, Lifestyle & more Online @

Flipkart.com, FLIPKART.COM (2023), <https://www.flipkart.com/> (last visited August 11, 2023).



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- **Bharat Petroleum Corporation Limited (BPCL):** BPCL is an Indian state-owned oil and gas company. The company has been using AI to improve its refinery operations for several years. For example, AI is used to predict when equipment is likely to fail so that maintenance can be performed before it causes a breakdown. This has helped to reduce unplanned downtime and improve efficiency. AI is also used to optimize the production of fuels and other products.



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- **L&T Technology Services (LTTS):** LTTS is an Indian multinational technology company that provides engineering, manufacturing, and IT services. The company has been using AI to improve its customer service for several years. For example, AI is used to answer customer queries and resolve issues quickly. This has helped to improve customer satisfaction and reduce the cost of customer service. AI is also used to develop new products and services that meet the needs of customers.



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¹⁷ Logo, airasia newsroom, AIRASIA NEWSROOM (2014), <https://newsroom.airasia.com/airline-airasia-logo#gsc.tab=0> (last visited August 13, 2023).

¹⁸ Bharat Petroleum, BHARATPETROLEUM.IN (2022), <https://www.bharatpetroleum.in/about-bpcl/media-kit/image-library/brand-and-identity.aspx> (last visited August 13, 2023).

¹⁹ Media Kit | L&T Technology Services, LTTS.COM (2023), <https://www.ltts.com/media-kit> (last visited August 12, 2023).

- **Infosys:** Infosys is an Indian multinational information technology company. The company has been using AI to improve its operations for several years. For example, AI is used to automate tasks such as data entry and invoice processing. This has helped to reduce costs and improve efficiency. AI is also used to develop new products and services that meet the needs of customers.



- **Zomato:** Zomato is an Indian restaurant search and food delivery platform. The company has been using AI to improve its food recommendations and to personalize the shopping experience for customers. For example, AI is used to recommend restaurants that customers are likely to be interested in, based on their past purchases, and browsing history. This has helped to increase sales and to improve customer satisfaction. AI is also used to optimize the placement of restaurants on the platform so that customers can find the restaurants they are looking for quickly and easily.



8. Policy Recommendations For South Asian Government To Maximize The Benefits Of AI While Protecting Workers Right

- **Investing in Education and Training:** Artificial intelligence is rapidly changing the nature of work and workers must be equipped with the necessary skills to succeed in the new economy. Governments should invest in education and training programs to teach workers the skills they need to use AI effectively.

²⁰ Infosys Limited, Navigate your next, INFOSYS.COM (2023), <https://www.infosys.com/> (last visited August 13, 2023).

²¹ Zomato, ZOMATO.COM (2023), <https://www.zomato.com/> (last visited August 15, 2023).

- **Creating a level playing field for businesses:** The government should level the playing field for businesses using AI so that all businesses can benefit from AI technology. This could include tax breaks or subsidies for businesses investing in AI, or creating regulations that make it easier for businesses to use AI.
- **Protecting the Rights of Employees:** Governments should protect workers' rights in the age of AI. This includes ensuring that workers do not have their jobs replaced by AI, that they are not discriminated against in the workplace, and that their data is protected.
- **Encourage Innovation:** Governments should foster innovation in AI. This could include funding research and development or creating a regulatory environment conducive to innovation.
- **Engage with Stakeholders:** Governments should engage with stakeholders, such as businesses, workers, and civil society organizations, to develop a holistic approach to AI policy. This will help ensure that AI is used in a way that benefits everyone in society.
- **Create a National AI Strategy:** Governments should develop a national AI strategy that outlines their vision for the development and use of AI in the country. This strategy should address the following questions: ethical use of AI, the development of skills and talents in AI, driving AI-based innovation, and AI rules.

9. Conclusion

On one side where companies are doing mass layoffs because of the incapability of employees but on the other hand Artificial intelligence (AI) has the potential to provide numerous benefits to workers and laborers. These benefits include increased productivity, improved decision-making, enhanced safety, reduced costs, and improved employee satisfaction. AI can automate tasks that are currently performed by humans, freeing up workers to focus on more creative and strategic work. Additionally, AI can help workers make better decisions by providing them with real-time data and insights. AI can also be used to create safer workplaces by monitoring equipment and identifying potential hazards. The governments of all

South Asian Countries have to make a national policy on AI and introduce it immediately in their country otherwise western countries will take advantage.

DOMESTIC WORKERS': NEGOTIATING THE RIGHT ON PAR WITH OTHER WORKERS' WITH REFERENCE TO WOMEN IN INDIA

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Abstract

Domestic Workers' are always highlighted with obligation but not right. In spite of the paucity of domestic workers' around the world including South Asia, the right what is required basically is not fundamentally extended to them and it is regularly reported that women domestic workers are exploited to maximum. Though the domestic workers have the liberty to change the owners at their interest but many of the owner hesitate to provide the rights, one of the basic reasons being the owner themselves are not aware of the rights of the domestic worker. The domestic worker market is on demand supply theory, especially in cities of India but due to poor conditions they tend to accept the employment at any rate of wage, informally. The Global nation has to remind itself that they were criticized by the International Labour Organisation at times on the issue of domestic workers and recommended the respective nations to introduce legislation to democratize human rights. The advice of International Labour Organisation was accepted minimum with varying conditions by the South Asian countries. Indian though introduced law on domestic worker but still has its own lacuna and above all the availability of the schemes under the law is applicable to ordinary people in India, and there is no specific scheme of protection available to these women domestic workers. The paper argues the conceptualization of domestic work with available rights. The author attempts to analyse social security legislation in India and South Asia really benefit and protect equally to organized sector and further to identify to what extent the laws are protecting women domestic workers on par with the conventions and recommendations of International Labour Organization. Further the author also attempts to identify whether the protections available to women workers coincide with the national or international law. The first two component of research will be resourced with doctrinal method and the final component of research will be empirical especially attempted in the region of Chennai, India.

KeyWords: Labour, Domestic, Worker, Rights, International Labour Organization,

1. Introduction

South Asian nations are continuously attempting to revamp the labour legislations to proliferate their respective constitutional justice. Labour legislations primarily concentrate on organized sector and less concern on informal or unorganized labourers. Domestic workers, informal sectors, are very poorly protected and visibility of representation to resolve their challenges or claim their rights is minimal. Though the rights are intrinsically growing in the technology era, but reports suggests that domestic workers rights are violated, harassed at their domestic work place, no minimum wage, no proper safety and finally no termed organized social security. The position of domestic workers in South Asia including India is poor due to the political and social policy. Campaigning for rights and protection of domestic workers has enlarged since 21st century with legal support of International Labour Organization, but in reality the organized sector are benefitted structurally, with the available legislations and informal sectors including domestic workers does not have the visibility of social protection. This article primarily focuses on the challenges of domestic worker in South Asia and extent to identify what protections are available during the contingency with regard to Indian scenario. Further a special attention is provided to women domestic worker in India.

2. Domestic Worker

Domestic worker means who works within the scope of house for remuneration. Domestic workers are those workers who perform work in or for a private household or households but not in any factory or industry even though their work resembles to household work and such persons name should not be available in the muster roll of any factory or industry. International Labour Organization defines domestic worker as a person engaged in domestic work within an employment relationship.¹ Domestic workers perform varieties of work within the residence, their service ranges from maintaining the household, cooking, laundry, gardening, taking care of children and age old etc. Domestic workers are two types namely, residential domestic worker, who stay at the resident and engage in all works and other type of domestic workers are who work for a scheduled time but the timing may change depending on the work. According to Brihaspati, domestic labour are one the classification of labour on basis of activities in ancient India, hence it reflects

¹ Domestic workers Convention, 2011, art.1.

that in ancient India these kinds of labour systems were prevailing. The ancient structure of domestic workers basic needs were satisfied by the employer and at times food were offered in lieu of wages.² In the ancient period mostly the domestic workers were dominated by male but the present scenario is different as female are preferred for household work and employment relating to gardening or any other work which requires more physical labour, men are preferred. The demand for female domestic workers has been gradually increasing in urban areas, where employers are willing to offer higher wages than those available at home, simultaneously, there is a risk associated with the migration of domestic workers, particularly girls, as evidenced by the incident of 13 girls disappearing in 2010, who had been taken away as a group and had not returned. This has caused fear among locals who wish to migrate, and they have chosen to work in areas near with lower wages³. Domestic work always has a negative connotation, which has led to domestic workers being subject to discrimination and marginalization in society.

Domestic workers are an integral part of the global economy, which are highly valued for their contribution to economic and social growth, with an estimated 53 million in total. Of these, 21 million are located in Asia and Pacific, and approximately 1.4 percent is located in South Asia, with India accounting for 1.3 percent of the total domestic worker force, with highest number among the South Asian countries where women community makes up 3.5 percent of the population and men making up 0.7 percent. Domestic work is a hugely female-dominated industry, with seventy percent of the world's seventy million household workers being women, according to the International Labour Organisation and eleven millions of these women are immigrants. The migrant domestic workers face more challenges than ordinary domestic workers. These domestic workers are confronted with a range of challenges, including disparities in wages and wage less than minimum wage, absence from work, physical and sexual abuse, inadequate social security coverage, and inadequate working conditions due to a lack of adequate legislation comparable to that of the organized sector.

² Pratibha Goyal, Mini Goyal, Shailha Goyal, "Work and Wages of Labour: A study of Ancient India", Prastuti, Vol.I No.1, July-Dec 2012.

³Indispensable yet Unprotected: Working conditions of Indian domestic workers at home and abroad, p.36

3. International Law on Domestic Worker

Ms. Yalitza Aparicio, an actress, asserted that health and safety of domestic workers, who are responsible for cleaning the house and take care of the family, is significantly compromised. Nations around the world had ratified “all human beings are born free and equal in dignity and rights”⁴, under Universal Declaration of Human Rights (UDHR). United nation has strongly stressed that any violation against individual right under UDHR amounts to violation against humanity. Further International Covenant on Social, Economic and Cultural Rights has also affirmed that no person shall be deprived of his life through economic and social reasons. One of the articles of the convention states that “every nation to recognize the right of everyone to enjoyment of just and favourable conditions of work”.⁵ It is surprising to note that South Asian countries are lacking in terms of just and favourable working conditions. CESCR has also raised the situation of disadvantageous working conditions affecting in particular domestic workers, most of whom are migrant women, who are paid the lowest minimum wage, working over eight hours a day with inadequate rest, pensions and vacations. The nations have, of course, implemented legislations to improve better working conditions, however, it is important to note that these legislations does not cover domestic workers in its entirety. For a better working condition, International Labour Organisation introduced the Convention on the Abolition of Forced Labour in 1957 with the aim of eliminating all forms of Forced Labour. Domestic workers who are employed as housemaids are subject to forced labour, in which their identity cards, passports and relevant documents are retained by the employer. If they pertain to be immigrant domestic workers, then their wages are significantly very low and forbidden to leave the house. However, due to poverty and other reasons, these domestic workers are often reluctant to reveal the truth about being in forced labour.

International Labour Organisation,(ILO) a united nation specialized agency primarily focuses upon the labour issues and challenges and attempting to resolve the same. Domestic worker issues have been a lot and ILO has taken various measures to observe that domestic workers rights are observed according to ILO objectives. Many conventions under ILO are applicable to domestic workers

⁴ Article 1, Universal Declaration of Human Rights.

⁵ International Convention on Social, Economic and Cultural Rights, art. 7.

starting from wage to health. One of the most important landmark conventions for Domestic workers, of its own kind, was introduced in 2011 with an objective to improve the working conditions and guarantee the domestic workers with decent job for all under the goals of the ILO declaration on Fundamental Principles and Rights at Work and the ILO Declaration on Social Justice for a fair globalization and to extend the protection on par with other workers.

Boola Urmila, UN expert, presenting her report to the Human Rights Council stated, "Countless households around the world rely on migrant domestic workers. This contribution to society should not only be acknowledged and valued but it is also time for nations and private employment to protect, respect and fulfill the human rights of all migrant domestic works, including of the most vulnerable ones". The Domestic Workers Convention, 2011 (C. 189) provides that "each State party to ensure the effective promotion and protection of the human rights of all domestic workers and to promote and realize the fundamental principles and rights at work".⁶ The implementation of the Convention can only be effective if it is ratified, however, to the surprise of many, only 36 countries have ratified the Convention and none of the countries of South Asia have made an effort to do so. In order to demonstrate the significance of the Convention, the Indian Government implemented the Rashtriya Swathi Bima Yojna, a health insurance program for domestic workers in 2012, May, and in the following year, extended the domestic worker through the introduction of a new law prohibiting workplace sexual harassment. It's been 12 years since the Domestic Workers Convention was put in place confirming labour rights, and there's still no sign of any progress in terms of decent work and human rights, and has become worse than before due to covid19 pandemic surge but the workers are still fighting for their rights and, most importantly, for their legal rights.⁷ Following the implementation of the C. 189 Convention, International Domestic Workers' Federation initiated campaigns to ratify and implement the Convention at national level, as well as raising and extending hands to promote the rights of domestic workers such as paid leave, minimum wage, employment contracts etc. The Federation partnered with WIEGO

⁶ Convention on Domestic Workers (C 189), art. 3.

⁷ Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No. 189), ILO Report.

to increase the capacity of domestic workers and extending technical support and tracking the national efforts for the implementation of C. 189.

4. Domestic Worker in South Asia and India

Most of the western countries households are filled with domestic workers, but in contrast, in South Asia nations, although a significant portion of middle and upper-class households can afford household appliances, a preference continues to exist for low-cost domestic workers, on whom the majority of domestic work is easily delegated. Domestic workers face a lot of harassment and discrimination from their employers in South Asian countries. These scenarios exist in South Asia countries because of lack of proper legislation. The Centre for Economic, Social and Cultural Rights (CESCR) recommended that the State of Nepal should incorporate the gender equality principle into its legislation especially in the area employment and labour conditions, to guarantee that women are not subject to discrimination and their legal status is safeguarded. In Bangladesh, Domestic Worker Protection and Welfare Policy, 2015 allowed for employment of children aged 12 for the purpose of paid domestic work⁸, which is disheartening. Overall, South Asia countries lack with a comprehensive federal legislation on Domestic Workers, however, few legislations federal or municipal do provide rights with programs or schemes.

The Hindu, an English magazine, revealed that a 14 year old girl, domestic worker, from Gurugram home was rescued by the social workers. On enquiry it was revealed by the girl that she was harassed, assaulted, tortured and deprived food. On the other had employer has accused that the minor girl was stealing food and not working properly.⁹ To strengthen and safeguard the domestic workers and other unorganized sections, India has implemented the Unorganized Workers' Social Security Act in 2008. The Social security Act empowers the municipal government to establish social security welfare program and schemes viz life, disability, health, maternity benefits & old age protection etc. The Central Government has implemented nine schemes available under Schedule I of the social

⁸ Maya John, "The Persistent Precarity of Domestic Workers in South Asia", ROSA, available at: <https://www.rosalux.de/en/news/id/44474/the-persistent-precarity-of-domestic-workers-in-south-asia> (last visited 10/9/23).

⁹ Saumya Kalia, "Are domestic workers legally protected in India", The Hindu, March 15, 2023, available at: <https://www.thehindu.com/news/national/explained-are-domestic-workers-legally-protected-in-india/article66606678.ece> (last visited Aug 8, 2023).

security law in order to provide comprehensive social security to unorganized workers. These include the Atal Pension Yojana, Pradhan Mantri Jeevan Joyti Bima Yojana, and Pradhan Mantri Suvaraksha Bima Yojana for all categories of workers including domestic workers. One of the challenges that the domestic worker may encounter is that, due to the existence of limited number of pre-existing schemes through various other platforms, the domestic workers either would have registered already or may not be able to register their names under this Act.

The Indian Social Security Code, consolidated with the existing social security law, was established by the Indian Parliament in 2020 with an object to regulate the organized and unorganized sectors, and extend social security benefits including sickness, maternity, disability benefits, etc. to employees and workers across various organizations. Section 109 of the Code provides that central Government and State Government shall frame and notify welfare schemes for unorganized workers. Further, In April 2021, the Labour and Employment Ministry targeted to collect data by field work surveys on domestic workers through Labour Bureau. The labour Bureau has completed the field work survey and is expected to implement the relevant policies, social security measures and other relevant benefits to table the report. In spite of available schemes under this Code and expected from Labour Bureau, many of the domestic workers hesitate to draw the scheme because of the complex nature of procedure. Though the workers are considered to be domestic worker but there is no legal status of employment relationship. These workers engage to employer household work orally with fixation of wage, and neither the employer nor the employee records the same to any public authority. The Code permits to record the registration of unorganized sectors but not as domestic worker. Next, due to the lack of relationship in this peculiar private work nature the intervention of state also gets difficult. Maya John from ROSA Lunenburg Stiftung says that, "The Labour Codes legitimise the transition from active state interference to de-regulation, i.e., a generalisation of the notion that the management of the work relationship is a private affair between employers and employees; this is increasingly the case in the formal sector as well". In this context, we observe that labour inspection of the employers' adherence to prescribed labour standards has been strategically substituted by self-assessment by employers. Moreover, Murata, an innovative electronics company, has set up human rights policies as part of its corporate social responsibility (CSR) and formulated its CSR Charter to promote

human rights. The company has firmly established the policy that the working conditions of the employees are kept in line with the laws and regulations of the nation and follow the recommendations of international standards. Similarly, the employer of domestic workers must also follow the national laws and provide work to their employee. The Employer Responsibility Scheme can be created and made to register under the existing board, wherein the employers guarantee to human rights and working conditions. Further, the workers engage with employer and there is no relationship with another worker engaged to different employer, so it is difficult to form association among the employees, but an association can be formed, constitutionally guaranteed under Article 19.

5. Female Migrant Domestic Workers

Female migrant domestic workers prefer to immigrate to foreign countries for various job opportunities including household works. India among the South Asian countries is the largest producer of migrant employees, especially domestic workers. In India, the women from Kerala State attempt to move to gulf countries and the Indian government earlier restricted the movement to Kuwait in 1999 and later lifted the ban with various restrictions. Further, labour emigration, especially female, overseas recruitment practices have become increasingly complicated and pose a formidable challenge to the Government and its regulator organs, because the process of recruitment allegedly involves corruption and exploitation on an enormous scale.¹⁰ According to one of the study's findings, "Migrant domestic workers are forced to work only for one employer and are not permitted to switch jobs unless the women leave the country and their employer takes possession of a legal document with no entitlement". Learning from these challenges, UN Women in association with the India Centre for Migration and Ministry of External Affairs, Government of India has established Immigrant Employment Conditions (IEC) materials specifically tailored to the needs of Migrant Women Domestic Workers. These materials include a handbook, poster, audio and video, and destination helpline card. The materials provide information on rules and regulations applicable to migration, prerequisites for migration and destination countries as well as, significantly, the rights of the migrant women domestic workers.

¹⁰ Indispensable yet Unprotected: Working conditions of Indian domestic workers at home and abroad, p.30.

6. Domestic Workers at the jurisdiction of Chennai

Out of total collected samples related to domestic workers, almost around 50, in the region of Chennai, Tamil Nadu, India, it is identify that 83.3 percent of domestic workers are female and remaining being male. Some of the residents' employer wants the domestic worker to stay with them, the study reveals that 55.6 percent of the domestic employee does not stay with the employer and 22.2 percent of the said employee don't stay and others stay on emergency or on request but not live in stay. Almost many of the domestic workers perform their activities at an average of 2 hours or less than two hours because these workers also attempt to engage in other households, which is 17 percent. The wage of the domestic worker from the collected sample rages from Rs. 1000 to Rs. 5000 for an average two hour working period per month. To surprise almost all the domestic employee and including the employer are not aware of the minimum wages but the employer felt that wage paid to the employee is higher than their work performed. One respondent employee said that she had to discontinue the service due to insufficient wage provided by the employer. Tamil Nadu government has also revised the minimum wages as Rs. 1110 monthly - one hour per day for the corporation region. Hence from the collected samples it is identified that 25 percent of employer are not paying the minimum wages in the Chennai region. In terms of leave entitlement, only 5.6 percent of workers are not allowed to take leave for a single day. As it is very clear that most of the domestic workers are female and if they are pregnant, neither benefits nor can leave with wage be expected from employer. With regard to welfare measures, about 16.7 percent of employers have implemented social security measures for their domestic employees, while the rest has refrained from doing so. Additionally, 22.2 percent of domestic workers employees have attempted to register themselves with the government's social security schemes. A significant proportion of domestic workers do not take advantage of the schemes due to either not being aware of such schemes or due to a high level of formalization and procedure associated with such schemes.

7. Conclusion and Suggestion

"Our struggle as women for dignity and equality is intrinsically linked to our ability to access and enjoy our economic social and cultural rights. These rights cannot be separated from one another as to look at them in isolation will mean that women

will continue to be denied their most basic of human rights".¹¹ Even after the implementation of Convention 189, the South Asian countries have not ratified the Convention, yet they have attempted to safeguard and protect the rights of the domestic workers through various federal or municipal legislations, however, not in its fullest scope. Social Security laws in India primarily extend its recognition and social security welfare measures to the organized sector, thus excluding the unorganized sectors. However, measures are devised where domestic workers are required to register their names and obtain benefits, which is a lengthy procedure. Other labour codes also extend support to organized sector, but not concerned with unorganized people. The data collected suggests domestic workers are still paid below the minimum wage, which is a fundamental right under Article 21 of the Indian Constitution and welfare schemes are not totally available to them. To address the problems of domestic worker within and migrant domestic worker, the State must enact legislation that recognizes domestic workers with legal status and establish a legal relationship with the employer that allows the employer to be held accountable in the event of breach of labour laws. Further, Migrant women workers from South Asia face a variety of challenges in the countries of destination due to their vulnerable position, so prior to emigration check, a diplomatic arrangement must be established to safeguard the rights of immigrant labour and to raise awareness on the right of domestic work and relevant information.

¹¹ Charlene May, Legal Resources Centre (South Africa).

HUMAN RIGHTS AND COVID-19

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Abstracts:

Human rights are the key to shaping significant epidemic response, public health emergencies as well as the people's lives and livelihoods impact. Human rights are the basic rights and freedoms that belong to every person in the world from birth until death, the rights relating to life, liberty, equality, and dignity of the individual are guaranteed by the embodied constitution in the international engagement and enforceable by the court in India. Almost 222 countries and territories around the world suffered due to the pandemic covid-19 which had a major impact on the public and it was even observed that in a way the human rights of individuals were being violated. This abuse and violation of human rights cause psychological anguish, which is especially sensitive to the pandemic's impact on individuals and especially marginalized groups.

In this paper, the study examines how the COVID-19 pandemic and human rights interact, looking at how different facets of human rights have been impacted by the response to the virus. We investigate the effects of the pandemic on public health initiatives, individual liberties, and the socioeconomic inequality they intensify using an interdisciplinary perspective.

Keywords: Human Rights, Effects, Covid-19, Laws, Public Health, Violation

1. Introduction

The COVID-19 pandemic, caused by the novel coronavirus SARS-CoV-2, emerged in late 2019 and swiftly evolved into a global crisis of unprecedented proportions. This highly contagious virus spread rapidly across continents, challenging the resilience of healthcare systems, economies, and societies at large. The World Health Organization (WHO) declared COVID-19 a pandemic on March 11, 2020,¹ underscoring the severity and global reach of the disease.²

The impact of the COVID-19 pandemic on global health has been profound, stretching far beyond the immediate health implications. The virus has posed an extraordinary threat to human life, overwhelming healthcare infrastructure, and pushing medical professionals to their limits. With millions of confirmed cases and a significant death toll, the pandemic has forced nations to implement stringent public health measures, including lockdowns, social distancing, and travel restrictions, in an attempt to curb the spread of the virus.³

These measures, while crucial for public health, have triggered a complex interplay between safeguarding public welfare and respecting individual rights. The pandemic has exposed and intensified existing social and economic disparities, disproportionately affecting vulnerable populations. Furthermore, the rapid development and deployment of medical countermeasures, such as vaccines, have raised ethical and accessibility concerns, highlighting the need for a balanced approach that upholds the principles of human rights.⁴

In this context, this paper seeks to delve into the intricate relationship between human rights and the COVID-19 pandemic, exploring how the global response to the virus has shaped and, at times, challenged the fundamental rights of individuals and communities. Through an interdisciplinary analysis, we aim to contribute to the understanding of the intricate dynamics between public health imperatives and the protection of human rights during times of crisis.

¹ Domenico Cucinotta & Maurizio Vanelli, *WHO Declares COVID-19 a Pandemic*, 91 ACTA BIOMED. 157 (2020), <https://pubmed.ncbi.nlm.nih.gov/32191675/> (last visited Dec 12, 2023).

² Coronavirus disease (COVID-19) pandemic, <https://www.who.int/europe/emergencies/situations/covid-19> (last visited Dec 12, 2023).

³ Cucinotta and Vanelli, *supra* note 1.

⁴ WHO Declares COVID-19 a Pandemic - PubMed, <https://pubmed.ncbi.nlm.nih.gov/32191675/> (last visited Dec 12, 2023).

2. Idea of Human Rights And Its Importance About Crises Involving Public Health

The concept of human rights, grounded in the principles of inherent dignity, equality, and inalienable rights, forms the bedrock of ethical and legal frameworks designed to protect individuals from arbitrary treatment and promote the well-being of societies. As we confront the profound challenges posed by the COVID-19 pandemic, the importance of human rights takes center stage, guiding the ethical dimensions of public health responses and shaping the discourse surrounding individual liberties and societal well-being.⁵

Human rights, as enshrined in various international agreements such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), provide a universal foundation for the protection of individual freedoms. These rights encompass civil, political, economic, social, and cultural dimensions, reflecting the understanding that human flourishing requires more than the absence of state interference but also the guarantee of essential conditions for a dignified life.

Public health emergencies, such as the ongoing COVID-19 pandemic, present a unique challenge to the realization of human rights. The urgency of containing the virus and safeguarding public health necessitates interventions that, at times, may infringe upon individual liberties. Striking the right balance between protecting public health and upholding human rights requires a nuanced approach that acknowledges the complexities of the situation.⁶

The significance of human rights in the context of public health emergencies becomes evident as governments implement measures such as quarantine, lockdowns, and restrictions on movement to curb the spread of the virus. These measures, while essential for controlling the pandemic, can have profound

⁵ What Is the Role of Public Health in a Humanitarian Crisis? | Online Masters in Public Health, <https://mphdegree.usc.edu/blog/humanitarian-crisis> (last visited Dec 12, 2023).

⁶ Ensuring Rights while Protecting Health: The Importance of Using a Human Rights Approach in Implementing Public Health Responses to COVID-19 - Health and Human Rights Journal, <https://www.hhrjournal.org/2021/10/ensuring-rights-while-protecting-health-the-importance-of-using-a-human-rights-approach-in-implementing-public-health-responses-to-covid-19/> (last visited Dec 12, 2023).

implications for individual freedoms, raising ethical questions about the scope, duration, and necessity of such interventions.⁷

Furthermore, the pandemic has laid bare pre-existing socio-economic inequalities that directly impact the ability of individuals and communities to weather the storm. Vulnerable populations, including marginalized communities, refugees, and migrants, often face disproportionate challenges in accessing healthcare, economic support, and essential services, highlighting the intersectionality of human rights and public health.⁸

3. Government to protect Right to life

The basic responsibility of all states is to preserve the lives of its residents, maintain their level of life, and strive ceaselessly to improve public health. In *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*⁹, the Supreme Court ruled that the Constitution commands the creation of a welfare state at both the federal and state levels. Article 21 lays a duty on the state to defend human life. The state fulfils such responsibilities by "operating hospitals and health centres to offer such amenities to individuals who desire them." While interpreting Article 21, the Court determined that government hospitals and personnel should provide medical services in order to save lives. The inability of such institutions to provide healthcare services is a breach of Article 21¹⁰. The court also declared that the state cannot deny persons' right to life on the grounds that they lack financial means. As a result, the right to health is an intrinsic aspect of the right to life, and the state is obligated to offer medical help to people. The Constitution must be construed in accordance with international law, and India is a member of a number of international organizations that offer comparable protections to those outlined in Article 21.

⁷ *Id.*

⁸ *Id.*

⁹ *Paschim Banga Khet Mazdoor Samity & Ors v State of West Bengal & Anor.* Cited as: (1996) AIR SC 2426/ (1996) 4 SCC 37 | *ESCR-Net.* (2014). *ESCR-Net.* <https://www.escr-net.org/caselaw/2006/paschim-banga-khet-mazdoor-samity-ors-v-state-west-bengal-anor-cited-1996-air-sc-2426>.

¹⁰ *Article 21 of the Constitution of India: Understanding Right to Life and Personal Liberty from Case Laws - Academike.* (2021, August 12). *Academike.* <https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/>.

Article 6 of the ICCPR, 1976¹¹, Article 25(1) of the Universal Declaration of Human Rights, 1948¹², and Article 7 of the International Covenant on Economic, Social, and Cultural Rights, 1976, for example, put a duty on governments to provide an appropriate standard of living to their citizens. Except for the right to seek an appropriate living standard for one's health and well-being, no other right has been violated more thoroughly and consistently.

4. Examining travel restrictions, lockdowns, and quarantines in light of human rights.

Covid-19 is a pandemic public health issue that may infect and kill individuals of all ages, regardless of race, sex, colour, language, religion or gender identity, political or other opinion, national, ethnic or socioeconomic origin, property, handicap, birth, or any other status. The virus does not discriminate, but its consequences do. Article 14 states that the state must not deny equal legal protection and shall not engage in unjustifiable discrimination. It represents the idea that persons in comparable situations should be treated equally and that people should be treated differently if the circumstances warrant it. The discriminatory behaviors undermine the government's inclusive approach and attempt to prevent the spread of the virus. This right acknowledges the responsibility of the state in providing for distinctions and unique needs of persons who face health issues as a result of discriminatory activities by the state or private entities. The case of Alakh Srivastava v. Union of India exposes the predicament of migrant workers who are on their way home. During such tough times, migrant workers who are similarly prone to the virus are denied basic comforts and are forced to reside in government shelters that are unequal, congested, and unsanitary, with minimal healthcare facilities. Furthermore, the origin of Covid-19 has been linked to China, leading to an increase in aggression towards Asians. Discrimination has also been aimed toward frontline workers, emergency responders, and those who have been diagnosed with the virus. In its interpretation of the Siracusa Principles, the UN Economic and Social Council and UNHRC support limits and actions taken to safeguard the people, such as limiting freedom of movement, if a situation threatens the populace's lives. The government is required to make authorized, necessary, and reasonable efforts to prevent, treat,

¹¹ *International Covenant on Civil and Political Rights*. (2023). OHCHR.

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

¹² Nations, U. (2023). *Universal Declaration of Human Rights | United Nations*. United Nations; United Nations. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

and control epidemic, endemic, occupational, and other illnesses. In international human rights law, the right to freedom of movement permits individuals to migrate to and from a country, as well as the ability of each individual to move freely inside their own country. According to Article 3 of the International Health Regulations, the World Health Organization underlines that the government should take drastic steps while being conscious of an individual's basic rights (2005). Article 19(1)(d) of the Indian Constitution allows its citizens to "travel freely across the territory of India." Furthermore, Article 21, which protects the right to life and liberty, encompasses the right to freedom of movement, since limitations on the same would limit an individual's liberty. However, under Section 19(2) of the Constitution, the government has the ability to appropriately limit the use of this freedom in the benefit of the general public. The new coronavirus, or Covid-19, has reached the degree of concern for public health, which warrants the government's restrictions and limits imposed in line with legislation in the form of travel bans, obligatory quarantine, and lockdowns. The World Health Organization highlights that any step for public health protection might be used. In line with Article 3 of the International Health Regulations, such measures shall not be disparate to an individual's dignity, rights, and freedom (2005). To manage the virus, a chain of infection must be interrupted, and the most frequent way for doing so is self-isolation, quarantine, and lockdowns. These procedures are practicable and necessary for preventing viral transmission, which would save lives and keep the healthcare system from being overcrowded. However, imposing a state-wide lockdown may have a significant economic impact, but given India's public healthcare system, such actions are vital. The right to health is linked to the realization of other human rights, such as the right to essential information in order to take preventative measures. The freedom of speech and expression guaranteed by Article 19(1) (a) of the Constitution permits individuals to freely express their thoughts and ideas, subject to the limitations set out in Article 19. (2). the present situation necessitates unusual levels of collaboration from individuals, and in order to garner popular support, the government must be open and upfront in disseminating information about the epidemic and the national response. Nonetheless, several nations have restricted the right to free speech by banning and restricting the circulation of information about official efforts to control the virus. Li Wenliang, a Chinese doctor who warned about the new virus, was called by authorities for disseminating false information and ultimately died as a result of the infection. Iran and Thailand exploited a pandemic as a cover to prevent political opponents from propagating government inaction. States, on the other hand, should emphasize the broadcast of trustworthy

information on a regular basis while preventing the spread of disinformation, which might generate a state of fear in the minds of the general public and exacerbate the issue of infection transmission. Furthermore, authorities should take efforts to give internet access to individuals at risk in order to raise knowledge of the new coronavirus.

4.1 Quarantine:

Public Health Imperative: Quarantine is designed to isolate individuals who may have been exposed to the virus to prevent its further spread.

Human Rights Consideration: Quarantine raises concerns about the right to freedom of movement and the potential for arbitrary detention. The duration and conditions of quarantine must be proportionate and necessary, with due process safeguards in place.

4.2 Lockdowns:

Public Health Imperative: Lockdowns involve restrictions on movement, closure of businesses, and limitations on social activities to curb the spread of the virus.

Human Rights Consideration: Lockdowns implicate various rights, including freedom of movement, the right to work, and the right to education. Governments must ensure that these restrictions are temporary, proportionate, and necessary, with a focus on minimizing the impact on vulnerable populations.

4.3 Travel Restrictions:

Public Health Imperative: Restricting travel aims to contain the spread of the virus across regions and countries.

Human Rights Consideration: Travel restrictions can impede the right to freedom of movement, family reunification, and access to asylum. Measures must be proportionate, non-discriminatory, and considerate of the humanitarian aspects, especially for refugees and migrants.

4.4 Access to Essential Services during Lockdowns:

Public Health Imperative: Lockdowns may disrupt access to essential services, impacting healthcare, education, and necessities.

Human Rights Consideration: Governments must ensure that measures do not disproportionately affect vulnerable populations, guaranteeing access to healthcare, education, and social services. Special provisions should be made for those unable to afford necessary goods and services.

A careful balance must be struck while navigating the conflict between individual rights and public health initiatives. Governments must commit to respecting the values of human rights during the crisis and the recovery that follows, and they must implement policies that are evidence-based, appropriate, and time-limited. A strategy to addressing public health crises that respects rights must include ongoing monitoring, public participation, and adherence to the law.

5. Oxygen Shortage during the COVID-19 Crisis in India

The coronavirus SARS-CoV-2 that produced the COVID-19 epidemic has put the world's healthcare infrastructure to the test. India has to deal with an unusual increase of COVID-19 cases in 2021, especially during the second wave.¹³ A serious and concerning problem surfaced as the incidence of illnesses increased there was a severe lack of medical oxygen. Within the larger framework of the pandemic, oxygen scarcity emerged as a defining disaster adding a level of complexity to the already difficult issues facing the public, and healthcare professionals. The paper aims to delve into the oxygen shortage issue during the COVID-19 crisis in India, exploring the multifaceted aspects of the crisis, its implications on public health, and the responses elicited from various stakeholders. The shortage of medical oxygen not only exacerbated the suffering of COVID-19 patients but also laid bare systemic vulnerabilities within the healthcare infrastructure. Understanding the factors contributing to the oxygen shortage and analyzing the responses can provide valuable insights into the preparedness and resilience of healthcare systems during a public health emergency.¹⁴

Here is an overview of the oxygen shortage issue¹⁵

¹³ How India's Covid-Hit Hospitals Ran Out of Oxygen - The New York Times, <https://www.nytimes.com/2021/06/28/world/asia/india-coronavirus-oxygen.html> (last visited Dec 12, 2023).

¹⁴ Putting an end to India's oxygen crises | UN News, <https://news.un.org/en/story/2022/01/1110922> (last visited Dec 12, 2023).

¹⁵ How India's Covid-Hit Hospitals Ran Out of Oxygen - The New York Times, *supra* note 13.

Surge in COVID-19 Cases:

India experienced a massive surge in COVID-19 cases in April and May 2021, with a sharp increase in the number of patients requiring medical oxygen due to severe respiratory distress.

Increased Demand for Medical Oxygen:

The surge in cases led to a surge in demand for medical oxygen in hospitals treating COVID-19 patients. Many patients with severe symptoms, particularly those suffering from acute respiratory distress syndrome (ARDS), required oxygen support for treatment.

Healthcare Infrastructure Strain:

The sudden and overwhelming demand for medical oxygen put immense strain on the healthcare infrastructure. Hospitals, especially in densely populated regions, faced challenges in procuring and distributing sufficient oxygen to meet the escalating demand.

Logistical Challenges:

Transportation and distribution of medical oxygen posed logistical challenges. The timely and efficient delivery of oxygen cylinders to hospitals and healthcare facilities became a critical bottleneck.

International Assistance:

The global community responded to India's oxygen crisis with international aid and assistance. Several countries, organizations, and individuals provided medical oxygen, oxygen concentrators, and related supplies to support the country's healthcare system.¹⁶

6. There is no Centralized Coordination.

For severe COVID patients with hypoxemia – when blood oxygen levels are too low – oxygen treatment is critical. India produces adequate oxygen, according to experts, a little over 7,000 tons per day. The majority of it is intended for industrial usage, although it might be diverted for medicinal uses.¹⁷ The Indian government has now allocated the vast majority of the country's industrially generated oxygen to

¹⁶ Covid-19 in India: Cases, deaths and oxygen supply - BBC News, <https://www.bbc.com/news/world-asia-india-56891016> (last visited Dec 12, 2023).

¹⁷ *Id.*

the healthcare system. Suppliers have been ramping up capacity to be prepared to supply more than 9,000 tons of medical oxygen by mid-May, in response to increasing demand. However, the majority of oxygen generators are located in India's east, whereas the country's western and northern cities have seen a surge in demand.¹⁸ "The supply and distribution of oxygen are not coordinated centrally. It's extremely disorganized, and red tape has stymied timely supplies" Kumar Rahul, the secretary of Punjab's health department, said, According to Vikas Bajpai of the Progressive Medicos and Scientists Forum, this is a unique crisis that requires all government authorities to rise to the occasion. "The terrible fact is that supply has been unable to keep up with the geometrically increasing demand," he stated. Prime Minister Narendra Modi's administration has introduced "oxygen express" trains to transport gas from manufacturing plants to regions where it is required throughout the country. Airlifting oxygen from military sites has also been done by the Indian Air Force.¹⁹

Transport and storage capacity are insufficient.

Despite this, the nation lacks adequate transportation and storage facilities. Cryogenic tankers convey liquid oxygen at very low temperatures to distributors, who subsequently convert it to gas for filling cylinders. However, India lacks cryogenic tankers "There are only finite oxygen tankers and cylinders around." According to Meher Prakash of the Jawaharlal Nehru Centre for Advanced Scientific Research, "the logistics of replenishing them and delivering them to the destination is a serious bottleneck. The lack of oxygen has been a major issue not just in cities, but also in rural towns and villages with already inadequate health facilities. "Unfortunately, there has been little discussion of a COVID-19 plan that takes into account rural India's many restrictions, such as oxygen supply."²⁰

Foreign assistance is stranded at the Delhi airport.

Emergency medical assistance from overseas donors has started pouring in India over the last several days to help ease the country's severe oxygen shortage. The third of six relief shipments, including 1,000 oxygen cylinders, was delivered by the US on 4 May 2021. More than 400 oxygen concentrators were supplied by the United

¹⁸ How India's Covid-Hit Hospitals Ran Out of Oxygen - The New York Times, *supra* note 13.

¹⁹ COVID-19: Oxygen To Be Transported by Trains, Supply Diverted From Industries - The Wire Science, <https://science.thewire.in/health/covid-19-oxygen-to-be-transported-by-trains-supply-diverted-from-industries/> (last visited Dec 12, 2023).

²⁰ *Id.*

Kingdom, while France contributed eight oxygen generators, each capable of serving 250 hospitalized patients. On Saturday, a German military plane carrying 120 ventilators arrived in India, and authorities said they were planning future flights with more supplies. While the emergency help may save lives, it does not seem that it has reached people who are in desperate need of oxygen. According to local media estimates, over 20 aircraft have arrived with relief, but the supplies have been detained at customs for weeks. No domestic planes have taken off, according to Indian authorities, to transport the supplies to other regions of the nation. Many states have yet to be told about their share and what they would get from New Delhi.²¹

7. The Significant Role of Delhi High Court

During the hearing, petitioner Rakesh Malhotra told the Court that most laboratories aren't collecting samples for testing since the Delhi government has threatened to take harsh measures if reports aren't delivered on time. According to the Court, such warnings would be counterproductive since laboratories are under strain owing to a huge number of tests, and "no lab seems to wait carelessly or purposefully. The Court also voiced worry over the surge in coronavirus cases, stating that "the number of COVID positive patients being reported daily in the national capital has approached 25 thousand, and 15-20% of them would need hospitalization. The healthcare infrastructure is clearly on the verge of collapsing, according to the High Court.²²

8. Overview of International Human Rights Instruments And Their Relevance To Public Health Emergencies

The international human rights framework, which is made up of several treaties, declarations, and conventions, creates a thorough set of guidelines and norms intended to uphold and defend each person's fundamental rights and dignity. In light of the difficulties the international community is now facing due to public health emergencies like the COVID-19 pandemic, a critical analysis of these instruments of human rights demonstrates their relevance in directing actions and reducing the likelihood of breaches during emergencies.

²¹ Centre claims Covid-19 foreign aid promptly distributed, but states say process began only on May 3, <https://scroll.in/latest/994059/centre-claims-covid-19-foreign-aid-promptly-distributed-state-officials-say-process-began-on-may-3> (last visited Dec 12, 2023).

²² Centre, Delhi Government Failed Miserably: Delhi High Court On Migrant Workers Crisis, <https://www.ndtv.com/india-news/centre-delhi-govt-failed-miserably-to-deal-with-migrant-labourers-issues-during-lockdown-hc-2417240> (last visited Dec 12, 2023).

Universal Declaration of Human Rights (UDHR):

Adopted by the United Nations General Assembly in 1948, the UDHR remains a foundational document articulating the fundamental rights and freedoms to which all individuals are entitled. Pertinent articles include the right to life (Article 3), liberty and security of person (Article 9), and the right to work, education, and an adequate standard of living (Articles 23-25). The UDHR provides a broad moral and legal compass applicable to public health emergencies.²³

International Covenant on Civil and Political Rights (ICCPR):

Enacted in 1966, the ICCPR elaborates on civil and political rights, including the right to life, freedom of movement, privacy, and freedom of assembly. States parties are obligated to protect these rights even in times of emergency, albeit with certain permissible restrictions. The ICCPR sets the standard for balancing public health measures with individual liberties.²⁴

International Covenant on Economic, Social, and Cultural Rights (ICESCR):

Complementing the ICCPR, the ICESCR outlines economic, social, and cultural rights, such as the right to health (Article 12). During public health emergencies, states must work towards ensuring the highest attainable standard of physical and mental health for all. The ICESCR emphasizes the importance of non-discrimination and equal access to healthcare services.²⁵

International Health Regulations (IHR):

Enacted by the World Health Organization (WHO), the IHR is a legally binding instrument that aims to prevent and control the international spread of diseases. While not a human rights treaty per se, the IHR incorporates principles of human rights, including non-discrimination and respect for individuals' dignity, highlighting the interconnectedness of public health and human rights.²⁶

²³ Universal Declaration of Human Rights | United Nations, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited Dec 12, 2023).

²⁴ International Covenant on Civil and Political Rights | OHCHR, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (last visited Dec 12, 2023).

²⁵ International Covenant on Economic, Social and Cultural Rights | OHCHR, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (last visited Dec 12, 2023).

²⁶ International health regulations, https://www.who.int/health-topics/international-health-regulations#tab=tab_1 (last visited Dec 12, 2023).

9. Migrant Workers

In India, migrant workers during the COVID-19 Pandemic faced a lot of hurdles when they worked in factories and workplaces due to the lockdown²⁷. All are being shut down. And due to this major issue of lockdown, workers faced a lot of economic and food shortage issues²⁸. Due to this, many families who depend upon workers are not able to fulfill their needs and go hungry when they don't have any option²⁹, they start walking from the place where they work to home in lockdown at a time, with no type of transport facility working. Most of the migrant workers are from Uttar Pradesh, Bihar, and Rajasthan (Delhi, and Mumbai), which marked the highest number of workers for their daily livelihood³⁰. Migrant workers mainly Work on a daily pay basis in factories or in the industry Also, they are denied basic needs such as adequate healthcare, housing, sanitation, and Proper food for the betterment Workers mostly come from villages and come to work in big Cities for their livelihood³¹. And it's seen that in the case of workers, they didn't keep saving and all because they never thought of a big epidemic occurring. They mostly save small amounts for emergencies, and many of them dis amounts also didn't save for the future³². After having a lot of struggles never decided to move from one place to another in search of food security, housing, and sanitation But when labour moved, the police authority started brutality to the people. Also, it was seen that government official has taken various steps to curb this situation, like providing Rasan and paying home rent, But this is not done in an appropriate manner, so they cannot benefit³³. Only 72% of migrant workers had food in storage for the following

²⁷ India, Day 1: World's Largest Coronavirus Lockdown Begins (Published 2020). (2023). *The New York Times*. <https://www.nytimes.com/2020/03/25/world/asia/india-lockdown-coronavirus.html>

²⁸ Modi Orders 3-Week Total Lockdown for All 1.3 Billion Indians (Published 2020). (2023). *The New York Times*. <https://www.nytimes.com/2020/03/24/world/asia/india-coronavirus-lockdown.html>

²⁹ India's Coronavirus Lockdown Leaves Vast Numbers Stranded and Hungry (Published 2020). (2023). *The New York Times*. <https://www.nytimes.com/2020/03/29/world/asia/coronavirus-india-migrants.html>

³⁰ Kawoosa, M. (2019, July 23). *What the 2011 census data on migration tells us*. Hindustan Times; Hindustan Times. <https://www.hindustantimes.com/delhi-news/migration-from-up-bihar-disproportionately-high/story-K3WAio8TrrvBhd22VbAPLN.html>

³¹ Nilanjana Bhowmick. (2020, May 27). *History*; National Geographic. <https://www.nationalgeographic.com/history/article/they-treat-us-like-stray-dogs-migrant-workers-flee-india-cities>

³² *Coronavirus Lockdown Sends Migrant Workers On A Long And Risky Trip Home*. (2020, March 31). NPR. <https://www.npr.org/sections/goatsandsoda/2020/03/31/822642382/coronavirus-lockdown-sends-migrant-workers-on-a-long-and-risky-trip-home>

³³ Rounak Kumar Gunjan. (2020, April 15). *Impatient, Starving, Angry: As India Extends Lockdown, Stranded Migrant Workers Emerge as Crisis in Making*. News18; News18.

two days, according to a study of 11,159 migrant workers conducted by the Stranded Workers Action Network (2020). Ninety-six percent of respondents said they had not received any rations from government entities³⁴. When we looked at the available cash with them, we found that around 70% of migrant workers only had \$200–300 for the remaining days of the lockdown³⁵. In addition, 89% of employees said they had not been paid by their employers³⁶. Furthermore, owing to the disruption in public transit, the migrants were unable to return to their home country. Despite the government's ruling, the landlords did not exclude the room rent. Because of these socio-politically imposed restrictions, migrants were forced to undertake the herculean effort of returning home on foot, despite their unmet biological demands and the terrible environment as well as the police's equally harsh attitude³⁷. Apart from this thing is going on. Some people started creating rumors that the government started a train service for the migrant labor so that they could reach home due to these thousands or lakhs of workers. We can say started gathering at railway stations and bus stations and demanding transport or other ways to reach home Seeing all these conditions. People started to realize that it is so much more difficult to leave Away from home .

Shramik special train story due to the ongoing extension of COVID lockdown migrate workers, which started facing various levels of stress over a crore of workers roaming here and there. In wish to go home as soon as possible. After a lot of ups and downs, the government of India finally announced To running Shramik Special train on the day of labour Day³⁸, To transport the migrant workers who cluelessly roam here and there in search of any how-to to go home. Then, after the

<https://www.news18.com/news/india/impatient-starving-angry-as-india-battles-pandemic-stranded-migrant-workers-emerge-as-crisis-in-the-making-2578109.html>

³⁴ Ijalr. (2021, March 26). *Migrant workers and covid-19 - ijalr*. Ijalr. <https://ijalr.in/migrant-workers-and-covid-19/>

³⁵ Munshi, S. (2020, May 29). *Survey Shows Over 50% of Bihar Migrants Eat Once a Day, 70% Debt Ridden & Less Than 1% Have Savings*. News18; News18. <https://www.news18.com/news/india/survey-over-50-of-bihar-migrants-have-one-meal-a-day-70-debt-ridden-less-than-1-have-savings-2643099.html>

³⁶ *The Pandemic Is Changing Employee Benefits*. (2021, April 7). Harvard Business Review. <https://hbr.org/2021/04/the-pandemic-is-changing-employee-benefits>

³⁷ Sengupta, S. (2020). *Social Policy, COVID-19 and Impoverished Migrants: Challenges and Prospects in Locked Down India - Sohini Sengupta, Manish K. Jha, 2020*. The International Journal of Community and Social Development. <https://journals.sagepub.com/doi/full/10.1177/2516602620933715>

³⁸ Bhargava, Y. (2020, May). *Coronavirus lockdown | Railways to run "Shramik Special" trains to move migrant workers, other stranded persons*. The Hindu.

<https://www.thehindu.com/news/national/railways-to-run-shramik-special-trains-to-move-migrant-workers-other-stranded-persons/article31481996.ece>

announcement Every migrant worker thought this was the end of suffering and that anyhow, we will now reach home. But that wasn't the reality When they were ready to go back home, the charges of train fares were higher than the earlier. The labour again faces this issue. And government also imposed several restrictions while boarding trains or entering the Railway Station premises, apart from this service provided by the government, there are still several hurdles for the migrant worker. Also, it was mentioned that many of them are facing various challenges to get food and other basic needs³⁹.

10. The Loss of Dignity and Fundamental Rights Violation

Due to two factors, the privileged or 'Visible India' has mainly remained blind to these human beings and has seldom spoken about their rights and dignity. The first reason is that our understanding of basic rights differs from that of others. In this context, former Chief Justice Shah (2020) claims that there is a disparity between what we [the rich and higher classes] regard to be important for our right to live and what individuals who are socioeconomically lower than us think to be relevant. When evaluated in the context of a less privileged class, this concept of basic rights is often reduced to simply survival. Activists filed a Public Interest Litigation under Article 21 of the Indian constitution, proposing that migrant workers who are held at their point of migration be paid the minimum wage until the lockdown is lifted. However, since the employees are receiving meals and food grains, one of the issues presented in the Supreme Court of India was the necessity of minimum pay. According to Article 21 of the Indian Constitution, an individual's basic rights are not limited to simple survival but also include the right to livelihood, dignity, liberty, and health⁴⁰. As a free soul of a civic society, the same should naturally be provided to the impoverished class, who should have the right to live in dignity and be treated equally. However, the inherent inequity in India's socioeconomic structure infringes on the Republic of India's people's basic rights. For example, on March 25, 2020, the city gave its people just four hours' warning before imposing a total closure, leaving many migrant workers stuck in the city. Nonetheless, if

³⁹ Bismee Taskin. (2020, May 7). *11 hrs in train "without food and water": Migrant workers on reaching Bareilly from Ludhiana*. ThePrint; theprint. <https://theprint.in/india/11-hrs-in-train-without-food-and-water-migrant-workers-on-reaching-bareilly-from-ludhiana/416161/>

⁴⁰ *Article 21 of the Constitution of India: Understanding Right to Life and Personal Liberty from Case Laws - Academike*. (2021, August 12). Academike. <https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/>

migrant workers' rights had been considered, a substantial number of employees would have arrived at their destination without difficulty⁴¹.

11. Challenges and Mitigation of the Crisis

As the nation saw the migrant workers' plight, non-governmental organizations and individuals began to contribute more and more humanitarian relief. In the meantime, the government has taken steps to help. India's national government launched around 350 initiatives detailing migrant worker aid measures⁴². These included (a) the provision of buses and special trains to assist migrants in reaching their destination, (b) the provision of temporary shelters, food, clean drinking water, and other medical facilities for those traveling on foot, (c) instructions to employers not to deduct workers' wages because they are not working, and (d) welfare funds totaling 31,000 crores to support building and construction workers registered with their employers. The Supreme Court of India recently ordered the government to dismiss all charges against employees accused of breaking the lockdown on their way home. It has requested that the government gather detailed information on migrant employees, including their birthplace and kind of work, in order to provide job prospects in their home country. The court has also ordered that people who want to return to work in the host culture be provided with counseling assistance⁴³.

12. Domestic Violence

On March 23, 2020, the lockdown was announced due to the increased level of the COVID-19 pandemic⁴⁴ with the message that every member would stay home and stay safe from the virus but for some people, it became a wonderful time to create violence in the family or with the women. The level of domestic violence increased at a high level because due to lock down everyone in the nation is totally locked in their home or where they stay and no one is allowed to go outside, until and unless there is an emergency work or household item need to take .everyone are at the home and mostly people are working or having the habit of drinking alcohol. due to the stress day by day& and sitting at home, people started using sexual, economic,

⁴¹ March 25, 2020 - *The Lockdown Files* | NewsClick. (2022). NewsClick.

<https://www.newsclick.in/march-25-2020-lockdown-files>

⁴² Wikipedia Contributors. (2023, April 22). *Indian migrant workers during the COVID-19 pandemic*. Wikipedia; Wikimedia Foundation.

https://en.wikipedia.org/wiki/Indian_migrant_workers_during_the_COVID-19_pandemic.

⁴³ *The Indian Experience*. (2020). <https://ndma.gov.in/sites/default/files/PDF/covid/COVID-19-Indian-Experience.pdf>.

⁴⁴ *PM calls for complete lockdown of entire nation for 21 days*. (2020). Pib.gov.in.

<https://pib.gov.in/newsite/PrintRelease.aspx?relid=200658>.

physical, or other forms of violence or abuse to women and also not leaving their children. Many people Due to high stress start Torturing their wives and children They use a lot of force and violence on women⁴⁵. For them, this becomes the way of happiness via doing such type of activity, And in the case of drinking people, they use a lot of abuse women because not getting bottles to fulfill their drinking needs. Due to the ongoing lockdown, women were helpless, and some shut their mouths, either due to fear of the person or family image the ones who were able to speak did not have the proper way to connect with the police station or police authority Suppose police know that here violence in this family is going on They also sometimes not coming to home due to raise of Covid 19⁴⁶. While seeing the level of Complaints raised day by day Govt opens Many helpline numbers as well as email facilities to provide support and help to women who are facing problems If we see the data approx. 89% of cases of domestic violence are from the matrimonial home⁴⁷ And the rest were the victim of cybercrime. Sexual abuse, harassment, or having boyfriend issues. During the pre-lockdown, The cases of domestic violence increased from 44% to their higher level, 156% of post- lockdown cases were from married women or their in-laws⁴⁸.

The various forms of violence during Covid 19

Over 90 to 80 percent of women registered the case of an increased level of physical, emotional, and sexual abuse during the COVID-19 lockdown, some mentioned that women were subjected to severe beating with a belt or stick, or, even at the time found, apart if not only up to here they were also kicking several times or slapping mostly arm twisting, hair pulling and some wear stated that at the time of pregnancy, they were subjected to physical torture Apart from this all activity, we are not giving food. A working person in the company's wife's Husband was slapped with sleeper, or whatever they found in even a small issue They stated that, due to not having money and the anger day by day becoming high, the process of

⁴⁵ Chandra, J. (2020, June 15). *NCW records sharp spike in domestic violence amid lockdown*. The Hindu. <https://www.thehindu.com/news/national/ncw-records-sharp-spike-in-domestic-violence-amid-lockdown/article31835105.ece>.

⁴⁶ *COVID-19 and the increase of domestic violence against women*. (n.d.). <https://www.ohchr.org/sites/default/files/2022-01/india-womens-r-network.pdf>.

⁴⁷ *COVID-19 and the increase of domestic violence against women*. (n.d.). Retrieved September 29, 2023, from <https://www.ohchr.org/sites/default/files/2022-01/india-womens-r-network.pdf>.

⁴⁸ Kamakshi S. (2022, May 27). *Latest NFHS-5 Data Shows 30% of Indian Women Face Domestic Violence...And That's Just The Reported Number!* Women's Web. <https://www.womensweb.in/2022/05/nfhs-5-domestic-violence-latest-figures-show-not-much-has-changed-may22wk4sr/>.

abuse carried on in the presence of their children, women stated, and seeing this abuse and cruelty, many women rush to leave home, either went to neighbours house for the help and somewhere stay quiet because of family image and other wear crying inside at the home ⁴⁹.

In case of emotional abuse⁵⁰: Women said that they were subjected to verbal humiliation or forced to leave home or had several restrictions, such as contacting the person or the mobility In some cases, denial of medical aid to women while doing such is not satisfaction. They started commenting on their appearance or using abusive language in front of children, and sometimes under the influence. They are given Threats of divorce, Or saying, I left you with the motive to make women emotionally break down everywhere In some cases it was reported that continue giving threats of murder also. Or not allowed to speak to anyone from outside and the drunken person cooking food throws either on the floor or at the woman if doing this or not having satisfaction, then hitting their own head in the wall further, stating that their family member started giving a pressure of workload for fulfilling their demand And in case of working women, their family member always pressurized not to do her work instead of fulfill their demand. In some cases, it was also registered as working women while doing their work Either their husbands came and Showed their anger or simply smashed their laptop To fulfill their needs, and what they wanted⁵¹.

Few women stated that their husbands started having doubts about extramarital affairs. In some cases, women discovered that their husbands had extramarital affairs. If they are not able to meet, they openly have conversations, and text, which ultimately leads to violence, or sometimes the stage of committing the crime⁵².

⁴⁹ Radhakrishnan, V. (2020, June 22). *Data | Domestic violence complaints at a 10-year high during COVID-19 lockdown*. The Hindu. <https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19-lockdown/article31885001.ece>.

⁵⁰ Sucharita Maji, Saurabh Bansod, & Singh, T. (2021). Domestic violence during COVID-19 pandemic: The case for Indian women. *Journal of Community and Applied Social Psychology*, 32(3), 374–381. <https://doi.org/10.1002/casp.2501>.

⁵¹ COVID-19 and violence against women: What the data tells us | UN Women – Headquarters. (2021, November 24). UN Women – Headquarters. <https://www.unwomen.org/en/news-stories/feature-story/2021/11/covid-19-and-violence-against-women-what-the-data-tells-us>.

⁵² Kaushiki Ishwar, & Kaushiki Ishwar. (2022, February 14). *Probing Into The Domestic Violence Problem In Rural India*. Feminism in India. <https://feminisminindia.com/2022/02/15/the-indian-case-of-the-yellow-wallpaper/>.

Another Form of violence is stated as the increase of sexual abuse against women as the lockdown goes on People have nothing to do. They are totally free Earlier, they had the habit of eight hours to nine hours of work daily, and suddenly they are free and their minds become nothing blank, except for watching Instagram, Facebook, or other social media applications One more site, the people visiting that is **** site. People started watching and started applying there to their wives for example (They died both their hand and leg, or displayed the **** videos) And same acted. They also do it for the fun. In some cases, they did it in front of their children or forced Marital rape, not using protection, which led to pregnancy unwanted⁵³.

Women also suffered Food and economic insecurity during the lockdown. Their husband is not able to maintain their basic needs and due to this, they have lots of anxiety and several other tensions which ultimately cause violence to the women through the husband it was also heard that the husband was not able to maintain their children wife and stop sending their maintenance amount to which were decided by the court.

Some women were sent back to their parental home from their matrimonial home because of the rage of domestic violence, or having pressurised to go back for them. Women were considered to be an economic burden, and they said, we're not able to take care of yours.

13. Conclusion

The COVID-19 pandemic has presented unprecedented challenges to the protection and promotion of human rights around the world. While governments have taken necessary measures to curb the spread of the virus, such as lockdowns and travel restrictions, it has been crucial to strike a delicate balance between public health and safeguarding individual rights. Throughout the pandemic, we have witnessed both positive and negative impacts on human rights. On the positive side, many nations have demonstrated resilience and adaptability by utilizing technology to ensure access to education, work, and healthcare, thus upholding the right to education, work, and health to the best extent possible. Furthermore, the rapid development and distribution of vaccines have been a testament to global cooperation in the face of a shared crisis, emphasizing the importance of the right to health and access to

⁵³ Chamorro-Premuzic, T. (2021, March 27). How The Pandemic Increased Domestic Abuse And Sexual Violence Against Women. *Forbes*. <https://www.forbes.com/sites/tomaspremuzic/2021/03/27/how-the-pandemic-increased-domestic-abuse-and-sexual-violence-against-women/>.

healthcare. However, there have also been notable challenges. Lockdowns and restrictions have sometimes been implemented without adequate consideration for the economic and social rights of vulnerable populations, leading to job losses, economic hardship, and increased inequality. Surveillance and contact tracing measures, while necessary for public health, have raised concerns about privacy rights. Furthermore, marginalized communities have often borne the brunt of the pandemic's impact, exposing pre-existing inequalities and discrimination.

As we move forward, governments and international organizations must prioritize the protection of human rights while responding to public health emergencies. Lessons learned from the COVID-19 pandemic can guide future preparedness efforts, emphasizing the importance of a human rights-based approach. This approach should prioritize transparency, accountability, and the inclusion of all members of society, especially the most vulnerable.

In a world still grappling with the effects of the pandemic, the promotion and protection of human rights remain as vital as ever. The experience of COVID-19 has underscored the interconnectedness of global challenges and the necessity of upholding human rights as we navigate these complex issues. As we emerge from the pandemic, we must continue to advocate for human rights, ensuring that they are not just protected during times of crisis but are fundamental principles guiding our response to any future challenges that may arise.

LEGAL PROTECTION OF UNORGANIZED WORKERS: ENSURING EQUITY AND SOCIAL JUSTICE

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Abstract

Unorganized workers constitute a significant portion of the global workforce, contributing to various sectors such as agriculture, construction, domestic work, and street vending, among others. However, due to their informal nature of employment, these workers often face multiple challenges, including low wages, precarious working conditions, lack of social security benefits, and limited access to legal protections. This abstract highlights the importance of legal frameworks and mechanisms aimed at safeguarding the rights and well-being of unorganized workers. This paper reviews the existing legal landscape pertaining to the protection of unorganized workers, with a focus on international conventions, national legislation, and judicial precedents. It explores the fundamental principles of labour rights, including fair wages, safe working conditions, reasonable working hours, and social security, as enshrined in international instruments such as the International Labour Organization (ILO) conventions and the Universal Declaration of Human Rights. It explores the implementation of labour laws, social security schemes, and the establishment of specialized tribunals or dispute resolution mechanisms tailored to address the unique needs of unorganized workers. Additionally, it discusses the role of civil society organizations, trade unions, and advocacy groups in promoting the rights of these workers and advocating for legal reforms.

Keywords: *Unorganized Workers; Labour Rights; Legal Protection; Labour Laws; Social Justice.*

1. Introduction

The Constitution of India guarantees equality of opportunity in employment and directs the State to secure equal rights for livelihood, equal pay for equal work as well as just and humane conditions of work for all. Despite the concerted efforts of the State the economic status of unorganized workers is lagging far behind their organized workers counter parts. Indian economy is to a great extent characterized by large number of people working in unorganized sectors as unorganized workers; transitional nature of the Indian economy, disparity in education, skill and training are some of the major factors abetting such a large concentration of workers in an area most vulnerable to exogenous economic vicissitudes. Workers working in the unorganized sector deserve a separate mention as they are much marginalized. A majority of unorganized workers work in unorganized sectors for low wages due to low level of skills, illiteracy, ignorance and surplus labour and thus face high level of exploitation. This hampers their bargaining power for higher wages and any opportunities for further development. As we navigate an ever-changing landscape, it is crucial to shine a light on those workers who often go unnoticed and unprotected-the unorganized workers. These individuals form a significant part of our global workforce, contributing immensely to our economies while facing immense challenges. In this blog post, we will delve into the importance of legal protection for unorganized workers and how it can ensure equity and social justice in an increasingly informal economy.

2. Concept Meaning & Definition of Unorganized Workers

The unorganized or informal sector is a crucial component of the Indian economy, contributing significantly to both workforce and national productivity. More than 90 percent of the workforce and approximately 50 percent of the national product are attributed to the informal economy. This sector is predominantly comprised of socially and economically underprivileged segments of society.

The remarkable growth of the Indian economy in the last two decades has been accompanied by a noticeable increase in informalization. There are evident connections between informal and formal economic activities, indicating a growing interlinkage. The informal economy has demonstrated new dynamism in terms of output, employment, and earnings.

Achieving faster and inclusive growth necessitates special attention to the informal economy. Sustaining high growth levels is closely tied to enhancing domestic

demand for those engaged in the informal sector. Addressing the sector's needs in credit, skills, technology, marketing, and infrastructure is crucial. Various legal and institutional frameworks in India delineate the notion of unorganized workers and the unorganized sector. A key legislative landmark in this regard is the "Unorganised Workers' Social Security Act, 2008", which provides a comprehensive definition of both the unorganized sector and unorganized workers.

According to Section 2(l) of the aforementioned Act, the unorganized sector is characterized as a production or service-oriented enterprise owned by individuals or self-employed workers. These individuals are not working for an employer and are engaged in an unorganized sector job, earning an income below a specified threshold or owning land below a notified limit. Additionally, if workers are employed in such enterprises, the total number of workers cannot exceed 10. This definition emphasizes the small scale and individual ownership structure prevalent in the unorganized sector.

Another perspective on the unorganized sector is provided by the National Commission for Enterprises in the Unorganized Sector (NCEUS). According to NCEUS, the unorganized sector encompasses all unincorporated private enterprises owned by individuals or households engaged in the sale or production of goods and services. These enterprises operate on a proprietary or partnership basis and have fewer than ten total workers. This definition further highlights the private and often family-based nature of enterprises within the unorganized sector.

The term "unorganised worker" is defined under the Unorganised Workers' Social Security Act, 2008, encompassing home-based workers, self-employed workers, and wage workers in the unorganized sector. It also includes workers in the organized sector not covered by specific Acts. According to a survey by the National Sample Survey Organisation in 2009-10, total employment in both organized and unorganized sectors in the country was approximately 46.5 crores. Of this, about 2.8 crores were in the organized sector, and the remaining 43.7 crores were in the unorganized sector. A significant portion of unorganized workers, approximately 24.6 crores, were employed in agriculture, 4.4 crores in construction, and the rest in manufacturing, trade, transport, communication, and services. Many unorganized workers, particularly in activities like beedi rolling, agarbatti making, papad making, tailoring, and embroidery work, operate from home.

Unorganized workers face challenges such as excessive seasonality of employment, the absence of formal employer-employee relationships, and a lack of social security protection. Several legislations, including the Employee's Compensation Act, 1923; the Minimum Wages Act, 1948; and the Maternity Benefit Act, 1961, apply directly or indirectly to workers in the unorganized sector.

The Ministry of Labour operates Welfare Funds for specific categories of unorganized sector workers, providing various welfare activities in health care, housing, education assistance for children, water supply, etc. The government has launched the Group Insurance Scheme, Aam Admi Bima Yojana, for landless rural households, which also includes workers in the unorganized sector. The merger of Social Security Schemes, Aam Admi Bima Yojana (AABY) and Janashree Bima Yojana (JBY), into the renamed "Aam Admi Bima Yojana" has been effective since January 1, 2013.

Moving on to the definition of unorganized workers, as per Section 2(m) of "The Unorganised Workers' Social Security Act, 2008," an unorganized worker is described as a home-based worker, self-employed worker, or a wage worker in the unorganized sector. This definition also includes workers in the organized sector who are not covered by specific Acts mentioned in Schedule-II of the Act.

These Acts include the Industrial Disputes Act, 1947, the Employee's Compensation Act, 1923, the Employees Provident Funds and Miscellaneous Provision Act, 1952, the Employees' State Insurance Act, 1948, the Maternity Benefit Act, 1961, and the Payment of Gratuity Act, 1972. In essence, unorganized workers are those who lack the protection and benefits provided by the mentioned Acts and are often employed in informal and precarious working conditions (See the Table-01).

(Table 1: Definition of Unorganized Sector and Unorganized Worker)

Sr. No.		DEFINITION OF UNORGANIZED SECTOR
1.	The Unorganised Workers' Social Security Act, 2008"	According to "The Unorganised Workers' Social Security Act, 2008" Section 2 (l) of the Unorganised Workers Social Security Act, 2008 defines an unorganized sector as a production or service oriented enterprise owned by individuals or self-employed workers (one who is not working for an employer and is engaged in an unorganized sector job earning an income below a threshold or owning land below a notified limit) and if workers are employed, then the total number of workers cannot exceed 10.
2.	National Commission for Enterprises in Unorganized sector (NCEUS)	The Unorganized sectors are consisting of all the unincorporated private enterprises owned by the individuals or households engaged in sale or production of the goods and services operated on a proprietary or on a partnership basis with less than the ten total workers.
DEFINITION OF UNORGANIZED WORKER		
3.	Under Section 2 (m) of the Unorganised Workers' Social Security Act, 2008,	A home based worker, self-employed worker or a wage worker in the unorganized sector and includes a worker in the organized sector who is not covered by any of the Acts mentioned in Schedule-II of Act2 i.e., the Industrial Disputes Act, 1947, the Employee's Compensation Act, 1923, the Employees Provident Funds and Miscellaneous Provision Act, 1952, the Employees' State Insurance Act, 1948, the Maternity Benefit Act, 1961 and the Payment of Gratuity Act, 1972.

The definitions and concepts of unorganized workers and the unorganized sector in India revolve around characteristics such as individual ownership, small-scale

enterprises, and the absence of legal protections and benefits commonly associated with formal employment. These definitions are crucial for understanding the unique challenges faced by individuals working in the unorganized sector and contribute to the formulation of policies aimed at improving their social security and working conditions.

3. Key Characteristics of Unorganized Labour

- Unorganized labour constitutes a vast and widespread demographic throughout India.
- The sector experiences irregular employment patterns, leading to a lack of stable and enduring job opportunities, with some workers facing disguised unemployment.
- Workplaces in the unorganized sector are scattered and lack a formal employer-employee relationship.
- Rural areas witness a stratified unorganized labour force based on caste and community, while urban areas see a significant presence of migrant workers from rural backgrounds.
- Unorganized workers often grapple with indebtedness and bondage due to inadequate incomes.
- Exploitation is prevalent in the unorganized sector, with poor working conditions, notably lower wages compared to formal sectors, even for similar jobs.
- The sector relies on primitive production technologies and feudal production relations, hindering the adoption of advanced technologies.
- Limited education and exposure contribute to the poor absorption of modern practices.
- Unorganized workers often receive insufficient attention from trade unions.
- The unorganized sector lacks adequate and effective labour laws and standards.

4. Classification of Unorganized Sectors

The unorganized sector in India has been classified by the Ministry of Labour into four distinct groups. The first category, based on occupation, includes various livelihoods such as agricultural labourers, fishermen, and workers in construction, leather, and weaving. The second category focuses on the nature of employment, encompassing bonded labourers, contract labourers, and migrant workers. The third category is organized by service type and includes domestic workers, barbers, and vendors. The last category, the distressed category, comprises workers engaged in physically demanding tasks, such as animal-driven vehicle drivers and scavengers. This systematic classification facilitates targeted policy interventions to address the unique challenges faced by workers in the unorganized sector.

(Table 2: Generalized definition of Unorganized Sector and Unorganised Workers)

CLASSIFICATION OF UNORGANIZED SECTORS (The Ministry of Labour, Government of India, has categorized the unorganized sector under four groups)	
1. By occupation	Vulnerable groups include landless agricultural labours, small farmers, fishermen, sharecroppers, animal husbandry workers, beedi rollers, construction workers, leatherworkers, weavers, salt workers, artisans, and workers in various industries like brick kilns, stone quarries, saw mills, and oil mills.
2. Nature of employment	Bonded labourers, contract and casual labourers, migrant workers, etc.
3. Service Category	Domestic workers, barbers, fishermen and women, vegetable, fruit vendors, milk vendors, etc.
4. Distressed category	Drivers of animal driven vehicles, toddy tappers, scavengers, carriers of head loads, loaders and unloaders, etc.

A paradigm shift is necessary to acknowledge the unique challenges faced by unorganized workers and confront their specific vulnerabilities directly. Ensuring legal protection becomes crucial for promoting equitable treatment across all sectors, irrespective of formal employment status. To address these issues comprehensively,

it is essential to implement measures such as recognizing collective bargaining rights for unorganized workers and extending social security coverage beyond traditional employment models. This approach aims to bridge the gap between various forms of work arrangements while upholding fundamental labour rights.

The time is ripe for change, and it is imperative that governments globally unite to endorse international conventions dedicated to protecting the rights of unorganized workers within their jurisdictions. This collective action sends a clear message: every individual contributing to our economies deserves fair treatment, regardless of whether they fall under conventional labour regulations or not.

Coupled with robust labour laws specifically tailored to safeguard the interests of this growing sector and active participation from stakeholders through social dialogue platforms, we have a unique opportunity to rectify existing disparities and create a fairer, more inclusive economy for all. Let's seize this moment for positive transformation.

5. The Inadequacy of Traditional Labour Law

Traditional labour laws, designed for stable employment relationships, fall short in addressing the evolving nature of work, especially for unorganized workers in the informal economy. These laws often narrowly define "employees," excluding self-employed and those in temporary arrangements from vital protections like minimum wages and social security.

Focusing on collective bargaining, traditional labour laws overlook the unique challenges faced by unorganized workers, leaving them vulnerable to exploitation without representation. Enforcement mechanisms struggle to monitor compliance in the informal sector, allowing widespread violations.

The inflexibility of these laws fails to adapt to changing economic realities and emerging work forms. To address these issues, modernizing labour legislation is crucial. Comprehensive legal reforms, specifically tailored for unorganized workers, can ensure equitable protection and social justice in our labour markets.

6. A New Paradigm: Legal Protection of Unorganized Workers

A Modern Approach: Safeguarding Unorganized Workers through Legal Protections Traditional labour laws, initially crafted to shield formal sector

employees, often fall short in addressing the rights and needs of unorganized workers in the informal economy. This oversight creates a substantial gap in legal protection, exposing millions of workers to exploitation and depriving them of basic social security.

Acknowledging this reality, there is a burgeoning movement advocating for a new paradigm: legal protection for unorganized workers. This innovative approach aims to close existing gaps in labour laws by extending crucial protections and benefits to those operating outside formal employment structures.

Central to this new paradigm is the assurance that all workers, regardless of their employment status, have access to fundamental labour rights. These encompass fair wages, reasonable working hours, safe working conditions, freedom from discrimination, and the right to form trade unions or engage in collective bargaining. Ensuring these rights universally guarantees equity and social justice.

Legal protection for unorganized workers also encompasses access to social security benefits, including healthcare coverage, pension schemes, maternity leave provisions, unemployment benefits, and disability compensation. These measures not only protect their well-being but also contribute to reducing poverty and inequality within society.

On a global scale, effective implementation of legal protections for unorganized workers requires adherence to international conventions advocating for decent work standards across borders. Collaboration among governments, employers' organizations, and trade unions is crucial in creating an enabling environment for enforcing these protections.

Promoting social dialogue among stakeholders is another vital component of this new paradigm. Engaging with worker representatives through consultations and negotiations when developing policies related to labour rights fosters harmony between employers and employees, giving both parties a voice in decisions directly affecting them. Embracing this new paradigm of legal protection for unorganized workers paves the way for a more equitable and sustainable workforce. Comprehensive labour laws play a crucial role in addressing vulnerability and exploitation faced by these marginalized workers. Through collective efforts, we can work towards building a fairer and more just society.

7. The Benefits of Protecting Unorganized Workers

Unorganized workers, a substantial component of the informal economy¹, often grapple with vulnerability and limited access to fundamental labour rights. However, the implementation of legal protections for these workers can yield numerous benefits, fostering equity and social justice.

Recognition of the vital role played by unorganized workers in sectors like domestic work², street vending, agriculture, and construction is essential. Extending legal protection not only empowers these workers but also ensures the safeguarding of their labour rights, acknowledging their significant contributions to society.

Beyond recognition, legal protections have the potential to alleviate exploitation prevalent in the unorganized sector. Unfair practices, such as inadequate wages, extended working hours without proper compensation, unsafe working conditions, and the absence of social security benefits, can be addressed through legislative measures, thereby cultivating a more just work environment.

Economic stability is another positive outcome of protecting unorganized workers. Legislation providing fair wages and improved working conditions elevates living standards, subsequently stimulating local economies by enhancing consumer demand.

Furthermore, legal protection aligns with international conventions on labour rights, emphasizing equality at work and encouraging social dialogue between employers and employees. These principles transcend traditional employment relationships, reinforcing a global commitment to fundamental values.

Lastly, extending legal protection to unorganized workers contributes to social cohesion. It conveys a powerful message that every member of society deserves equal treatment under the law, irrespective of occupation or employment status. This acknowledgement not only upholds each individual's inherent worth but also fosters unity among diverse groups within communities.

¹ Mousavi, M. N. Nazim A. Simki K. Ismail S. A. and Waseem A. Investigating the Role of Urban-Rural Economies in the Development of Rural Settlements: Fresh Evidence from Iran. *"Asia-Pacific Journal of Rural Development"* 32 no. 2 (2022): 170-186.

² Jameel, A, and Ahmed, W. "Sustainable Development Goals and India's Commitment to Gender Justice." *Society & Sustainability* 3, no. 2 (2021): 68-86.

In, prioritizing legal protection for unorganized workers is not only crucial for promoting equity but also initiates positive ripple effects throughout society. It diminishes exploitation, bolsters economic stability, and upholds fundamental principles recognized globally. The time has come to prioritize the protection of these vulnerable individuals who significantly contribute to our societies.

8. Problems faced by the unorganized workers

As being the weaker section of the society unorganized workers face many challenges. They are as follows:

- **Low Wages:** Unorganized workers often receive minimal wages, violating the Minimum Wages Act, and the Supreme Court recognizes sub-minimum wages as forced labour under Article 23 of the Indian Constitution³.
- **Lack of Work Hazard Knowledge:** Unorganized sector's working conditions adversely affect workers' health, especially home workers, who commonly face health issues.
- **Health Problems:** Workers in the unorganized sector suffer from respiratory issues and body aches due to hazardous working conditions, including exposure to toxic materials⁴.
- **Deplorable Living Conditions:** Unorganized workers live in unsanitary conditions, facing issues like sewerage problems, drainage system overflow, flooding, and storms, often residing in slum areas⁵.
- **Extended Working Hours:** Long working hours beyond labour norms are prevalent, especially in agriculture, where no fixed hours exist.
- **Non-Agricultural Sectors:** Workers in non-agricultural sectors like fireworks and power looms endure extended working hours, facing exploitation due to illiteracy and lack of awareness.

³ Khan, M. W. & Zaheeruddin, "Manual Scavenging: A Practice Prohibited, Yet Continues", *Asian Resonance* 8 (2) (2020) 162-168.

⁴ Ahmed, W, Mohd Y, and Khan, M. W "The Silent Threat Below: A Comprehensive Analysis of Manhole Gases and Health Effects." *Sprin Journal of Arts, Humanities and Social Sciences* 2, no. 11 (2023): 115-126.

⁵ Khan, M. W, Human Rights, not for Manual Scavengers: The deserted state of rights of Scavengers in India, *Global Challenges & Solutions*, ed. KAAV Publications, (2019) p-264-278.

- **Unawareness of Trade Unions:** Many workers are unaware of trade unions and their rules, hindering the resolution of disputes between employers and employees.
- **High Level of Insecurity:** Workers in sectors like agriculture face irregular and insecure employment, leading to unemployment and starvation during off-seasons.
- **Seasonal Employment:** Unorganized workers often experience seasonal employment, with work available for only a few months, leading to the Mahatma Gandhi National Rural Employment Guarantee Act to address this issue.
- **Low Wages for Women and Children:** Despite constitutional provisions for equal pay, women and children are paid meager wages, especially in hazardous sectors, where they are subjected to long working hours⁶.
- **Workplace Harassment for Women:** Sexual harassment remains a significant issue for women in the workplace, despite legal protections⁷.
- **Vulnerable Labour Groups:** Bondage systems exist in quarries, manual scavenger⁸, brick-kilns, and construction sites, passing from one generation to the next.
- **Debtor-Creditor Relationship:** Bonded labour involves a debtor-creditor relationship where the labourer is bonded until the debt is repaid.
- **Insecurity Due to Natural Disasters:** Natural disasters impact the informal sector by affecting both productive bases and limited household assets.

9. Legal measures in support of unorganized workers

Legal measures in support of unorganized workers in India encompass constitutional provisions, legislative measures, and the active role of the Indian

⁶ Khan, M., "Role of Non-Governmental Organizations in Improving the State of Manual Scavengers in India, *Advances In Science and Technology*" *Recon-19*, (2020) 312-318.

⁷ Ahmed, W., Jameel, A. "Constitutional Rights, various laws and Schemes for women empowerment in India." *International Journal of Society and Humanities* 12, no. 1 (2018): 178-184.

⁸ Khan, M. W. & Zaheeruddin, "Role of Dr. B.R. Ambedkar in the Empowerment of the Socio-Economic Status of Manual Scavengers in India", *Excellence International Journal of Education And Research-9* (04),(2020) 63-69.

Judiciary. Constitutionally, Article 14 ensures equality before the law and equal protection for all residents. Article 16 guarantees equal opportunities in public employment, while Articles 21, 21A, 23, and 24 address issues related to minimum wages, compulsory education, forced labour, and child labour, respectively.

On the legislative front, various laws have been enacted to protect the rights of unorganized workers. These may include provisions related to minimum wages, working hours, occupational safety, and social security benefits, aiming to establish a more equitable working environment.

The Indian Judiciary plays a crucial role in ensuring the protection of the rights of unorganized workers. Through legal interpretation, judgments, and interventions, the judiciary contributes to upholding constitutional principles and ensuring that legislative measures are effectively implemented. The judiciary serves as a mechanism for addressing grievances, advocating for justice, and holding accountable those who violate the rights of unorganized workers.

The comprehensive approach involving constitutional safeguards, legislative measures, and judicial activism collectively contributes to the legal framework aimed at protecting the rights and well-being of unorganized workers in India.

a. Constitutional Measures

Constitutional provisions in India play a crucial role in ensuring the protection of rights for unorganized workers. Article 14 underscores the principle of equality before the law, emphasizing equal protection for all residents. Article 16 guarantees equal opportunities in public employment, while Article 21 addresses concerns related to minimum wages and the recognition of bonded labour. Additionally, Article 21A focuses on providing free and compulsory education for children aged six to fourteen. Article 23 prohibits forced labour and employment below statutory minimum wages, emphasizing fairness in labour practices. Lastly, Article 24 places restrictions on child labour in hazardous employment. Together, these constitutional safeguards create a robust framework, giving priority to principles of equality, opportunity, education, and protection for unorganized workers.

(Table-03: Constitutional Provisions in Protecting the Rights of Unorganized Sectors)

CONSTITUTIONAL PROVISIONS IN PROTECTING THE RIGHTS OF UNORGANIZED SECTORS		
Sr. No.	Article	Constitutional Safeguard
1.	Article 14	Article 14 of the Indian Constitution ensures equality before the law and equal protection of laws for all residents in India, prohibiting the State from denying these rights to anyone. It underscores the principle of treating everyone equally under the law.
2.	Article 16	Article 16 ensures equal opportunity in public employment, stating that all citizens have equality of opportunity in matters of employment or appointment to any office under the State.
3.	Article 21	Failure to pay minimum wages violates Article 21 of the Indian Constitution, which also emphasizes the need for government recognition of bonded labour and the provision of basic human dignity to such labours by every State Government.
4.	Article 21A	The State shall provide free and compulsory education to all the children in the age of six to fourteen years in such a manner as the State may by law determine
5.	Article 23	Article 23 prohibits forced labour and declares it an offense punishable by law. It also restricts employing workers at wages below the statutory minimum, considering it a form of forced labour.
6.	Article 24	No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment

b. Legislative measure

India has implemented various legislative measures to safeguard the rights and conditions of unorganized workers. Notable acts include the Dock Workers (Regulation of Employment) Act, 1948, ensuring fair conditions in dockyards, and the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, addressing the

beedi and cigar industry. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, focuses on inter-state migrant workers, while the Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Rules, 1984, provides guidelines for the cinema industry. Acts such as the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, and The Building and Construction Workers Act, 1996, emphasize regulation in the construction sector. The Unorganised Workers Social Security Act, 2008, serves as an umbrella legislation for social security, and the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013, addresses manual scavenging prohibition and rehabilitation. These legislative measures collectively form a comprehensive framework for protecting unorganized workers, ensuring fair conditions and promoting their overall well-being.

(Table-04: Existing Legal Frame Work)

Sr. No.	Existing Legal Frame Work
1.	The Dock Workers (Regulation of Employment) Act, 1948
2.	The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
3.	The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
4.	The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Rules, 1984
5.	The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996
6.	The Building and Construction Workers Act, 1996
7.	The Unorganised Workers Social Security Act, 2008
9.	The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013.

c. Role of Indian Judiciary for the protection of the rights of the unorganized workers

Sometimes due to failure of proper implementation of legislations judiciary come forward for the protection of the rights of unorganised workers. Unorganised

workers indeed remain outside the purview of social security measures.

Indian Judiciary played a pivotal role in the development of modern jurisprudence and made a significant contribution to the protection of interests of weaker section of society which could be reflected from several decisions. Judiciary also tried to extend the benefits of labour welfare measurements such as the Employees Compensation Act, Payment of Gratuity Act, Employees State Insurance Act, Employees Provident Fund etc.

Judiciary has exclusive responsibility for the protection of interest of a weaker section of society. Through various judgments, the Supreme Court of India emphasised on Right to Livelihood as an inherent part of Right to Life.

- In the case of **Rural Litigation and Entitlement Kendra, Dehradun v. Uttar Pradesh**⁹, the court stated that the right to life under Article 21 of the Constitution of India also includes the right to livelihood.
- In **People Union for Democratic Rights v. Union of India**¹⁰, the court held that beggar is also a kind of forced labour and it is a violation of the right to live with dignity, respect and fundamental human rights. If any person is taking the service of any labour and does not pay the minimum wages, then it is a violation of Article 23 of the Constitution of India.
- In **Sanjit Roy v. State of Rajasthan**¹¹, it was held that payment of wages lower than the minimum wage to the person employed on famine relief work is violative of Article 23. Whenever Any labour or service is taken by the state from any person, who is affected by drought and scarcity condition the state cannot pay him less wage than the minimum wages on the ground that it is given help to them to meet famine situation. The state cannot take advantage of their helplessness.
- In the case of **Deena v. Union of India**¹², the court held that the labour work that is taken from the prisoners it without paying sufficient wages is considered forced labour, and it is an infringement of Article 23 of The

⁹ 1985 SCR (3) 169.

¹⁰ 1983 SCR (1) 456.

¹¹ 1983 SCR (2) 271.

¹² WRIT PETITION (CRIMINAL) NO. 89 OF 2015.

Constitution. The prisoners have the right to claim the reasonable wages for their service rendered, and the court must enforce the claim of labourers.

- In the case of **Bandhua Mukti Morcha v. Union of India**¹³, the court held that whenever the public interest litigation is initiated alleging the practice of bonded labour, the government needs to accept it as the opportunities and to examine the issues or problem of labour and make efforts to eradicate the practice of bonded labour and protect the labours. Article 23 of the Constitution of India, which prohibits the practice of bonded labour protects and helps the labours to earn for their livelihood.
- In the case of **Neeraja Chaudhary v. State of Madhya Pradesh**¹⁴, Justice Bhagwati held that it is not sufficient for the Government to find about the existence of bonded labour, but it is also necessary that the labourers should be rehabilitated because if they are not rehabilitated, then they would be driven to despair, poverty and helplessness.

Article 21 states that bonded labour should be identified and efforts need to be made by the Government to complete rehabilitation of the labourers. Directive Principles of State Policy was enacted as the guidelines for the government. Under DPSP, the State Government needs to provide a basic human dignity to bonded labour and if it is not fulfilled, then it will result in the infringement of Article 21 of the Constitution. Judicial trends concerning the extension of the benefits of social security schemes to unorganized workers.

- In the case of **Daily Rated Casual Labour v. Union of India**¹⁵, it was held that whenever the employees are classified into the casual and regular employees leads to the infringement of Article 14 and Article 16 of the Constitution. It is also against the spirit of Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966. When the labourers are not paid minimum wages as prescribed by the Minimum Wages Act, then it amounts to exploitation of labour. The court also stated that the Government should be the model employer and not take advantage of its dominant position.

¹³ 1984 SCR (2) 67.

¹⁴ (1984) 3 SCC 243.

¹⁵ 1988 SCR (1) 598.

- In the case of **State v. Banwari**¹⁶, the High Court of Allahabad stated that “The person cannot refuse to render the services merely on the ground that such labours belong to the Scheduled Caste. This is done to protect the interest of weaker sections of society.
- In the landmark case **M.C. Mehta v. State of Tamil Nadu**¹⁷, the Supreme Court of India gave order to the Government to do a survey and to stop the child labour in the matchstick and cracker factories. The court also directed that the minimum wage paid by the subcontractors under Minimum Wages Act should be directly paid and the provisions of section 21 of the Contract Labour Act, 1970 should be observed.
- In **Delhi Jal Board v. National Campaign For Dignity and Rights of Sewerage and Allied Workers**¹⁸, neither the lawmakers nor those entrusted with the duty of implementing laws enacted for the welfare of unorganized workers have put in place appropriate mechanism for the protection of persons employed by or through contractors to whom service meant to benefit the public at large are outsourced by state and its agencies for doing workers, which are inherently hazardous and dangerous to live nor have they made provision for payment of reasonable, compensation in the event of death.

Therefore, Judiciary is active to take all necessary steps for protection of the rights of unorganised workers and implementing social security welfare schemes and also extend the advantages of various labour welfare legislation.

10. Scheme for Ensuring Equity and Social Justice to unorganized workers

Several schemes in India have been implemented to ensure equity and social justice for unorganized workers, recognizing their vulnerable position in the informal sector. These initiatives aim to provide financial security, healthcare, and social welfare benefits, fostering inclusivity and addressing the unique challenges faced by this workforce.

- **Pradhan Mantri Shram Yogi Maan-dhan (PM-SYM):** Launched by the Government of India, this scheme focuses on providing a pension to

¹⁶ 1957 CriLJ 539.

¹⁷ (1996) 6 SCC 756.

¹⁸ <https://blog.ipleaders.in/unorganised-sector-rights-protection/>

unorganized workers in their old age. Workers between the ages of 18 to 40 can voluntarily enroll and contribute to the scheme, ensuring financial support post-retirement.¹⁹

- **Atal Beemit Vyakti Kalyan Yojana:** This is an unemployment insurance scheme designed to provide relief to unorganized workers during periods of unemployment. It offers financial assistance for a maximum of 90 days in a year, contributing to economic stability during job loss.
- **Ayushman Bharat Pradhan Mantri Jan Arogya Yojana (PM-JAY):** While not exclusive to unorganized workers, this healthcare scheme aims to provide financial protection to vulnerable families against high medical costs. It ensures access to quality healthcare, contributing to the well-being of unorganized workers and their families.
- **Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA):** Although primarily for rural employment, MGNREGA indirectly benefits unorganized workers by providing them with an alternative source of income during lean periods. It guarantees 100 days of wage employment to rural households²⁰.
- **Aam Aadmi Bima Yojana (AABY):** This social security scheme offers insurance coverage for unorganized workers and their families. It provides financial assistance in case of disability or death and ensures that the family receives the benefits, contributing to the overall welfare of the worker.
- **National Career Service (NCS):** NCS is a government initiative that facilitates job matching for job seekers in the unorganized sector. It serves as a platform for connecting workers with potential employers, enhancing their employability and access to job opportunities.
- **Rashtriya Swasthya Bima Yojana (RSBY):** Although not specific to unorganized workers, RSBY provides health insurance coverage to below-poverty-line families, benefiting many workers in the unorganized sector. It helps in mitigating health-related financial risks.

¹⁹ Ghosh, A. *Pensions and Informal Sector in India*, Taylor & Francis, (2022) P-1-150.

²⁰ Rehan, M. "Role of MGNREGA Scheme in Women Empowerment in India: An Analysis" Published in International Journal of Trend in Scientific Research and Development, Volume-7 | Issue-2, April 2023, pp. 210-213.

These schemes collectively strive to bridge the gap in social security and economic opportunities for unorganized workers, promoting equity and social justice in India's diverse workforce. They form an essential part of the government's efforts to uplift and empower the marginalized sections of society.

11. Conclusion

The multifaceted landscape of unorganized workers in India demands a comprehensive approach to address their unique challenges and vulnerabilities. From a legal standpoint, constitutional provisions, such as Article 14 emphasizing equality before the law, and legislative measures, including acts like the Dock Workers (Regulation of Employment) Act, collectively form a robust framework. These legal safeguards, bolstered by the active role of the Indian Judiciary, underscore the commitment to protecting the rights and dignity of unorganized workers.

Recognizing the inadequacies of traditional labour laws, a new paradigm is essential, one that extends legal protection to unorganized workers and ensures fair treatment irrespective of their employment status. The benefits of such protection are far-reaching, encompassing economic stability, social cohesion, and adherence to international conventions on labour rights.

Moreover, government schemes like the Pradhan Mantri Shram Yogi Maan-dhan and Ayushman Bharat Pradhan Mantri Jan Arogya Yojana play a pivotal role in providing financial security and healthcare support to unorganized workers. These initiatives, along with others like MGNREGA and RSBY, contribute to creating a more equitable and just society, mitigating the challenges faced by this vital segment of the workforce.

In the broader context, it is evident that a collective effort from legal, legislative, and governmental fronts, coupled with social dialogue platforms, is indispensable for rectifying existing disparities and fostering a fairer, more inclusive economy for all. As we navigate the complexities of the unorganized sector, it becomes imperative to prioritize and uphold the rights, dignity, and well-being of these workers, recognizing their invaluable contribution to the nation's growth and development.

WOMEN'S ROLE IN ENVIRONMENT CONSERVATION AND SUSTAINABLE DEVELOPMENT

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Abstract

Natural Environment or the natural world is the combination of both living and non-living things interacting together. It's the interaction of all living species, climate, weather and natural resources that affect human survival. The word Environment is derived from a Latin word 'environer' which means to surround. Due to urbanization and uncontrollable greed of human race our natural environment is going through lot of difficulty. Our natural resources are depleting at a very alarming rate. Therefore, to protect Earth and the natural resources it's very important to preserve and protect our natural surrounding from pollution, land degradation, deforestation. In order to device a proper conservation plan involvement of women is necessary at each and every level. It's very important to include women at each and every level starting form planning to actually implementing the policies and programs.

Women are considered as the pillar of society. Although contribution of women in political, social and economic is not appreciated nor recognized but the contribution of women in household chores cannot be denied. Women are the one who are expected to confine within

the four walls of home and do the household chores. Hence this is the main reason why there is a relationship between women and environment. Women in their day to day activities rely upon environment. The activities start from cooking to relaxing all activities include environment and natural elements. Women are considered as the active agents of conservation and restoration of environment. Women and environment are closely bounded and intimate relation between women and nature led to the emergence of theory of eco-feminism, which is a field bridging ecological ethics and feminism that seeks to explore the conceptual connections between environmental degradation and sexist oppression. Women through their role as farmers and collectors of water and fire-woods have a close connection with their local environment, women and children as well as marginalized sections are the prime victims of environmental degradation especially at times of natural disasters.

Keywords: *Ecofeminism, Prakriti, nurturing, Chipko Movement, Narmada Bachao Andolan.*

1. Methodology: This paper is based on qualitative studies, and the information is collected from secondary sources such as books, newspapers, journals, articles, internet, archives etc.

2. Objective of the Paper: This paper highlights the connection between women and nature and the various contributions which is being made by the women to preserve and protect the natural environment since ages

3. Introduction

From time immemorial women have been considered as the weaker section of the society who is merely responsible for the management of the house and taking care of the family. Since ancient times men were given the task of going out and to look for jobs but the sole responsibility of the house, nurturing the children and educating them, doing odd jobs to sustain livelihood were on the shoulders of the women. Therefore, the role of women in the society is always considered as the caretaker. Here the term caring means to look after the children, men and sick and elderly, disabled in the house therefore at the community level women are also considered as the caretaker of the natural environment as women are the one who travel long distances to get wood for fire, water for drinking purposes; women are the one who look after the crops for their private consumption as well as for the commercial purpose. Women depend upon the natural resources like water, land

tress etc. for their household works. They are considered to be best collectors of natural resources. In 1970, a book titled 'Women's role in Economic development'¹ by Ester Boserup sparked the connection of women with the environment. According to the World Bank in 1991 and other studies, women are very close to nature and contribute significantly in its management, rehabilitation and conservation.

4. Women as Nurturers of Nature

Women are being worshipped as the Goddesses for wealth, health, wisdom, knowledge, creation and sustenance of the whole world. Even during the Indus Valley Civilization, a woman was considered as the "MOTHER GODDESS" with a plant coming out of her embryo². "Women hold up half of the sky, make up one half of the world's task force, and fulfill one half of the planet's potential. In women lie nature's best qualities of motherhood, compassion, humanity and love. Because they have been blessed with the capacity for giving and nurturing life, women also have the capacity for a deep commitment for preserving and nourishing not only their own offspring, but of the entire planet as well". The High herbal and medicinal value of forest products by women is quickly disappearing with deforestation. Ruthless and unconscious exploitation of resources, which resulted in degradation of environment has a direct impact on women. About 3 million people in the tribal and forest areas earn their livelihood by carrying a load on their heads, out of which 90% are women. Recent studies shows that women are direct culprits of Environment degradation and pollution. To illustrate years back women used to fetch water from few feet away but now because of excessive mining and deforestation they have to go miles for gallon of drinking water. Though environment degradation harms the human beings generally but is considered the main victim. Women is known to have deep knowledge about environment because of her direct contact and has the ability to build it more than men and consequently they are the one who suffer from a degraded home and neighborhood. Women are active agents of conservation and restoration of environment and plays a active role in development of a balanced sustainable development.³ The world summit on

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¹ Ester Boserup, *Women's role in Economic development*, (Earthscan, UK, 1989).

² National Museum, New Delhi available at: <https://indianculture.gov.in/artefacts-museums/mother-goddess-2> (last visited on 14.02.2022).

³ Mago Payal and Isha Gunwal, "Role of women IN Environment Conservation" SSRN, 2020.

Sustainable Development held in 2002 in Johannesburg confirmed that there is need for gender analysis and gender mainstreaming in all efforts and the recognition of land rights of females.

The following observations can be made with respect to women interdependence with nature.⁴ 1) Women are having base and skills for natural resource management. 2) Women are good managers for natural resources. 3) Women are sensitive towards environment. 4) Women have great biological consciousness.

5. Ecofeminism

Ecofeminism was coined by the French writer Françoise d'Eaubonne in her book *Le Féminisme ou la Mort*⁵. It's that branch of feminism which is related to environment. It makes a connection between human and nature. They see a connection between women and nature. The main reason behind this thinking is that nature is always portrayed as a famine power who has the ability to produce and nurture other beings. This power or shakti is known as "**Prakriti**", where Prakriti creates the world. There is a close and positive relationship between nature and women because of the female reproductive functions such as childbirth and menstruation.

6. Women's Connection with the Environment: Women, Environment and Development (Wed)

Women of our country have given a different outlook to the environment debate as their experience base is different. Poor women's lives and vision is broad and holistic as they clearly understand that environment and economics are compatible. Women's are managers/maintainers of natural environment, innovators for creation of new environment and rehabilitators of natural environment. Women have the capacity to manage their natural surroundings and to overcome the crisis by adopting several mechanisms. We can proudly say women and the environment are close knit and interconnected. Ironically women has been constantly being denied various formal leadership positions still lot of women are able to raise their voice for the conservation of environment.

⁴ Bidisha Borah, " Women and Environment with special Reference to India: An assessment" *7 European Journal of Molecular and Clinical Medicine*, 2020.

⁵ Françoise d'Eaubonne, *Le Féminisme ou la Mort*(1974).

Lady Bird Jhonson have used her position as the first Lady to advocate for extensive environmental legislation, most notably the Highway Beautification Act of 1965, The Wilderness Act of 1964, and The Land and Water Conservation Fund.

Another iconic female environmentalist is Mollie Beattie, the first female director of the U.S. Fish and Wildlife Service. She notably used her position to advocate for the National Wildlife Refuge System, adding many wildlife refuges and creating habitat conservation plans. Known for her ability to bring together people of different opinions, she left behind an impressive legacy.

Women have been involved in several governmental and non governmental forestry and environment programs which are as follows:

- 1) Chipko Movement in India- In India “Chipko Movement⁶” was led in the Mandal Village of Himalayas. The literal meaning of the term Chipko means to hug. People in that region was led a women named GAURA DEVI⁷. The women kept all night guarding the trees so that forest officials do not come to cut the trees. The news of the movement spread to different parts of the world. Due to spread of movement the Chief Minister was forced to create a cabinet meeting to discuss the matter, and finally the women merged victorious when the government denied the programme of cutting the trees of that area which was the means of livelihood for numerous households.
- 2) Another fascinating movement which was led by women across India was “Narmada Bachao Andolan”.In this movement women from all the affected areas came together to stop the construction of a dam on Narmada River. In this movement we can see names of various women who went to jail, got beaten up by the officials. Dedli (Bai)Vasave, Pervi, Sadhana Dadhich, Kapila (Ben) Tadvi are some of the prominent figures of Narmada Bachao Andolan. Nari Shakti Ka Sanman was the most significant slogan of the movement. Even women were

⁶ The Chipko movement or chipko andolan, was a forest [conservation movement](#) in [India](#).The movement originated in 1973 at the Himalayan region of Uttarakhand (then part of Uttar Pradesh) and went on to become a rallying point for many future environmental movements all over the world.

⁷ Gaura Devi was a grassroots activist and a rural women community leader from India who played an important role in the Chipko movement. Born in 1925, Gaura Devi hailed from the tribal Marchha family of the Laata village in Chamoli district.

ready to compromise their life for the sake of the river and to prohibit the construction of dam.⁸

- 3) Appiko Movement- Another significant social movement that began in Karnataka in 1983 is the Appiko movement. This movement was started in opposition to the government's plan to make forest land available for industrial development. As a result, many adults, children, and women clutched trees. The part Mahila Mandal plays is very important including the function played by Adivasi women.⁹
- 4) Silent Valley Movement- Silent Valley is one of the important biodiversity hotspot in Keralas Southern and western Ghats in 1976. Sugatha Kumari was the leader of the silent valley movement, which protested the government's decision to build a dam for a hydroelectric power project in the silent valley forest. As a result that forest land designated as a National Park because of numerous demonstrations and the active participation of women.
- 5) Navdanya Movement- Navdanya Movement started in 1982 also raised the issue of environment conservation. As a programme of the Research Foundation for Science, Technology and Ecology, a participatory research endeavour to provide direction and support to environmental action, Navdanya is the largest organic movement . Navdanya, which translates to "nine harvests," refers to all of India's sources of reliable sustenance.

Keeping seeds safe from biopiracy is the major goal. The majority of the Navdanya movement's participants were female farmers from different regions of the nation.¹⁰

Mrs. Indira Gandhi was the first prime minister who recognized the importance of environmental conservation and represented India at the Stockholm Convention in 1972. She also brought a halt to the tree-felling activities in the Himalayan region that came under threat for commercial use. Women and

⁸ Amit Sengupta, Narmada Bachao Andolan The Longest living Gandhian Satyagraha, National Herald Newspaper , 2018.

⁹ Elwell Natalie and Yesmine Williams, " If you care about the Environment , You should care about Gender" *World Resources Institute*, 2016.

¹⁰ Olalekan morufu Raimi, " Women role in Environmental Conservation and Development in Nigeria" *Ecology and Conseroation Science: Open Access* 2019.

nature are always interconnected this phrase means the oppressed are in solidarity with each other. It's often a cultural myth that women are somehow closer to nature than men. However, being relegated to the realm of nature and caretaking work does give them an understanding of the ways in which we are all connected to nature. Women understand our material dependence on nature and the power of nature. The work women are made to do create sensitivities and empathy. As a result, there is a moral knowledge present for women, not because of being in a female body, but because of what female bodies are made to do. If women were given power from the beginning there would have been difference in the present situation of environment. The environmental problems we face now were manufactured pretty much in the last 200 years of colonialism and extractive capitalism. But even if we look at just these last 200 years, women's energies have gone towards improving schooling, creating movements for equality, creating the entire fields of public health and social work and so on. So, while this industrial machine has been literally gaining steam over the last 200 years, women have put their energy into institutions that build social health, well-being and connections between people. That says to me that if women had wielded more power, they would have created different sorts of institutions and different sorts of wealth.

7. Conclusion

Environment is very important for every person in the world, be it men or women. Both have to play crucial roles to protect nature as we are receiving numerous services from it. In order to protect nature and to ensure that our future generation can reap the benefit of it both have to play on the forefront. One cannot sideline women while framing any strategies to protect and prevent nature. In the past (18th and 19th century) in particular, there was no role of women in conserving the environment and its promotion as they were devoid of social life in all major spheres. Then women started spreading awareness against environmental degradation and also about their rights and duties. Number of movements were launched by the government for protection of natural resources and environment conservation. In India, during the protection of trees Amrita Devi lost her life by commercial logger in Uttarakhand. Other women like Vandana Shiva, Medha Patekar, Maneka Gandhi also raised their voices and contributed for Environment protection and its conservation. Navdanya movement of 1982 also helped to

organize women and people for the environment cause. In the Chipko Movement also at some point of time the men of the area were interested to make deals with the contractors for cutting the trees but it was the determination of women that they did not allow even the men of the area to cut the trees. The country's natural resources are strained continuously because of population and technological advancement. Pollution, soil erosion, urbanization and deforestation has degraded the country's resources like land, water, fuel etc. Therefore for the proper conservation of natural resources and environment promotion is not possible without women involvement in Planning and training. Now in the present era as women role is recognized in every field so their role in ecology management must also be recognized to accelerate the active participation of women.¹¹ In this paper we have seen the efforts of the link between women and nature and how the women have continuously taken a forefront in any programs which were taken to protect the environment and to stop any major projects which were having a huge possibility of destroying nature.

In the end "Man is a part of nature, a war of man against nature is against himself."

¹¹ *Supra* note 4 at 164.

INDEPENDENCE OF JUDICIARY IN INDIA

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Abstract

The rule of law is the heart of our nation's democracy, which creates an urgency to form independent judiciary. Judgments delivered by judges should be regardless of the political wind blowing." The other two pillars of government i.e. executive and legislative system, must not obstruct the judiciary's ability to do justice. Judges must be allowed to perform their duties without fear of reprisal, stress, or any type of threats. The main objective of judicial independence is the importance of judges to work free and to settle a matter before them through established laws without being affected or distracted by any other element. A French philosopher Montesquieu by whom the notion of independent judiciary was proposed. He strongly believed in the principle of power partition, which indicates three major parts of government – legislature, executive, and judiciary. All three have separate powers. Montesquieu notion had influenced the founding authors of the American Constitution, who later created an independent court in their nation. Before 1701, judges in the United Kingdom served at the discretion of the monarch and like any other royal servant they often used to get fired from their job by the king at any time. Due to this Act of Settlement, 1701 had been brought which guaranteed the judicial independence and brought a strong belief in the Constitution. Hon'ble Supreme Court stated in S.P. Gupta v Union of India¹, "Though there is no clear mentioning in the Indian Constitution, the independence of the judiciary and the rule of law are fundamentals of the Indian Constitution thus cannot be changed."

KEYWORDS: Independent, Judiciary, Constitution, Government, Judicial

¹ AIR 1962 SC 149.

1. Introduction

The essential duty of judicial independence is to defend the advantages and rights granted by the restricted constitution. It forbids the legislative and executive branches from interfering with their rights. Judicial independence refers to the judiciary's aim of being free of government interference. This term isn't well defined, and it differs from one jurisdiction to the next. The rule of law is the cornerstone of this idea. Independent judges are the foundation of the judicial system's credibility. Any government branch or commercial entity should not be able to exert undue influence or control over India's courts. Separation of powers and judicial independence are inextricably linked. Allowing judges to serve for lengthy periods of time is one strategy to enable and improve the judiciary's independence. It encourages them to make decisions based on the rule of law and judicial discretion. It is the bedrock upon which democracy and the rule of law are built. In an independent judicial system, courts and judges are free to operate without undue interference. The judiciary's independence allows it to preserve citizens' rights and maintain equality for everyone. However, such a choice will not be in the best interests of strong entities. This concept was founded in England in the 18th century. By using the authority of judicial review, the judiciary in various countries maintains checks and balances on the legislative. The judiciary has the authority to resolve disputes, conduct judicial reviews, and maintain the law and enforce basic rights.

In India, judges are nominated by the President in consultation with the judicial authorities under Article 124(2)². The security of tenure is guaranteed to every judge. Only misbehaviour or incompetence will lead to the removal of a Supreme Court or High Court judge. Only the President, according to Article 124(4)³, has the ability to impeach a judge. The consolidated fund of India pays for the judiciary's administrative costs. Judges are not authorized to plead in any court once their term has ended. Judges' actions may be excused if their responsibilities are considered in the legislature. The Constitution's authors established an independent and impartial judicial system. Although, in its practical aspect, the judiciary is not totally autonomous. Its implementation is lacking, however it is more textual in character. The independence and functioning of the judiciary is also affected by the movement of judges. There is no effective procedure in place to prevent the government from abusing its authority to transfer. Courts in India are divided into three levels: district

² "THE CONSTITUTION OF INDIA,."

³ *Ibid.*

courts, high courts, and the Supreme Court. *S H Sheth v. Union of India*⁴, popularly known as the Sankal Chand case. The majority of the Supreme Court in this decision held that prior permission is not necessary when changing judges. Despite the fact that Justice Bhagwati and Justice Untawalia issued opposing opinions. The amendments made by the 42nd Amendment were rescinded by the Janta government. Mrs Gandhi recognized that the legislative rules for appointing judges had replaced Justice Khanna, the senior-most judge, as a result of his decision in the Habeas Corpus case *A.D.M. Jabalpur v. Shukla*⁵. After then, Justice O. N. Vohra, an Additional Judge of the Delhi High Court, was removed because he rendered a fair judgment against Mr Sanjay Gandhi. All of this demonstrates the price of being open and honest. Because it is fragile, the judiciary's independence is constantly prone to manipulation by the powerful. The judges' pay and allowance are guaranteed under the Indian Constitution. However, there is no timetable for its amendment.

The independence of the judiciary has been eroded as a result of the government's actions. Retired judges may also be employed to enhance the court system's condition. It was noted in the case of *Orissa v. Sudhansu Sekhar Mishra AIR*⁶ that the High Court has jurisdiction to spare the duration agreed of services of any of the officials under supervision for filling up only for good cause if the High Court thinks it appropriate. Such executive positions that may need the participation of a judicial officer. The government said that judicial personnel of the High Court should not be allowed to acquire a stake in the Secretariat. On paper, the changes will not be successful unless the judiciary takes steps to make them a reality. *S H Sheth v. Union of India (1978) 1 SCR 423*⁷, popularly known as the Sankal Chand case. The majority of the Supreme Court in this decision held that prior permission is not necessary when changing judges. Despite the fact that Justice Bhagwati and Justice Untawalia issued opposing opinions. The amendments made by the 42nd Amendment were rescinded by the Janta government. Mrs Gandhi recognized that the legislative rules for appointing judges had replaced Justice Khanna, the senior-most judge, as a result of his decision in the Habeas Corpus case *A.D.M. Jabalpur v.*

⁴ (1978) 1 SCR 423.

⁵ 1976 AIR 1207.

⁶ 1968 SC 647.

⁷ "Case Analysis: Union of India V. Sankalchand Himatlal Sheth (1977) | Judicial Appointment and Transfer," available at: <https://www.legalbites.in/case-analysis-sankalchand-himatlal-sheth-1977/> (last visited January 17, 2024).

Shukla⁸. After then, Justice O. N. Vohra, an Additional Judge of the Delhi High Court, was removed because he rendered a fair judgment against Mr Sanjay Gandhi. All of this demonstrates the price of being open and honest. Because it is fragile, the judiciary's independence is constantly prone to manipulation by the powerful. The judges' pay and allowance are guaranteed under the Indian Constitution. However, there is no timetable for its amendment. The independence of the judiciary has been eroded as a result of the government's actions. Retired judges may also be employed to enhance the court system's condition. It was noted in the case of *Orissa v. Sudhansu Sekhar Mishra*⁹ that the High Court has jurisdiction to spare the duration agreed of services of any of the officials under supervision for filling up only for good cause if the High Court thinks it appropriate. Such executive positions that may need the participation of a judicial officer. The government said that judicial personnel of the High Court should not be allowed to acquire a stake in the Secretariat. On paper, the changes will not be successful unless the judiciary takes steps to make them a reality.

2. Importance Of Judicial Independence

The importance of judicial independence cannot be overstated in the context of a democratic society. The judiciary serves as a crucial check on the powers of the executive and legislative branches, playing a pivotal role in safeguarding the rights of citizens and ensuring the proper functioning of the democratic system. An independent judiciary acts as a bulwark against potential abuses of power, providing a mechanism for the resolution of disputes and the interpretation of laws in a fair and impartial manner. One of the fundamental functions of an independent judiciary is to uphold the rule of law¹⁰. The judiciary acts as the guardian of the legal framework, ensuring that laws are applied consistently and fairly. This not only protects individual rights but also establishes a framework for the orderly resolution of conflicts within society. Without judicial independence, there is a risk that the legal system could be manipulated for political or personal interests, eroding the very foundation of the rule of law. Moreover, an independent judiciary plays a crucial role in fostering public trust in the legal system. When citizens believe that the judiciary operates free from external influence, they are more likely to have

⁸ 1976 AIR 1207.

⁹ AIR 1968 SC 647.

¹⁰ "Independence of Judiciary in India - International Journal of Law Management & Humanities," available at: <https://ijlmh.com/paper/independence-of-judiciary-in-india/> (last visited January 17, 2024).

confidence in the fairness and integrity of the legal processes. Public trust in the judiciary is essential for maintaining social cohesion and ensuring that individuals feel secure in the knowledge that their rights will be protected by an impartial and independent judiciary. In a broader sense, the independence of the judiciary contributes to the overall stability and legitimacy of a democratic society. It provides a mechanism for resolving disputes without resorting to violence or extra-legal means. By serving as an arbiter in conflicts and interpreting laws in accordance with constitutional principles, the judiciary helps maintain social order and stability. Furthermore, an independent judiciary is instrumental in preventing the concentration of power within a single branch of government. By acting as a counterbalance to the executive and legislative branches, the judiciary ensures that no single entity becomes overly dominant, thus preserving the separation of powers – a foundational principle in democratic governance¹¹. The importance of judicial independence lies in its role as a safeguard for citizens' rights, a promoter of the rule of law, a builder of public trust, and a preserver of democratic principles. Without an independent judiciary, the very essence of a democratic society is at risk, and the potential for abuses of power and erosion of individual liberties becomes a looming concern. Thus, the maintenance and enhancement of judicial independence should be a constant focus for those committed to the preservation and advancement of democratic values.

3. Laws after Independence

The Constitution, drafted by B.R. Ambedkar's legal genius, became the guiding light in all legislative and executive concerns. Jawaharlal Nehru and Mahatma Gandhi, two of the country's most notable leaders, were also outstanding attorneys. This lengthy constitution placed a strong emphasis on social welfare and tried to empower society's poorest members¹². The country takes on a social justice paradigm on its own, and it continues to strive for constitutional rights for all citizens.

One of the most difficult tasks facing the British administration was to create a set of laws that addressed India's religious and cultural diversity. Aside from the aforementioned efforts, Law Commission findings were also crucial for shifting the dynamics away from religious legislation and toward a more objective viewpoint.

¹¹ *Ibid.*

¹² <http://www.barcouncilofindia.org/about/about-the-legal-profession/legal-education-in-the-united-kingdom/>

During the British government, the rule of law was implemented, which limited the use of authority in arbitrary ways. The judiciary's independence and the separation of powers were emphasized. India has retained the same court structure as it had under British control post-independence.

4. Evolution of Judicial Independence

Judicial activism in India represents a dynamic facet of the country's legal landscape, embodying instances where the judiciary actively engages in shaping public policy and safeguarding fundamental rights. The concept of judicial activism goes beyond the traditional role of the judiciary as an arbiter of legal disputes and extends into the realm of proactively addressing social issues, promoting justice, and ensuring the protection of constitutional values¹³.

Throughout India's legal history, there have been notable instances of judicial activism that have left an indelible mark on the nation's socio-legal fabric. The judiciary, particularly the higher courts, has often stepped in to fill gaps in legislation or correct perceived injustices. In doing so, the judiciary has played a transformative role in shaping public policy by interpreting laws in a manner that aligns with constitutional principles and protects the rights of citizens.

Judicial activism in India is evident in cases where the judiciary, cognizant of its role as the guardian of the Constitution, has actively intervened to address issues of public concern. This proactive stance is particularly pronounced in matters related to environmental protection, human rights, and social justice. For example, landmark judgments have been delivered to safeguard the rights of marginalized communities, promote environmental sustainability, and ensure the rule of law in various spheres of public life¹⁴.

The Supreme Court of India, as the apex judicial body, has been at the forefront of judicial activism. Through Public Interest Litigations (PILs) and other mechanisms, the Court has often taken suo motu cognizance of matters that require urgent attention. This approach reflects a commitment to justice beyond individual disputes, signaling a broader societal concern.

¹³ Harish Verma, "CONCEPT AND HISTORY OF JUDICIAL INDEPENDENCE IN INDIA."

¹⁴ *Ibid.*

The impact of judicial activism extends beyond the courtroom, influencing legislative and executive actions. By actively interpreting and enforcing constitutional provisions, the judiciary shapes the legal landscape and provides a check on potential governmental excesses. This proactive judicial role has been both praised for its contribution to justice and criticized for potentially encroaching on the domain of the legislative and executive branches.

Judicial activism in India underscores the judiciary's commitment to its role as the guardian of the Constitution and protector of fundamental rights. While it brings about positive changes and ensures justice in areas that may be overlooked by other branches of government, the fine balance between activism and respecting the separation of powers remains a subject of ongoing debate. The exploration of instances of judicial activism is crucial for understanding the judiciary's evolving role in shaping public policy and upholding constitutional values in the diverse and dynamic context of India.

5. Landmark judgment

Landmark judgments in India have played a pivotal role in reinforcing the independence of the judiciary and establishing crucial precedents for the protection of individual rights. These decisions, often delivered by the Supreme Court, have shaped the legal landscape, reaffirming the judiciary's commitment to upholding constitutional principles and safeguarding citizens' fundamental rights. One such landmark judgment is the *Kesavananda Bharati case (1973)*¹⁵, which is celebrated for establishing the doctrine of basic structure. In this case, the Supreme Court held that while Parliament has the power to amend the Constitution, it cannot alter its basic structure. This landmark decision set a significant precedent by delineating certain essential features of the Constitution that are immune from arbitrary amendments, reinforcing the idea that the judiciary acts as a guardian of the constitutional framework. The *Maneka Gandhi case (1978)*¹⁶ is another pivotal judgment that marked a watershed moment in the protection of individual liberties. The Supreme Court, in this case, interpreted the right to life and personal liberty under Article 21¹⁷ expansively, stating that the procedure established by law must be fair, just, and

¹⁵ "Case Summary: Kesavanad Bharti vs. State of Kerala - LawLex.Org," available at: <https://lawlex.org/lex-bulletin/18930/18930> (last visited January 15, 2024).

¹⁶ "Case Summary: Maneka Gandhi vs. Union Of India (1978) - LawLex.Org," available at: <https://lawlex.org/lex-bulletin/case-summary-maneka-gandhi-vs-union-of-india-1978/19368> (last visited January 15, 2024).

¹⁷ "THE CONSTITUTION OF INDIA,."

reasonable. This judgment expanded the scope of individual rights and emphasized the judiciary's role in ensuring that procedural fairness is an integral part of any deprivation of life or personal liberty. The Vishakha case (1997)¹⁸ is noteworthy for addressing the issue of sexual harassment at the workplace. The Supreme Court, in the absence of legislation, laid down guidelines to prevent sexual harassment and formulated the principle that employers must provide a safe working environment. This decision exemplifies the judiciary's proactive role in filling legislative gaps to protect the dignity and rights of individuals. More recently, the Navtej Singh Johar case (2018)¹⁹ decriminalized consensual same-sex relations by striking down Section 377 of the Indian Penal Code. The Supreme Court, in this judgment, underscored the importance of recognizing the rights of the LGBTQ+ community, setting a precedent for inclusivity and non-discrimination. This decision highlighted the judiciary's commitment to evolving societal norms and protecting individual autonomy. The Puttaswamy judgment (2017)²⁰ is a landmark decision affirming the right to privacy as a fundamental right under the Constitution. The Supreme Court recognized that privacy is an intrinsic part of individual liberty and dignity. This judgment has far-reaching implications for protecting citizens from unwarranted state intrusion and has become a cornerstone for discussions on digital privacy and surveillance.

In analyzing these landmark judgments, it is evident that the judiciary in India has actively engaged in interpreting the Constitution to protect and expand individual rights. These decisions not only reinforce the independence of the judiciary but also set enduring precedents that guide the legal system in safeguarding the principles of justice, equality, and liberty. They reflect the judiciary's commitment to adapting constitutional principles to the evolving needs of society while ensuring a robust framework for the protection of individual rights.

6. Separation of Powers

¹⁸ "Vishaka Vs State of Rajasthan [(1997) 6 SCC 241] - Summary & Analysis," available at: <https://lawcorner.in/vishaka-vs-state-of-rajasthan-1997-6-scc-241-summary-analysis/> (last visited January 15, 2024).

¹⁹ "Case Summary: Navtej Singh Johar v. Union of India thr. Secretary Ministry of Law and Justice - LawLex.Org," available at: <https://lawlex.org/lex-bulletin/case-summary-navtej-singh-johar-v-union-of-india-thr-secretary-ministry-of-law-and-justice/25100> (last visited January 15, 2024).

²⁰ "Global Freedom of Expression | Puttaswamy v. Union of India (I) - Global Freedom of Expression," available at: <https://globalfreedomofexpression.columbia.edu/cases/puttaswamy-v-india/> (last visited January 17, 2024).

Montesquieu, a French academic, proposed the Doctrine of Separation of Powers for the first time in 1747²¹. He endeavored to create clear borders between the Executive, Legislative, and Judicial branches of government. He was a firm believer that one organ should not interfere with the other in order to prevent a totalitarian government. According to Montesquieu, if the legislative and the executive are administered by the same body or magistrate, liberty is jeopardized²². He believed that a judge may take the position of the legislator since there were no set limitations, allowing the judge to exercise arbitrary authority. As a result, having one government organ undertake the tasks of the other was risky.

When we speak of the separation of powers, however, we are referring to the separation of functions. The requirement for tight power categorization may coexist with the functions with little interference. Specialization is the foundation for these functions²³. Power is only a tool for achieving a goal. When there is no division of powers, what is exercised is a structured connectivity of functions rather than an arbitrary juxtaposition of powers. The issue is whether the court can function as an autonomous organ in a democracy where all organs are interconnected.

India is a federal state with responsibilities shared between the Centre and the States, and it has a Parliamentary system of government with a defined distribution of powers. The practice of separation of powers is less prominent in the UK parliamentary system, and there are evident overlaps. The Parliament is in charge of the legislative. Although the Queen is the head of state, she is also a member of the legislature. The judiciary is autonomous, however judges may be removed if the legislative houses issue an address²⁴. The government is rapidly being handed adjudicatory powers, demonstrating that there is no separation of powers in England.

7. Related provisions

The Indian Constitution is the supreme law of the nation, upon which all other laws are based. The judiciary is the most essential arm of law, and it cannot be replaced because it imparts justice, social, economic, and political will. It should guarantee

²¹ Doctrine of separation of power <https://www.lawctopus.com/academike/doctrine-of-separation-of-power/>.

²² Supra Note 13.

²³ Lectures by Professor Abhimanyu Singh.

²⁴ <https://www.lawctopus.com/academike/doctrine-of-separation-of-power/>.

that states are of high quality and that everyone has an equal chance. As a result, the judiciary may be seen as both an aesthetic function and a social-economic differentiation. According to Granville Austin, the judiciary has acted as a revolutionary arm in the social-economic realm. It emphasizes the need of providing social justice to the general public. The judicial duty is significantly distinct, and it necessitates justice for minority workers, gender justice, and equality among the unequal in society. The function of the judiciary is to ensure that everyone receives social justice. In this case, no judge should take a negative stance.

The judiciary's function is considerably more than that of a spectator, and it should operate as an active participant within the scope of the legal process. It's a more goal-oriented strategy. It must be founded on constitutional principles. The Indian Constitution should take actions and measures to guarantee that the judiciary is independent. It should be backed up by parliamentary sovereignty in the constitution. The clause that ensures the independence of the Supreme Court and hence the High Courts' judges. Before joining the Supreme Court and thus the High Courts, justices must take an oath to honestly discharge their responsibilities without fear, favour, love, or ill-will, and to protect the Indian Constitution and thus the laws. This pledge presupposes acceptance of the theory of constitutional sovereignty. The strategy of appointing judges also guarantees the judiciary's independence in India. The President appoints the justices of the Supreme Court and the High Courts. The President of India is required by the Indian Constitution to make nominations in consultation with the absolute best judicial authority. It follows the cabinet's proposal. The constitution also specifies the conditions that must be met for such positions. The choice should be made without regard for political considerations.

8. Independence of the judiciary

The Indian Constitution created an uniform three-tier framework for the judiciary in India, with the Supreme Court at the top, followed by High Courts in States, and then Subordinate Courts at the district level, and contained various measures to maintain independence, including the following:

8.1 Judges are appointed.

The President of India, who also serves as the Union's Executive Head, appoints Supreme Court and High Court judges. In this case, however, the President is obliged to utilize such authority after consulting with Supreme Court and High

Court judges²⁵. As a result, the Executive is not given a free hand in this area by the Constitution.

Furthermore, in *Supreme Court Advocates-on-Record Association v. Union of India*²⁶ the Supreme Court defined judicial independence as the idea that no other department of government, including the Executive and Legislature, has priority in appointing judges. The Apex Court established the collegium system for appointing judges to the Higher Judiciary, reclaiming power from the Executive and establishing a precedent that has been followed ever since.

8.2 Security of Tenure of Office

It is most important that the security tenure of judges has very important impact on the Indian judiciary independence. And if the security of the judges are in question than the judges didn't do their work properly and it is impossible to fulfil demanding work of his lofty position without fear or favour. And in the constitution art 124 (4)²⁷ talk about impeached /removal of the judges on the basic of ground of proven misbehaviour or incompetence.

8.3 Judges' remuneration and benefits

Judges' salary, privileges, allowances, leave of absence rights, and pensions are all regulated by law by Parliament. However, once a judge has been appointed and his pay and allowances have been set by law, they cannot be changed to his detriment during his time of office.²⁸

8.4 Personnel Appointment

The Chief Justice of the Supreme Court and the Chief Justice of each High Court are empowered by the Constitution to recruit and govern the officers and employees of their respective courts²⁹.

8.5 The Court's Expenditure

The Supreme Court's and High Courts' administrative costs, including all salaries, allowances, and pensions paid to officers and employees, are charged to the

²⁵ Articles 124(2) & 217(1), Constitution of India.

²⁶ AIR 1994 SC 268.

²⁷ Article 124(4), Constitution of India.

²⁸ Articles 125 & 221, Constitution of India.

²⁹ Articles 146 & 229, Constitution of India.

Consolidated Fund of India and the States, respectively, and hence are not subject to legislative approval³⁰.

8.6 After retirement, there is a ban on practicing.

After retirement, the Supreme Court judges are prohibited by the Constitution from appearing or arguing before any court, tribunal, or judicial body in India³¹. A former High Court Judge is likewise barred from practicing law before a court where he previously served as a Judge. A High Court Judge, on the other hand, may practice in the Supreme Court or in a High Court where he has not previously served as a Judge after retirement³².

8.7 Restriction on Parliamentary Debate

The Constitution forbids any discussion of any Supreme Court or High Court Judge's behaviour in the performance of his responsibilities in Parliament or in the Legislature of any State³³. As a result, the framers of the Constitution placed a high value on the judiciary's independence, putting it above all other considerations³⁴.

8.8 Possession of the Power to Punish for Contempt

The Supreme Court and the High Courts have been designated as Courts of Record³⁵, with the authority to punish anybody who defies them. The logic for contempt of court is that in order to accomplish the aim of dispensing justice, courts must have the capacity to ensure that their judgements are obeyed. The goal of a contempt of court penalty is to defend the process of justice itself, not the Court's dignity. The ability to punish oneself for contempt is critical for judges to retain their impartiality and independence

9. Challenges to Judicial Independence

- Executive Interference

The challenge of executive interference in the judiciary poses a significant threat to the foundational principle of judicial independence. The concept of judicial independence is predicated on the idea that the judiciary must operate free from external influence, ensuring impartiality and fairness in its decision-making

³⁰ Articles 146 & 229, Constitution of India.

³¹ Article 124(7), Constitution of India.

³² Article 220, Constitution of India.

³³ Articles 121 & 211, Constitution of India.

³⁴ Shukla, *The Constitution of India*, 1995, 531.

³⁵ Articles 129 & 215, Constitution of India.

processes. However, instances of executive interference can compromise this independence, leading to a range of detrimental consequences for the justice system and democratic governance. Executive interference can manifest in various forms, such as undue pressure on judicial appointments, transfers, or promotions. When the executive branch seeks to influence the judiciary in matters related to personnel, it raises concerns about the potential erosion of the separation of powers – a bedrock principle of democratic governance. Judicial appointments, particularly at higher levels, should be based on merit, integrity, and legal expertise rather than political considerations. Any interference that compromises this merit-based system undermines the independence of the judiciary. Another facet of executive interference is the undue influence on specific cases. In some instances, there have been allegations of the executive attempting to sway judicial decisions in matters of political significance. This interference can take the form of subtle pressures, implicit expectations, or, in extreme cases, overt attempts to manipulate the judicial process. Such interventions undermine the judiciary's role as an impartial arbiter and threaten the credibility of the legal system³⁶. The impact of executive interference on judicial independence extends beyond individual cases; it erodes public trust in the judiciary. If citizens perceive that the judiciary is susceptible to external pressures, the legitimacy of court decisions and the overall justice system may be questioned. Public trust is crucial for the effective functioning of the legal system, and any erosion of this trust weakens the judiciary's ability to fulfill its constitutional role. The phenomenon of executive interference is not confined to specific levels of the judiciary but can occur at various stages, from trial courts to the highest appellate courts. It is essential to recognize that an independent judiciary is a cornerstone of a functioning democracy, and any compromise in this regard raises serious concerns about the health of democratic institutions. Efforts to address challenges related to executive interference involve maintaining a transparent and merit-based system for judicial appointments, ensuring that decisions are based on legal principles rather than political considerations, and fostering a culture of judicial independence. Additionally, legal and institutional safeguards, such as the separation of powers and the role of independent judicial commissions, play a crucial role in preventing unwarranted executive interference. Investigating instances of executive interference in the judiciary is essential for preserving and strengthening judicial independence. A vigilant and informed public, along with robust legal mechanisms, is vital to

³⁶ "(PDF) STUDY ON INDEPENDENCE OF JUDICIARY," *available at*: https://www.researchgate.net/publication/361024811_STUDY_ON_INDEPENDENCE_OF_JUDICIARY (last visited January 17, 2024).

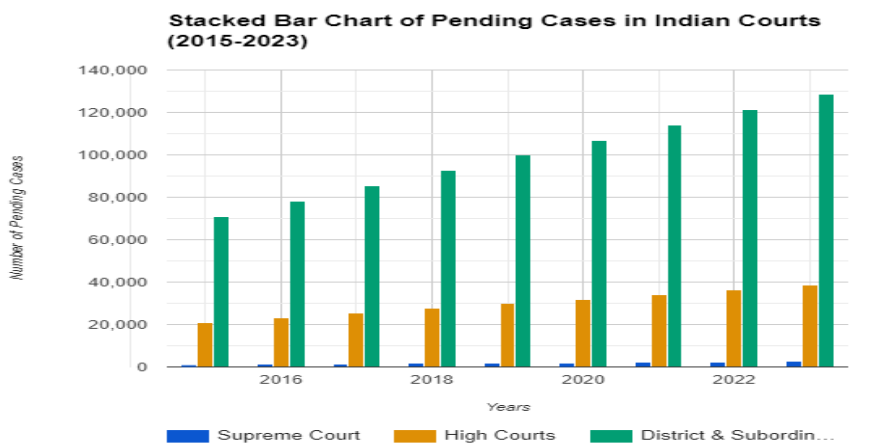
counteracting such challenges and upholding the integrity of the judiciary within the broader democratic framework.

- Delayed Justice

Delayed justice is a persistent challenge in many legal systems, including that of India, and it poses multifaceted implications for the credibility of the judiciary. The timely dispensation of justice is fundamental to the effectiveness of the legal system and the protection of individual rights. When justice is delayed, it not only impacts the litigants involved but also undermines public confidence in the judiciary, with far-reaching consequences for the rule of law. One of the primary implications of delayed justice is the erosion of public trust in the judicial system. When individuals experience prolonged delays in the resolution of their cases, it fosters a perception that the legal system is inefficient and unable to provide timely redress. This lack of confidence can lead to a diminished respect for the judiciary and a decreased willingness to engage with the legal processes, thereby weakening the rule of law. Moreover, delayed justice can result in the denial of justice itself. The prolonged wait for resolution can be emotionally, mentally, and financially taxing on litigants, affecting their lives and livelihoods. In cases involving criminal matters, delayed justice may impact the accused, victims, and the broader community. It can compromise the deterrent effect of the legal system and impede the timely closure of legal disputes³⁷. The backlog of cases in the judicial system contributes significantly to delayed justice. A high caseload, coupled with limited judicial resources, can lead to inefficiencies in case management. The procedural complexities and the time-consuming nature of legal processes further exacerbate the problem. The slow pace of litigation not only affects individual litigants but also has societal implications, as unresolved disputes may contribute to social unrest and perpetuate a sense of injustice. The credibility of the judiciary is closely tied to its ability to deliver justice in a timely manner. When delays become systemic, it invites criticism of the legal system as a whole. The judiciary's role as the guardian of constitutional rights and the protector of the rule of law is contingent on its capacity to dispense justice expeditiously. Prolonged delays can lead to a perception of judicial inefficiency, raising questions about the efficacy of the legal framework and the commitment of the judiciary to its constitutional mandate. Addressing the challenge of delayed justice requires comprehensive reforms aimed at increasing judicial efficiency,

³⁷ Vandana Ajay Kumar, "Journal of Law, Policy and Globalization www.iiste.org ISSN," 4 *Online*) (2012).

streamlining procedures, and augmenting judicial resources. Implementing technology to expedite case management, investing in judicial infrastructure, and exploring alternative dispute resolution mechanisms are among the strategies that can contribute to alleviating the issue. delayed justice poses a significant challenge to the credibility of the judiciary in India. It is imperative to recognize the profound implications of delayed justice on public trust, individual rights, and the overall functioning of a democratic society. Efforts to address this challenge should be central to ongoing judicial reforms, with a focus on enhancing the efficiency and accessibility of the legal system to ensure timely justice for all³⁸.



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10. Suggestion and Reforms to make Judiciary Independent

Suggestions and Reforms to Strengthen the Judiciary- If the following ideas and changes are adopted in our nation, the judiciary's independence will be realized. The judiciary should not be treated like a puppet and cannot be manipulated by the executive or legislative branches. The judiciary should have its own distinct identity. Its operation should demonstrate autonomy. The process of appointing judges, or the system for doing so, should be highly clear. Malpractices should be avoided at all costs. Judges should be well-versed in the law and capable of making decisions. Judges should be given a lengthy term of service and security of tenure. This will guarantee that people make decisions free of third-party influence, fear, or impartiality. Judges should be paid a reasonable salary and allowance, as well as

³⁸ *Ibid.*

³⁹ "Welcome to NJDG - National Judicial Data Grid," available at: <https://njdg.ecourts.gov.in/njdgnew/index.php> (last visited January 17, 2024).

receive additional benefits like as housing. After retirement, there should be a prohibition on practicing. They have the authority to impose penalties for contempt of court. The judiciary also has a lot of power. It is the guardian of basic rights and the interpreter of the constitution. They must also assess if all legislation are constitutional.

11. Conclusion

India's constitution establishes a completely independent judiciary, which is critical for achieving fair and equitable justice. There should be no intervention from the legislature, the executive, or any other external forces in the administration of justice, so that the decision seems to be reasonable. The judges of the courts have not been prejudiced in favor of one party or the other. The legislature has broad legislative powers, but when it oversteps its constitutional limitations, the courts may issue writs to halt the proceedings or provide appropriate directives to restart it. It's difficult to think of any strategy to make Indian courts more self-sufficient and protect them from outside interference. The Indian constitution allows the court to function autonomously. The independence of the judiciary is critical for achieving fair justice. Without the influence of a third party or any other sort of external force, justice should be carried out equitably. There should be no prejudices, and judges should make decisions with caution, moderation, and logic. The judiciary's independence is urgently needed, as is proper functioning and influence by the other institutions, the government and legislative. There should be no undue influence from any other party other than the person who is delivering justice.

FOREIGN DIRECT INVESTMENT IN DEFENCE SECTOR- A CRITICAL ANALYSIS

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Abstract

Foreign Direct Investment in Defence Sector has always been a debatable topic. My dissertation starts with the Defence Industry market, which had formerly been reserved for the public sector, was opened up to 100% private sector participation in May 2001, with Foreign Direct Investment (FDI) up to 26% subject to licensing. The Ministry of Commerce and Industry, Department of Industrial Policy and Promotion issued Press Note No. 5 (2016 Series) allowing FDI up to 49 per cent through the automated route (Under the Automatic Route, a foreign investor or an Indian firm does not need the Reserve Bank or the Government of India's permission to invest) and above 49 per cent through the Government route (Prior authorisation from the following Government of India agencies or organisations is required for the foreign investor or Indian enterprise) where it was likely to result in access to new technology or for others to be registered. As part of the change in the Defence Sector to improve self-reliance, the Government of India declared in May 2020, 'Press note -4' that the FDI cap in defence production would be increased to 74 per cent from 49 per cent under the Automatic Route. Some suggest boosting FDI in the Defence Sector by up to 74 per cent through the Automatic Route for companies pursuing new defence industrial licenses, and up to 100 per cent through the Government Route anywhere, is likely to result in access to advanced technologies or for others to be registered. A critical analysis of the said has been done. The Defence Sector is very crucial as any lapse in it can threaten the country's independence. To see how other countries have managed FDI, a comparative analysis has been presented in the dissertation of certain jurisdictions that have a presence in the international defence market. The aim is to explore legislations/policies from other countries that can be adopted by India's defence industry in order to respond to emerging market realities. To analyse current and potential defence issues, a combination of predictive and exploratory analysis methods is used

1. INTRODUCTION

The foundations for achieving sustainable economic development are *stability, progress, and prosperity*. To achieve desirable economic results, the preservation of internal peace, secure law and order structure is necessary. Defence and Homeland Security have therefore been listed as one of the most critical sectors for ensuring balanced and inclusive development.

By constantly monitoring the domestic security situation, issuing effective advice, extending personnel and financial help, guidance, and skills to preserve stability and peace in the area, India's internal security is one of the Government's key areas of focus. In this background, the Government is taking some constructive measures to engage actively through different mechanisms to take up and pursue several multilateral and bilateral initiatives in security-related areas. Continuous and non-ending, thus, security reforms are underway to accomplish the vision of our Noble Prime Minister, Shri Narendra Modi, to make India a USD 5 trillion economy by 2024-25¹.(The Hindu 2021) The Government of India has been working towards the self-reliance aim that has driven us to nurture and extend our industrial defence base and to sustain the Indian internal security scenario successfully. Therefore, the Government of India has started many reforms in defence production, job generation and investment to improve "Make in India" to achieve the country's solid and sustainable socio-economic growth.

The security sector of India is the vital sector for sustaining the stability of the country, advancement, prosperity for growth and development. The sector has tremendous potential to grow as a global industry for Defence production, analysis, supply chain procurement, technological creation, offsets, etc. In recent years, the concept of national security has grown in terms of Defence and homeland security, including cybersecurity, new technologies, among others.

India is surrounded by neighbours with whom India had wars in past and military standoff keeps taking place. Since independence, the need to protect its borders has been given priority. Defence production needs to be upgraded to make it equal to

¹ PTI, India ushering in rapid structural reforms to become \$5 trillion economy by 2025: Goyal, The Hindu, (New Delhi, 09 January 2021) <<https://www.thehindu.com/business/Economy/india-ushering-in-rapid-structural-reforms-to-become-5-trillion-economy-by-2025-goyal/article33535817.ece>> accessed 27 January 2021.

other countries' military strength for this reason. The Government's Long-term Comprehensive Procurement Strategy accounts for expected procurement right up to 2027. The industry requires a capital of more than Rs 50,000crore over the next 3 years to fulfil this demand internally. The PSUs (Public Sector Security Units) are unlikely for making this commitment as well as do not find this high-risk investment profitable enough for the Indian private industry.

India strives to enhance its strategic position internationally and to become a member of the Nuclear Suppliers Community and United Nations Security Council, whereas imports almost 70% of its military equipment as well as relies on essential Defence technology imports. Therefore, the nation wants top-end technology and a thriving Defence manufacturing base to achieve its objectives of self-reliance. India has, of course, invested a growing amount of money in Defence.

2. Literature Review

Azhar, S. (2012) Indian FDI review and growth effects in their research paper. It also focuses on FDI determinants and criteria, year-by-year analysis, sectoral analysis, FDI sources and factors. Growing investment in terms of foreign direct investment is amongst the main economic dimension of the globalization. In recent years, maximum of the countries was not able to draw more investment because of the global recession. During any crises, India has also been able to attract better FDIs as compared to the developed regions of the world. Via technology transfer, job creation and increased access to management skills, foreign resources, commodity markets and distribution networks, these investments have been a key driver of accelerating economic growth.

Singh, S. (2019) As indicated in his article, amongst the world's top rising markets is our Indian Economy. This economy was considered a delicate matter five years ago, but not anymore. Since 2014, with a major rise in FDI, it became a top international destination worldwide. India is becoming amongst the most internationally competitive markets emerging today. USD563320 million is total FDI earned spanning from April 2000 to June 2018. This year-round fund flow has helped the nation to advance technology, upgrade skills, create jobs, improve infrastructure and management.

Teli, R.B. FDI flow for the period from 1991 to 2012 is described in his paper. Total FDI flow grew from US\$ 133 million in 1991-1992 to US\$ 27,841 million in 2008-09 with the DFI share by equity approvals, which stood on 65.79 percent and 34.21 percent for portfolio investment. Estimates depicts than an overall inflow in 2015-16 would be US\$ 4,6098 million. The associated economic indicators have a positive effect on the Indian economy. Via favorable policies, the Government of India must attract more and more FDI and must avoid all uncertainties.

Narasimhulu and Irfana (2006) in this research the authors talked about the FDI patterns and trends in the country, they expressed and examined their points that our country has to accept FDI inflows in such a way that we could achieve our aims of rapidly growing economy, elimination of poverty and inter-regional and inter-personal development inequalities and attain the modernization and self-reliance of India.

Koner J. By concentrating on the linear time trend study of FDI inflows in India, in their paper, et al. (2013) note that during the post-reform period, the projected outcome shows a positive impact of FDI on the growth of economy. Chaturbedi I. presented a discussion of the FDI and its role in India's economic growth. (2011) states in its paper that FDI has the ability to contribute to growth by shifting financial capital, technology, creative and enhanced management strategies, as well as growing productivity. This paper focuses primarily on the manufacturing sectors in India and shows that higher FDI is noted in service sector as a result.

Kumar, V. (2012) Foreign direct investments are important factors that help boost the growth of the Indian economy. Our country has seen a shift in both the course and flow of direct foreign investments in the country with the implementation of liberalization policies under Dr. Manmohan Singh's finance ministry in 1991 & with further few policy reforms. India has seen FDI flows rise from US\$ 4029 million in 2000-01 to US\$ 36396 million in 2013. In addition, India experienced annual growth of 24.2 percent in FDI to cross US\$ 3.995 billion in April-May 2013, compared to US\$ 3.18 billion in the same timeframe in 2012. The research, however, indicates that the country is still far behind compared to some developed countries such as China. The continuous increase in foreign direct investment, which has been permitted across industries and sectors, has shown that foreign investors have confidence in Indian

markets' resilience. In addition, the study shows that FDI and GDP flows are positively correlated with each other and that India's GDP shows a positive movement with the flow of foreign direct investment. The influx of FII and FDI also represents the positive relationship with each other.

3. Research Methodology

3.1 Type of Research: Quantitative and Analytical Research

The trend and pattern of the FDI based on annual approval and the actual FDI facts were collected from the monthly bulletins of the Reserve Bank of India (RBI). The other data which include Industrial production, Industrial growth rate, GDP and its index growth rate, domestic savings, capital formation, Foreign Institutional Investment, FPI, were taken from various handbook of statistics of Indian Economy, Economic Survey, various magazines, newsletters from SIA and from daily newspapers. The data related to global FDI inflow and outflow, mergers and acquisition, developing and developed countries, and Asian countries were taken from the annual publications of World Investment Report, Asian Development Bank Report and reports from web sites of various official sources of the FDI details.

3.2 Time period

The dissertation utilizes FDI information and other related information for experimental investigation covering the period between 2001-2002 and 2019-2020, on the grounds that from 2001-2002 onwards India opened its financial entryway for the defense sector through 26% and in the year 2020 India received the highest ever foreign investment. Along these lines, the investigation has given a lot of accentuation to the period from 2001-2002 to 2019-2020.

3.3 Limitations of the Study

Every financial/logical investigation were confronted with various restrictions and the examination is no exemption for such marvels. Various other constraints used in the experiment are:

Most data used in the study have been obtained from secondary sources, uniformity of data may be suffered. FDI was the only cause of development after 2001 is an arguable point as there is no specific report or data showing or segregating the same speculation.

4. EVOLUTION OF FOREIGN DIRECT INVESTMENT IN DEFENCE SECTOR

This chapter will discuss the evolution of Foreign Direct Investment in the Defence Sector, the advantages of 100 per cent FDI and will discuss the current policy that the Government has brought. It will throw light on the various limits (cap) of FDI in the Defence Sector, decided by the Government, over the last two decades. The reasons for deciding such limits, the complex procedure of procuring FDI (in the Defence Sector) and the impact of the emerging technological development on FDI limits will be elaborated in this chapter.

4.1 FDI EVOLUTION IN THE DEFENCE SECTOR

As a strategic sector, the Defence Sector in India was historically reserved for the public sector. With the opening of the Indian economy in 1991, the idea of FDI was implemented in India but not in defence.

4.1.1 MAY 2001

In May 2001, however, the Defence Market was opened up 100% for Indian Private Sector participation with up to 26% permitted FDI, all subject to licensing.

The discussion about the FDI limit in Defence was reinforced in May 2010 when the Department for Promotion of Industry and Internal Trade (DIPP) issued a discussion paper outlining the advantages and disadvantages of increasing the Defence FDI limit ("Discussion Paper"²). The first of many discussion papers put out by the DIPP on critical public discussion issues, raised interesting reasons for raising the Defence Sector's FDI ceiling from 26% to 74%, and claimed that it would be beneficial to liberalize the FDI limit to 100%.

4.1.2 AUGUST 2014.

Prime Minister Narendra Modi's 2014 administration planned to increase Foreign Direct Investment (FDI) in different sectors. So the Government also, in the Defence Sector adopted this increase and gave way to foreign investment of up to 49%.³

² Dipp.gov.in. 2021. [online] Available at:

<https://dipp.gov.in/sites/default/files/india_FDI_May2010_0.pdf> [Accessed 9 July 2021].

³ Ministry of Commerce and Industry, Department of Industrial Policy and Promotion (Press Note 7 of 2014) <https://dipp.gov.in/sites/default/files/pn7_2014_1.pdf> accessed 28 January 2021

4.1.3 JUNE 2016.

In 2016⁴, the Government planned a revised "Consolidated FDI Policy" where the policy allowed Defence FDI limits of up to 49%⁵ (Press Note 5 of 2016, 2016) by the automatic route and over 49% by government route on a case-by-case basis, where the emerging modern and "state-of-the-art" technology was likely to have a huge impact on the nation. Although in the technology sharing along with state-of-the-art technology transfer case, FDI limit in Defence in graded steps to 74% and 100% was permitted. In 2016, the Government also lifted the FDI ceiling in Defence Sector to 100% again. For FDI above 49%, the term state-of-the-art was dropped. There was no more need for Cabinet Committee on Security (CCS) clearance⁶. The approval process itself, however, would include the Ministry of Defence (MoD) and the Ministry of Home Affairs (MHA), which will discuss concerns pertaining to national Defence, domestic security and all other matters relating to national security.⁷(Shruti Sharma,2020)

Through this decision, India expected to make more access to emerging technology to open its defence market to 100% FDI. July 2016 announcement of 100% FDI in Defence of state-of-the-art technology transfers from government lines represents an important step for foreign investors, mainly original fabricators. Foreign investors were in favour of this strategy of complete liberalization of the Defence industry since it was necessary to maintain control of the business, particularly in the transition's sense of special technologies. This assisted India in setting up joint ventures to exploit vital technology to improve the Indian Defence industry's domestic potential and thus build employment in the region.

4.1.1.1 REASONS FOR 100% FDI IN DEFENCE in 2016

The Indian Comptroller and Auditor General report (CAG 2015) highlighted the need for decisive action to modernize the factories and increase their ability to

⁴ Ministry of Commerce and Industry, Department of Industrial Policy and Promotion (Press Note 5 of 2016) <https://dipp.gov.in/sites/default/files/pn5_2016.pdf> accessed 28 January 2021

⁵ FDI Regime - Press Note 5 of 2016, <<https://aureuslaw.com/fdi-regime-press-note-5-2016/>> accessed 28 January 2021.

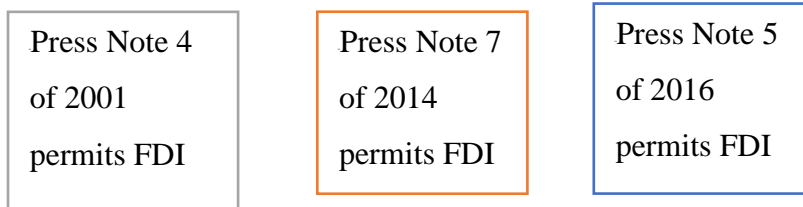
⁶All instances involving capital expenditures of more than Rs. 1000 cores in the Department of Defence Production and Department of Defence Research and Development are taken into consideration.

⁷ Shruti Sharma, Biological Risks in India: Perspectives and Analysis, (Carnegie Endowment For International Peace, 09 November 2020) <<https://carnegieendowment.org/2020/12/09/biological-risks-in-india-perspectives-and-analysis-pub-83399>> accessed 09 July 2021.

provide the Indian Army's requisite material to overcome the limitations in the supply of vital munitions⁸.(Cag.gov.in. 2021. Report No. 19 of 2015,2021) It was unlikely that even small arms and munitions needs will expand their capacity; with no change in provision for the modernization of ordination factories this year's budget.

Table -1 Basic difference between policies

FDI IN DEFENCE UP TO 2015	FROM JUNE 2016
<p>FDI allowed under automatic route up to 49%.</p> <p>In addition, 49% are on the acceptance path where these types of FDI are expected to proceed to:</p> <p>A) New technology Access; modern technology access</p> <p>(b) The state-of-the-art infrastructure of the country</p>	<p>If such FDI can lead to access to modern technology or be registered for other reasons, FDI is over 49% under the approval path. The state of access to state-of-the-art technologies in the nation has been done away with.</p> <p>The FDI cap was made applicable to small arms development.</p> <p>As well as munitions protected by the 1959 Arms Act.</p>



Global investment in the Defence Sector is part of India's wider FDI strategy and is expected to bring the benefits of technology transfer, marketing expertise, introducing modern management techniques and new export promotion possibilities. However, the Defence FDI policy in the current system was not capable to bring in Defence FDI policy even after 16 years of being in operation.

⁸ Cag.gov.in. 2021. Report No. 19 of 2015 - Union Government (Defence Services) Army and Ordnance Factories (Performance Audit of Ammunition Management in Army) | Comptroller and Auditor General of India. [online] Available at: <https://cag.gov.in/cag_old/content/report-no-19-2015-union-government-defence-services-army-and-ordnance-factories-performance> [Accessed 9 July 2021].

Despite attempts, the Defence development of India has not lived up to standards, forcing vital systems to be imported in order to ensure defence preparedness. India wants higher FDIs in its defence industry for strengthening its local technology base, make the compensatory policy effective, as well as profitable economically.

4.1.1.2 ADVANTAGES OF HAVING 100% FDI

In defence, making 100% FDI is a major opportunity because:

1. International buyers will now have the trust to invest in the Defence industry as original equipment manufacturers (OEMs) will benefit from the ease of guidelines as returns will be guaranteed. This would establish a situation in which this expanded spending supports the security forces and local economies.
2. This move will improve complete research and development for creating and delivering technologies that meet the security needs of the country directly. In addition, domestic defence undertakings are still projected to benefit from foreign firms, as well as many joint ventures for manufacturing defence equipment are already in operation.
3. Transparency: Decreased imports are likely to contribute to greater transparency, with intermediaries playing a declining position.
4. Quality Products: Thanks to the greater capital injection, infrastructure services are expected to increase. Improved quality goods are produced because of the inflow of technologies, skills, and improved manufacturing facilities. The effect would be improved competitiveness, growth, and efficiency. Owing to economies of scale, the cost of manufacturing is also expected to decline, rendering Indian arms and facilities internationally affordable.

4.1.1.3 SELF-RELIANT DEFENCE 2020⁹: NEW INDIA NEW DEFENCE.

The Indian FDI Policy was revised in 2020 for maximizing the Foreign Direct Investment penetration into the Defence market. Through a press release, the

⁹ Government Reforms and Enablers (Government Reforms and Enablers, 17 May 2020) <<https://static.pib.gov.in/WriteReadData/userfiles/Aatma%20Nirbhar%20Bharat%20%20Presentation%20Part%205%2017-5-2020.pdf>> accessed 27 January 2021.

Department for the Promotion of Business and International Trade (DPIIT) announced to declare a 49% to 74% ¹⁰ (Press Note No.4, 2021) rise in FDI limits in the Defence Sector under the automatic route (that is, without government approval).

As per the updated strategy, the key requirements for foreign direct investment in the Defence Sector would be:¹¹

- (a) For businesses getting fresh manufacturing licenses,
 - i. Up to 74% of FDI will be allowed under the automatic path.
 - ii. Fresh FDI will be permitted above 74% besides approval from the government, and this new FDI could provide access to new technology or offer additional expenditure reasons above a 74% limit.

- (b) For current investments where the industrial license or government permission for FDI has already been received by the investment firm.
 - i. Such a company shall be expected to report such new foreign investment to the Ministry of Defense within 30 days of an influx of foreign investment by infusion of up to 49% of the new FDI by a shift in the company's shareholding or through the transfer of shares to a new investor.
 - ii. Any deal that will raise the company's FDI to over 49% would entail prior government approval.

As a result, Indian Defense companies who already have the FDI will stay bound by existing provisions and the compulsory expansion of the FDI is only planned to encourage entry to the sector of entities seeking new industrial licenses by up to 74%. Another important reform is that, for national security, the Government can check or deny any FDI in any Indian Defence business even if such investment is below the differing thresholds as discussed above.

5. CRITICAL REVIEW OF THE PRESS NOTE 4¹²

This part of the chapter would discuss my analysis of the Press Note -4 of 2020.

¹⁰ Government of India Ministry of Commerce & Industry Department for Promotion of Industry and Internal Trade FDI Policy Section (Press Note No. 4 (18 September 2020) <https://dipp.gov.in/sites/default/files/pn4-2020_0.PDF> accessed 28 January 2021.

¹¹ *Ibid.*

¹² *Ibid.*

The planned liberalization of the FDI Defence manufacturing policy is a welcome development and could draw large-scale investment in the sector by international defence players, adding considerable impetus to the Make in India program of the government.¹³ (Report of the Expert Committee on Micro, Small and Medium Enterprises,2019)

(a) Expanded rights of management and control for international OEMs (as shareholders)

The rise in foreign ownership limits to 74% of the investment company's equity capital in India would allow foreign security majors to exert significant ownership and influence over the investment company (through majority voting rights as shareholders and a seat on the board of such investee companies)

(b) The Press Notice focuses on new FDI ideas prospectively

The Press Notice specifically notes that under Automatic Path, up to 74% of FDI is allowed for companies pursuing a new Industrial License, enabling international OEMs and Defence majors to purchase up to 74% of the equity resources of qualifying companies in new investment proposals alone. Prior government approval will also be needed for any new injection of FDI or shift in international shareholding in existing Defence manufacturing firms above 49% (and requiring a valid Industrial License).¹⁴ (National Investment Promotion & Facilitation Agency,2021)



¹³ Report of the Expert Committee on Micro, Small and Medium Enterprises (June 2019)

¹⁴ National Investment Promotion & Facilitation Agency, "FDI ENTRY ROUTES INTO INDIA" (Invest India) <<https://www.investindia.gov.in/foreign-direct-investment>> accessed 09 July 2021

1.1.1. CHANGES TO THE EXISTING FDI SYSTEM AS A RESULT OF THE PRESS NOTE¹⁵

<u>EXISTING FDI FRAMEWORK</u>	<u>PROPOSED CHANGES UNDER THE PRESS NOTE</u>
<i>100 percent FDI in the defence sector is subject to an industrial licence (Industrial License) under the industries (Development & Regulation) Act, 1951, and production of small weapons and ammunition is subject to the Arms Act, 1959, where</i>	
(a) 49% FDI is permitted under the Automatic Route.	(a) 74% FDI is permitted under the Automatic Route.
(b) Any FDI more than 49 percent would require prior government permission if it is likely to result in access to "modern technology" or other reasons that must be documented.	(b) Any FDI that exceeds 74 percent would require prior government permission if it is likely to result in access to "modern technology" or other reasons that must be documented.
KEY CONDITIONS:	KEY CONDITIONS:
(a) Infusion of new foreign investment within the permitted Automatic Route level (i.e. up to 49 percent) in a company not seeking an Industrial License will require prior Government approval in the event of a change in ownership pattern or a transfer of stake from an existing foreign investor to a new foreign investor.	(a) If a company does not seek an Industrial License or already has Government approval for FDI in defence, it must submit a declaration to the Ministry of Defence (MoD) within 30 days of any change in equity/shareholding pattern or transfer of stake by existing investor to new foreign investor for FDI up to 49 percent. Proposals to increase FDI in such firms above 49 percent will need to be approved by the government first.
(b) Foreign investment is subject to security clearance and guidelines of the	(b) Same as existing framework.

¹⁵ Foreign Direct Investment norms in the Indian defence sector liberalized further (Trilegal, 24 September 2020) <<https://www.trilegal.com/index.php/publications/analysis/foreign-direct-investment-norms-in-the-indian-defence-sector-liberalised-fu>> accessed 18 June 2021

MoD.	
(c) In terms of product design and development, the investee firm must be self-sufficient. The investee/joint venture firm, as well as its production site, should be able to provide maintenance and life cycle support for the goods produced in India.	(c) Same as existing framework.
	(e) Foreign investment is scrutinised for national security reasons, and the government maintains the authority to evaluate any foreign defence investment that affects or may influence national security.

6. TRENDS IN FDI FLOWS IN THE PAST 20 YEARS.

The key problem now arises whether the new provisions will lead to a substantial increase in the flow of foreign investment/technology to the Indian Defence market, with the relief from the regular Defence FDI requirements. This is significant considering that the Defence industry has kept the most under-examined sector by international investors to date (see Table), although over 20 years have passed since the sector was opened to foreign investment.

Table-1: "SECTOR WISE FDI EQUITY INFLOWS (APRIL 2000- SEPTEMBER 2020)"¹⁶

SECTOR	RANK	AMOUNT OF FDI INFLOWS (IN Rs. Crore)	AMOUNT OF FDI INFLOWS (IN US \$ Millions)"	% OF TOTAL INFLOWS
Service Sector	1	462,114.07	80,670.79	17.66

¹⁶ Ministry of Commerce & Industry, "Sector-Wise FDI Inflow" (04 MAR 2020) < <https://pib.gov.in/PressReleseDetailm.aspx?PRID=1605185>> accessed 5 February 2021

Computer Software and Hardware	2	266,385.18	43,586.95	9.54
Telecommunications	3	218,047.28	37,116.34	8.13
Trading	4	168,426.20	26,541.60	5.81
Construction Development	5	121,888.63	25,371.47	5.55
Timber Products	54	1,074.35	182.39	0.04
Coal Production	60	119.19	27.73	0.01
Defence Industries	61	51.93	8.82	0.00
Mathematical, Surveying and Drawing Instruments	62	39.80	7.98	0.00
COIR	63	22.05	4.07	0.00

The table shows that the highest FDI inflows were drawn by the service industry, followed by the growth of computer hardware & software, etc. This is unacceptable that FDI inflows are extremely poor in the Defence Sector during the study period, i.e., Rs. 51.93 crore. As India has wars on both sides of the borders, military standoff keeps having at the borders and Indian defence needs to be on par with world defence technology. This is also a source of worry for the Indian government.

Now, by taking steps such as raising the FDI ceiling to 100% and starting the 'Make in India' initiative, the present Government has made efforts to introduce FDI into this market. It is hoped that such initiatives would further improve FDI inflows in this market. A great deal also needs to be done to attract foreign and domestic investors to invest in this market. The above statics is one such reason government in 2020 under Press Note -4 of 2020, under automated route increased the limit to 74% from 49%.

But the 100% FDI has always been in debate, certain fallacies are created. In the next part, we shall discuss the fallacies/myths. Few scholars/academicians have observed that "The opponents revert to their time-tested subterfuge of increasing the

bogey"¹⁷ (Maj Gen Mrinal Suman ,2021) of security issues and danger to indigenous industry any time the question of increasing FDI cap comes up, thus covering their selfish motives. There has always been a delusion about FDI in the Defence market, guaranteeing that no investment is got. This entire part shall be discussed in length from the next chapter.

In this chapter, we have seen how from 2001 to 2020 the government has increased the FDI in order bring advance technologies. The policy announced by the Government is the need of the hour to modernize the armed forces and help to be better prepared for any kind of war.

7. DEBUNKING THE MYTHS ABOUT FDI IN DEFENSE SECTOR

In the previous chapter we discussed the myths that are always created whenever FDI is being discussed in the common parlance. It is said that there is a section that doesn't want the armed forces to get stronger. Let's discuss all the myths or the fallacies and then proceed with the actual drawbacks the policy has.

7.1. FALLACIES

7.1.1. INDIA'S NON-INVOLVEMENT IN FOREIGN INVESTMENT CHOICES.

The above statement reflects a misunderstanding of FDI flow dynamics. It is always overlooked that a need-based notion is FDI. Whereas for rapid growth, a host nation wants FDI, prospective investors are driven solely by economic considerations. As investable funds are limited, they are coveted by all countries. To decide the one that seems most lucrative for optimal returns, international investors carry out an inter-se review of all probable destinations. Therefore, every host nation shall aspire to do so.

7.1.2. HIGHER FDI LIMIT POSES THREAT TO NATIONAL SECURITY.

India is currently buying all critical overseas manufactured/integrated weapons systems. It is not understood how the security of India would be threatened if India were to produce/integrate the same weapons systems. Indeed, Indigenous output would prevent India from unilaterally imposing embargoes on contractual suppliers through whimsical foreign governments. Needless to mention, through resorting to

¹⁷Maj Gen Mrinal Suman "FDI in Defence: Dispelling the Myths" (Indian Defence Review, 08 July 2014 <<http://www.indiandefencereview.com/news/fdi-in-defence-dispelling-the-myths/>> accessed 28 January 2021.

fatuous logic, security risks are over-hyped to maintain the status quo by vested interests. The concerns shared were entirely irrational and grossly overblown.

7.1.3. FDI OBSTRUCTS THE DEVELOPMENT OF INDIGENOUS DEFENCE INDUSTRY.

The then Defence Minister's assertion in 2013 that it is important to build up India's indigenous capability for the design and production of weapons systems cannot be contested at all. His statement, however, that it would be a retrograde measure to allow foreign firms for setting up manufacturing/assembly facilities in India and stymie the development of indigenous potential is mistaken. He expressed apprehension that such a move would prolong India's reliance on advanced arms from foreign countries.

Later in 2019, Rajnath Singh called it a "game-changer"¹⁸ (The Economic Times. 2021) when FDI was increased, as it would help to understand the true potential of India in weaponry and military hardware manufacturing. One best example of FDI and validating the stance of now Defence Minister is the development of the BrahMos missile which has been developed by Russia and India.

It is clear to say at this point as according to me, FDI in Defence have fake bubbles which need to get busted so that actual loopholes come into existence and rightfully worked upon. It is pertinent to "*say that armed forces' preparedness can't be compromised as that will mean compromising the security of the country and also playing with sentiments of the country.*"

Now let us focus on the loopholes.

7.2 LOOPHOLES

7.2.1. NATIONAL SECURITY

According to the Press Notice, Foreign Defence Investment was also subject to investigation on grounds of national security and the Government reserves the right to review any foreign Defence investment affecting or affecting national security. The press note does not clarify the factors involved in the national security

¹⁸The Economic Times. 2021. *Raising FDI cap to 74% in Defence manufacturing will be "game changer": Rajnath Singh.* [online] Available at: <<https://economictimes.indiatimes.com/news/Defence/raising-fdi-cap-to-74-in-Defence-manufacturing-will-be-game-changer-rajnath-singh/articleshow/75781028.cms?from=mdr>> [Accessed 1 February 2021].

determination of FDI, although it is essential for expenditure schedules and transaction security to consider the lack of clarity.

7.2.2. FDI MAKES 49% IN INDIAN DEFENCE MANUFACTURING FIRMS.

This condition was eased under the Press Notice from the prior approval of the Government to the post-investment declaration of MOD. According to the Press Release, The infusion, in the absence of an industrial license or already having government approval, of up to 49% of fresh foreign investment into a company needs the duty to register the MOD declaration in the event of a capital/shareholder change or the sale of security from the current owners to a new investor, not before this date (as is essential under the existing FDI framework). This declaration is essential for potential contributions to be forwarded to MoD and 30 days after the transaction or change of shareholder or share transfer. Though, the Press Notice also notes that plans to raise FDI from these firms by over 49% would continue for requiring prior government support.

From the new FDI context, the latter wording in the Press Notice relating to '*a firm not requiring an Industrial License*' conveys the uncertainty whether the FDI restrictions in Defence industry extend to firms whose operations do not need an Industrial License or who, under the Weapons Act, are not involved in the manufacture of small arms and ammunition. Historically, FDI prohibitions have been interpreted to occur only with current Defence undertakings (or firms possessing an Industrial License) or those that manufacture small weapons or arms.

It looks doubtful that, under the Press Notice, the regulator intended for protecting firms whose operations do not need an Industrial License or are not involved in the manufacture of small ammunition and arms (under the Arms Act), even though the term 'company not requiring an Industrial License' has endured. Therefore, it would be beneficial if the government explained this stance to prevent any more uncertainty.

8. COMPARATIVE ANALYSIS- THINGS TO BE LEARNED FROM DEVELOPED NATIONS

Most developed countries hear frequent calls from international manufacturers and advocacy groups for increased foreign investment caps in high-tech sectors,

especially the Defence industry, typically followed by claims that increased foreign investment will cause a rapid technical upgrading of the domestic Defence industrial base. Some demands for Foreign Direct Investment (FDI) have been as strong as 74%, which may be troublesome if the fragile behaviour of Foreign Institutional Investors (FIIs) is considered.

Most countries have rules restricting the selling of defence firms to foreign buyers or requiring a check of such acquisitions. Foreigners are forbidden from participating in Chinese companies that make weapons and explosives, according to the Chinese Catalog for Guidance of Foreign Investment Industries. Global investment in companies with sensitive or classified technology or contracts is subject to scrutiny in France and Germany, although it is not subject to review in Russia and the United Kingdom.

8.1. UNITED STATES.

The United States has pushed the institutions that make up the Committee on Foreign Investments in the United States (CFIUS) to confront national security concerns. The US government took this measure in response to the increase in outbound Chinese investment. It is important to note that the United States has close security relations with both Japan and Korea, including mutual defence arrangements and troop stationing. Via the Foreign Investment Risk Assessment Modernisation Act (FIRRMA) of 2018, the United States stepped up its CFIUS review regime. The United States America recently enacted an additional measure on outward FDI.

Americans may not invest in Chinese companies that the administration claims are regulated or operated by the Chinese military¹⁹. (Mr. James X. Zhan ,2021) The Order affects 31 Chinese businesses.

8.2. THE UNITED KINGDOM.

International companies, for example, are expected to adhere to terms relating to the preservation of defensive capabilities as they purchase businesses that manufacture products for the military. As an example: When a US Defence corporation buys a British Defence company, the British government wants the company to adhere to

¹⁹ Mr. James X. Zhan "Investment Policy Monitor" (United Nation UNCTAD, February, 2021) <https://unctad.org/system/files/official-document/diaepcbinf2021d2_en.pdf> accessed 09 July 2021

certain terms about the security of sensitive technologies and documents. It is important to note that since such bans are not codified if a foreigner tries to invest in a region considered undesirable, the investor will be privately diverted. While the UK lacks a formalised investment review body to determine international protection in the Defence and military sectors, it has an ad hoc investment review mechanism headed by the appropriate Government ministry with legislative authority for the sector in question. It's also worth noting that aggressive foreign ownership will put the UK's multinational supply chains at risk by undermining industrial funding for the country's national security. ²⁰In 2018, the UK government reduced the thresholds for three separate areas of the economy, including the active target of military/dual-use products subject to export regulation, in order to close the gap in the government's powers. In addition, beginning in 2019, the government plans to amend the Enterprises Act 2002's turnover threshold and share of supply tests. This will enable the government to investigate and eventually engage in mergers that are actually below the threshold in two areas:

- a. The dual-use and military use market; and
- b. Parts of the applied technology sector.

8.3. RUSSIA

International firms seeking to acquire over 50% or a majority interest in a Russian firm must receive Russian Government permission if the target company is in the listed industry, according to the Strategic Sectors Regulation. Explosives, firearms, and military machinery are some aspects of the military industry that are included in the same. The Federal Antimonopoly Service is one of the other authorities in Russia that regulates investment activity or influences the investment environment (direct control over foreign investments in companies of strategic significance for national defence and state security). The federal legislation²¹ on the Mechanism for Making International Investments in Companies of Strategic Importance for National Defence and State Security has placed restrictions on foreign investors (also known as Strategic Investment Law). Security and defence are two of the fields

²⁰Written evidence submitted by ADS (FSC0002), (UK Parliament, 1 October 2020), paragraph 2.4, <<https://publications.parliament.uk/pa/cm5801/cmselect/cmdfence/699/69905.htm>> accessed 09 July 2021.

²¹29 April 2008 No. 57-FZ.

protected by the legislation.²² (Vassily Rudomino, Ksenia Tarkhova, Ruslana Karimova, Roman Vedernikov and Anastasia,2021)

8.4. CHINA.

The Measures for the Security Review of Foreign Investment (Security Review Measures) were recently released by China's National Development and Reform Commission (NDRC) and the **Ministry of Commerce (MOFCOM)**. Investment in the military field, military-related industries, and other fields related to China's defence stability, as well as investment in the areas surrounding military installations and military facilities, were among the subjects under scrutiny. Under the current mechanism adopted, the NSR Office has limited latitude in deciding what makes up "national security."

The three key components of China's FDI strategy are **direction, domestic value addition, and technology transfer**. China is "explicit about the form of foreign investment that is 'prohibited,' 'permitted,' or 'encouraged,' with the latter group focused on advanced technology. To entice foreign investments into its high-tech industries, China offers government subsidies and lower tariff rates.

From this chapter, it may be inferred that there are mainly four different models²³ (Fiott and Daniel, , 2021) that are used to protect their industrial base against foreign threats. Through the comparative analysis, it may be stated that: -

To begin with, all non-EU and non-NATO FDI in the Defence, aerospace and security sectors is outright prohibited. This is called the prohibition model.

Second, the Approval Model is used in countries where foreign buyers, including those from the European Union, must first get government and ministerial approval for any takeover contract.

²² Vassily Rudomino, Ksenia Tarkhova, Ruslana Karimova, Roman Vedernikov and Anastasia, "The Foreign Investment Regulation Review: Russia" (Alrud Law Firm, 20 October 2020) <<https://thelawreviews.co.uk/title/the-foreign-investment-regulation-review/russia>> accessed 09 July 2021.

²³Fiott and Daniel, "Safeguarding the EDTIB: The Case for supervising non-EU FDI in the Defence Sector" (University of Pittusburgh, December 2012), <<http://aei.pitt.edu/39409/>> accessed 09 July 2021.

Third, purchases by international companies may be subject to scrutiny by qualified ministries under the Review Model. Countries such as the United Kingdom, France, and Germany follow this model.

Fourth, under the Supervision Model, all Defence companies, whether domestic or foreign-owned, are managed and monitored by proxy boards made up of state nationals. Countries such as the United States use this form of the model.

9. THE WAY AHEAD AND MAPPING THE FUTURE COURSE OF ACTION

9.1. CONCLUSION

The goal of the Government of India to raise Defence FDI by 74% through direct route is a good initiative. A lot of caution needs to be emphasized, though, and a lot needs to change. Foreign companies will be motivated to make a profit that could often clash with our strategic sovereignty. There is also the sharing of the new technologies by multinational companies for the development of domestic military systems. It is still a divisive topic. To delicately balance the needs of encouraging the 'Make in India' commodity and the international partner who would be keen to support its supply chain complexities, the Government would have to move ahead with great caution.

Growing the FDI cap is just part of the fight fought in the greater scheme of things. India is the biggest arms importer in the world, but discrepancies and contradictions are uncovered from a closer glance at our acquisitions. Expensive platforms such as the Boeing P-8I Poseidon maritime surveillance aircraft and the C-130J Hercules medium-lift aircraft have reinforced capabilities, but there are still glaring holes. The Indian Army desperately needs modern field artillery and the ground-based air defence systems of the Indian Air Force are essentially obsolete. These shortcomings have not been resolved by repeated tenders and isolated contracts.

Although there would almost definitely be other riders increasing the FDI limit, this could be the most opportune time to enforce such a decision. The economic growth-oriented policies of the current administration have improved market sentiment, and this, coupled with the demand created by the modernization and expansion of

one of the largest armed forces in the world, will prove to be the wind in the sail for the Defence Sector in India.

The effectiveness of a versatile FDI programme hinges on how well it is handled for the domestic industry's good. Some lessons can be learned from the experiences of other countries, especially China, which has used FDI to grow its strategic industries. China's FDI strategy seeks to help its industries "integrate into the global value chain... accelerate its economic and technical transition [while resisting technological reinvention]."

An increase in the FDI cap will boost the prospects of technology transfer and the establishment of substantive relations between Indian and foreign Defence firms, given India's underdeveloped Defence R&D and production base, the need to enhance domestic Defence production, and the immense economic benefits that could flow in. Increases in the FDI ceiling are also expected to make the offset scheme and the 'Self-Reliant India' more reliable. Since a cap-based approach is characterised by limitations, particularly to attract high technology-intensive investments, the FDI cap in the Defence Sector should be raised to 100%, rather than fixed at a level of up to 74%, considering the above potential benefits.

9.2 RECOMMENDATIONS

After analysing all the points covered in the previous chapters, the following are few suggestions made by the researcher so that India could become one of the leading countries in the field of manufacturing, state of the art technologies in the defence sector and our forces have access to all modern technologies.

1. According to the aforementioned study, the 'review model,' which is adopted by countries such as the United Kingdom, France, and Germany, is the model code of ethics out of the four that exist around the globe. It is the author's clear recommendation that such a model be kept in India as well.
2. Second, because of the high level of sensitivity associated with the Defence Sector and national security, any Defence-related foreign direct investment should be subject to a more thorough analysis by the empowered Foreign Investment Promotion Board. This recommendation is like the scheme in use in the United Kingdom.

3. Third, the Foreign Investment Promotion Board should be given the authority to prescribe a specific amount of FDI, ranging from zero to one hundred per cent, based on a rigorous review and detailed impact analysis on each investment.
4. Fourth, the firm will be given extra protective precautions to provide to clients to ease any fears that may occur through the investigation.
5. Fifth, it's possible that the FIPB has the authority to require technology transfer to Indian companies and value addition as a prerequisite for enabling foreign investment.
6. Sixth, it should be emphasized that lifting the ceiling from 2% to 49-74 per cent poses serious concerns about the effect on national defence, the economic base, and overall national stability. When the strategies of the United States are examined, such issues could be eased by not restricting FDI to a certain proportion of equity flows, but by taking a more flexible approach. As a result, each Defence-related FDI is subjected to a broader evaluation and effect analysis based on a series of well-calibrated parameters. The recommendation is that this is implemented in India to ensure the best practice of foreign investment inflows while still maintaining national security and the Defence industry.
7. Where FDI exceeds 49 per cent, requirements be placed on the proposed foreign investor to enable him to work in India as an Indian company, with no technical or other benefits permitted to be transferred without permission from Indian authorities to the parent or any other Government. It is also emphasized that, rather than intrinsic rigidity, full but case-by-case liberalization of FDI policy would allow for merit-based selection.
8. Import ban-The Government imposed an import restriction on 101 Defence products as part of a big drive to boost the domestic Defence industry, and another complete list is in the works. This action is aimed at bolstering the cause of self-reliance and indigenization of Defence systems, with a promise to buy the items locally. However, the country's defence manufacturing industry faces a scarcity of specialized raw materials, technology, and other resources. The Government should a strategy to encourage foreign OEMs to

transfer technology and specialized raw materials, which would help to grow the relatively young sector.

With these measures, the Government has taken the first and most important step toward creating an investment, manufacturing, and export-friendly policy climate. With a little more effort, the industry should see the same level of interest as IT and Automotive. In a single customer-driven sector, the Government must ensure that the private sector is treated similarly to the public sector in terms of respect and incentives. The most important factor in maintaining the economies of scale necessary for the sustainability of such investments is a constant flow of orders and export opportunities.

WORKERS' PARTICIPATION IN MANAGEMENT TOWARDS EMPOWERMENT AND ORGANIZATIONAL SUCCESS: INSIGHTS FROM SOUTH ASIAN COUNTRIES

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Abstract

Workers' participation in management (WPM) is a hot topic in industrial relations, especially in South Asia. The historical, cultural, and socio-economic elements that create WPM frameworks in South Asian nations are examined in this research to uncover common trends and different approaches to workers' engagement in decision-making. The abstract emphasizes how colonial legacies, labor struggles, and industrialization shaped participatory practices. Based on a wide range of scholarly sources, legal documents, and policy reports, the study describes the legal frameworks and institutional structures governing WPM in each nation, emphasizing trade unions, employer associations, and government bodies' roles in shaping participatory initiatives. The abstract also discusses South Asian WPM approaches, from consultation systems to collaborative decision-making bodies. Comparing these models shows how employee representation, decision-making authority, and effectiveness vary by environment. The abstract also examines how WPM methods are integrated into organizational cultures and management practices, affecting employee morale, productivity, and labor-management relations. The study also covers South Asian WPM implementation issues. Low union density, power inequalities, and employee and employer ignorance of participatory management's benefits are explored. The abstract also discusses cultural and social conventions that may affect WPM acceptance and success and ways to overcome them. This abstract synthesizes case studies and empirical data to demonstrate the potential benefits of WPM in South Asian countries. Participatory techniques can boost employee satisfaction, eliminate industrial conflicts, and improve organizational performance, boosting regional economic and social development. This

abstract compares WPM methods, helping policymakers, management practitioners, and researchers understand and increase worker empowerment and engagement in decision-making across the area. This research proposes a more informed and context-sensitive approach to WPM that promotes inclusive, transparent, and collaborative workplaces in South Asia's dynamic terrain by acknowledging each country's specific challenges and potential.

Key Words: *Workers' Participation, Management, Collective Bargaining, Workers' Rights.*

1. Introduction

Workers' involvement in management is a process through which subordinate employees, either individually or collectively, engage in organizational decision-making within their respective workplaces. It is a crucial element of industrial democracy, rooted in the Human Relations approach to Management that introduced a new value system to labor and management interactions. Historically, Workers' Participation in Management (WPM) refers to the engagement of non-managerial staff in organizational decision-making. This concept is also referred to as 'labor participation' or 'employee participation' in management. In Germany, it's termed co-determination, while in Yugoslavia, it's called self-management. The International Labour Organization has been actively encouraging member nations to embrace the concept of Workers' Participation in Management.¹

In simpler terms, workers' participation in management signifies the intellectual and emotional engagement of employees in the administration of an enterprise. This process involves subordinate or employee involvement in one or more aspects of organizational decision-making. The extent of such participation can vary from the voluntary sharing of information by management with workers to direct involvement of workers in decision-making. While workers' participation in decision-making is generally advantageous, instances of its misuse do arise. Effective management practices, direct communication, coordination, and sincere efforts can help mitigate this challenge, leading to enhanced organizational functioning.

Article 43A of the Indian Constitution pertains to Workers' Participation in Management, falling under the Directive Principles of State Policy. This element

¹ Gunn, C., 2011. Workers' participation in management, workers' control of production: Worlds apart. Review of Radical Political Economics, 43(3), pp.317-327.

plays a significant role in industrial democracy, enabling employees to have a voice in management decisions. Workers' participation involves integrating workers into the decision-making process, positively impacting their psychological well-being and fostering a sense of association with the organization. Anchored in the Human Relations approach, WPM emphasizes power-sharing with workers, recognizing their direct engagement with the work. Through WPM, employees can share their perspectives, ideas, and contribute to decision-making, thereby fostering loyalty, trust, and augmenting overall productivity. This concept has historical roots, with Mahatma Gandhi introducing it in India in 1920, exemplified by the joint participation of textile workers and employers in Ahmedabad resolving disputes. Additionally, in 1958, TISCO established committees enabling worker participation in various organizational matters.²

2. Literature Review

2.1 G. Kameswar Rao, *Workers' Participation in Management*, Cochin University Law Review, 1982, pg.211

This study found that many factors affect output and productivity. Labor relations are very important. Positive management-employee relations build a stable basis and positive workplace. Other nations aim for cooperative industrial relations, save for those with a fully communist framework where management and workers are almost indistinguishable and closely collaborate. Because of trust and respect, arguments are minimal and resolutions are pleasant. Indian management-labor relations must enable participatory management in firms. This is necessary to fight poverty, meet needs, resist external influences, and equal industrialized nations in output and productivity. Increase output and productivity. Industrial peace is essential for economic growth since industrial relations affect economic growth.

2.2 Dr.V.P. Matheswaran; P. Aishwarya; *Workers Participation in Management Decision Making - A Theoretical Study*, International Journal Of Creative Research Thoughts (Ijcr), Vol6 Issue 2, 2018

² Sethi, K.C., 1973. *Workers' Participation in Management: A Report and a Viewpoint*. Indian Journal of Industrial Relations, 9(2), pp.313-321.

The author concludes that employers should be progressive and treat employees equally. Employees should be informed about the benefits of management choices. Recognizing rights and agreeing on industry goals is vital. Participative management education is needed for employees and representatives. Effective communication and staff decision-making are crucial. Continuous engagement from the operational level is crucial. Management and labor should promote cooperation and participation.

- 2.3 Ahzaz Reegan, R. Ravimohan: A study on workers' participation in management with reference to Blue Bharath Exim Pvt. Ltd., Chennai; *Malaya Journal of Matematik*, Vol. 5, No. 2, 2695-2702, 2020; <https://doi.org/10.26637/MJM0520/0696>

The author finds that the study sheds light on employee involvement in managerial decision-making. People confirm meetings once or twice a month. The intermittent nature of such meetings highlights the need for additional participation. The study also analyzes worker invitation factors. Management typically involves employees in critical decisions, which fosters cooperation. Employee decision-making suggestions are often supported at management meetings, boosting teamwork. Participation dynamics apply to various behaviors; major decisions often require human engagement, sometimes limited to worker representatives. Suggestion boxes aid employee insights. Policy initiatives reduce worker invitations, according to most respondents. Participation in labour conditions and service standards choices is more common than administration and supervision decisions. Complex member disagreements are usually handled. Integrating employee opinions boosts morale, inventiveness, effort, and ownership. Workers are encouraged to solve group problems creatively. By enhancing manager-employee communication, worker participation boosts organizational performance and cohesion.

- 2.4 Abhimanyu Kumar and Anshu Taunk; Workers' Participation in Management: A Case Study Of National Thermal Power Corporation In India, *International Journal of Educational Research and Technology*; Volume 3 [4] December 2012: 42 -45

In Ramagundam, Andhra Pradesh, the National Thermal Power Corporation (NTPC) holds worker-management forums. Forums ensure fair representation of these groups, promoting involvement. Meetings include workers' representatives' independence. Self-selection or trade union appointment are methods. The paper underlines NTPC Ramagundam's proactive implementation of most main forum decisions. Effective policy, service, productivity, manufacturing, and administration decisions are made through management-worker collaboration. These findings demonstrate NTPC Ramagundam, Andhra Pradesh's strong worker participation system.

2.5 M. Rosner, B. Kavcic, A. S. Tannenbaum, M. Vianello, G. Weiser; Worker Participation and Influence in Five Countries, Symposium: Cross-national Research, University of Michigan; 1973, pg 200

<https://deepblue.lib.umich.edu/bitstream/handle/2027.42/86665/j.1468-232X.1973.tb00549.x.pdf?sequence=1>

The author finds that worker participation in decision-making processes correlates with worker collective influence. This affects workers' personal influence, trust, and accountability. Management's influence is more likely to be accepted when workers trust management and feel a feeling of duty to the company. Thus, managers have more power in such situations. As members noted, plants that encourage worker participation in decision-making likely to have significant control. The increased influence of workers in this situation does not reduce managers' influence. Instead, member trust and accountability support managers' impact.

3. Research Methodology

I hereby declare that I have followed a comprehensive research methodology centered on the analysis and interpretation of existing legal materials. This research approach involves an in-depth examination of statutes, case law, legal principles, and academic literature within the chosen legal domain. The research process entailed the systematic review of relevant legal doctrines, statutes, regulations, and authoritative legal writings to discern patterns, principles, and rules that form the basis of legal interpretations and decisions. I have critically evaluated and synthesized the available legal sources to develop a coherent understanding of the legal framework under investigation. Throughout this research, I have adhered to

ethical guidelines, ensuring the proper citation of sources and providing due credit to the original authors. This doctrinal research methodology aims to contribute to a deeper understanding of the legal landscape within the chosen subject area.

4. Analysis

The term "participation" holds diverse interpretations across involved parties. From the management's perspective, it signifies joint consultation preceding decision-making. For workers, it embodies codetermination, while for the government, it denotes labor's involvement alongside management, devoid of ultimate authority or accountability in decision-making. Participation, in essence, is generally regarded as a mechanism to diminish power disparities and rectify power imbalances. As articulated by Keith Davis, participation denotes the psychological and emotional engagement of an individual within a given context, motivating them to contribute to collective objectives and share in the responsibility of achieving them. It signifies the process through which the authority and accountability for managing industry are shared with workers.³

Given the array of viewpoints, a precise definition of "workers' participation" proves challenging; it can be best described as a system of communication and consultation, whether formal or informal, enabling organizational employees to remain informed about the enterprise's affairs and offering them the avenue to voice their opinions and contribute to managerial decisions. Successful participation should span various management levels and presuppose the voluntary assumption of responsibilities by workers. It entails emotional and intellectual involvement, transcending mere physical presence. It goes beyond mere consent or endorsement of managerial actions. Workers' participation can manifest in both formal and informal modes, encapsulating a communication and contribution system wherein employees express their viewpoints and contribute to managerial choices.⁴

The overarching goal of participation is to fundamentally transform the organizational dynamics of production, effectively transferring the management function to the workforce. There are four degrees of participation: communication, involving the sharing of managerial decisions with workers; consultation, where workers voice their opinions on work-related matters and management makes

³ Davis, K., 1967. Understanding the social responsibility puzzle. *Business horizons*, 10(4), pp.45-50.

⁴ Markowitz, L., 1996. Employee participation at the workplace: capitalist control or worker freedom?. *Critical Sociology*, 22(2), pp.89-103.

decisions post-consultation; codetermination, characterized by joint decision-making by managers and workers; and self-management, wherein workers exercise full autonomy from decision-making to execution.⁵

Workers' involvement in management signifies the emotional and cognitive engagement of employees in the administration of an enterprise. This concept functions as a mechanism through which workers contribute to decision-making processes. The ideology that underpins workers' participation underscores several key aspects:

- (a) Democratic inclusion in decision-making;
- (b) Maximizing collaboration between employers and employees;
- (c) Minimizing state interference;
- (d) Achieving enhanced social justice;
- (e) Amplifying industrial efficiency; and
- (f) Elevating organizational well-being and efficacy.

The understanding and implementation of workers' participation have varied over time, encompassing joint consultation mechanisms within industry, labor-management cooperation models, acknowledgment of co-partnership principles, and the application of industrial democracy principles. As a result, participation has manifested in diverse forms, ranging from voluntary information sharing by management with workers to the formal involvement of workers in substantive decision-making within the management process.⁶

In, *Gujarat Kamdar Sahakari Mandal vs Ramkrishna Mills Ltd.*⁷ held that the provisions of Article 43A are aimed at ushering in industrial democracy, and in the words of Justice Krishna Iyer, they signify the "termination of industrial bonded labor." The Constitutional directive is unequivocal: the sole management of enterprises shouldn't remain the exclusive prerogative of capital providers; workers should also have the right to participate. This is because, in a socialist societal framework, where enterprises are the central economic entities, control should extend not solely to capital suppliers, but also encompass labor. Workers hold a distinct position within such a socialist society; they are more than mere suppliers of

⁵ Ramsay, H., 1977. Cycles of control: worker participation in sociological and historical perspective. *Sociology*, 11(3), pp.481-506.

⁶ *Ibid.*

⁷ (1995) 2 GLR 1619

labor. Their value isn't that of a tradeable commodity acquired by capital owners; rather, they are contributors to wealth creation, much like capital. Their labor is indispensable, without which capital's progress would be impeded, and they stand as, at the very least, equal partners with capital within the enterprise. With this Constitutional philosophy in mind, it's imperative to consider the scheme presented by the workers' society.

4.1 Understanding Workers' Participation

As per the International Labour Organisation (ILO), the concept of "Workers' participation" broadly encompasses all forms of engagement between workers, their representatives, and the decision-making process. This spectrum ranges from the exchange of information, consultations, decisions, and negotiations to more structured arrangements like having workers' representatives on management or supervisory boards, or even instances of workers managing operations themselves, as observed in Yugoslavia.

The key implications of Workers' participation in management, as distilled by the ILO, are as follows:

- a) Workers possess valuable ideas and opinions that can contribute constructively.
- b) In a participatory environment, informed workers are more likely to work intelligently and with enhanced loyalty when they understand the rationale behind particular decisions.

The primary attributes of workers' participation in management can be succinctly outlined as follows:

- i) Participation involves practices that expand the influence employees wield in decision-making processes while simultaneously assuming responsibilities.
- ii) Participation hinges on the voluntary acceptance of responsibilities by employees.
- iii) Workers engage through their designated representatives in decision-making. It's essential to distinguish this from collective bargaining, which revolves around power dynamics and pressuring management, whereas

workers' participation is rooted in mutual trust, information exchange, and collaborative discussion.

- iv) Workers' involvement is grounded in the rationale that they invest their labor and effort into the organization and are directly impacted by decisions. Their contribution to outcomes entitles them to voice their opinions.
- v) Participation can take formal or informal forms, both of which encompass communication avenues through which workers can express their viewpoints. Formal participation often involves committees and councils like works committees, Joint Management Councils, safety committees, etc., while informal participation may involve supervisors consulting workers on issues like leave, promotion, and transfers.
- vi) Workers' participation provides psychological contentment, recognizing their considerable time commitment to the organization. This acknowledgment and commitment foster psychological satisfaction.

4.2 Why of the workers' participation in management is necessary?

The purpose of Workers' Participation in Management (WPM) can diverge based on geographical context, regional nuances, hierarchical levels, industry specifications, and other factors. For instance, in Germany, the aim might be to co-determine decisions across diverse enterprise tiers. In Japan, the focus could be fostering a constructive comprehension of business and production matters between management and labor.⁸ In the case of India, the objective could be the establishment of a socialist society. Implementing effective employee participation and involvement holds numerous benefits for organizations. Foremost, it prevents the exploitation of workers by management, fostering a more equitable and just workplace environment. Such an approach also contributes to the establishment of democratic principles within the organization, ensuring that decisions are made collectively and transparently. Improved understanding between workers and management is another outcome, facilitating the amicable resolution of conflicts and promoting harmony.⁹

⁸ Wagner, Pia, Christopher Prinz, Manfred Wannöffel, and Dieter Kreimeier. "Learning factory for management, organization and workers' participation." *Procedia CIRP* 32 (2015): 115-119.

⁹ Derber, M., 1970. Crosscurrents in workers participation. *Industrial Relations: A Journal of Economy and Society*, 9(2), pp.123-136.

Encouraging employee participation provides a platform for self-expression, granting employees a voice in matters that concern them. This empowerment ultimately contributes to industrial peace and a sense of ownership among the workforce. Moreover, robust communication channels are established through this approach, enhancing information flow and cooperation across all levels of the organization. Crucially, involving employees in decision-making reduces resistance to change, making it easier for workers to embrace necessary adaptations for the growth and development of the organization. In essence, embracing employee participation not only benefits the workforce but also contributes to a more resilient, adaptive, and harmonious workplace that drives organizational success.¹⁰

4.3 Workers' Participation and Decision Making Process

The concept of Workers' Participation in Management (WPM) yields multifaceted advantages for both organizations and employees alike. The inherent benefits of WPM are manifold and encompass the following key aspects:

Firstly, it serves as a potent vehicle to fortify democratic participation in the decision-making process, ensuring a broader array of perspectives are considered in shaping organizational strategies.

Secondly, WPM acts as a catalyst in fostering closer collaboration between employers and employees, thereby nurturing an environment of mutual trust and shared objectives.

Furthermore, WPM engenders heightened commitment and dedication among employees, catalyzing the pursuit of collective goals and thereby augmenting industrial efficiency.¹¹

In addition to its operational impacts, WPM contributes to the promotion of elevated levels of health and social justice measures within the workplace ecosystem. A notable consequence of WPM is the heightened affinity employees develop towards the organization, which in turn translates to demonstrable improvements in overall performance metrics. This participatory approach significantly bolsters job

¹⁰ Dreze, J.H., 1976. Some theory of labor management and participation. *Econometrica: Journal of the Econometric Society*, pp.1125-1139.

¹¹ Gunn, C., 2011. Workers' participation in management, workers' control of production: Worlds apart. *Review of Radical Political Economics*, 43(3), pp.317-327.

satisfaction levels among employees, consequently cultivating a more harmonious and content workforce. By embedding mechanisms for employee involvement, WPM substantially curtails conflicts within the organizational milieu, nurturing a cohesive and collaborative work environment.¹² A paramount outcome of WPM is the establishment of robust channels of communication and information dissemination, laying the foundation for transparent and effective organizational discourse. An essential feature of WPM lies in its capacity to ensure the active engagement of employees in shaping the contours of company policies and decisions, thus imbuing them with a sense of ownership and alignment with the organization's trajectory.¹³ Embracing the ethos of Workers' Participation in Management not only empowers employees to contribute their ideas, suggestions, and feedback on pivotal company policies and decisions, but also engenders a profound sense of significance among workers, underscoring their pivotal role in the achievement of organizational objectives.¹⁴

The core objective underpinning the adoption of Workers' Participation in Management revolves around fostering a profound sense of affiliation among employees, channeling their ideas, suggestions, and concerns. This entire framework is underpinned by a robust and comprehensive reward policy designed to continually incentivize enhanced performance from employees. The ambit of workers' engagement in managerial decision-making is versatile, encompassing spheres of social, economic, and personnel-related choices contingent upon the specific exigencies of the organization.

There is different level of participation in Management, such as:

- (i) **Informative Participation:** This pertains to the dissemination of information by management to workers regarding various aspects related to the workforce, such as financial statements, production metrics, and the overall financial well-being of the organization.

¹² Tausky, C. and Chelte, A.F., 1988. Workers' participation. *Work and Occupations*, 15(4), pp.363-373.

¹³ Jayawardana, A.K., O'Donnell, M. and Jayakody, J.A.S.K., 2013. Job involvement and performance among middle managers in Sri Lanka. *The International Journal of Human Resource Management*, 24(21), pp.4008-4025.

¹⁴ Ghosh, P.K. and Van de Vall, M., 1978. Workers' Participation in Management: Applied to India. *Management International Review*, pp.55-68.

- (ii) **Consultative Participation:** In this form of participation, workers are afforded the opportunity to express their opinions on matters concerning them. However, the final acceptance or rejection of their viewpoints rests with the employers. Here, employees are limited to providing their opinions without wielding decision-making authority.
- (iii) **Associative Participation:** Representing an enhanced iteration of consultative participation, associative participation operates on the premise that employers have a moral obligation to acknowledge, accept, and implement decisions arrived at through unanimous agreement among employees.
- (iv) **Administrative Participation:** Under this model, decisions are pre-determined and enacted by workers. This level of participation entails a higher degree of power and responsibility sharing by workers compared to other participation levels.
- (v) **Decisive Participation:** In this capacity, decisions on significant matters such as production processes and employee welfare are collaboratively made by both workers and management after thorough deliberation and discussion.

In the realm of organizational participation, these categorizations delineate the various degrees of involvement and decision-making authority extended to employees. Informative participation ensures transparency, consultative participation acknowledges employee input within certain boundaries, associative participation emphasizes ethical acceptance of unanimous decisions, administrative participation grants workers a greater share of responsibility, and decisive participation highlights joint decision-making after comprehensive discourse. Each level reflects a distinct approach to integrating employee perspectives into organizational decision-making processes.¹⁵

Let us delve into the dimensions of Workers' Participation in Management within an industrial context:

¹⁵ Damachi, U.G., 1986. Workers' participation in management. In *Management Problems in Africa* (pp. 315-330). London: Palgrave Macmillan UK.

1) *Social Decision-Making*

The realm of social decision-making addresses the well-being and job security of employees. This encompasses determinations pertaining to work hours, workplace rules and regulations, working conditions, welfare initiatives, employee health, safety measures, and sanitation provisions. By involving workers in these matters, organizations create an environment that fosters employee welfare and engagement.

2) *Economic/Financial Decision-Making*

Workers' participation in management extends to the financial and economic facets of organizational operations. This encompasses matters such as production methods, cost reduction strategies, inventory management, capital structure considerations, technological integration, automation, shutdown procedures, mergers and acquisitions, and workforce adjustments. Soliciting insights from employees, for instance, on innovative methods to curtail operational costs, can yield transformative outcomes.

3) *Personnel Decision-Making*

A pivotal role of Workers' Participation in Management lies in personnel decision-making. Employees play an active role in diverse management processes encompassing recruitment and selection, training and development, workload allocation, job placements, promotions, demotions, transfers, grievance handling, voluntary retirement schemes, remuneration frameworks, and more. Empowering workers to partake in these functions safeguards their interests and propels them to contribute fervently for both their personal growth and the betterment of the organization as a whole.¹⁶

Collective bargaining entails negotiations between employees and employers to determine salary, working conditions, benefits, and rights, often preferred over seeking management roles. Work Councils/Committees consist of representative employees and employers aiming to maintain amicable relations. Joint Management Councils, advisory in nature, feature equal employee and employer representation but with limited impact. Board Representation involves electing employees to a company's board to protect interests and relationships. Workers Complete

¹⁶ Derber, M., 1970. Crosscurrents in workers participation. *Industrial Relations: A Journal of Economy and Society*, 9(2), pp.123-136.

Ownership (Self-Management) grants employees control via an elected board, prevalent in Yugoslavia. Co-partnership lets employees engage in share capital, though limited management involvement, often less favored by trade unions.¹⁷

4.4 Why WPM is not Successful

i) *Disparities in Ideology*

There exists an ideological disparity between employers and workers with regards to the scheme, or there might be a lack of comprehensive understanding of its essence. While employees may advocate for its simultaneous implementation across all levels, employers could prefer a gradual introduction starting from the board level. Consequently, both parties are not fully embracing the scheme.

ii) *Inadequate Embrace of Participation's Essence*

The involved parties often fail to grasp the true essence of participation. Worker representatives may perceive it solely as a mechanism for addressing grievances, such as salary, work conditions, and enhanced security. Conversely, employers might fear that worker participation could diminish their decision-making authority.

iii) *Weak Trade Union Presence*

The absence of robust trade unions in India poses a challenge. The existence of multiple unions coupled with inter-union rivalry further hampers the effectiveness of the scheme.

iv) *Limited Worker Literacy*

A substantial portion of the workforce, as well as their representatives, lack proper literacy or education. This deficiency stands as a major obstacle in the successful implementation of WPM, as active participation across various levels is hindered by their inadequate knowledge.

v) *Flawed Implementation*

Delays in executing decisions made by diverse committees contribute to the inefficacious functioning of the scheme. Such delays lead to worker

¹⁷ Rathnakar, G., 2012. A study of workers participation in management decision making at Bhel, Hyderabad. International Journal of Marketing, Financial Services & Management Research, 1(9), pp.135-141.

frustration and diminishing interest in WPM.¹⁸

4.4 Workers' Participation in Management in South Asian Countries

4.4.1 Sri Lanka

In Sri Lanka, the structures for involving employees are established within a legal framework. This framework mandates the formal registration of trade unions or workers' organizations to represent their respective members. Additionally, it outlines criteria such as the employer's acknowledgment of a union as a negotiating entity, membership thresholds for recognition, and the employer's responsibilities once a trade union attains negotiating status. This legislative emphasis on securing rights stems from the historically adversarial relationship between trade unions and employers rooted in Sri Lanka's colonial past and its quest for independence. However, it's important to note that solely relying on legislation has fallen short of cultivating an improved industrial atmosphere.¹⁹

Criticism has been directed towards the government by trade unions for not effectively enforcing laws that were intended to establish mandatory trade union recognition. On the contrary, employers contend that the recognition of trade unions and the process of collective bargaining hinge on mutual trust and a harmonious rapport between involved parties. They argue that attempts to mandate such recognition could potentially exacerbate tensions and antagonism towards trade unions. The tradition of employee participation in Sri Lankan workplaces has primarily unfolded through the establishment of trade unions. These unions, historically linked to the fight for independence, continue to be seen as opposing forces in relation to employers and, to some extent, the political landscape. Legislative provisions governing trade unions apply to various sectors in Sri Lanka, including the private sector, state-owned commercial entities, public corporations, and statutory boards. However, these regulations do not encompass trade unions representing employees of central and local governments, which are governed by

¹⁸ Bernstein, Paul. "Necessary elements for effective worker participation in decision making." *Journal of Economic Issues* 10, no. 2 (1976): 490-522.

¹⁹ Jayawardana, A.K., O'Donnell, M. and Jayakody, J.A.S.K., 2013. Job involvement and performance among middle managers in Sri Lanka. *The International Journal of Human Resource Management*, 24(21), pp.4008-4025.

the Establishments Code and decisions issued by the Cabinet and ministries over time.²⁰

4.4.2 Bangladesh

In Bangladesh decision-making authority is predominantly centralized at higher management levels, with minimal worker involvement. Limited direct participation occurs mainly in managerial tasks and goal setting, showing a positive link between participation, motivation, and performance. In the garment sector, only a few motivational strategies such as bonuses, transport, canteen, medical benefits, and profit sharing are employed. Workers attribute poor participation to management's lack of willingness, insufficient labor union activity, workforce homogeneity, illiteracy, and political divisions. These results hold implications for government, RMG industry policy makers, and manufacturing management, suggesting the need to address these issues to enhance workers' involvement in decision-making in the context of the Bangladeshi garment sector.²¹

4.4.3 Nepal

The Bonus Act of 2030 B.S. pertains to the Welfare Fund, stipulating that seventy percent of the residual bonus amount, post-distribution, should be deposited in the Welfare Fund established under Section 37 of the Labour Act, 2048 (1991), with the remaining thirty percent allocated to the National Level Welfare Fund established by the Government of Nepal. The Trade Union Act of 2049 B.S., in Section 11, addresses the recognition of Authorized Trade Unions for collective bargaining on behalf of workers. The Act also grants working committees of Authorized Trade Unions the ability to present claims for collective bargaining to management. Under the Privatization Act of 2050 B.S., Section 14 outlines provisions related to employees during enterprise privatization, including ensuring the continuity of service for existing workers, providing reasonable compensation or benefits, and offering shares of the privatized enterprise to current employees.²² The Labour Act

²⁰ Shyamali Ranaraja, Emerging trends in employee participation in Sri Lanka, Working Paper No. 46, Industrial and Employment Relations Department, ILO Regional Office for Asia and the Pacific, 2013

²¹ Md. Anowar Hossain Bhuiyan, Employee Participation in Decision Making in RMG sector of Bangladesh: Correlation with Motivation and Performance, *Journal of Business and Technology (Dhaka)*, Vol.5 Issue 2 2010

²² Gyawali, A., 2017. Impact of employee participation on job satisfaction, employee fairness perception and organizational commitment: A case of Nepalese commercial banks. *Saptagandaki Journal*, 8, pp.1-13.

of 2074 B.S. introduces worker participation through various mechanisms, such as Collective Bargaining, Claim presentation to management, dispute resolution, Labor Relation Committee establishment, Minimum Remuneration Fixation Committee formulation, and Central Labour Advisory Council constitution. The Right to Employment Act of 2075 B.S. aims to ensure citizens' employment rights, establishing Employment Service Centers and a Steering Committee for related functions. Challenges to Workers Participation Movement in Nepal include employer hesitance due to perceived worker incompetency, the dual roles of worker representatives as spokesmen and co-managers, trade union leaders prioritizing political interests, and limited lower-level participation in decision-making within organizations. Nepal is at an infant stage as far as worker participation in management is concerned, a broad view has to be taken for the totality of the concept and its proper implication.²³

4.4.4 Bhutan

The findings from numerous research studies indicate that all enterprises are well-informed about their duties and responsibilities towards Gross National Happiness (GNH). Employers have effectively undergone orientation and training to adopt the principles of GNH culture within Bhutan's manufacturing industries. Employees, in a general sense, exhibit cooperative, non-aggressive, mild, and loyal behavior towards management and their respective business organizations. This demeanor is evident in their approaches. They do not perceive trade unions or workers' associations activities as crucial or urgently needed within the context of industrial relations.²⁴

The foundation of industrial relations is built upon principles of fairness and equity. Both management and employees recognize the significance of organizational and employee growth, despite having varying interests. While their interests may differ, there are areas of convergence where they share common goals to sustain their collective existence. Against this backdrop, the dynamics between employers and employees in Bhutan's manufacturing industries hold significance due to their influence on the efficient functioning of business operations within industrial

²³ Bimal Prasad Lamichhane, Workers' Participation in Management in Nepal, *Kalika Journal of Interdisciplinary Studies*, 2021, pg.34.

²⁴ Tshering, D., Tejavaddhana, P., Siripornpibul, T., Cruickshank, M. and Briggs, D., 2019. Motivational factors influencing retention of village health workers in rural communities of Bhutan. *Asia Pacific Journal of Public Health*, 31(5), pp.433-442.

setups. Such interactions serve as a potential indicator or outcome of the successful infusion of GNH culture throughout policy levels. The Bhutanese populace has effectively assimilated the values of GNH culture, which consistently exhibits positive attitudinal traits indicative of transformative shifts in organizational culture.²⁵

4.4.5 India

Since achieving independence, the Government of India has developed various initiatives to promote workers' involvement in management.

- i) **Works Committee:** The Industrial Disputes Act of 1947 introduced the concept of Bipartite Works Committee, enabling limited participation of elected worker representatives. These committees aimed to foster amicable relations between employers and employees. By the close of 1987, around 530 such committees were operational, frequently leading to clashes between works committee representatives and trade unions in the same enterprise.
- ii) **Joint Management Councils:** Joint Management Councils (JMCs) were introduced in 1958, entrusted with administrative responsibilities for matters related to welfare, safety, vocational training, and holiday schedules. However, these councils did not receive substantial support from either unions or management.
- iii) **Constitutional Amendment and 1975 Scheme:** In 1975, a constitutional amendment incorporated Section 43 A in the Directive Principles, mandating the state to enact suitable legislation ensuring workers' participation in the management of various industries and undertakings. The scheme established joint councils at shop and plant levels for manufacturing and mining units with 500 or more workers. These councils were tasked with enhancing production, reducing absenteeism, and ensuring safety.
- iv) **Scheme of Workers' Participation in Management:** Two years later, commercial and service organizations with 100 or more employees were

²⁵ Aparna Vajpayee, Parag Sanghani, Dilip Kumar Chakraborty, Ajay K Jain; Doctrine of GNH and Employee Employer Relationship: A Study of Manufacturing Industries of Bhutan, The Korean Journal of International Studies, Volume 15 Issue 39 pg. 23, 2022.

included in a similar participative scheme. This initiative encompassed institutions like hospitals, postal services, railways, and state electricity boards. However, practical challenges plagued its implementation, leading to the ineffectiveness of many forums.

- v) **New Scheme for Employee Participation 1983:** In December 1983, a fresh participation scheme was introduced, applicable to central public sector enterprises at the board level. Representation of worker representatives was determined through consultation with unions, maintaining parity between management and unions. This scheme extended its purview to a broader range of work-related issues, enabling discussions at the plant level encompassing personnel matters, welfare, environment, and plant operations.
- vi) **Workers' Participation in Management Bill 1990:** In 1990, the Government introduced a bill proposing a three-tier representative participation framework. Key features of this bill included defining "worker" to encompass all types of employees, establishing shop floor and establishment councils, granting representation for both "workmen" and "other workers" on the Board of Management of corporate bodies owning industrial establishments, and empowering the Central/State Government to appoint inspectors for enforcing the act, who would be regarded as public servants under the Indian Penal Code. The Workers' Participation in Management Bill of 1990 was introduced in the Rajya Sabha on May 30, 1990. Its purpose was to establish a framework for meaningful involvement of workers in management activities at different levels within industrial establishments, including shop/floor, establishment, and Board of Management levels. The Bill was later referred to the Parliamentary Standing Committee on Labour and Welfare of the Lok Sabha on July 12, 1994. This committee presented its findings on December 18, 2001. In a meeting held in April 2005, the same committee expressed the need to continue pursuing the Workers' Participation in Management Bill of 1990.²⁶

²⁶ Hogler, R.L., 1993. Employee involvement and Electromation, Inc.: An analysis and a proposal for statutory change. *Labor Law Journal*, 44(5), pp.261-274.

During this meeting, representatives from various trade unions urged the Government to promptly pass the Bill in Parliament. They argued that significant delays had already occurred and advocated for extending worker participation beyond the shop/floor level. They believed that involving workers at all levels of management would enhance productivity and output. The trade unions assured the committee that worker participation in management wouldn't be exploited for bargaining purposes. On the other hand, employer representatives stated that the relevance of the 1990 Bill had diminished due to substantial changes over the past 15 years. They viewed the Bill as a regressive step and suggested that worker participation in management should be limited to shop/floor/production levels in manufacturing industries.²⁷

The meeting, chaired by the Additional Secretary of Labour and Employment, Mr. J.P. Singh, was attended by representatives from various trade unions including AITUC, BMS, CITU, HMS, INTUC, and UTUC. On the employers' side, ASOCHAM and Laghu Udyog Bharti were present. Additionally, representatives from the State Governments of Madhya Pradesh and Andhra Pradesh and officials from Central Government Departments of Chemicals and Fertilizers, Heavy Industries, and Commerce, along with senior officials from the Labour Ministry, attended the meeting.

During the meeting, the Tripartite Committee also deliberated on amending the Industrial Disputes Act of 1947 to include sales representatives as workers. The committee discussed how Section 2 (C) of the Act had been modified in 1982 to define 'Sales Promotion' as an 'Industry'. However, due to the lack of a separate law to safeguard the interests of workers in the excluded category of institutions/industries, this change couldn't be enforced. The Ministry of Labour acknowledged that efforts had been made to address this issue but without success. The Ministry also revealed that they were examining the possibility of extending the Sales Promotion Employees (Conditions of Service) Act of 1976 to other scheduled industries and were in the process of collecting relevant information. During the

²⁷ Ghosh, P.K. and Van de Vall, M., 1978. Workers' Participation in Management: Applied to India. *Management International Review*, pp.55-68.

meeting, representatives from the Medical and Sales Representatives' Associations presented their various demands to the committee.²⁸

5. Conclusion & Suggestions

In the pursuit of industrial democracy, Workers' Participation in Management emerges as a pivotal stride. This concept entails the cognitive and emotional engagement of employees in enterprise management. The positive impact of such participation is anticipated to encompass heightened productivity, improved industrial harmony, and enriched individual development. Despite intermittent introduction of schemes like works committees, joint management councils, and shop councils in India, progress has been hindered by certain challenges and unmet prerequisites. The year 1990 witnessed the government's introduction of a bill to establish representative participation forums on three tiers. To ensure the success of workers' participation at all levels, crucial factors such as job security, workers' education, robust trade unions, effective communication, mutual trust, and top management endorsement need to be underscored. Several essential conditions underscore the effectiveness of participatory management strategies:

- i) A robust, democratic, and representative unionism serves as a foundation for successful participation.
- ii) Clearly formulated and mutually agreed-upon participation objectives are essential for its success.
- iii) Cultivating a pervasive sense of participation across all levels is critical.
- iv) Effective consultation of workers by management is vital.
- v) Both management and workers should wholeheartedly embrace the underlying philosophy of labor participation.
- vi) Until the participatory structure is widely accepted, legislative support ensures the recognition and protection of rights.
- vii) Education and training play a pivotal role in the purposeful execution of participatory management.

²⁸ Ministry of Labour and Employment, Labour Ministry Holds Consultation with Social Partners on Pursuing Participation of Workers in Management Bill 1990, Press Information Bureau (2006), <https://pib.gov.in/newsite/erelcontent.aspx?relid=15485> (last visited 2024).

- viii) Precise forums, participation domains, and well-defined implementation guidelines, coupled with prompt follow-up and feedback mechanisms, constitute the backbone of successful implementation.

To enhance worker participation, several key measures should be implemented. Firstly, it's imperative to employ proper motivation techniques to boost worker engagement. Additionally, management must actively share their perspectives and foster open communication with the workforce. Workers, in turn, need to collaborate closely with the management. Employers should adopt a forward-looking approach, recognizing the industry as a collaborative endeavor where workers have an equal stake. Workers should be well-informed about the advantages of their involvement in the management process, and both employers and workers should align on industry objectives while respecting each other's rights. Education and training programs on the principles and procedures of participative management should be made available to workers and their representatives, emphasizing the benefits of such involvement. Effective communication and consultation between workers and management in decisions affecting them are vital. Participation should be an ongoing, continuous process, with initial involvement commencing at the operational management level. The key to success lies in fostering mutual cooperation and commitment to participation from both management and labor. As the significant role of Workers' Participation in Management (WPM) in boosting organizational productivity. This approach fosters a sense of belonging, driving productivity and internal relationships in organizations. Despite government efforts, such as the Labor Code, making WPM a reality remains challenging. To increase the nation's GDP, we must enhance business output through effective WPM implementation. To achieve this, we should prioritize strategies like creating a democratic workplace, setting clear objectives, making swift decisions, and providing thorough employee training. Additionally, participative management should work alongside collective bargaining to create favorable working conditions and legal relationships. A strong trade union, a peaceful work environment without strikes or lockouts, and democratic management processes are recommended. Comprehensive training and education programs are essential, empowering workers to think, feel, and act responsibly in their roles.

EMERGING POTENTIAL OF GREEN BONDS IN INDIA

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Abstract

This paper explores the potential of green bonds in India, highlighting their role in green finance and environmental solutions. Green bonds, market-based and regulatory-driven, secure funds for environmentally friendly projects, providing static revenue to stockholders through interest. The market has seen significant growth since the first issuance in 2007, with diverse types such as usage of proceeds, project bonds, and securitized bonds.

In India, various initiatives and forums, including the Green Infrastructure Investment Coalition, reflect the growing interest in green finance. SEBI guidelines recognize industries like renewable energy, clean transportation, and sustainable waste management as suitable for green projects. However, challenges such as lack of information symmetry, market structure development, and greenwashing hinder the market growth.

The paper suggests policy measures, including incorporating green usage of funds in bond terms and providing tax incentives for green bonds, to strengthen the market. It emphasizes the importance of investor risk weighting, support from buy-side business and activist groups, and collaboration among stakeholders to propel the green bond sector forward. As climate-friendly initiatives gain momentum in India, the paper concludes by highlighting the immense opportunity for reshaping finances and accelerating sustainable growth, driven by government programs like One Sun, One World, One Grid and the International Solar Alliance.

In summary, the paper advocates for concerted efforts from issuers, buyers, insurers, supervisors, and authorities to overcome challenges and capitalize on the growing demand for green bonds in India, aligning with global sustainability goals.

1. Introduction

This paper brings together the understanding of potential of green bonds in India. It gives us an insight of how green bonds can help in green finance and provide a potential of what it actually seems. Its development is market based and regulatory driven. Green Bonds are basically secure revenue financial tools which are related to encouraging and implementation in climatic problems and environment friendly solutions. The concept is very simple exchange. The creditor of the bonds is given money to fund the green ventures and in return the stockholders get a static revenue through the method of interest. When these bonds mature within a fixed time period, the principal is repaid for his deposits. These bonds are alike to regular bonds, only exception that the funds are pre-utilized into a green deal.

“The first Green Bond was issued by European bank in 2007, promising €600 million under the label "Climate Awareness Bond," with the revenues going to renewable energy and efficiency initiatives as part of a planned framework. Gradually, the market started witnessing an exploration of over fifty percent composite yearly development ratio & it remains to grow in the main subcategory of a static earning rate.

Green financing is investment for a specific use of a green project that will help in building a sustainable environment that will improve climate change. Projects which are environmentally sustainable comprise power creation through sustainable resources for example sun, air, and biodegradable gas; fresh conveyance that scale down greenhouse gas releases; energy competent projects, for example, green structure; surplus management that comprises recycling, effectual removal, & power alteration, amongst others. Climate modification variation, renewable dump & aquatic organisation, renewable land usage, containing renewable forestry & cultivation, & life diversity protection are amongst the schemes demarcated as feasible under the “Green Debt Securities disclosure requirement” as per SEBI guidelines 2017. Recent economic instruments including “green bonds, carbon market instruments, and financial” institutions (e.g., green financial institutions & green proceeds) are being designed to report the monetary difficulties for such kinds of creativities. Collectively, they form green finance as a whole. Green finance is the current and main topic of discussions in the economic development of the nation.

2. Kinds of Green Bonds

The green bonds can be categorised into the following types-

- **Green usage of proceeds bond**

This is a typical alternative to the creditor debt security, with funds raised apprehended in a sub-document or somehow traced by the issuer, as well as an official internal mechanism related to the creditor's venture financing & savings procedures. The GBP propose that issuers communicate to investors the sorts of interim investment instruments for the stability of non-allotted funds as they await like savings.

- **Green project Bond**

Stockholder has straight connection to danger of projects which can be single or multiple in this type of bonds with or without potential alternative to the creditor.

- **Green securitised bond**

Bonds that are securitized by one or multiple detailed schemes, like shielded bonds, investment securities, and other assemblies, are examples of this sort of bond. The money flows of the properties guaranteeing the bonds are usually the initial basis of reimbursement. Asset-backed securitisations of rooftop solar PV, for example, are covered by this form of bond.⁷

3. Green Finance-Related Activities in India

The first-ever Green Infrastructure Investment Coalition: India Forum was held at London Stock Exchange, London, on 30th June 2016. ¹

- On the 3rd of June 2016, a Conference with India's Energy Efficiency Services Limited was conducted at E&Y office located in London Bridge².
- On the 28th of April 2016, the National Stock Exchange hosted a round group on “green bonds” as a budding foundation of capital.

4. POLICIES AND TRENDS

Policies and Provisions to support the growth of Green Bond Market

¹ (Aggarwal,2015)

² (Productline,2019)

Green Bonds are those bonds whose proceeds are set aside for green initiatives, according to the SEBI Circular³. The following industries are recognised by SEBI as being suitable for green projects

1. Renewable and sustainable energy (wind, solar, etc.),
2. Clean Transportation (mass transportation),
3. Sustainable water management (clean and/or drinking water, water recycling's, etc) iv. Climate change adaptations Energy Efficiency (Efficient and green Buildings)
4. Sustainable waste management (recycling, waste to energy etc.)
5. Conservation of Biodiversity

5. Challenges in Green Bond Market

• Lack of symmetrical information and high cost of borrowing

The most significant barrier faced is high cost of borrowing and the evaluation signifies that it could be related to the information that is asymmetric in nature. Hence, it is important for the data organisation system to grow and result in significant resource distribution in this system.

• Market Structure Development

With only a portion of entering of green bond in the large area of the domestic market till now, there is room for large number of opportunities to be discovered.⁴ Some of the report suggest the value of -

- Rise in management between investment and green policies
- A feasible applicable framework for the twin level that is national and state in terms of policy to be answerable to the present shareholders.

• Deficient measures to support the booming instrument

Promotion of economic development and increase work on climatic problems is the area where the green finance has huge possibility of growth. But, due to the unpopular nature in the market and less information and understanding the typical investor is investing in this suspiciously and interprets them as perilous

³(OECD, N.D.)

⁴(Missions and goals, n.d-b)

instruments. This is obviously the truth when bonds are not issued by more than one established green sector including as renewable energy. Additionally, the green projects in India are possibly not sticking to the standards that are usually accepted in regard to the return period and the type of issuer and conventionally the size of the project is also an issue in India.

- **Absence of methodologies and structure to analyse wide area of project For Indian Market**

There are few fundamental issues in the growth and development of green bond in the market, which needs to be resolved in order to promote the growth of green bond segment. Following issue have an impacting role in the market⁵-

- a) The minute size of the projects resulting in smaller size of issuance.
- b) High professed risk for new technology.
- c) Absence of policies which combine the national relation for analysing the projects Accountable investors also looking forward to move towards the economic and sustainable development targets by the way of bonds.
- d) No universal terminology of 'green' from a national context.

- **Greenwashing**

Greenwashing as a notion related to false promotion of the idea that an entity's product, goal or rules are in the favour of environment. "Green washing is rampant" was stated by the superior of International Accounting standard board as a public statement in April 2019 and this was with regard to corporate nature, which mostly contaminates green bonds. Some bonds are termed as "green" although they don't accept the standards of usage of proceeds for green bonds.

- **Issuer exhaustion and misunderstanding**

Given the plethora of criteria, the seemingly overlapping functions of certain market actors, and the spinning and ever-rising sets of regulations, disclosure reporting requirements, and criteria with which they may be required to conform, many issuers regard this basically simple product as unduly complicated.

⁵(Opportunities and Risks of Green Bond Investing, 2022).

• Assessing pricing profits of turning green

Green/sustainable investing criteria are being more widely adopted among investors. These will only become worse, particularly for investors with in EU, if buy-side-directed legislation (such as the EU Commission's intended revisions to the Independent Investment Proceed Managers Directive and the UCITS Directive) takes effect.

Conclusion

Given the pressing need to meet the Paris Agreement's global warming targets, I believe there is more that can be made to assure the continued viability of green bonds as an entity (though not negotiating their commercial and monetary feasibility). To that aim, it is recommended the following measures for strengthening the green bond market, as mentioned above:

- putting green usage of funds and/or monitoring requirements right into the pledge's terms of service,
- as a result, making them executable via an agreed-upon put event (it is acknowledgeable that a comparable event of default would be perceived as excessively severe and would encounter too much opposition) and/or
- Is a punishment for non-compliance, creating margin concessions.

Green requirements that may be enforced will be more legally burdensome for issuers, who are already tired of inconsistent and conflicting green bond guidelines and rules, as mentioned above. Nevertheless, in exchange for a promise of action, the investor industry, which is focused mainly on sustainable and green investing, should compensate issuers with improved demand and, as a result, cheaper prices for such proactive green bonds. If authorised, this green bond will not be the first time in the strategic sustainability area that green conditions were made contractually enforceable.

Green loans are more likely to incorporate binding green conditions, and a substantial majority of green loans award borrowers with higher margins if they can demonstrate that they have accomplished particular green or sustainable goals. Potential business issuers may be hesitant to be the next agents, as with any financial market origination. Public, international, & financial institutions (which are have

previously used green bond financing) would be great role models for include explicit green elements in bond prescribed language.

Professor of Queen Market University of London, Professor Rodrigo Olivares said that “Public sector entities in many cases have longer investment horizons than short-term commercial issuers, often have political or explicit mandates to do good as well as achieve commercially viable financing and benefit from connections to policy-makers”.⁶ When one or two of these trailblazing issuers have adopted such new favourite documentation practises, it is easy for others to follow suit – or to appear fewer green in contrast.

Given the evident and pressing public policy challenges at hand, officials have been discussing giving clear tax incentives for green bond issuance and/or purchaser. Too far, no major authority has implemented this, although Singapore and Malaysia have taken steps in this direction. Surprisingly, one assertion presented against these tax incentives is that green bonds lack any enforceable contract obligations assuring that the revenues would be used in the declared green manner.

Therefore, the taxpayer finishes up unintentionally a clean slate bond. This dispute can be resolved by giving tax benefits in relation to the bonds with clear objectional legal green inclined terminologies or otherwise by providing end to end tax appraisals when the bond maturity falls and its environmentally friendly nature and inclination with the transparency can be achieved.

This would have a double-effect of strengthening the market for green bonds and aiding to sustenance the public policy aims.

- Investor danger weighting

Investor outgoing adjustments in the field of bond threat assessment is proposed to benefit green bond holders. Favourable risk weighing might once again be linked to responsive green phrases. This might be accomplished in the EU by amending the Capital Adequacy Regulation.

⁶ (Public Sector Must Play Major Role in Catalyzing Private Climate Finance, 2022).

- Buyside business and activist groups

Huge market participants like financial institutions and retirement plans, and also sector organisations and investor task forces like Climate Action 100+, are in a good way that promotes expansion plans. Green bonds will be strengthened as a competitive financial markets instrument that meets actual individual and financial demands if investors recognised and rewarded strong green corporate leaders.

- Steps forward

Clock's running out. Actual worries about green bond trustworthiness threaten jeopardising the entire strategic sustainability effort, with potential catastrophic repercussions for everyone.

Lenders that enthusiastically support the Paris Agreement and also United Nations' 2030 Sustainable Development Objectives must be courageous.

The dynamics of the market is always changing. It benefits everyone to embrace brand creation and upgradation with enhanced investor rights and to encourage broader and more comprehensive brand incentivization. Issuers, buyers, insurers, supervisors, and authorities have an important role in bringing the green bond sector forward. It is very much in best interests to do so.

The durability of ESG investing throughout the COVID-19 issue, increasing preference for green bonds, and also the RBI's revived attention all point to an immense opportunity for re organizing finances as the country rises from its lockup. There is no shortage of desire to accelerate climate-friendly growth. During the emergency, India's government launched its "One Sun, One World, One Grid"⁷ effort, a new program to link solar energy supplies throughout the borders of countries in South and Southeast Asia, the Middle East, and Africa. This comes after India launched the "International Solar Alliance" and proposed a World Solar Bank.

Climate change and the want to strengthen corporate governance, according to Mr. Mukund Rajan, co-head of the innovative ESG business ECube, are both pushing change in India. "Large institutional investors across the mutual fund, insurance and pension fund industries are being tasked by their regulators to exercise more

⁷ International Solar Alliance, n.d.).

diligence on ESG matters and adopt a stewardship approach when committing capital to potential investee companies.”⁸ On the contrary, further opportunities for investors are also generated by the production of low-cost financing, notably from foreign charities, business angels, and certain fund managers wanting more impact and ready to bear a few of the cost in green building Indian market.

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⁸ (What Next for Sustainable Finance in India?, 2020

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AN ANALYSIS ON INDIA'S LABOUR LAW BEING USED TO TERMINATE EMPLOYEES DURING COVID-19

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Abstract

India is in the top fifth fastest-growing major economy in the world ranking 2023, with a workforce of 400 million. Several companies like IT and IT-enabled services, financial services, consulting, insurance and healthcare. The global view of running the business and handling employees has been altered by the Covid-19 pandemic. The imposition of a national lockdown in India has posed unusual challenges to employers, like paying reduced wages to employees, and illegal terminations. The Indian government has issued several labour law advisories and orders, primarily about the continued payment of wages and restricting termination of employees, during the pandemic.

The Indian government has taken significant steps to shield workers of low-income groups from the potential economic harm caused by Covid-19; hence, the government has issued several guidelines and also urged for forming new legislation to address this matter. Thus, there was a way to survive in that pandemic while maintaining a business and jobs that the employer and the employees agreed with reasonable conditions after considering mutual benefits instead of terminating the employee. Otherwise, the employer may also face consequential remedial actions under India Labour laws for illegal termination.

No entity will be permitted to terminate any employee of any nature unless there has been a violation of the contract under which such employment was agreed, according to the order issued by the Ministry of Home Affairs, the "MHA Notification," on March 29, 2020, under the Disaster Management Act, 2005, and in some states under the Epidemic Diseases Act,

1897 and it applies to all entities in the nation and also directed the states and Union Territories to, inter alia, take measures to ensure that, during the lockdown Employers promptly and without deductions pay employees compensation. Similar decisions have also been made in many states, including Tamil Nadu and Maharashtra. For an employee who falls under the category of a workman', their conditions of service are governed by the Industrial Dispute Act, of 1947. According to Section 2A of the Act, a worker's dismissal will be regarded as an industrial dispute.

This paper presentation will discuss the Comparative Evaluation of Labour Law for the Termination of Employees during Covid-19 in India.

Keywords: Covid-19 pandemic, Termination of Employee, Employer challenges.

1. Introduction

The Covid-19 pandemic has significantly impacted India's socioeconomic situation and adverse effects on jobs, salaries and the quality of life are evident. In addition, Covid-19 also caused an economic and mental breakdown, which left hungry and jobless people in developing nations. India imposed a 68-day, four-phased shutdown beginning on March 24 and lasting until May 31 in light of how Covid-19 has spread to other nations and the fact that social isolation is the only method that can effectively control this illness. All state and union territory governments have imposed lockdowns under the advice provided by the Indian government. The Lockdown will undoubtedly have an impact on India's economy and Indian companies are already dealing with several first-time problems, including those involving their employees.

Further, the Ministry of Home Affairs ("MHA") ordered every employer to pay its employees their full salary by March 29, 2020, and any pay reduction would be an offence under the Disaster Management Act, 2005, keeping in consideration the current situation and the welfare of the employees. The government is considering issuing a circular to encourage non-retrenchment and layoffs as well as worker and employee safety during the pandemic¹.

After that also during Covid-19 employers reduced their workforce because employees have been terminated, with the common issue being that they did not get

¹No. 40-3/2020-DM-I(A) dated 29/03/2020, <https://www.mha.gov.in>.

paid or were fired because they were the employees who would be fired first. As a result, the International Labour Organization (ILO) reported that thousands of workers have lost their jobs as a result of the pandemic².

The era in which a renowned/multinational business/company (MNC) was synonymous with job security has long since passed. Even famous businesses like Twitter, Meta, and Amazon are generating news these days for firing hundreds of thousands of workers. The voyage began during the illegal terminations of Covid-19. However, given that the virus destroyed numerous enterprises, that period was somewhat justifiable. Nobody knew how to remain still in the face of lockdown shocks. The current situation is somewhat concerning, especially for the employees whose survival depends on that one job. One thing that needs to be remembered is that employers are not deities. Before giving their employees the orders to quit their jobs, they must also abide by a set of rules. Employees won't be able to speak out when facing unlawful termination if they are unaware of what constitutes it.

The concerns that develop following the termination of employees due to Covid-19 was under Labour Law will be discussed throughout this research. We can comprehend the major problems with the Covid-19-related termination of work. We analyse the potential outcomes for this termination of employment to better comprehend the issues that employees must deal with. These are some typical Covid-19 topics that may be of use to employers in helping them tackle employee-related matters with care.

2. Research Methodologies

I used the exploratory research method in my research paper. Exploratory research is the process of examining a topic that hasn't been thoroughly or previously researched. Although exploratory research is rarely conclusive, it is usually conducted to learn more about an issue that already exists. For this research, I primarily relied on websites and research papers, reports on interviews and surveys.

²https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_740893/lang-en/index.htm#:~:text=More%20than%20four%20out%20of,ILO%20Director%2DGeneral%20Guy%20Ryder.

3. Method of Collecting Data

The method used to collect data was through research websites. I used the latest research done by scholars and professors. The websites that based on official organizations such as the ILO, the Ministry of Labour and Employment Statistics Department, the National Disaster Management Authority and so on. The reason for using these websites as these organizations are legal and the data on their websites are more than likely to be true.

Further, I reviewed statutes to find out whether any written or express provisions/rules governed the specific termination issue during the Covid-19 outbreak. To analyse the most recent data on the topic, particularly those about employment termination, I also perused newspapers and online research articles and Integrated all of the gathered data and analysed to determine whether in certain circumstances, termination of employment is lawful and which one isn't.

4. Data Analysis

Extracting information from the websites, mainly taking research data and survey statistics such as unemployment rates, termination rates, and categories of the affected individuals.

5. Complications in Methodology

In this research, when I collected data and statistics from different research analyses and papers, I observed minor discrepancies and inconsistencies. To get around this, start by gathering data from the most reliable and authentic sources, like governmental agencies and, in particular, survey findings from researchers in relevant fields. Because the data are carefully and correctly acquired, this helps to produce the most consistent and reliable findings.

6. Background of Labour Law and Wrongful Termination

6.1 Labour Law

People frequently believe that a private employer has the right to fire an employee without providing a cause, leaving the employee helpless. Employees do, however, have some fundamental rights regardless of whether they work in the public or private sector. Termination of employment in India is referred to as a "retrenchment" in The Industrial Relations Code, 2020. Under section 2(zh) of the Act, it is described

as "termination of service of a workman by an employer for any reason whatsoever, other than as a punishment inflicted by way of disciplinary action"³.

The following situations are exceptions: retirement age, voluntary retirement, contractual projects, and an employee's protracted illness. According to Indian labour law, both parties have certain obligations and rights when an employment relationship ends⁴.

6.2 Labour Laws in India

The term "labour" describes productive activity, especially manual labour done for compensation. Labour law is a collection of legislation, executive rules, and case law about the legal rights and constraints on working employees and their organizations. There are two main categories of labour law:

- First, the relationship between the employer, union, and employee is called the tripartite relationship.
- Second, rights of employees under employment contracts with employer⁵.

In India, the wide category of the "Industrial Relation Code, 2020" is most commonly used to refer to the legislation governing labour and employment. The social and economic climate that is currently in place has had a significant impact on how Indian labour laws have been shaped. These laws govern different areas of work, including the amount of hours worked, salaries, social security, and facilities offered⁶.

Labour laws have also been significantly impacted by the discussions held during the various sessions of the International Labour Conference and the Indian Labour Conference. The recommendations of numerous national committees and

³ http://labourlawdesk.com/blog/salient_features_of_the_ir_code_2020#:~:text=under%20this%20code,-Sec.,from%20the%20definition%20of%20Retrenchment.

⁴ Debjani Aich & Stephen Mathias, Employment & labour law in India, lexology, (December 12, 2018) [https://www.lexology.com/library/detail.aspx?g=fa2fb547-5828-419a-bd3b-4ef01b612643#:~:text=For%20a%20%27workman%27%20\(as,thereof%20in%20excess%20of%20six](https://www.lexology.com/library/detail.aspx?g=fa2fb547-5828-419a-bd3b-4ef01b612643#:~:text=For%20a%20%27workman%27%20(as,thereof%20in%20excess%20of%20six).

⁵ https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_756179.pdf.

⁶ Prerona Sil, Perspective: Employment Laws in India - Challenges, Changes and the Way Forward, Foxmandal, (October 20, 2022), <https://www.foxmandal.in/perspective-employment-laws-in-india-challenges-changes-and-the-way-forward/>.

commissions on Labour Laws, such as the First National Commission on Labour (1969), which was chaired by Justice Gajendragadkar; the National Commission on Rural Labour (1991); and the Second National Commission on Labour (2002), which was chaired by Shri Ravindra Varma⁷ and Judicial decision on labour law becomes precedent particularly about minimum wages, bonded labour, and other issues, have also shaped and influenced labour legislation. The concurrent list of subjects in the Indian Constitution includes labour, over which both the Central and State Governments have legislative authority. As a result, many labour laws have been passed to address various aspects of labour, including occupational health and safety, employment, training of apprentices, setting, reviewing, and revising minimum wages, how wages are paid, paying compensation to workers injured in accidents that result in death or disability, as well as bonded labour, contract labour, women's labour, child labour, and the resolution and adjudication of labour disputes.

The laws fall under the following categories:

- Labour rules are passed by the Central Government, the enforcement of which is exclusively within its purview.
- Central government-enacted labour regulations are enforced by state and central governments alike.
- Labour regulations are implemented by state governments after being passed by the central government.
- State-specific labour regulations are passed and enforced by the different State Governments.

6.3 Termination

What is Employment Termination?

An employee's employment ceased by himself or by the employer is known as Termination of Employment. An employee may resign from their position voluntarily or terminated by the employer. An employee may be terminated by their employer for several reasons, including downsizing or poor performance, Insubordination, breach of contractual conditions and layoff.

The two ways that employees can be terminated are as follows:

⁷ https://labour.gov.in/sites/default/files/39ilcagenda_1.pdf.

Termination by Contract: A specific process for terminating an employee is outlined in the employment contracts. The use of this termination strategy is more common. When an employee is recruited for a set amount of time under a fixed-term employment contract, this type of termination occurs more frequently. The employee is automatically terminated if the employer does not renew the contract, which does not constitute wrongful termination.

Termination by Law: In the absence of a method for terminating an employee, the employer is required to abide by the labour laws of the applicable state⁸.

6.4 Indian Termination Procedures

Termination for a cause: disobedience, theft, fraud, tardiness, taking a bribe, being dishonest, damaging the company's property, and carelessness in work.

Ordinary termination: is the most common process for dismissing an employee. It stipulates that the employer must provide the worker with 30 days' notice before making a change.

6.5 Wrongful Termination of Employees

Employees who are fired wrongfully are referred to as having experienced a wrongful termination.

6.5.1 Illegal termination can be classified into majorly different categories such as:

1. Discrimination.
2. Breach of Contract.
3. Illicit order of the employer.
4. Personal grudge.
5. Dispute.

There are several grounds for wrongful termination of employees, including the following:

- Discrimination based on factors such as race, religion, caste, gender, age, and many others,
- When the company's standards for terminating an employee are broken and those guidelines have been defined,

⁸ <https://eplex.ilo.org/fixed-term-contracts-ftcs>.

- Whenever a public policy is broken⁹.

6.6 Employee Rights Following A Wrongful Termination

6.6.1 Right to obtain a letter of termination of employment: A company is required to provide an employee with a notice before terminating their job after more than three months of service, or pay them instead of notice.

6.6.2 Right to File a Lawsuit Because of an Unlawful or Illegal Termination: If it is determined that there was no just cause for the termination and that it was based on illegal grounds, such as discrimination based on religion, caste, gender, age, disability, pregnancy, etc., the employee may sue the employer on the grounds of illegal or unlawful termination of employment.

6.6.3 Right to a Severance Payment: When his employment agreement with the employer is terminated, the employee is entitled to receive several payments.

The following payments are covered under this:

- When an employee who has worked for more than a year is laid off, 50% of their earnings will be paid for up to 45 days;
- A day's worth of unpaid wages;
- The cancellation of unused paid time off;
- Payment of a gratuity to an employee who has worked for more than five years by the provisions of the Gratuity Act;

6.6.4 Right to Request an Investigation for Wrongful Termination: An employee has the right to request an investigation into a questionable or unfair termination. It is necessary to carefully review and properly evaluate the facts and circumstances to decide whether or not the employee has to be held accountable¹⁰.

7. Laws to Protect the Employees from Wrongful Termination Employees

7.1 Code on Industrial Relations, 2020: This labour code combines three previous laws and broadens the definition of a worker to encompass anyone who is employed in manual, technical, operational, or clerical jobs, whether they are skilled or

⁹ https://www.legalserviceindia.com/legal/article-3958-illegal-termination-of-an-employee-during-covid-19.html#google_vignette.

¹⁰ <https://www.legalserviceindia.com/legal/article-11742-illegal-termination-of-employees-by-multi-national-companies-mncs-legal-remedies.html>.

unskilled. Additionally, the criteria now take into account people in supervisory roles who earn less than Rs. 18,000 per month.

The code adds a new clause for fixed-term employment that allows employers the freedom to hire someone based on a signed contract. Employees on a fixed-term contract will receive the same perks as permanent workers. The threshold for a business to have standing orders has been increased to 300 employees. The government claims that the higher barrier will increase employment since it will make hiring and firing employees easier and more flexible.

By enabling businesses with up to 300 employees to proceed with layoffs, retrenchments, and closures without seeking approval from the government, the new industrial relations legislation would also increase the convenience of doing business. The new Code also suggests creating a fund for retraining laid-off employees, with an employer contribution equal to the worker's most recent 15 days of pay. A Compulsory Facility for the Helpline for the Redressal of Problems of Migrant Workers is one of the Government's efforts to swiftly address worker complaints. I am creating a database of migrant workers at the national level. When working for 180 days as opposed to 240 days, there is a provision for the accumulation of one day of leave for every 20 days worked¹¹.

Equal opportunity for women in all spheres: Women must be allowed to work at night in any industry. In addition to the employee's compensation, this sum would be paid. Universal Social Security coverage will be aided by the establishment of a "Social Security Fund" for the 40 million unorganized workers, as well as GIG and platform workers.

8. Employment-At-Will Doctrine

Employment at-will agreements are those in which an employer can dismiss a worker for any reason at any time or for no reason at all except those that are against the law of the land. In the same manner, quitting a job by an employee for any reason at any time or for no reason at all carries no legal consequences.

¹¹ <https://economictimes.indiatimes.com/news/how-to/what-to-do-in-case-of-wrongful-termination-of-employment/articleshow/86983537.cms?from=mdr>.

Additionally, "employment-at-will" means that an employer is free to change the terms and conditions of the job at any time, without any reason or consequence. For example, an employer may reduce paid time off, cease offering perks, or alter wages.

The Employee was hired "at-will" by the Employer, which means that any party (the Employer or the Employee) may cancel this Agreement at any time. Neither Party will continue to be subject to the obligations or duties outlined in this Agreement after it has ended.

8.1 Employee's Termination: The Employee shall have the right but not the obligation to terminate this Agreement by giving at least 90 days' notice. The Employee shall be entitled to severance pay equal to their pay at the moment of termination, up until the end of the notice period, if the Employee terminates this Agreement.

8.2 Employer's Termination: The Employer shall have the right to terminate this Agreement with at least 90 days' prior written notice. The Employee will be entitled to severance pay equivalent to their pay at the moment of termination up until the end of the notice period if the Employer terminates this Agreement¹².

9. Judiciary View on Termination of Employee

The principles of natural justice are still applicable to an employee *Delhi Transport Corpn. V DTC Mazdoor Sabha*, which will enable him to be heard during the termination procedure and receive appropriate representation. Even so, the majority of businesses forbid attorneys from attending internal termination proceedings. Employees who have been fired are also allowed to make an absolute claim if they have not had adequate notice or time to provide a defence and explanation for the alleged wrongdoing¹³.

In the case of *Shri Satya Narayan Garg v DCM Ltd*, employees cannot claim compensation for an indefinite period after their termination. In cases where compensation for wrongful termination is claimed, the expectation is that an employee will seek out alternative employment in the interim, it was held based on mitigation of damages and the way the Supreme Court interpreted the case. This case

¹² <https://www.bls.gov/opub/mlr/2001/01/art1full.pdf>.

¹³ *Delhi Transport Corpn. V DTC Mazdoor Sabha*, 1991 AIE 101.

serves as a model for determining how much a servant should receive after his employment ends. The court decided that the compensation should only cover the brief period during which the employee was impacted by the wrongful termination¹⁴.

The court held in the case of *GE Transportation v. Shri Tarun Bhargava*, that the agreed-upon period of one month's notice shall validly terminate the employment and that there shall be no compensation for the time that the petitioner was unable to perform his or her duties because the employee was not covered by the Industrial Dispute Act and the Specific Relief Act didn't provide for specific performance of a determinable contract¹⁵.

Further, in the consideration of grounds for termination, reference is made to *Air India Corporation v. VA Rebellow*, where it was decided that a lack of faith in an employee is sufficient cause to terminate an employment contract. In this particular case, the business claimed that since the petitioners' duties involved dealing with air hostesses and acting in confidence, management must have faith in their hiring decision. Despite being arbitrary, this termination shall stand¹⁶.

10. Various Issues and Circulations on Labour Law During Covid-19

The Government of India issued an order on 29 March 2020 directing all employers to pay full salary to employees and workers (both permanent and contract) and prohibiting terminate on for the duration of the pandemicdriven national lockdown. Noncompliance potentially carries legal action under the Disaster Management Act, 2005

In *Ficus Pax Private Limited v. Union of India*, the Supreme Court of India ruled that no coercive action may be taken against businesses for not paying all employees during a lockdown. Several private enterprises filed several petitions, in this case, challenging the Ministry of Home Affairs' ruling mandating that employees get their full salary for the 54 days of lockdown since they were unable to pay their employees in full.¹⁷

¹⁴ Shri Satya Narayan Garg v DCM Ltd, 2012 127 DRJ 216.

¹⁵ GE Transportation v. Shri Tarun Bhargava, 2012 190 DLT 195.

¹⁶ Air India Corporation v. VA Rebellow, 1972 AIR 1343.

¹⁷ Ficus Pax Private Limited v. Union of India, DN 10983, 2020 SC.

The court observed that there should be some negotiations between the employers and employees to determine what needs to be done for the payment of these 54 days' wages. The Micro, Medium, and Tiny Enterprises (MSMEs) claimed that the MHA order, dated March 29, did not take into consideration the needs of these tiny firms, which had been negatively impacted by the pandemic.

Further court held that the settlement process between the employer and the employee is required to be carried out to protect the interests of both parties. If an agreement cannot be reached between the parties, the establishments may resort to the labour authorities for assistance.

Later, the Ministry of Home Affairs withdrew the directive that indicated businesses could continue to pay their workers' full salaries during the period of the country's lockdown as it entered the next phase. Many businesses and industries that were unable to pay their workers their full salary during the lockdown would be greatly relieved by the government's action. In a directive for this phase, Union Home Secretary Ajay Bhalla stated: "Whereas, save as otherwise provided in the guidelines annexed to this order, all orders issued by National Executive Committee (NEC) under Section 10(2)(1) of the Disaster Management Act, 2005, shall cease to have effect from 18.05.2020".¹⁸

SURVEYS AND STATISTICS

A study was conducted on three States - Maharashtra, Tamil Nadu, and Uttar Pradesh for the impact on employers and workers due to Covid-19 related market disruptions and the data was collected from October 2020 to January 2021. The study findings show that 31% of all respondents reported harassment in continuing their jobs even after the lockdown was lifted in June 2020. 32 per cent of those who faced harassment mentioned longer working hours, 28 per cent were terminated without intimation, and 27 per cent received wages after a delay. A higher proportion in Uttar Pradesh reported longer hours of work compared to the other two states. Termination without notice was an issue for 32 per cent in Tamil Nadu, whereas for 36 per cent in Maharashtra.¹⁹

¹⁸ <https://www.hindustantimes.com/india-news/lockdown-wages-can-be-negotiated-sc/story-giEkQiO1aSmleNLUJFmSSJ.html>.

¹⁹ https://www.ilo.org/newdelhi/whatwedo/publications/WCMS_798079/lang--en/index.htm.

A survey was conducted in Karnataka state by the Azim Premji University in collaboration with ten civil society organizations. It's shown that 72% of workers in Karnataka lost their employment during the Covid-19 pandemic. The survey findings stated that 76% of urban workers and 66% of rural workers lost their employment amid the nationwide lockdown. The findings also revealed that more than four in ten salaried workers 44% saw either a reduction in their salary or received no salary during the lockdown.²⁰

There have been several reports published both at international and national forum reveals that an average period of 15 years to get the dispute resolved through Indian judicial system.²¹ According to the National Judicial Data Grid about 45 million cases are pending in various courts in India.

11. Conclusion

Labour, one of the most significant parts of our nation, has a significant impact on the economy. This research paper regarding the termination of employees during this Covid-19 period has determined the statics showing that several workmen had been terminated or deducted from their pay. The government has issued an order dated 29th March 2020 to protect the workman from illegal termination and provide full wages. But the apex court also considered the employer side that they were also facing financial difficulties during Covid- 19 pandemic and suggested for settlement. Later the government withdrew their direction for continued payment of full wages during the period of the country's lockdown by the employers.

From this research, we get to understand that both parties play their roles to ensure that every decision made in the businesses must be discussed and approved by both parties so none of them will be unfairly treated as Covid-19 virus not only affected the employers to sustain their businesses but also employees that need to survive during this pandemic. Any situation resulting Illegal termination of the employees should resort to the legal remedies provided by the government. Furthermore, those

²⁰ https://www.legalserviceindia.com/legal/article-3958-illegal-termination-of-an-employee-during-covid-19.html#google_vignette.

²¹ Vandana Ajay Kumar (2012), Judicial Delays in India: Causes & Remedies: Journal of Law, Policy and Globalization www.iiste.org ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol 4, 2012 16.

were lost their jobs or were illegally terminated during Covid-19 had to take legal remedies but that is a lengthy procedure.

Labour laws can be complicated but play a vital role in protecting the rights of employees. The present administration has adopted four new labour law codes that attempt to balance the power between employers and employees while simplifying and containing all prior legislation. However certain labour organizations and trade unions are claiming that they favour the employers or the employees over them. To prevent them from being used as a tool for exploitation and harassment, the country's labour laws must be modified regularly following the needs of the moment.

ARABI KALYANAM AND ITS CONNECTION WITH THE TRAFFICKING OF WOMEN

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Abstract

Arabi Kalyanam, an integral facet of Kerala's Muslim community, remains deeply entrenched in the social fabric despite being officially outlawed in India and facing growing disapproval within Muslim societies. This study explores the persistent phenomenon of Arabi Kalyanam in the secluded regions of the Malabar district in Kerala, shedding light on its prevalence in contemporary times. Employing a lens akin to that used in examining human trafficking, the research scrutinizes the coercive nature of Arabi Kalyanam, where women are forced into marriages against their volition, only to be abandoned by their husbands once their immediate needs are satisfied, often within a remarkably short span. The ramifications of this practice raise serious concerns about the well-being and agency of the women ensnared in its grip.

A thorough analysis of diverse contributing factors to this unconventional form of matrimony is presented, emphasizing the adverse implications associated with Arabi Kalyanam. This study seeks to draw attention to the distressing dimensions of this marital practice, advocating for a deeper comprehension and suggesting potential interventions to address the pressing issue. In advocating for a holistic approach, the research urges stakeholders to recognize the urgent need for preventative measures and intervention strategies. By shedding light on the intricacies of Arabi Kalyanam, the study seeks to empower policymakers, activists, and communities to collectively address the underlying issues, fostering a supportive environment for women who find themselves entangled in this alarming marital practice.

Keywords: Arabi Kalyanam, Arabs, Muslim, Women, Malabar, Kerala

1. Introduction

Arabi Kalyanam is an old traditional practice which is the Muslim women from Kerala's liaison with Arab men. For hundreds of years, the Arabs have conducted trade with Kerala. During their stay in the country, they started taking women native to India as temporary wives or concubines to meet their desires and needs. However, these Arabian traders had to leave eventually, and they left behind their wives and any children that had been born during this encounter. The children were forced to grow up in poverty due to the absence of a father figure. This inhumane system has been practiced mainly because the Arabian traders offered the poor Muslim family significant amounts of money to marry their daughters. The purpose of the present study is to understand the different aspects of Arabi Kalyanam and find the connections that it has to human trafficking.

2. Methodology

Arabi Kalyanam is a highly significant social issue, and because of that, the data has carefully been collected from authentic secondary sources. Due to a lack of information in scholarly articles on this topic, different creditable news sources have been cited throughout the work. Top newspaper outlets such as First Post, Business Standard, The New Indian Express and India Today have been utilized, and the data is relatively new as all the information in this section has been collected from newspaper articles published in the last ten years. Collecting information from the different secondary sources has allowed to maintain the authenticity of the study and dwell in factually correct information; the widescale availability of secondary data has further allowed the research to be carried out in a smoother manner. The newspaper sources have helped throw the spotlight on the Arabi Kalyanam that has been carried out in secrecy in parts of the country for decades without notice.

3. Findings

The significance of Arabi Kalyanam in the Muslim communities of Kerala has already been highlighted within the study; through these marriages, the Muslim families were able to build strong alliances with the Gulf countries and establish themselves in the Arab world. The cases of Arabi Kalyanam, however, have declined over the years due to wide-scale protests and the vulnerable women of the communities being used for pleasure by Arabian men.

Despite the sharp decline in cases, a report of a UAE national forcibly marrying a 17-year-old orphan Keralite girl in 2013 raised awareness about the practices of Arabi

Kalyanam that continue to this day (First Post, 2013). The issue was primarily brought to light as the child approached Child Welfare Services, stating that the orphanage where the girl was staying forced her to enter this matrimonial alliance with Jasim Mohammed Abdul Kareem, a resident of Ras al-Khaimah. The girl has stated that after forcibly marrying her on 13 June 2013, they have travelled together to many different places in Kerala, where Jasim sexually abused her before returning to his country on 1 July 2013

Following the incident, Jasim, his mother and the orphanage where the girl was previously staying has been booked by the police for violating several Indian laws and regulations, such as the *Prohibition of Child Marriage Act-2006*, the *Juvenile Justice Act and Protection of Children from Sexual Offences Act* (First Post, 2013).

The case of the 17-year-old girl stands as an archetypal example of human trafficking and how women continue to suffer in parts of Kerala even today. The complaint was further transferred to the Chemmangad police in Kozhikode district, where the incident initially took place. Business Standard (2013) further questions the reliability of this kind of orphanage, where the organization forces young girls to marry against their wishes. After the marriage, the girl was allegedly forced to go on a honeymoon with the groom for 17 days. The mother of the child was contacted by the authorities, who opened about how extreme poverty has forced her to leave her child with the orphanage, where she has been caused by the orphanage authorities to marry the UAE based individual.

In another newspaper article Koshy (2013), has elaborated on how this kind of case often occurs in certain parts of Kerala; particularly this case involving the 17-year-old girl has only gained traction because she has successfully reported the case to the State authorities. Jasim is a result of an Arabi Kalyanam. Even though these marriages are not legal, they used to be expected in parts of the state. The traditional practice of Arabi Kalyanam has essentially been a method through which Arab men fed on the vulnerability of the poor Muslim communities of Kerala and used them to meet their sexual purposes. The practices diminished after the Renaissance movement of the Muslims, which took place in Kerala and contributed to revolutionizing the laws and regulations of the state. Right before the incident, the girl had graduated from her Class XII examinations (The Pioneer, 2013). She had hopes of pursuing a suitable carrier, but the orphanage where she had lived since her childhood intervened and initiated the marriage. In the marriage certificate,

Jasim's address was falsified further to deceive the girl and her family of his identity; the girl was notified via a phone call about her divorce.

Following this incident in June 2013, another occurrence of Arabi Kalyanam was reported to the authorities on August 23rd, involving a Saudi Arabia national who allegedly disappeared within four days of marrying a girl from the Malappuram district of Kerala. These repeated incidents have raised concerns among the people; the public has protested the heinous practice and has stated that, unlike in prior times, the Muslim community are not as poor and therefore has no reason to indulge in this kind of practice. Following the incident, the Government has also faced extreme amounts of criticism for not cancelling the license of the orphanage and allowing it to continue its traditions (*Radhakrishnan, 2013*). Despite all the precautions that have been taken, research findings have shown that there still exist many women aged between 20 to 80 who are a victim of Arabi Kalyanam.

Education has been widely available to all parts of India, and the literacy rate among the younger generations has increased.

Still, as can be seen with this case, the underprivileged women of Kerala continue to be taken advantage of, as they become victims of situations which are not under their control by any means. Awareness about the harmful effects of this kind of marriage has been raised through campaigns, not only for the Muslim communities but also the tribal communities of the area that are married off to foreigners.

The authorities thought that these ancient practices had wholly been eradicated due to the NGO led intervention programs, however, the case of the 17-year-old girl has put the matter into perspective. VP Zuhara, a leading, women's rights activist in Kerala, has elaborated on how lack of education and poverty and the prevalence of dowry within the communities forces the parents to fall for this kind of trap and sacrifice their daughters unknowingly (*The Times of India, 2013*). The incident of the marriage has been reported as a social hazard. Fear of shame and public opinion are factors for which women do not usually report their misfortune.

Gender activists consider the term Arabi Kalyanam to be glorified as the alliance is merely a flesh trade. Reports have shown that the rate of this kind of marriage has dwindled over the years but is still in practice in places such as Kozhikode. New findings have resurfaced, which further show that Jasim was provided with options

for women to marry, like how slaves were traded, or products were bought from stores. Many agents performed secretly to ensure the marriage went smoothly. Many girls from the orphanage were paraded before Jasim, and he was allowed to pick the one he wished to marry. (*The Pioneer*, 2013). Many Muslim scholars have tried to defend the case and justify the act by suggesting by Islamic laws; the girl is of the age of consent despite being under 18 in Kerala.

The Kerala Nadvathul Mujahideen (established in 1950), or the headquarters of marriage certificates, has been responsible for legalizing this marriage. The fact that the groom had an Arabian heritage was skillfully omitted from the marriage certificate. His address was set to that of his mother, who originally hails from Kerala. Critics have suggested that this would have been an example of a perfect Arabi Kalyanam, however, they did not expect the girl to ring the authorities and claim justice. The family had tried to shut down the case with a monetary settlement but was rejected by the girl who sought justice (*The Pioneer*, 2013). Rough estimates suggest that they are at least 10,000 girls in the rural areas of the Nilambur area of Malappuram district who are a victim of this kind of marriage.

Lack of support from the family and society after their divorce has led these women to choose the path of prostitution. These women, due to lack of opportunities, reside in the outer parts of the city in slums.

The issue has brought into light another form of Marriage known as the Mysore Kalyanam. Mysore Kalyanam has been described as a byproduct of the Muslims of the region gaining immense wealth due to all the trade and commerce and becoming affluent, allowing them to marry poor, vulnerable women and then leaving them due to the loopholes in marriages that exist.

The sudden emergence of Arabi Kalyanam has been compared to human trafficking by many scholars because these women were essentially married by the Arabs to satisfy their sexual needs. After the end of their honeymoon, the men left for their homes with promises of coming back for the bride, but that never happened. This form of human trafficking was endorsed by the Muslim heads of the region, increasing the level of problems that these women had to face. Pro-women activists and several political leaders and NGOs of Kerala have pleaded with the government to chalk up new regulations that can completely stop Arabi Kalyanam. The Muslim girls were forced to marry these Arabian men against their wishes, and after they

were left behind, they did not have any social security and had to live the rest of their lives in poverty (The New Indian Express, 2014). The sudden rise of such incidences after almost 20 years has completely shocked the people. Bindu Krishna, the All-India Vice-president of Mahila Congress, has described this case as a brutal rape and has suggested the need to make society more alert of these social evils to avoid women from falling prey.

Cross-border marriages are not essentially a new concept as this kind of trend can also be found in other parts of India such as Rajasthan, Uttar Pradesh, Madhya Pradesh, Gujrat, and Kerala. Mysore Kalyanam, Mali Kalyanam, and Arabi Kalyanam are examples of all the different cross-border marriages that are constantly taking place. (*INFLIBNET Center, 2016*).

Human trafficking is known to be one of the worst forms of human rights violations that strips a person from their liberty and dignity and makes them face torture and cruelty. (*UNODC, 2020*). Trafficking is illegal in all parts of India, but women continue to be trafficked from parts of India almost daily. Researchers believe that the caste system still prevalent in India continues to women still being trafficked. Women that belong to these lower classes often do not have the resources to defend themselves; society makes them feel inferior, leading to them being trafficked for both sex and labour.

The activities of human trafficking in the modern era have shifted from urban locations to rural suburbs, making it hard to track.

In the local Keralite culture, if a groom hails from the Maldives, they are known as Maali Kalyanam; if they are from Mysore, they are referred to as Mysore Kalyanam, and in this case, if the groom is of Arabian origin, they are known as Arabi Kalyanam. The Arabs, through the ages, have been held in high regard by the Indian Muslims due to their wealth and fortune. In certain scenarios, women from districts of Kannur have been reported to have been trafficked to Qatar and Dubai with the allusion of marrying a Sheikh.

(*Ministry of Women & Child Development, 2022*).

All these falsified marriages have a middleman who orchestrates these marriages, and the groom bears all the expenses of the wedding. The agent is usually from

Kerala and is paid by the groom to deceive these people and forcefully enter the matrimonial alliance.

The women who are married to the Arabs are often deserted after a few weeks or months, and the child born out of their intimate relationship is then forced to grow up in poverty because the father is unwilling to take any responsibility for the marriage. As for the girls, their role is simple of a concubine to meet the demands of their husband. In order to better understand the perspective of the thousands of women who fall victim to the idea of Arabi Kalyanam, The Hindu (2021) has asked questions about Nafeesa, a woman who was married to an Iranian named Hassan Mohammad. The woman says that even though she has not heard from her husband in over a decade, she still loves him and often thinks back to the happy times she experienced with her husband while he was still in India. “*Mehar*” has been described to be one of the primary attractions which lured these women and their families to marriage. The 2013 incident of Arabi Kalyanam changed people’s perspectives and reminded them of the horrific social evils that continue today. However, the study has pointed out that the incident has raised awareness in Kerala, and the activist movements run by NGO groups have further helped in getting rid of this horrible social practice.

4. Discussion

The findings of the present study are highly informational as it has highlighted the horrific conditions in which Muslim women in Kerala have to live and the constant fear of human trafficking that they might have to experience for belonging to a weaker section of society. The 17-year-old girl from the study was pressured by her orphanage to marry.

Despite the orphanage trying to deviate from the search attempts and suggesting that the girl and her mother were consulted before the marriage, public opinion continued to bash the orphanage (*Zee News, 2013*).

The public outcry observed after the news made headlines led to the groom’s mother and cousin being arrested. (*The Indian Express, 2013*). Documentation was collected of the girl from her residence to prove her age and punish the groom’s family for victimizing a minor. The grim reality of women suffering and child trafficking that continues in the modern era has been fleshed out in the present research through the example of the young girl who was forcefully married to an

Arab. Following the incident, another incidence of child trafficking in Kerala was reported in which 455 children were smuggled from the State. Authorities determined that the children were being trafficked, and all the adults that were involved in the process were arrested. (Sabith, 2014). Women that fall victim to Arabi Kalyanam and other forms of trafficking often belong to weaker sections of society; the economic disparities in the household lead to them falling into traps which ultimately cause mental and physical harm. Another example of female trafficking was observed in 2022 when a mother of two fell for a babysitter job description in a Gulf country (Hindustan Times, 2022). The woman with her husband mortgaged all the gold jewelry of the family to raise money of 1.20 lakhs for her flight tickets. After reaching, she realized she was in a sex trade.

Cases like this can be found in many different districts of Kerala as well as other parts of the country. The New Indian Express (2013) has stated the evil practice of Arabi Kalyanam has raised wide-scale debates across Kerala. The incident has served as a wake-up call to make people aware of these problems taking place within the country. The people belonging to these Muslim communities have been victimized and suffered in these marriages, which were primarily done for sexual pleasure. The parents, in most of these cases, often did not have the necessary resources to give the usual dowry expected by the groom's family. They, therefore, fell to these lucrative marriage offerings, which ultimately ruined the lives of the daughter. There have not been any reported cases since the incident suggesting that the local efforts to curb these marriages have been successful.

5. Conclusion

As concluding remarks for the present study, the problems related to Arabi Kalyanam have been brought to light. In the year 2013, two different occurrences of this kind of marriage were reported in the state of Kerala; the marriages have helped in bringing to light the horrible social practices that continue in the modern age.

The present study is highly informational as it has elaborately stated the case, the public opinion, and the current market scenario regarding this form of marriage. A detailed account from different Government websites and newspaper articles have been collected to highlight how this form of marriage can be harmful to women who are married in these circumstances.

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CONCEALED DARKNESS WITHIN US- A NEED FOR MENTAL WELL-BEING LAWS IN INDIA

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Abstract

The thoughts that originate within our minds are the building blocks of life in the same manner as the cells in our bodies. The state of our mind affects our bodies in the same way as any disease or disability would. Then, why is it that physical well-being is prioritized more than mental well-being? Why there is no such law in India, that mandates staff of trained counsellors and psychologists in schools and offices? Thousands of teens and employers commit suicide due to a lack of support and guidance. Pressure and expectations of society, family, and parents have burdened people beyond their potential, but they are still crawling to reach a goal that may be well beyond their capacity. Because the more you walk, the further expectations grow and the distant finish lines become. Teens and working people are between the most affected ages. Where in the competition to be better, teens are either pressurized and over-stressed or in some cases completely ignored emotionally and for the working class, reaching the most successful position or goal in the hierarchy sometimes becomes the reason for the degradation of their success, efficiency and most significantly, life. One of the main reasons for high suicide rates and the emergence of crime is poor mental health. Every person is holding that darkness in them that causes hindrance in living a quality life. The main objective of every country is to ensure their citizen's quality of life, rise from the state of "log kya change" help them to get rid of the demons inside their heads, the government should step up and make laws to prioritize mental well-being equally.

KEYWORDS:- *Mental State of teens and people at the workplace, poor mental health, loss of lives, increase in the rate of crime, stigmas associated, and legislative steps.*

1. WHAT IS MENTAL HEALTH?

Mental health is the well-being of a person in the various aspects such as social, emotional and psychological that influence cognition, perception and behaviour. Keyes¹ identifies three main components of mental health: emotional well-being, social well-being and psychological well-being. Emotional well-being includes being happy, satisfied with life and interested in life. Psychological well-being in life refers to liking all parts of one's personality, fulfilling one's responsibilities diligently, being satisfied with life, and feeling that one is at one's best potential and interest. Finally, social well-being includes having a healthy relationship with your family, relatives and friends, positive communication, feeling connected to people, feeling loved and important, and being assured that you matter. Mental health directly or indirectly affects our daily decisions and opinions, and our behaviour towards other people. According to WHO, "Mental health is more than the absence of mental disorders and disabilities. Mental health also means caring for one's happiness and well-being. It is an individual's ability to cope with the daily stresses of life, to fulfil their potential, to work effectively and to give their best to themselves and to the community. A person's mental well-being is important at all stages of life. A child, a teenager, a middle-aged person or an elderly person needs to have a mental state that enables them to cope with the problems and situations that arise at that stage. It is often observed that various factors and reasons that an individual faces can affect him and can certainly unbalance his mental state. When it comes to the importance of mental health, the answer would undoubtedly be yes. It is as important as the well-being of our bodies. It is the mind that commands an individual to speak, eat, sleep, show emotion, be compassionate and make decisions. In this case, if the mind is not well and at its best, the person will automatically lack efficiency and drown in a sea of self-doubt, lack of self-worth and other negative emotions. However, the meaning of mental health is quite subjective and can be different in different cultures and communities. One thing might be considered deviant in a stable mental state, and in some other areas, it might not be the normal behaviour of a mentally stable and healthy being. Nevertheless, food is different in different cultures, but is ultimately important for survival. In the same way, the meaning of mental health might be different in different cultures, but the conclusion at the end remains that "mental health is important" and this is universally accepted.

¹ Bauer, G.F. and Hämmig, O. (no date) *Bridging occupational, organizational and public health*, SpringerLink. Available at: <https://link.springer.com/book/10.1007/978-94-007-5640-3> (Accessed: 22 July 2023).

2. EPIDEMIOLOGY

Mental illness is now more common than diseases such as cancer, diabetes or heart disease. It is estimated that more than 450 million people suffer from some form of mental illness. It is predicted that by 2029 mental illness will be the leading cause of disease worldwide. Even today, major depression ranks fourth in the world's top ten diseases.

Due to poor mental well-being, one student commits suicide every hour in India, according to 2015 data from the National Crime Records Bureau². The percentage distribution of suicide rate includes students - 6.7%, housewives - 16.7% and the highest percentage of daily wage earners - 17.8%. This data indicates that most of the people who committed suicide were mainly teenagers, housewives, self-employed or daily wage earners, who face the most stress and expectations and when they are finally unable to cope with it all, they end up taking their own lives. NCRB also reveals in its report that when it comes to suicide rates among children below 18 years, the only reasons are failure in examination and family problems. The case of housewives or women aged between 18-45 years has high suicide rates with the main reason being infertility, impotence, dowry-related problems and family problems. Other reasons include extramarital affairs and divorce.

3. CONDITION OF MENTAL HEALTH AT DIFFERENT STAGES OF LIFE

3.1 TEENS AND CHILDREN(BELOW 18 YEARS OF AGE)

According to the sources, one in six people is between the ages of 10 and 19. These adolescent years are some of the most confusing and challenging years of a person's life. It is at this age that an individual strives to know themselves and develop their personality and character. During this process of self-realisation, a teenager goes through various stages of self-doubt, self-denial, and lack of self-esteem and self-worth. With the constant emotional, physical and social changes, including susceptibility to violence, peer pressure, parental and family expectations and the need to fit in, an individual is highly susceptible to poor mental health and coping strategies. The causes of poor mental health in children can be divided into two main factors:-

3.1.1. BIOLOGICAL FACTORS- These are the factors that deal with any physical or biological problem that adversely affects the mental health of the individual. It is not

² *National Crime Records Bureau*. Available at: <https://ncrb.gov.in/en> (Accessed: 22 July 2023).

concerned with the society or the people but rather the physical concerns. It may include:-

- a. Genetic factors:- Any mental disorder that an individual has inherited and developed through genes. The main examples of genetic factors are Schizophrenia³, and Alzheimer's disease. In some cases, disorders such as PTSD and depression can also be genetic, but this only develops when the circumstances that trigger these disorders are present.
- b. Substance abuse:- Prolonged and abusive use of substances like alcohol, amphetamines or other drugs tends to deteriorate the mental health of an individual, this is quite common among teenagers. Studies show a link between alcohol abuse and depression. They also show a link between prolonged use of amphetamines and anxiety disorders. Teenagers are strongly influenced by substance abuse. Most of them use it to escape from certain social or personal problems, not knowing the deadly consequences of the same.

3.1.2 ENVIRONMENTAL FACTORS:- These factors are psychologically based and are more common in nature. An individual has to deal with this kind of stress on a daily basis which ultimately becomes the reason for stress. These factors could be:-

- a. Trauma - any unexpected and unwanted event that has happened can constitute a trauma, it may be because of emotional abuse, sexual abuse or physical abuse. Trauma experienced by a child during his growing years has a great impact on his character development. We have often come across such people who are afraid of water or enclosed spaces, it could be because of some traumatic event that happened associated with that particular thing.
- b. Bullying - In today's world, bullying has become one of the major concerns. The main reason for low self-confidence, low self-esteem and many personality questions that one asks oneself. The only reason mass shootings and juvenile crimes are somehow related to bullying, is that an individual vents his bottled emotions of humiliation in a violent manner.

³ Schizophrenia National Institute of Mental Health. Available at: <https://www.nimh.nih.gov/health/statistics/schizophrenia> (Accessed: 22 July 2023).

- c. Demands at school - In a world where every individual is exceptionally good and intellectual. There is a great competition for greater success. In this race to get into the best colleges and the best jobs, children are pressured with piles of work and immense participation in all sorts of activities and courses. The child is likely to be overburdened and the inability to complete this work on time leads to disappointment and fear of failure. Thus, it hinders healthy mental well-being.
- d. Unstable home environment:- With the development, the family size has decreased and the home environment has changed drastically. In some cases, the parents provide all the material things but are emotionally unavailable. In other cases, where one of the parents has died, this can also be a traumatic event and lead to stress. Domestic violence is quite common in today's household and when a child grows up witnessing such circumstances, his or her character is developed in such a way.
- e. Cultural or Social Expectations:- Society has deliberately invented such standards for people to meet in order to fit in. Cultures, where thinness, fairness and perfect bodies are assumed to be the standard, put immense pressure on an individual. While trying to meet these expectations, people often ignore their mental health and eventually develop disorders such as anorexia nervosa, bulimia or other eating disorders. It should be recognised that size, colour or certain features don't describe a person's worth and standards.
- f. Feelings of inadequacy:- This feeling of low self-esteem, anger, anxiety, and loneliness is a common problem. An individual, even when sitting in a group, may feel lonely and emotionally disconnected. They may feel that they are worthless and even if they were to disappear, no one would care.

3.2 MIDDLE- AGED (19-45YEARS OF AGE)

Middle- age is the age between young adults and old age. As most of the physical, social emotional changes occur in this stage of life, the middle-aged population is more prone to developing mental health disorders. This could be because of infertility which affects women's self-concept and self-esteem. In this phase of a woman's life, she undergoes various changes in her appearance and weight, deals with financial problems, retirement, increased family responsibilities, matrimonial

problems like domestic violence, demand for dowry, expectations from spouse, etc. Middle-aged people and the causes for poor, mental health can be classified into two:- causes of poor mental health at work and causes of poor mental health in society.

3.2.1 Causes of poor mental health at work: A decent workplace is not only a fundamental right but it also helps in minimizing tensions and conflicts at work leading to better coordination and efficiency. Therefore, it is very important to maintain a healthy work environment. Some of the risks that can be a cause of poor mental health can be:-

- (a) long, unsocial or inflexible hours, discrimination and exclusion,
- (b) lack of control over workload,
- (c) understaffing,
- (d) unsafe or poor physical working conditions,
- (e) an organizational culture that creates a negative atmosphere,
- (f) limited support from colleagues and authoritarian supervision,
- (g) acts of violence, harassment and bullying,
- (h) unclear job-role,
- (i) Under or over-promotion
- (j) Inadequate income or poor investment in career development
- (k) Job insecurity and conflicting home/work demands

3.2.2 Causes of poor mental health in society:- when an individual reaches this stage, he has to handle more responsibilities and has to perform more duties for his family and children. Some of the factors that risk mental health in middle age are:-

- a. Preoccupation with Past and Future:- At this age, when an individual has already lived half of his life, the memories of the past and the mistakes of the past always keep an individual's mind occupied and under pressure. On the other hand, the person is also concerned about the future of their children and events. This pressure and overthinking situation often leads to deteriorating mental well-being.
- b. Preoccupation with Family problems and health:- Due to various changes in different aspects of a person's life, many family problems arise like, conflicts between husband and wife, concerns about children, expectations of family, etc. At this stage, health also becomes a concerning issue because if the body

is not in the right state, one is not able to perform efficiently and make decisions correctly.

- c. **Preoccupation with financial problems:-** As an individual reaches this stage, he starts worrying about finances to support his family and provide a good quality of life. If any individual is not able to achieve the expected financial status, one starts questioning his self-worth, and self-esteem. Even on not meeting the expectations laid down by his/her spouse, the condition of relationships also starts declining.

Hence, the above-given reasons are the main risk factors responsible for poor mental health in Middle-aged people.

3.3 OLDER ADULTS

At different Phases of life, an individual has to deal with different kinds of problems. Over 20% of older adults suffer from mental and neurological disorders. Older adults who are usually aged 60 years and above, make a lot of contributions to society by volunteering and supporting family members. However, they are also prone to several health and emotional problems at the same time.

Although mental stressors are quite subjective in nature, there are some life stressors which are common to all older people like chronic pains and reduced mobility. Some of the main risk factors for the mental health of older adults are listed below:-

1. **Physical health-** People who have been very active all their lives, find this phase very frustrating and stressful where their bodies don't support them to work.
2. **Bereavement:-** Losing your family and friends can be a painful situation. At this age, they often have to cope with the loss of their spouse and siblings. This also can be a major life stressor for them.
3. **Dependency and lower income levels:-** After retirement, the income of older people generally falls, which leads to dependency on the other family members. In this age, it is quite difficult to perform even daily activities like dressing up and using washrooms, for food and other necessities. This condition at one point in time can be very sad, annoying and a trigger for low self-esteem.
4. **Declining memory and Insomnia:-** Losing memory can be very frightening. It is very difficult when an individual starts forgetting medicines and, eventually your

relatives. When a person reaches this age where his physical activity reduces leading to insomnia. When a person is unable to sleep well, he starts overthinking ultimately stressing and deteriorating mental health.

4. THE OUTCOMES ASSOCIATED WITH POOR MENTAL HEALTH

Poor mental health can be the root cause of many social, physical and economic problems. The root cause of every problem, offence, crime, and disorder starts with a negative thought. It takes a single thought that creates a chain of similar thoughts favouring the same. There are many instances in society that show the visual representation of this. There is a very famous perception and side of the argument that Every Villain has its own story. This applies to real life as well, all individuals are born with innocence and kind hearts. But it's the world and the environment that fosters and shapes in this way. Like the commonly used phrase in India "Doctor ka beta, Doctor hi Banega", then how can we comprise the mental health and environment of a child who is growing up in an atmosphere of violence and fierceness? Therefore, mental health has a lot of impact on not just the individual but also on his parents, the society where he lives, his peers and the community as a whole.

5. EFFECT OF POOR MENTAL HEALTH ON INDIVIDUAL

When it comes to Poor mental health, it sees no age, no gender and no circumstances. There are occurrences of such acts, where a child of 5 years is depressed due to some traumatic incident or where a 68-year-old adult suffers from the same condition may be from some other cause. This perception of "Bache hai, the kis cheez ki tension" is so overrated that the state of teens and children remains unrecognized and untreated. An unhealthy state of mind not only affects the quality of life, it also impacts education, and level of productivity and makes people more vulnerable to indulging in social offences like abuse, theft and violence. This state also restricts an individual from excelling in educational courses and pursuing certain professions or careers. According to *Kessler*, individuals with a psychological disorder are less likely to complete high school, get into a desired college, and receive a degree as compared to their peers with good mental health⁴. It has been observed that the crime rate in places like Delhi, Bombay, U.P, etc, the crime rates are comparatively higher. The reason is that the resources are very limited and

⁴ Kessler, R.C., Foster, C.L., Saunders, W.B., Stang, P.E. (1995). Social consequences of psychiatric disorders, I: Educational attainment. *American Journal of Psychiatry*, 152(7): 1026-1032.

people with low income are unable to access them. This creates an environment where the stress is released in the form of violence, influencing society and children. Eventually, with the pressures and expectations from family to have luxury, one is susceptible to crime and suicide in the end.

6. EFFECTS OF POOR MENTAL HEALTH ON FAMILIES / CAREGIVERS

The burden of for caring and handling an individual who is not at best with his mental health is ultimately on the family members and caregivers. One who is suffering is not alone in this journey. The individual who eventually starts cutting off from the family and stops getting involved with the family is really stressful and hurtful to watch. Looking after a family member who is mentally not in the right position is extremely nerve-racking, and it can sometimes cause problems like headaches and migraines, fatigue, loss of appetite, insomnia, guilt, fear, and confusion. They are often filled with confusion and guilt and are unable to make a decision about what to do. In this process, in many cases family member has to give up his job or any other occasion. The social lives of the family also deteriorate, as they are afraid to open up about the situation and end up bottling their emotions inside. In *Freud's early Psychoanalytic theory*⁵, he states that most of the problems in adulthood are because of early childhood experiences. Even other psychological theories show that family plays a huge role in the recovery of the relative.

Even in the economic aspects, the mental health of the individual highly impacts his family. The cost of therapies and treatment of poor health is quite high and the family bears its expenses. Hence, in this case of poor mental health, parents get under the pressure of readjusting their parental methods and expectations while the partners must exude a reasonable amount of empathy and patience to give the appropriate amount of care and affection.

7. EFFECT OF POOR MENTAL HEALTH ON SOCIETY AND COMMUNITY

Mental illness is a global problem. further than 300 million people, 4.4 of the world's population, suffer from depression. These intimidating numbers reflect the wider frequencies of mental ill-health more generally. It's estimated that mental health conditions will be affected. an astonishing one in four people at some time in their lives.

⁵ Sigmund Freud (no date) *Sigmund Freud* | Institute of Psychoanalysis. Available at: <https://psychoanalysis.org.uk/our-authors-and-theorists/sigmund-freud> (Accessed: 03 August 2023).

The same disparity is seen in situations of civil society mobilization (a vital element in any effective response). Organizations representing people with mental health problems and psycho-social disabilities are present in only 49 low-income countries, compared with 83 in high-income countries.

Civil society organisations can also do further to develop and implement acceptable responses to the global challenges of mental health. One illustration from Health Poverty Action's own experience was working with indigenous Mam communities in Guatemala to address violence against women. Working with local community leaders to address the lack of emotional psychoanalytical support survivalists developed a course for local women leaders, traditional birth attendants and religious leaders.

It tutored them to recognize depression and anxiety, and relate them to local cultural illnesses similar to "soul loss". It also tutored introductory listening ways, and the use of locally available medicinal plants to help with relaxation and stress relief. As a result, women who suffer violent abuse are suitable to pierce a trained community counsellor to whom they can talk in their own indigenous language, and find support to begin to rebuild their lives. Mental health services must be incorporated as a core element of health systems and must be clear in calls for comprehensive primary health care.

8. CONCEPT OF "LOG KYA SOCHENGE"

India has a long history of stigmatising, trivialising, disregarding, and looking down on mental diseases. Religious rites, denial, slurs, and victim-blaming are frequently used in place of acceptance. People with mental illnesses frequently hear comments like, "If only he/she would just go out more," "If only he/she would just go out less," "If only they would pray," "If only they would just make more of an effort in relationships," or "try harder to be happy."

The biological basis of all types of mood and psychotic disorders is still far from being understood and accepted by the general public. It is still not widely recognised that mental health issues require the same attention and care as physical illnesses.

Stigma is frequently linked to problems that the majority of society cannot understand. People need to be informed on the fundamentals of mental health in order to end this stigma. In India, the phrase "out of sight, out of mind" is a nice way to sum up how people feel about mental disorders. Mental illnesses may not be visible, like a rash, cut, fever, or runny nose, but that doesn't imply they don't exist. As a result, people with mental illnesses are frequently institutionalised, misunderstood, and blamed, which keeps them caught in a loop of their sickness. There are two types of stigma: societal and personal. Stigma is the mark of shame connected to all things psychological.

As the term implies, societal stigma is one that is visible in society at large when individuals refuse to recognise the patient's sickness and go so far as to joke about it or minimise it. On the other hand, self-stigma comes from within and is related to the challenges that the person has.

Because of many preconceived notions about mental health issues that have been ingrained in their thoughts, a sizable portion of our society is scared to seek help for themselves. People must pause and consider their options before embracing their disease out of fear of what "others will think of them. Parents may very well be aware that their child is not functioning well mentally but they choose to wait until the very last minute because they cannot stand the blaming and derision that would come with the sickness. It might surprise you to learn that a large number of people in our nation still carry this stigma. They could come from large cities or the most remote villages, have no formal education, or perhaps have a close relative or friend who is mentally ill. For the patient, their doctors and therapists, as well as their relatives and loved ones, the labels that go along with a diagnosis are cruel, demeaning, and useless.

People in India who suffer from serious mental problems frequently go to temples and shrines rather than doctors. The lack of understanding and sensitivity regarding the issue is the main factor contributing to India's decline in mental health. People who experience any form of mental health disorder are heavily stigmatised. They are frequently labelled by society as "lunatics," "mad," "possessed," and many other terms. As a result, the sufferers experience a vicious cycle of isolation, agony, and shame.

Because of the limited resources, people prioritise physical difficulties over mental ones because the latter's effects are less obvious. Education and understanding about mental health are lacking. People strive to conceal their mental health difficulties because they view them as taboo. They feel depressed and guilty for having a mental disease, and they avoid discussing it with others. Governments, non-governmental organisations, and other social institutions must begin educating the public about mental health concerns and dispelling the myths surrounding them. They've been successful in doing this with conditions like polio, leprosy, HIV, typhoid, etc.

9. How does policy about mental health affect

Healthcare professionals have several possibilities to influence policy and to participate in continuous discussions about how society might deal with mental health disorders. Take a look at some of the following fundamental tactics.

9.1 Increased Awareness

Concerns about mental health continue to be shrouded in secrecy, misunderstanding, and shame. Information about the nature of mental health issues and the accessibility of care is frequently lacking in the general public. Raising awareness in a stigma-free manner, including through traditional media, blogs, social media, and other online and offline platforms, is one of the most important responsibilities that mental health practitioners can play.

9.2 Creating referendum text

The creation of a municipal legislation or ordinance and its presentation to the populace for approval through a referendum provides another avenue for potential impact. It's crucial to review local regulations because specific procedures can differ depending on the municipality. Generally speaking, citizens can propose issues for voters or their local government to examine by creating some basic policy wording and gathering sufficient petitions. This could be a potent strategy to get local authorities to offer their opinions on mental health legislation.

9.3 Influencers in lobbying

At the federal, state, and municipal levels, mental health experts can also influence lawmakers and government organisations. Joining forces with an existing advocacy group is one of the most successful methods to accomplish this.

9.4 Event Management

Professionals in the field of mental health can also promote awareness by planning regional activities. These could consist of instructional seminars or fundraising events. Classes designed for parents, caregivers, or other family members of people with mental illnesses can be extremely beneficial.

9.5 Promoting Change

Starting within your own organisation is frequently the greatest approach to bringing about change. Encourage your coworkers, family, churchgoers, or acquaintances to adopt new policies or cultural changes. Encourage them to engage more in conversations about mental health policies or to speak about mental illness in a non-stigmatizing manner.

10. REQUIREMENT OF MENTAL WELL-BEING LAWS IN SCHOOLS

Every country desires that their children and young people be able to learn about health and well-being to ensure they acquire skills to live healthy, happy lives. Instead of being a single subject or class, health and wellness is divided into various categories: preparing for choices and changes for physical, mental, emotional, and social well-being physical education, sport, food, health, substance abuse, relationships, and sexual health are all related to physical exercise and parenting.

The promotion of school attendance and ensuring that students may make use of their educational possibilities regardless of their background or financial situation are other aspects of health and well-being.

To ensure that kids feel content, protected, included, and valued in their learning environment, there should be a variety of materials available. Bullying, attendance, and school exclusions should all be addressed in the resources provided.

There should be groups and associations that pan out policies, and other actions that are needed to be taken to improve ethos and culture in schools.

11. SCHOOL ATTENDANCE AND REDUCTION OF ABSENCE AND EXCLUSION

The record should be maintained to analyse the attendance of the students individually. If the individual is found to be absent for more than the normal number of days, the matter should be looked upon to find the root cause of that

particular action. Students should also be motivated to attend school and make them realize that missing school should be the last resort and option to follow.

11.1 ANTI-BULLYING

There should be guidance provided to the children and students to have a holistic approach to anti-bullying. To monitor this approach a government-initiated association should be formed to create a uniform and consistent approach to handling bullying as well as high-quality indicators to gauge the approach's effectiveness.

“Respect for all”, should be the main motto of the community. The information and guidance should be to school staff on addressing homophobic, bi-phobic and transphobic bullying. Instead of respecting all communities and people.

11.2 MENTAL HEALTH IN SCHOOLS

There should be certain policies and strategies that need to be formed with a vision to improve mental health in India. The objective that every child and young person should have appropriate access to emotional and mental health support in school should be outlined in the Strategy's section on prevention and early intervention. A specific action to assess the implementation of personal and social education, including the function of pastoral direction in local authority schools and services for counselling for children and young people, should also be included in the strategy.

11.3 ACCESS TO COUNSELLORS IN SCHOOLS

Government programmes should be introduced that include a promise to make investments in school counselling programmes for all levels of education. The commitment should guarantee that counselling services are available in every secondary school while also making it easier for nearby primary and special schools to get access to counselling. Access to counsellors in secondary school programmes should be designed and developed with the help of guidance from local authorities.

11.4 MENTAL-HEALTH EDUCATION

The work presently being done by schools to help kids and teenagers understand mental health as part of health and wellness in Curriculum for Excellence will be improved by school counselling. Mental health education must be delivered through personal and social education classes.

Children and young people should be made aware of the value of mental wellness and how it can be promoted and reinforced through individual coping mechanisms and supportive connections, according to the Health and Wellbeing Experiences and Outcomes. Children and teenagers will understand that having good mental health is not always attainable and that there is support available if this happens.

11.5 MENTAL HEALTH TRAINING FOR SCHOOL STAFF

School staff should be trained through various materials provided related to mental health. Participants will learn about mental health concerns and the stigmas associated with them, as well as about equal rights, listening techniques, the effects of alcohol and drugs on mental health, and suicide intervention.

11.6 GENDER-BASED VIOLENCE

A Gender-based violence working group should be established aimed at fostering interpersonal interactions among children and young people that are respectful, accountable, and confident. This should also establish and develop a national framework to prevent and respond to harmful behaviour towards a particular gender.

12. INDIA'S CURRENT MENTAL HEALTH LEGISLATIONS AND POLICIES

The right to health has been incorporated into the right to life beginning with Article 21 of the Indian Constitution. It is crucial that people with mental illnesses obtain high-quality mental healthcare and have comfortable living arrangements in both their homes and society.

The Indian government introduced the National Mental Health Programme in 1982. (NMHP). It has remained written down for 38 years. The National Mental Health Program (NMHP) was established in light of the enormous burden that mental illness places on society and the woefully inadequate infrastructure for mental health care in the nation.

Since its inception, the Mental Health Act passed in 1987, has drawn criticism. Mental health is covered under the National Health Policy of 2002. However, there isn't a specific mental health policy. The District Mental Health Program (DMHP)⁶

⁶ *National Mental Health Programme (NMHP) - Ministry of Health and Family...* Available at: <https://main.mohfw.gov.in/sites/default/files/9903463892NMHP%20detail.pdf> (Accessed: 22 July 2023).

was expanded in 1996, and in 2003 it underwent a strategic review that included the inclusion of two significant projects: modernising state mental hospitals and upgrading psychiatric wings at medical schools and general hospitals. The Convention on the Rights of Persons with Disabilities and its Optional Protocol were signed and ratified by India in 2007. The Program included the Manpower Development Scheme (Scheme-A & B) in 2009).

The DMHP has the following goals and envisions the delivery of fundamental mental health services at the community level, which is vital to note:

- a. To integrate these services with other health care and to offer the community dependable basic mental health treatments;
- b. Early patient identification and care within the local community;
- c. Increasing public awareness to lessen the stigma associated with mental illness; and
- d. To care for and rehabilitate mentally ill people living in the neighbourhood.

The Ministry of Health and Family Welfare (MoHFW) appointed a Mental Health Policy Group (MHPG) in 2012 to design a DMHP for the Twelfth Five Year Plan (2012–2017). The main goal was to make mental health care available and accessible to everyone during the plan period, especially the most vulnerable and underprivileged segments of the population, in order to reduce distress, disability, and premature mortality associated with mental illness and to improve recovery from mental illness. Other goals included reducing stigma, encouraging community involvement, improving at-risk populations' access to preventive services, ensuring rights, integrating mental health into other programmes like those for rural and child health, motivating and empowering employees at work, enhancing the infrastructure for the delivery of mental health services, generating knowledge and evidence for those services, and establishing governance, administrative, and accountability mechanisms.

Additionally, a central mental health team has been established to oversee and carry out the programme. A system for tracking mental health (MHIS) is being created. With the aid of a training manual, standardised training was suggested.

The Government of India began improving mental health care after the National Mental Health Survey from 2014 to 2016 by developing policies like the National Mental Health Policy (NMHP), 2014. The Mental Health Act of 1987, which had

many beneficial aspects, has drawn criticism ever since it was passed and was not successfully put into practice because of a lack of funding.

Unfortunately, the problems of the Mental Health Act of 1987 have not been addressed by the current Act. The new Act disregards the fact that the nation has a mental health programme. All states should have been required by the Act to implement NMHP, and the state mental authority should be held accountable for doing so. By allowing the adoption of NMHP in all states, the Act can only properly implement the right to mental health treatment.

13. ISSUES TO BE ADDRESSED

In the entire world, India has the highest rate of suicides. There is a clear connection between mental health and India's high crime and drug addiction rates. The epidemic has introduced previously unknown mental health problems, exposing shortcomings in the current legal and regulatory framework for mental health. This pandemic has served as a wake-up call to highlight the necessity for the Central or State governments to strengthen and increase support for India's mental healthcare system. The DMHP has not been successfully implemented throughout India, and there is a complete dearth of integrated mental healthcare.

People's mental health is already suffering from the COVID-19 pandemic's effects, and this is just the beginning. The psychological, social, and economic repercussions will be extensive if we don't make firm promises to increase investment in mental health right away.

Each year, sadness and anxiety, two of the most prevalent mental diseases, harm the world economy due to missed productivity. More than 75% of people with mental problems in low- and middle-income nations do not receive any therapy at all. Due to a lack of funding and resources, mental health in India is suffering. It is time to give mental health the attention it deserves by investing in and integrating it into both the public and private sectors of healthcare.

14. MEASURES NECESSARY

According to experts, the DMHP must be implemented effectively in order to address a number of pressing problems with India's delivery of mental healthcare.

The new Act mandates that for people who no longer need treatment in restrictive mental health facilities, the government must create "least restrictive community-based establishments, such half-way houses, group homes, and the like." However, in actuality, India's system of mental healthcare services lacks or is insufficiently equipped with such rehabilitative facilities. The 2017 Supreme Court order directing the establishment or expansion of such halfway houses has not yet been complied with by the Central and State governments. The states have only offered a road map for implementation as of 2020. There is "no health without mental health," hence treating mental health illnesses must be addressed seriously and given equal, if not greater, priority than even physical health. The primary healthcare system needs to support mental health and simple access to affordable treatment for common mental diseases.

The government must allocate dynamic policies and resources in light of the current state of mental health in India. By adopting national initiatives, there is an urgent need to leverage the media, social media, and other community services to raise awareness and remove the stigma around mental health disorders. Global reports indicate that the pandemic has also had major psychological repercussions, including worry, stress, despair, terror, and insomnia. A 20% spike in mental health problems was recently reported in India Today following the introduction of the lockdown in March 2020.

As was mentioned earlier, the NMHP has offered some initial improvements to the mental healthcare system. The best method to make things better is with appropriate intervention, awareness of the problem, and easy access to professionals. To control the crisis, social, public, and private cooperation is needed. To lessen discomfort and guarantee that individuals have easy access to mental health facilities, there is an urgent need to provide psychological assistance with skilled mental health specialists as first aid. According to a petition before the Supreme Court, mental illnesses must also be covered by insurance.

15. CONCLUSION

Tapestry of India's story is woven with living threads of resilience, innovation and cultural richness. But beneath this colourful surface lies a hidden, often torn and neglected thread - the thread of spiritual well-being. For too long, the mental health of millions has remained a silent shadow, its impact underestimated and its needs ignored. However, the time for silence is over. The consequences of a growing

national crisis require a decisive response and a legal framework that prioritizes mental health and empowers citizens to thrive. This paper was a stark reminder of the urgency of this need. We have delved into the depths of the labyrinth of mental health, exploring its complex manifestations and the profound impact it has on individuals, families and society as a whole. We have seen the devastating consequences of neglect, from a decline in individual well-being to a crippling burden on economic and social structures. The data speaks volumes and paints a picture of a nation battling a silent epidemic that demands immediate attention. An American case study, a landmark in mental health promotion, demonstrates the transformative potential of a strong legal framework. Looking at the Mental Health Equity and Addictions Act (MHPAEA) and the Americans with Disabilities Act (ADA), we witness how legislation can remove barriers to treatment, empower individuals and promote a culture of inclusion. This success story is not an anomaly; Countries such as Sweden, Scotland and Norway are witnessing the power of prioritizing mental health to contribute to individual well-being, economic productivity and social cohesion. However, the journey to a spiritually healthy India cannot be a mere copy-paste exercise. India's tapestry of needs is unique, intertwined with cultural nuances, socio-economic disparities and a complex health landscape. Therefore, it is necessary to respond to customized clothing that is adapted to meet the specific needs of citizens. This requires a multifaceted approach, a symphony of legislative action, infrastructure development and social change. The first note of this symphony is the urgent need for a 'law of total mental well-being'. These laws must not be mere ink on paper, but living documents that turn into concrete actions. They must ensure equal access to quality mental health care for all, regardless of socioeconomic background or geographic location. This includes requiring mental health insurance, building a strong network of mental health facilities, and ensuring the availability of trained professionals throughout the country. The second note in this symphony is to 'strengthen the mental health infrastructure'. This requires not only building brick-and-mortar facilities but also creating supportive environments that promote healing and wellness. Schools, workplaces and communities must become centres of mental health awareness and support, equipped to recognize and address early warning signs. This requires training non-mental health professionals to recognize and respond to mental health problems. This creates a support network that extends far beyond the walls of the clinics. The third note is to 'destroy stigma and discrimination'. The insidious reach of mental health stigma has long hindered access to treatment and recovery. Public awareness campaigns, targeted education programs and legislative initiatives to

combat discrimination based on mental health are critical to breaking this harmful barrier. We need to create a society where seeking help for mental health is not seen as a sign of weakness, but a sign of strength and resilience. Finally, the symphony of spiritual well-being must be led by a 'committed government'. Decision-makers have a responsibility to prioritize mental health in resource allocation, policy development and program implementation. This requires a change in mentality, recognizing that mental health is not a luxury, but a basic right that is essential for the well-being of the individual and society. The journey to a spiritually healthy India will not be easy. It requires constant effort, unwavering commitment and a collective will to break free from the shackles of carelessness. But the rewards are immeasurable - a nation where individuals can thrive, families can thrive, and society can reach its full potential. The time for silence is over. Let the symphony of mental well-being begin, its notes resonating across the country, forming a new chapter in the story of India, where mental health is not a neglected thread, but a vibrant tapestry of hope and healing.

COMPARATIVE ANALYSIS OF OCCUPATIONAL SAFETY AND HEALTH STANDARDS IN SOUTH ASIA

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Abstract

Occupational health encompasses not only the absence of ailments or diseases but also the physical and psychological aspects of health that are strongly associated with safety and cleanliness at work. Occupational safety and health initiatives addresses on fostering a secure and healthy work environment. Occupational safety and health circumstances are poverty stricken in South Asia in contrast to the global specifications causing a larger proportion of dangers as a consequence. Due to ongoing social, political, technological, and economic change, the scope of occupational safety and health has gradually expanded. The governments of developing economies are concentrating on strengthening regulations. However, there is a deficiency in boosting the execution of those laws, resulting in why worker health and safety at the workplace continues to decline. This paper intends to determine how to improve working conditions for workers' depreciating health. The authors also present the position of workers in the emerging economies of South Asia. The descriptive research approach is followed throughout the study to address the challenges experienced by workers and support those challenges with pertinent data. Workers confront a variety of difficulties at work, including accidents and injuries that leave them permanently disabled. Authorities and workers are both gravely concerned about the risks to workers' health and

safety in this extremely hazardous atmosphere. According to the International Labour Organisation, about 2.3 million men and women die across the globe from occupational injuries or illnesses each year, this indicates that more than 6000 people die every day. Data and case studies relating to the terrible workplace conditions in South Asia are discussed. The paper is concluded by suggesting a safety and health management system that is based on British standards. This study makes two contributions. It first conveys an impression of the unfortunate state of the workers, followed by a suggestion for a solution, "ACT," which is urgently required. Moreover, the study examines the impact of COVID-19 on migrant and informal workers. The findings underline the need for enhanced enforcement of current rules and regulations as well as the creation of new legislation for informal workers. Occupational safety and health injuries are a serious problem that needs to be addressed because workplace accidents are also lowering nations' production. Therefore, Workplace safety and health issues must be resolved through worldwide cooperation

1. Introduction

As defined by the World Health Organization (WHO) "occupational health deals with all aspects of health and safety in the workplace and has a strong focus on primary prevention of hazards." Health has been defined as "a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity."¹ Some of the risks associated with the work environment in south Asia are physical hazards which are created because of chemicals and machinery, biological troubles caused by exposure to viruses, and psychosocial problems caused due to stress and workplace violence. Occupational safety is a crucial component of employment because it not only safeguards employees but also improves morale, productivity, and legal compliance with occupational health and safety laws.

2. Significance:

The study promotes worker's occupational health and safety by prioritising their well-being. Moreover, adoption of OSH measures has been encouraged to reduce the financial costs incurred due to injuries at work. Adoption of OSH laws is necessary to safeguard the worker from accidents at work and also to ensure that employers uphold their duty to maintain a safe and healthy workplace.

¹ WEB ARCHIVE

<https://web.archive.org/web/20160707120526/http://www.who.int/about/definition/en/print.html> (last visited on 03/7/2023).

3. Scope and methodology

The study attempts to provide a general overview of occupational safety and health rules and the difficulties in their application. This study sought to investigate the occupational safety and health of laborers, migrant workers, and undocumented employees in South Asia. The major goal of this study is to determine the current state of OSH in countries around South Asia, particularly in India, Pakistan, Nepal, Bhutan, Bangladesh, Maldives, and Sri Lanka.

An empirical and comparative research methodology was used in the study. Primary data was gathered and examined from reports, policy documents, legal documents, published papers, web articles, and other sources. Primary data used in this article is information provided by nations in online reports. The information was gathered from a number of legitimately acknowledged sources. Data were gathered using databases like Google Scholar, Research Gate, Pub Med, and Academia.

Examined secondary data sources included survey information from the World health organization and international labour organization. A variety of legal systems are critically evaluated to see how legal issues relating to OSH are handled. The main axis of the study was the comparison of OSH legal systems in South Asian countries. We were able to locate content that was particular to South Asia by using the legal systems and cultural standing of each nation. For the purpose of gathering the essential information and providing sufficient support for the current paper, the reports of various governmental agencies and NGOs were also consulted.

4. Statement of Problems

An exploratory study of South Asian nations: - India, Sri Lanka, Bangladesh, Maldives, Bhutan, Pakistan, Nepal, and Iran; Concerning workplace safety and health is mentioned. The study identifies lack of awareness and inadequate infrastructure as a key factor contributing to occupational health and safety issues in South Asia. These nations struggle with a number of issues: poor infrastructure, a lack of worker training, a weak regulatory framework, limited access to healthcare, a rise in the informal economy, a lack of occupational safety and health institutions, gender disparities, and the vulnerability of female workers, expansion of labour migration.

A) Key Challenges encountered by South Asian workers.

1. Hazardous Working Conditions: Many hazardous industries, such as construction sites, feature heavy machinery, which results in accidents and injuries.
2. Minimal training and knowledge: Workers are unable to recognise and prevent mishaps that endanger their lives due to a lack of awareness about safety standards and risks.
3. Insufficient safety precautions: Essential safety equipment such as helmets, goggles, or breathing masks, are not supplied in many organisations.
4. Vulnerable worker groups: Certain groups of workers, such as migrant workers, women, and child labourers, face vulnerabilities such as exploitation and discrimination, extended working.
5. Inadequate laws and their enforcement: South Asian nations' existing OSH legislations are out of date and out of pace with worldwide norms, and their implementation is hampered by corruption, poor monitoring, and a lack of human and financial resources. Workers employed in informal sectors frequently do not receive proper safety precautions since there are no formal employment contracts.

Consequently, employers cannot be penalised for noncompliance with OSH laws.

B) Major Risks associated with industrial work.

1. Slips, trips, and falls: These mishaps might be caused by slippery or uneven surfaces, poor lighting, incorrect use of ladders or scaffolding, or obstructions in pathways.²
2. Electric shocks: People who come into contact with any "live" wires, whether directly or indirectly through a conducting substance or object, risk injury and shocks.
3. Respiratory Issues: Exposure to hazardous substances like dust, or chemicals can cause respiratory conditions such as asthma.
4. Hearing Impairment or Loss: Long-term exposure to loud noises without proper hearing protection can cause permanent hearing loss or damage.³

² *The Top 10 Workplace Hazards and How to Prevent Them*, Workingperson.me, available at <https://workingperson.me/the-top-10-workplace-hazards-and-how-to-prevent-them/>, last seen on 07/07/2023. ³ *Supra*.

For instance: Workers in Bangladesh’s prawn processing sector face risk like working in extreme cold, slippery floor, lifting heavy objects, standing long hours. The table shown below indicates the risks faced by prawn processing workers.³

Response types (%)	Work in extreme cold		Work in slippery floor		Lift heavy object		Work in heavy noise		Work in vibration		Work standing long hour		Inhale NH ₃ gas	
	F	M	F	M	F	M	F	M	F	M	F	M	F	M
Never	44.6	47.7	69.6	72.3	79.3	62.6	65.5	61.9	84.3	82.6	13.9	26.5	67.8	74.2
Always	27.6	25.8	3.9	5.2	5.2	14.2	13.1	16.1	2.8	5.2	72.2	47.7	0.5	0.6
Frequently	4.6	4.5	0.5	0.6	2.1	1.9	3.1	3.9	1.0	0.6	3.4	5.8	1.6	0.6
Sometimes	17.3	14.2	17.5	11.6	8.3	15.5	9.5	9.0	2.8	3.9	10.3	18.1	2.6	2.6
Rarely	5.9	7.7	8.5	10.3	5.2	5.8	8.8	9.0	9.0	7.7	0.3	1.9	27.5	21.9

Note: F – Female, M – Male

Table: Occupational Safety and Health risks indicated by the shrimp processing workers in their workplaces, 2015⁴

C) Case Studies describing Worker's problems and difficulties

1). Bangladesh

In November 2012, a fire at a Bangladeshi clothing factory claimed the lives of 112. Due to the factory's usage of volatile materials, investigators surmised that an electrical short circuit started the fire, which spread rapidly. During the incident, the fire alarm activated as it should have, but the managers insisted that the workers return to their workspaces and even blocked an escape entrance. Later, fire inspectors discovered that the factory's fire extinguishers were inoperative and had only been exhibited to deceive them. ⁵

2) India: The Bhopal Gas Tragedy, 1984

Chemical leak in the year 1984 that caused the Bhopal disaster in the Indian state of Madhya Pradesh. About 45 tonnes of the hazardous gas methyl isocyanate escaped from an insecticide plant controlled by the Indian division of the American company

³ Mohammad Nuruzzaman and Mohammed Helal Uddin, *OSH Risks for the Female Workers Engaged in the Shrimp Processing Industry in Bangladesh*, 30 S, The Journal of The Asian Fisheries Society 181,187(2017), available at <https://doi.org/10.33997/j.afs.2017.30.S1.009> , last seen on 07/07/2023.

⁴ Supra.

⁵ Herbert Post, *5 Events that Changed Workplace Health and Safety Movement*, Tradesafe Blog, available at <https://trdsf.com/blogs/news/5-events-that-changed-workplace-health-and-safetymovement#:~:text=The%201911%20Triangle%20Shirtwaist%20Factory,collapsed%20during%20the%20rescue%20effort> , last seen on 08/07/2023.

Union Carbide Corporation on December 3, 1984. Gas floated over the heavily populated suburbs, and it was predicted that between 15,000 and 20,000 people died in all. MIC was kept in three tanks, and tank E610 was where the leak happened. In contravention of safety rules, this tank had 42 tonnes of MIC when it was only supposed to hold 30. Water is thought to have entered the tank through a side pipe during the late hours of that tragic night while workmen attempted to clear it. The tank experienced an exothermic reaction as a result, which steadily increased tank pressure and allowed the gas to be vented at atmospheric pressure. If the safety mechanisms had been operating properly, may have prevented the catastrophe. The gas scrubber, which had been switched off at the time, was too tiny to handle a catastrophe of this magnitude.⁶

3) Maldives

According to reports, migrant workers and sanitation employees are dealing with serious OSH difficulties.

- A situation involving migrant labourers is discussed in a human rights watch report from 2020, which details the plight of 200 migrant workers on Bodufinolhu Island. Workers on this island have not been paid since December 2019 and work in long shifts without a break. According to the worldwide organisation for migrants, work-related accidents are the country's top killer of immigrants. A Bangladeshi construction worker was killed on 22 July after falling from the 14th storey of a building site in Hulhumale. Many employees are unaware of health insurance given by Maldivian law. In the Maldives, this issue of exploitative employment is very serious and calls for stringent legislation.⁷
- Due to poor sanitation in Maldives, workers are more susceptible to infections and health-related issues. The data regarding sanitary services provided to the population in the Maldives (2015)⁸ is displayed in the chart below.

⁶ *Bhopal Disaster*, Britannica, available at <https://www.britannica.com/event/Bhopal-disaster> , last seen on 08/07/2023.

⁷ *Maldives: Covid-19 Exposes Abuse of Migrants*, Human Right Watch (25-08-2020), available at <https://www.hrw.org/news/2020/08/25/maldives-covid-19-exposes-abuse-migrants> , last seen on 08/07/2023.

⁸ *Maldives MV: People Using At Least Basic Sanitation Services: % of Population*, CIEC data, available at <https://www.ceicdata.com/en/maldives/health-statistics/mv-people-using-at-least-basic-sanitation-services--ofpopulation> , last seen on 08/07/2023.

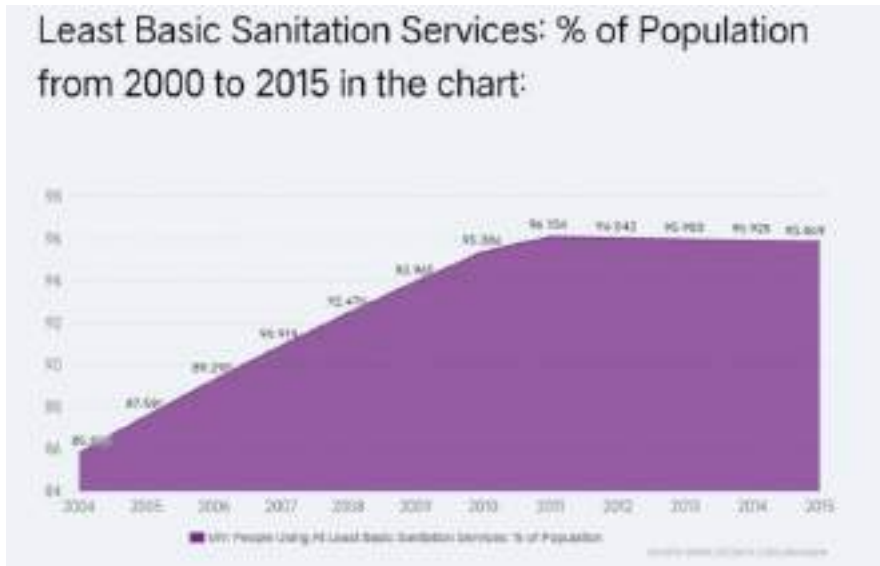


Table: showing percentage of basic sanitation services of population.

4) Bhutan

Occupational health risks in Bhutan's artisanal metalworking workplaces. Lead and mercury are both widely used in metal casting which directly and indirectly exposed workers or families to danger. WHO recruited 177 individuals for a cross-sectional observational study (109 craftsmen, 25 non-artisans, and 43 members of high-risk households). Blood samples were taken in addition to the occupational health examinations, and lead and mercury levels were checked. Of the 177 participants, 38% had elevated blood lead levels (defined as levels over 5 micrograms per decilitre, which are considered to be abnormal), and 52% had elevated blood mercury levels.⁹ For the safety and health of workers, the government needs to make positive changes and assist the business in abandoning the use of amalgamation techniques.

5. Analysis of the application of OSH laws in South Asia

A) COMPARISON OF LAWS

1. India:

In the past, India had a number of laws that addressed workers' health and safety at work, but recently all of those laws were combined to create a new code.

⁹ Case study: occupational health risk in metal artisanal workplaces in Bhutan, WHO, available at <https://www.who.int/publications/i/item/9789240017603>, last seen on 12/07/2023.

Occupational Safety, Health, and Working Conditions Code, 2020¹⁰ is a new law that took effect in 2020.

The Occupational Safety, Health, and Working Conditions Code, 2020 comprises of several acts, including:

- The Factories Act, 1948: This Act addresses issues like working hours, hiring of children, safety precautions, and leave and holiday policies.¹¹
- The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act of 1996 creates criteria for the welfare society and social security of workers in India's construction industry with the goal of providing working conditions.¹²
- The Mines Act, 1952: It is a piece of legislation that controls the safety precautions and working conditions in mines.¹³

2. Pakistan:

- Pakistan's Occupational Health and Safety Act of 2018: A law that mandates the application of laws to guarantee that individuals have safe and healthy working conditions.¹⁴
- The Factories Act, 1934: It covers topics like working conditions, hygiene, ventilation, lighting, and safety measures against particular risks.¹⁵
- The Employees' Old-Age Benefits Act, 1976: This act provides social security benefits and contains provisions for old age survivors.¹⁶
- The Mines Act, 1923: This law regulates the mining sector and the conditions of mine workers. The act addresses various issues such as health, safety, welfare, and ventilation to ensure mine workers' well-being and to prevent accidents and hazards in the mining industry.¹⁷

¹⁰ The Occupational Safety, Health, and Working Conditions Code, 2020.

¹¹ The Factories Act, 1948.

¹² The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

¹³ The Mines Act, 1952.

¹⁴ Pakistan Occupational Health and Safety Act 2018.

¹⁵ The Factories Act, 1934.

¹⁶ The Employees' Old-Age Benefits Act, 1976.

¹⁷ The Mines Act, 1923.

3. Bangladesh:

- The Bangladesh Labor Act, 2006: It covers aspects like working conditions, wages, working hours, safety, welfare, and industrial relations.¹⁸
- The Bangladesh Occupational Safety, Health, and Environment Foundation (OSHE) Foundation Act, 2013: Its goal is to promote and ensure occupational safety, health, and environmental standards.¹⁹
- The Bangladesh Occupational Safety, Health, and Environment Foundation Rules, 2014: These rules establish guidelines for the foundation's establishment and operation, which is in charge of overseeing and implementing safety, health, and environmental initiatives.²¹

4. Sri Lanka:

- The Factories Ordinance, 1942: It addresses issues such as working hours, wages, health and safety, welfare measures, and worker employment conditions.²²
- The Shop and Office Employees (Regulation of Employment and Remuneration) Act, 1954: It specifies working hours, overtime, leave entitlements, and wage guidelines for shop and office employees.²⁰
- The Workmen's Compensation Ordinance, 1935: This law compensates employees for injuries or disabilities sustained on the job. It includes both temporary and permanent disabilities, and fatal accidents.²⁴

5. Nepal:

- The Labor Act, 2074 (2017): This law governs the rights, responsibilities, and working conditions of employees and employers and includes subjects like wages, working hours, workplace safety, social security, and dispute resolution.²¹

¹⁸ The Bangladesh Labor Act, 2006.

¹⁹ The Bangladesh Occupational Safety, Health, and Environment Foundation (OSHE) Foundation Act, 2013. ²¹ The Bangladesh Occupational Safety, Health, and Environment Foundation Rules, 2014

²² The Factories Ordinance, 1942.

²⁰ The Shop and Office Employees (Regulation of Employment and Remuneration) Act, 1954 ²⁴ The Workmen's Compensation Ordinance, 1935.

²¹ The Labor Act, 2074 (2017).

- The Labor Rules, 2075 (2018): It outlines regulations and provisions pertaining to labour rights, employment conditions, and workplace safety.²²
- The Social Security Act, 2017: This act aims to provide comprehensive social security system that ensures their protection and welfare by including health care, maternity benefits etc.²³

B) An outline of law enforcement

Legislation has provided workers with reliable resources for their safety. Workers had no legal right to complain about their health and safety prior to the creation of laws.

The lives of workers in South Asia have been improved by legislation in several ways.

Here are a few advantages:

- 1) Regulatory agency: Each nation has its own regulatory organizations or agencies in charge of upholding occupational safety and health regulations and are made to inspect and oversee workplaces.
- 2) Compliance assistance: Resources are often provided to employers to comply with OSH laws which can ensure safety and health of workers.
- 3) Enforcement action: Laws provide us with fines and penalties which are imposed in case of violation of laws.

Despite passing laws, little has changed since there is ineffective enforcement. There are typical issues related to enforcement: There aren't enough inspectors. The largest factories or those with recognized health and safety issues are the ones that inspectors will often visit. Many inspectors have only a few hours of formal training in occupational health and safety.

Numerous inspectors are required to complete their work using almost no tools or resources. Inspectors are not able to enforce current laws. Ideal enforcement would include the following: Ensure that there is an adequate number of knowledgeable,

²² The Labor Rules, 2075 (2018).

²³ The Social Security Act, 2017.

prepared individuals with access to resources to inspect workplaces and implement the law; ad hoc inspections of all workplaces.

For significant change to occur, both employers and employees must collaborate. In contrast to merely passing legislation, proper enforcement can only bring about improvements.

C) Comparisons of authorities

Some of the organizations dedicated to occupational safety and health of workers in the world are:

1. The International Labour Organisation (ILO) was established in 1919.

The ILO creates worldwide labour standards in the area of workplace safety and health to assist governments in establishing national laws and regulations and enforcing their compliance.²⁴

2. WORLD HEALTH ORGANISATION was established on 7 April 1948

Key objectives of WHO in relation to occupational health and safety are:

- The preservation and promotion of workers' health and working capacity.
- The enhancement of working conditions and the environment to make it safe and healthful.²⁵

3. INDIA NATIONAL INSTITUTE OF OCCUPATIONAL HEALTH [NIOH]:

It was set up by the Indian Council of Medical Research, New Delhi. In the past, NIOH has prioritised underserved employees and those without access to occupational health treatment, in addition to acting as a reference hub for knowledge in a wide range of occupational health fields.²⁶

4. BANGLADESH

Bangladesh Occupational Safety, Health, and Environment Foundation (OSHE): It was established on April 28, 2003. It is a specialised development organisation that

²⁴ *International Labour Organization*, ILO.ORG.

https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@webdev/documents/publication/wcms_082361.pdf, last seen on 15/07/2023.

²⁵ *Occupational Health*, WHO, available at <https://www.who.int/health-topics/occupational-health>, last seen on 15/07/2023.

²⁶ *ICMR-NIOH*, NIOH.ORG, available at <https://www.nioh.org/about>, last seen on 16/07/2023.

focuses on problems that affect the economy, environment, work, salary, as well as the lifestyle of the employees.²⁷

5. SHORTCOMINGS in implementation of OSH measures.

A) Less expenditure on public health in south Asian countries

Health expenditure extend to all costs associated with providing health services, family planning, and nutrition, but a major drawback is that it does not include sanitary conditions and availability of drinking water. The amount spent overall on healthcare is a share of GDP. Greater health spending is associated with higher GDP.²⁸ N K Singh, the chairman of India's 15th Finance Commission, advised raising public expenditure on the health sector from 0.95 percent of GDP to 2.5 percent of GDP in four years.²⁹

WORLD HEALTH ORGANIZATION in a report mentions that:

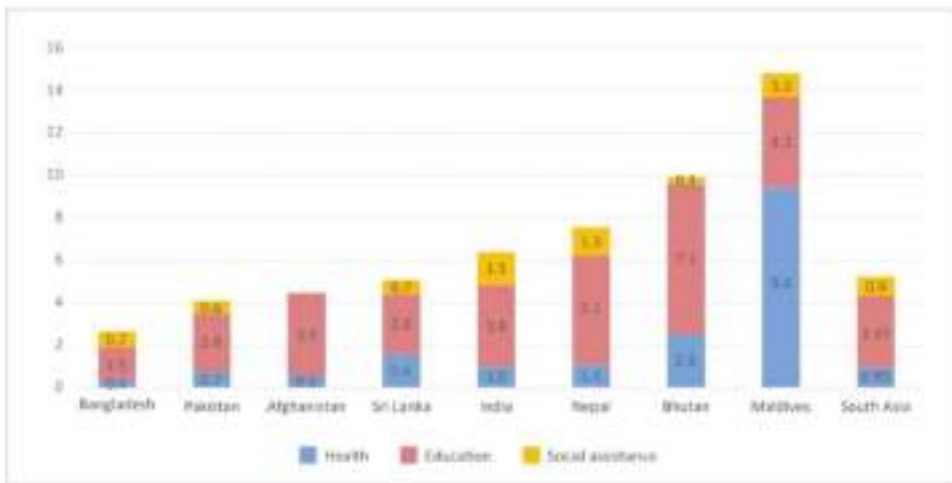
South Asia accounted for the majority of the nations with low health spending as compared to the other high-income nations. In south Asia, Bhutan and the Maldives have the highest levels of public social spending as a percentage of GDP when the sum of government spending on health, education, and social assistance is considered. Bhutan invests far more public money on education than other nations in the area, whereas India and the Maldives spend the most on social assistance and health care, respectively while Bangladesh spends the least on both health and education.³⁴

²⁷ OSHE Foundation, oshe-foundation.org, available at <https://www.oshe-foundation.org/> , last seen on 16/07/2023.

²⁸ Health Expenditure, WHO, available at <https://www.who.int/data/nutrition/nlis/info/health-expenditure#:~:text=Total%20expenditure%20on%20health%20as,nation%20in%20a%20given%20year> , last seen on 16/07/2023.

²⁹ Increase public spending on health sector to 2.5% of GDP by 2024, The Economic Times (18/11/2020), available at <https://m.economictimes.com/news/economy/policy/increase-public-spending-on-health-sector-to-2-5-of-gdp-by-2024-n-k-singh/articleshow/79284167.cms> , last seen on 16/07/2023.

³⁴ Global expenditure on health: Public spending on the rise, 2021, WHO, available at <https://www.who.int/publications/i/item/9789240041219> , last seen on 16/07/2023.



Source: Author's elaboration based on World Health Organization (2019), UNESCO (2018) and World Bank (2018).

Figure : gives a preliminary summary of social spending in South Asia.³⁰

B) Inadequate implementation of existing legislation

The most likely causes of Inadequate implementation of existing legislation in south Asian countries are lack of execution of effective trade union agreement, resulting in conflict between employees and management in both the organised and unorganised sectors. Initiatives that spread towards better occupational health are killed by a lack of finance and a bad economy in these countries. Governmental and nongovernmental programmes can both fail for a variety of reasons, including corruption, greed, and ignorance of health and safety. Labours have the right under ILO convention 170 to refuse to work in dangerous or unhealthy circumstances, however this right was often not recognised in most Acts of these countries³¹. Additionally, there are not many legislations in South Asia that address the occupational health and safety of agricultural workers.

In conclusion, laws in south Asian countries are not properly implemented, especially in the informal sector, and because of poverty and a lack of knowledge and awareness.

³⁰ *Social Spending in South Asia*, UNICEF, available at <https://www.unicef.org/rosa/reports/social-spending-south-asia>, last seen on 16/07/2023.

³¹ France Ncube, *Current Status and the Future of Occupational Safety and Health Legislation in Low- and Middle-Income Countries*, 9, sciencedirect, 365 (2018), available at <https://www.sciencedirect.com/science/article/pii/S2093791117302299>, last seen on 16/07/2023.

For instance: The following graph details the industrial and occupational accidents that have happened in Sri Lanka during the last few years, which is a consequence of ineffective implementation of pre-existing OSH laws.³²

C) Lack of reliable OSH data

The International Labour Organisation claims that in south Asian nations, the execution of measures for maintaining occupational safety and health has been hampered by a lack of information or pertinent data on accidents and dangers that employees have been experiencing at work.

The majority of the time, workers are observed performing their duties without the bare minimum of safety equipment, including helmets, gloves, and boots, among others. The employees have been forced to take on tremendous risks, including the possibility of fatal injury. According to the ILO, the expansion of COVID-19 has increased the risks for employees in practically every industry in south Asian countries.

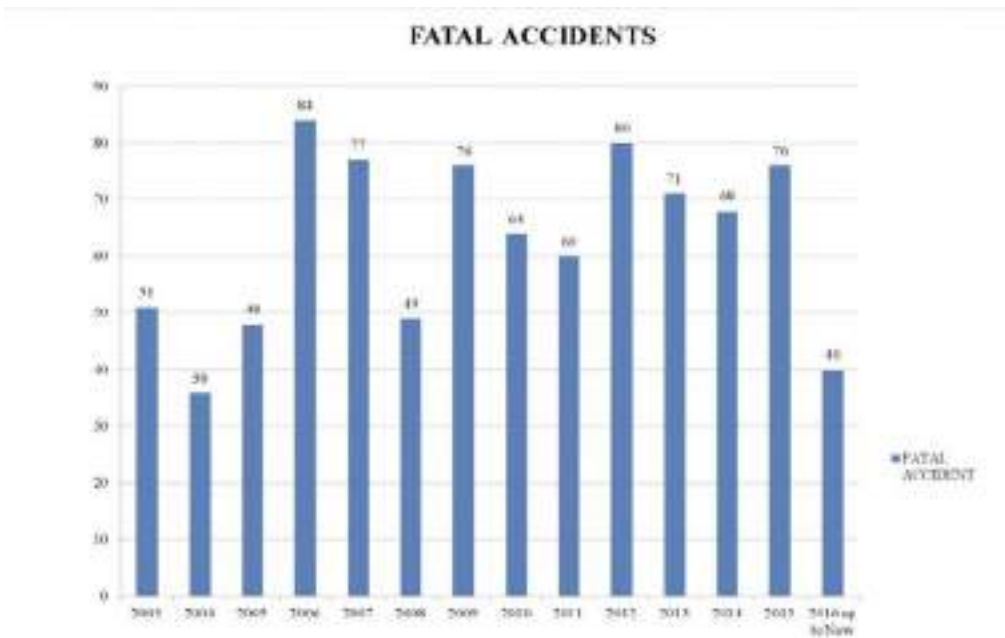


Figure: Showing data regarding Fatal accidents in Sri Lanka from 2003 to 2016 (based on Sri Lanka’s Nation Profile).

³² Country Report Sri Lanka, jisha, available at www.jisha.or.jp , last seen on 16/07/2023.

Here are some of the data which shows number of deaths and injuries of workers in these nations due to lack of occupational safety and health standards:

INDIA: Between 2018 and 2020, a total of 3,331 deaths were reported in India, yet just 14 persons were convicted for crimes under the Factories Act, 1948.³³

Pakistan: According to the most current estimates, 2.7 million Pakistani workers who were employed sustained an injury at work in 2017–18.³⁴

SRI LANKA: Sri Lanka has a working population of about 8.6 million people out of which nearly 500,000 individuals die from illness and accidents at work every year.³⁵ BANGLADESH: According to a study by the Bangladesh Institute of Labour Studies (BILS), 1,034 employees died in workplace accidents overall in 2022. The lack of adequate occupational safety and health requirements resulted in 1,037 more workers being hurt in the incidents, the report revealed.³⁶

NEPAL: Due to a lack of occupational safety and health standards, 20,000 employees suffer from workplace illnesses or injuries in Nepal every year, and more than 200 labours die due to such injuries. However, the data available to The Department of Labour and Occupational Safety of Nepal, as mentioned in the figure given below, is inaccurate because the data is not properly reported.³⁷

³³ Shreehari Paliath, *3 Workers Die Every Day In Indian Factories, Govt Data Show*, Indiaspend (21/01/2023), available at <https://www.indiaspend.com/special-reports/3-workers-die-every-day-in-indian-factories-govt-datashow-850083>, last seen on 18/07/2023.

³⁴ Muhammad Noman, Nooreen Mujahid, & Ambreen Fatima, *The Assessment of Occupational Injuries of Workers in Pakistan*, PMC 459 (2021), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8640648/#:~:text=The%20recent%20estimates%20revealed%20that,a%203.7%25%20of%20injury%20rate.&text=Labor%20Market%20Profile%20of%20Pakistan,last> seen on 18/07/2023.

³⁵ *Safety and health at work in Sri Lanka and the Maldives*, ILO, available at <https://www.ilo.org/colombo/areasofwork/safety-and-health-at-work/lang--en/index.htm>, last seen on 19/07/2023.

³⁶ *Report: Workplace accidents claimed 1,034 lives in 2022*, Dhaka Tribune (02/01/2023), available at <https://www.dhakatribune.com/bangladesh/2023/01/02/report-workplace-accidents-claimed-1034-lives-in-2022>, last seen on 18/07/2023.

³⁷ *Lack of proper data on accidents and hazards at workplace of Nepali workers*, myrepublica (30/04/2021), available at <https://myrepublica.nagariknetwork.com/amp/lack-of-proper-data-on-accidents-and-hazards-atworkplace-puts-nepali-workers-off-the-framework-of-occupational-safety-and-health-standardsilo/news.html.twig>, last seen on 18/07/2023.

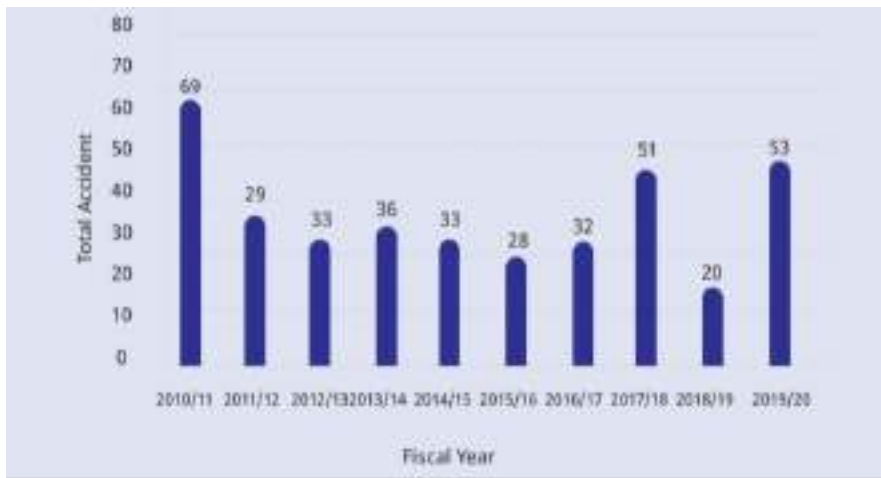


Figure: It shows the total number of occupational accidents in last 10 years [from 2010 to 2020], in Nepal.

D) Shortage of OSH professionals

A sizeable majority of the employed workforce—nearly 90% of all workers—works in the unorganized sector. Workers looking for such work are primarily concerned with finding employment and do not prioritize workplace safety and health. Additionally, businesses who hire these people don't enforce safety procedures since they may view them as an additional expense. In India, there are just about 1000 qualified occupational health experts, this amount is obviously low and insufficient. As a result, there is a significant shortage of occupational health and safety specialists in India. This statistic is extremely concerning because only five officials are assigned to inspect the 3270 boilers in the state of Uttar Pradesh, according to a report.³⁸ Having so few safety officers can have an adverse effect on workers. The fact that so few individuals enroll in occupational safety and health courses with the intention of pursuing a career is one of the causes of the scarcity of OSH experts. The government must raise public knowledge of this position. Multiple stakeholders must work together to address the scarcity of OSH specialists in South Asia. These could include educating people about the value of OSH,

³⁸ *Why a lack of culture – not compliance – is the primary cause of India's safety woes*, British Safety Council, available at <https://www.britsafe.in/publications-and-blogs/blogs/read-all-blogs/why-a-lack-of-culture-not-compliance-is-the-primary-cause-of-india-s-safetywoes/#:~:text=Shortage%20of%20trained%20OSH%20officers,health%20safety%20specialists%20in%20India>, last seen on 18/07/2023.

developing and growing specialized OSH educational programmes and courses, encouraging academic institutions to work together to build a competent workforce.

E) Apathy of stakeholders

Employees also place little value on safety procedures and tolerate risky working circumstances, especially those performing blue-collar jobs. As a result, there is a clear lack of concern for workplace safety. South Asian nations are primarily home to small and medium-sized businesses that lack basic safety standards. Most of these workers lack education and are unaware of their OSH rights. The main barrier to implementing the OSH concept in Nepal is the unwillingness of interested parties to recognize the value and significance of occupational health services.

Millions of migrant workers are employed in the tourist, hospitality, construction, and apparel industries, which saw a large number of enterprises in destination cities or countries cease operations. As a result, migrant workers in South Asia are being forced to take unpaid leave, work fewer hours, and lose their jobs. In early May 2020, 30% of families in Sri Lanka and Bangladesh, according to UNICEF estimates, had lost all of their income.³⁹ Within six months, the number of South Asian children living in poverty may reach more than 360 million. Economic activity should incorporate prevention as a key component. It is feasible to lessen stakeholders' apathy towards workers in OSH and promote a culture of safety and wellbeing in the workplace through education and awareness initiatives, teamwork, and worker involvement.

Every stakeholder should be informed and educated about the cost saving effects of OSH implementation which is shown in the table given below. The Department of Labor reports that over the previous four years, the construction sector accounted for 90.2% of all industries' workers' compensation costs, as seen in Table. Thus, OHS can have cost-saving effects.⁴⁰

³⁹ COVID-19 and Migration for Work in South Asia: Private Sector Responsibilities, UNICEF, available at www.unicef.org, last seen on 18/07/2023.

⁴⁰ DekiPelzomDukpa and PhuntshoDendup, *Occupational Health and Safety practices and challenges in the construction industry of Bhutan: a situation analysis*, 7 International Journal of Scientific and Research Publications 153, 160 (2017), available at https://www.academia.edu/62300926/Occupational_Health_and_Safety_Practices_and_Challenges_in_the_Construction_Industry_of_Bhutan_A_Situation_analysis, last seen on 19/07/2023.

Year	Cost of accident and injury (in Nu*)			
	Total	Construction	Percent	Other industry
2012/13	5434616.0	5194979.0	95.59	239637.0
2013/14	14797822.0	14408702.0	97.37	389120.0
2014/15	5208536.0	3012536.0	57.84	2196000.0
2015/16	11535059.0	10750560.0	93.20	784499.0

*\$1 = Nu: 64 (rough conversion). Source: Department of Labor, Annual report

Table: Showing cost of construction accidents and injuries.

7. RESULTS AND SUGGESTIONS

In every country, millions of people suffer serious workplace illnesses or work-related injuries every year. Controlling safety and health is a crucial part of operating a business.

The following are some effective methods that can be used to address the primary issues of safeguarding the health and safety of workers in South Asia.

A) Health and Safety Management System

The health and safety executive's report from 2021 states that a health and safety management system is a framework, set of rules, or instrument that aids people in charge of systematically managing health and safety in the workplace.

A health and safety management system assists in identifying potential dangers in the place of employment and works to avoid accidents in the future.

The elements of the occupational safety and health management system that must be adhered to in accordance with British regulations are listed in the figure below.⁴¹

B) Proper implementation of OSH laws.

The primary requirement of the hour for guaranteeing worker safety is effective execution of laws issued by all South Asian countries. Strong OSH laws that apply to all industries and occupations should be established and enforced by the government by including danger identification, risk evaluation, preventative

⁴¹ A National Priority on Occupational Health and Safety Management System, Indian council of medical research, available at <https://main.icmr.nic.in>, last seen on 19/07/2023.

strategies, training needs, and enforcement procedures. By conducting inspections, audits, and enforcing fines for non-compliance, it is necessary to ensure that OSH laws are effectively enforced. Workers who are classified as "informal" are often overlooked in South Asia. They are not given any legislative or safety measures. Therefore, new laws should be framed for this sector.



Figure: Element of OSH according to British standards.

Some recommendations given by ILO were created as a useful tool to help organisations and qualified institutions continuously improve their performance in OSH.⁴²

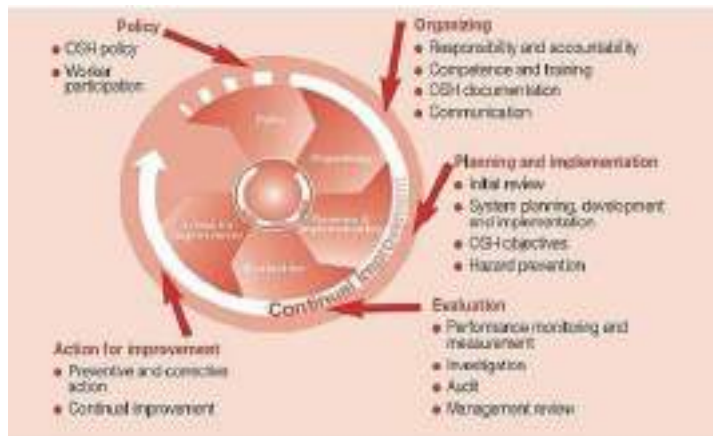


Figure: Showing elements of health and safety management system.

⁴² How can occupational safety and health be managed?, ILO, ilo.org, available at <https://www.ilo.org/global/topics/labour-administration-inspection/resources-library/publications/guide-forlabour-inspectors/how-can-osh-be-managed/lang--en/index.htm>, last seen on 19/07/2023.

A health and safety management system assists in identifying potential dangers in the place of employment and works to avoid accidents in the future.

C) Constant Observation and Assessment

Monitoring and assessment must be done on a regular basis to determine how well OSH policies and programmes are working.

Numerous authorities need to improve their performance, which necessitates continual monitoring and review. Data on migrant workers who lost their jobs and lives during COVID 19 lockdown were not available to the ministry of labour and employment. So continuous monitoring is necessary right now.

D) A.C.T

To raise the standards of workplace health and safety for workers in south Asian nations, the governments of these nations need to "ACT" efficiently.

AWARENESS: It is urgently necessary to be aware. To properly inform workers of their rights, the government must hold some awareness campaigns at the worker's residential areas with the help of NGOs and Lawyers. Further, the government should implement strategies to raise public knowledge of worthwhile OSH-related employment.

COLLABORATION: There should be two separate types of collaboration: first, between employers and workers, and second, between cross border countries. Employers and employees must work together for a better future. Workers will benefit from this partnership in terms of safety and health, and the employer's sector will produce more as a result. Their collaboration can be strengthened by organizing monthly conferences directly between the employer and all the workers. Promoting cross-border collaboration on worker safety and health is very crucial, especially for industries or sectors that operate across international borders. Utilising international organisations like South Asian Association for Regional Cooperation (SAARC) may help promote awareness regarding labour problems and promote cross-border collaboration.

TRAINING: In order to reduce workplace accidents, government should place a high priority on providing workers with sufficient training on the hazards associated with dangerous sectors.

8. Effects of COVID-19 on South Asian workers' and laborers' health and safety

The majority of people in the south Asian regions have low resources and a weak capacity to deal with the risks of a pandemic shock because of the existing challenging economic conditions. Afghanistan has only 2.8 doctors per 10,000 people, Bhutan has 3.8, Bangladesh has 5.3, and Nepal has 6.5, which is one-tenth the rate of more developed nations. There are only 7.8 doctors for every 10,000 people in India⁴³. The Covid-19 epidemic has put many internal migrant workers in a horrible condition due to disruptions in public transport.

According to a recent survey done in Bihar and UP in India, 73% of migrant lost their jobs. As a result of protracted lockdowns and production halts, migrant workers are more susceptible to layoffs. Studies were also undertaken, according to the water aid article, to comprehend the realities of sanitation personnel. Sanitation employees were on the front lines when the COVID-19 outbreak struck. The workers who cleaned our hospitals, quarantine centers, streets, and maintained sewer systems were largely ignored despite doing essential work. In South Asia, the informal sector continues to be poorly known due to a lack of trustworthy statistics. Over two billion (61.2%) of the world's employed people, according to the International Labor Organization's (ILO) first-ever evaluation of informal employment in 2018, are employed informally.⁴⁴ For instance: In India, the third-largest economy in the world, about 90% of the 500 million employees are employed in the unorganized sector, which accounts for at least half of the country's GDP. In Bangladesh, approximately 25 million people make up more than 85% of the labour force, accounting for close to 50% of the GDP.

Globally, the coronavirus 2019 (COVID-19) has had a significant negative impact on employees and organizations. It has raised employees' fears about job insecurity, isolation, difficulty of working remotely, and safety. The requirement for robust

⁴³ *Socio-economic implications of COVID-19 pandemic in South Asia*, PMC, available at https://www.academia.edu/62300926/Occupational_Health_and_Safety_Practices_and_Challenges_in_the_Construction_Industry_of_Bhutan_A_Situation_analysis, last seen on 21/07/2023.

⁴⁴ *Covid 19 has made life even more precarious for migrant workers*, ILO, available at https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_829452/lang-tr/index.htm#:~:text=Many%20migrant%20workers%20had%20their,required%20to%20go%20on%20leave, last seen on 21/07/2023.

national Occupational Safety and Health (OSH) systems to be in place has been reaffirmed by COVID-19.

9. Conclusion

The discipline of occupational safety and health emphasises the importance of employment while also recognising the necessity to shield workers from damage and avoidable hazards. Workplace sickness and injuries reduce productivity, increase absenteeism, increase healthcare expenses, and expose employers to potential legal liability. Implementing effective OSH techniques lowers these expenses and increases overall organisational productivity and efficiency. Even though the quality of goods is a major influence in the market expansion of an organisation, but employees are the foundation of every organisation. As a result, both labour health and the quality of the goods must be taken into account. There are several elements that affect a worker's health, including occupational risks for cancer, accidents, musculoskeletal illnesses, respiratory illnesses, hearing loss, circulatory illnesses, stress-related disorders, infectious diseases, and more. The primary cause of all occupational injuries is the ineffective application of OSH laws. In South Asian nations, the implementation of occupational health and safety practises is hindered not only by a lack of resources, technical know-how, and complexity, but also by worker passivity and employer ignorance, leaving no pressure on the government to even enforce existing legislation. Consequently, the government must be Aware, Collaborate and Train the workers to minimize injuries and maximize safety. In the vast subject of occupational safety and health (OSH), several stakeholders and scientific disciplines collaborate to ensure that workers everywhere have a safe and healthy workplace. There are many challenges and research possibilities that will lead to many answers, but the most crucial reality is that workplace safety is both a legal need and an implied moral requirement for organisations.

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