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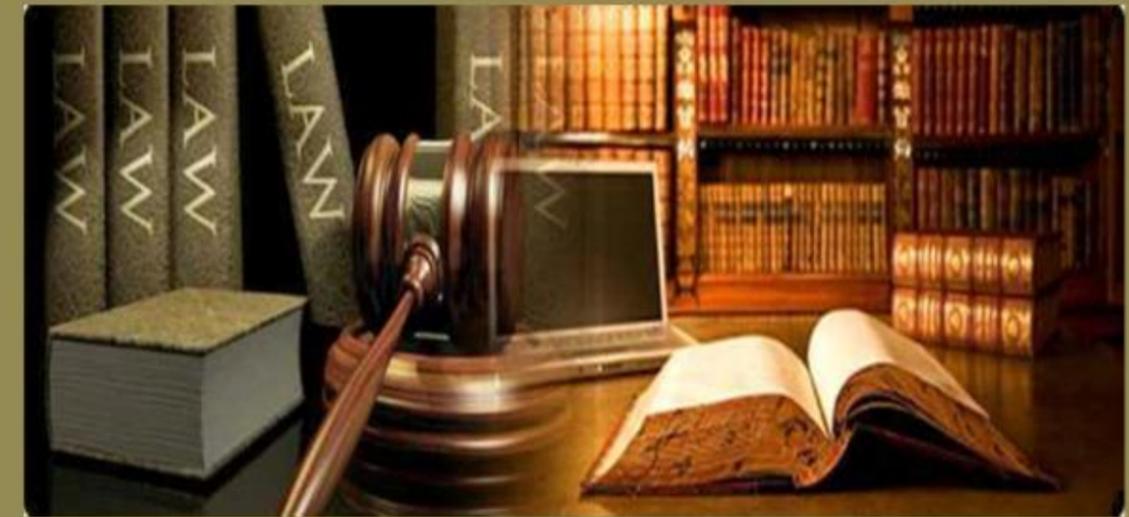
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**HSNC Board's
Kishinchand Chellaram Law College**

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Organised
**International Conference
on
Contemporary Contours of Constitutionalism
In Light of Changing Dimensions of Governance,
Judicial Review & Judicial Activism**

10th February 2024

Editor-in-Chief: Dr. Kavita Lalchandani



INTERNATIONAL CONFERENCE

ON

**CONTEMPORARY CONTOURS OF
CONSTITUTIONALISM IN LIGHT OF CHANGING
DIMENSIONS OF GOVERNANCE, JUDICIAL
REVIEW & JUDICIAL ACTIVISM**

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President's Note:

On the momentous occasion of 75 years of celebration of HSNC Board and 75 years of India as a Republic, it is with great pleasure that I extend my warmest congratulations to everyone associated with our esteemed HSNC Board as we celebrate our 75th anniversary.

Our HSNC Board has been committed to fostering excellence in education and promoting intellectual growth and development. As we commemorate this significant milestone, it is an opportunity to reflect on our journey and to celebrate our achievements. Our commitment to excellence, innovation and inclusivity has been unwavering and we are proud of the positive impact that our Board has had on countless students, educators and educational institutions.

On this auspicious occasion, we take great pride in K. C. Law College's accomplishment of hosting an International Conference on the theme 'Contemporary Contours of Constitutionalism In Light Of Changing Dimensions of Governance, Judicial Review & Judicial Activism'.

The concept of constitutionalism is imperative for governance and it embodies the principles of separation of powers, the rule of law and a responsible government, ensuring accountability, protection of rights, and the sovereignty of the people. The role of the judiciary is also critical in upholding constitutional principles and safeguarding democratic values.

I extend my congratulations to Principal Dr. Kavita Lalchandani for the successful organization of the International Conference on such a contemporary and significant theme. Her vision and leadership have been instrumental in making this event a great success. Dr. Lalchandani's ability to inspire and guide others toward a brighter future is commendable. Under her guidance, K. C. Law College continues to shape the educational landscape, providing students with opportunities to engage with cutting-edge legal issues and contribute meaningfully to the field of law.

I extend my best wishes to all the participants for their active engagement in this conference. Your contributions have helped shed light on the deeper understanding of the pressing issues surrounding constitutionalism in the 21st century.

Anil Harish

Adv. Anil Harish

President & Trustee, HSNC Board

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Dr. Kavita Lalchandani
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Principal

Principal's Note:

With immense gratification and a sense of accomplishment, we present the proceedings of the Interdisciplinary International Conference on "Contemporary Contours of Constitutionalism in Light of Changing Dimensions of Governance, Judicial Review & Judicial Activism." This publication is part of the celebration marking 75 years of the Hyderabad (Sind) National Collegiate Board (HSNC Board) and India's journey as a Republic.

For more than seven decades, the HSNC Board has been at the forefront of educational excellence, shaping the futures of countless students across Mumbai and Thane. Since its inception in 1949, the Board has stood as a beacon of hope and opportunity for generations of learners, fostering an environment where students can thrive, explore their passions, and reach their full potential through its unwavering commitment to quality education.

On this momentous occasion, the International Conference emphasized various interdisciplinary perspectives and marked a culmination of our collective efforts at K.C. Law College to promote knowledge sharing and academic discourse in the field of law. Scholars, academicians, practitioners, and students from various institutions and disciplines across the globe came together to engage in meaningful discussions and deliberations on contemporary legal issues and emerging trends.

Constitutionalism is the cornerstone of any democratic society, providing the framework that outlines government principles, powers, and limitations. In today's rapidly changing world, the need for constitutionalism is more crucial than ever. It ensures the independence of the judiciary, protection of rights, democratic governance, and international relations, serving as a vital safeguard against injustice and providing the foundation for a just, equitable, and flourishing democratic society.

I heartily congratulate the participants from around the world who shared their insights on various themes at this International Conference, such as electoral integrity and constitutionalism, the right to health and yoga, environmental constitutionalism, and the evolution of governance structures.

I would like to extend my heartfelt gratitude to all the participants and the editorial team, including all the teaching and non-teaching staff, for their diligent efforts in meticulously planning and executing this conference. I am confident that the proceedings of this conference will have profound and extensive implications, and the takeaways from this International Conference will undoubtedly reach far beyond these walls.

Dr. Kavita Lalchandani
Convener of the Conference

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THE RIGHT TO HEALTH AND YOGA: AN EXPLORATION IN INDIAN AND INTERNATIONAL CONTEXTS

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Introduction:

The concept of the right to health has gained significant attention in recent years, both in India and on the international stage. Recognizing the importance of maintaining good health and well-being, the Indian Constitution has enshrined the right to health as a fundamental right. Additionally, the practice of yoga, with its numerous physical and mental health benefits, has captured global attention. This essay aims to explore the background of the right to health and yoga within the Indian and international contexts, shedding light on their significance and contributions to an individual's well-being.

1. The Right to Health in Indian Context:

1.1. Constitution of India:

The Indian Constitution, under Article 21, guarantees the right to life, which has been interpreted by the judiciary to include the right to health. This implies that every citizen of India has the right to enjoy good physical and mental health, and the State has an obligation to provide healthcare facilities and services to its citizens.

The Indian Constitution, in its commitment to safeguarding citizens' well-being, recognizes the right to health implicitly. While not explicitly stated as a fundamental right, numerous provisions and judicial interpretations touch upon various aspects of the right to health. Article 21, the right to life and personal liberty, has been expansively interpreted by the judiciary to include the right to basic healthcare services. The Supreme Court, in several landmark judgments, has emphasized that the right to health is an integral component of the right to life, ensuring people's dignity and well-being.

1.2. Public Health Initiatives in India:

The Indian government has implemented various public health initiatives to ensure the right to health for its citizens. The National Health Mission, launched in 2005, aims to provide affordable and accessible healthcare to all. Additionally, the Ayushman Bharat Scheme, launched in 2018, seeks to provide health insurance coverage to economically vulnerable sections of society.

2. International Perspective on the Right to Health:

Internationally, the right to health has been recognized and enforced through various legal frameworks. The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, enshrines every individual's right to the highest attainable standard of physical and mental health. Subsequently, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) further elaborated on this right, urging states to take adequate measures for the prevention, treatment, and control of diseases.

2.1. Universal Declaration of Human Rights (UDHR):

The UDHR, adopted by the United Nations General Assembly in 1948, recognizes the right to health as a fundamental human right. Article 25 states that everyone has the right to a standard of living adequate for the health and well-being of themselves and their families, including medical care.

2.2. World Health Organization (WHO):

The WHO, a specialized agency of the United Nations, plays a crucial role in promoting the right to health globally. It defines the right to health as "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health," emphasizing the importance of equitable access to healthcare services.

3. Yoga in Indian Context:

Yoga, an ancient Indian practice, has gained global recognition for its potential to enhance physical, mental, and spiritual well-being. The white paper highlights the significance of incorporating yoga into healthcare systems. Yoga can serve as a valuable tool in preventing illnesses, managing chronic conditions, and promoting overall health. Additionally, the holistic nature of yoga aligns with the principles of the right to health, emphasizing the need for comprehensive care that addresses the physical, mental, and social aspects of individuals.

3.1. Ancient Origins:

Yoga, originating from ancient Indian traditions, encompasses physical, mental, and spiritual practices. It has been an integral part of Indian culture for centuries and has gained global popularity for its holistic approach to health and well-being.

3.2. Benefits of Yoga:

Yoga offers a multitude of physical and mental health benefits, making it a powerful tool to promote well-being. Regular practice of yoga enhances flexibility, strength, and balance, while also reducing stress, anxiety, and depression. Additionally, it improves respiratory and cardiovascular health, and promotes mindfulness and self-awareness.

4. International Perspective on Yoga:

4.1. United Nations Recognition:

Recognizing the immense value of yoga, the United Nations General Assembly declared June 21st as the International Day of Yoga in 2014. This recognition reflects the global recognition of yoga's positive impact on individuals' health and well-being.

4.2. Global Adoption:

Yoga has gained popularity worldwide, with millions of people incorporating it into their daily routines. Many countries have recognized the potential of yoga and have integrated it into their healthcare systems as a complementary therapy for various health conditions.

IV. Case Studies:

a. Kerala's Successful Implementation of the Right to Health:

The Indian state of Kerala has made significant strides in ensuring access to healthcare for its citizens. Through robust infrastructure, effective primary healthcare systems, and a focus on primary prevention, Kerala has achieved impressive health indicators compared to the national average. This case study exemplifies how prioritizing the right to health can lead to positive outcomes for individuals and communities.

Kerala's Impressive Health Indicators:¹

Kerala's commitment to healthcare can be seen through various health indicators. For instance, a study conducted by K. R. Thankappan et al., titled "Trends in Coronary Heart Disease Epidemiology in India" and published in the Journal of the American College of Cardiology, highlighted the state's success in combating coronary heart disease. The study found that Kerala had the lowest prevalence of this disease among all states in India, showcasing the effectiveness of the state's approach to healthcare.

(1) Additionally, the Global Burden of Disease Study 2017 ranked Kerala as the healthiest state in India based on multiple health indicators, including life expectancy, mortality rates, and disease burden. This recognition further signifies the state's commitment to providing quality healthcare services to its citizens.

(2) Robust Infrastructure and Primary Healthcare System: One of the key factors contributing to Kerala's success in healthcare is its robust infrastructure. The state has invested significantly in building healthcare facilities, including hospitals, clinics, and health centers, across urban and rural areas. This well-distributed network ensures accessibility to healthcare services for all residents, regardless of their geographic location.

Furthermore, Kerala's primary healthcare system plays a vital role in delivering comprehensive and affordable healthcare at the grassroots level. The state has strategically focused on strengthening primary healthcare centers, which act as the first point of contact for patients. These centers not only provide basic medical services but also prioritize preventive measures such as vaccinations, health education, and disease screening.

Emphasis on Primary Prevention:

Kerala's success in healthcare can be attributed to its emphasis on primary prevention strategies. The state recognizes that preventing diseases and promoting healthy lifestyles at the earliest stage is more efficient and cost-effective than treating advanced illnesses. As a result, Kerala has implemented various programs to raise awareness about the importance of nutrition, physical activity, and hygiene. For example, the state has successfully implemented the "Kudumbashree" program, which focuses on empowering women through self-help groups. These groups not only enhance women's social and economic status but also promote healthcare and sanitation practices within communities.

Collaborative Efforts and Community Participation:

Kerala's approach to healthcare extends beyond government initiatives. The state actively encourages community participation and collaborates with non-governmental organizations (NGOs), healthcare professionals, and local communities to strengthen the healthcare system. Community health workers, known as Accredited Social Health Activists (ASHAs), play a crucial role in spreading awareness and providing basic healthcare services within their communities. Their efforts complement the formal healthcare system and bridge the gap between healthcare providers and the population.

b. Case Study on the impacts of Yoga ²

One notable case study that gained attention for examining the impact of yoga on health is the study led by researchers from the University of California, Los Angeles (UCLA), published in the Journal of Clinical Psychology in Medical Settings in 2015.

¹ <https://www.emerald.com/insight/search?q=case+studies+on+kerala+healthcare>

² https://www.researchgate.net/publication/342298155_Effects_of_Mindfulness-Based_Intervention_on_the_Treatment_of_Problematic_Eating_Behaviors_A_Systematic_Review

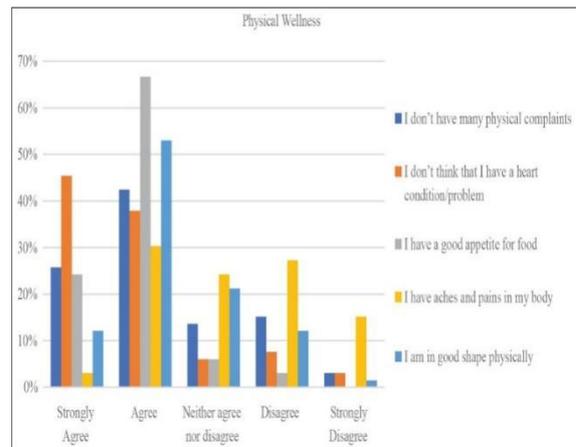
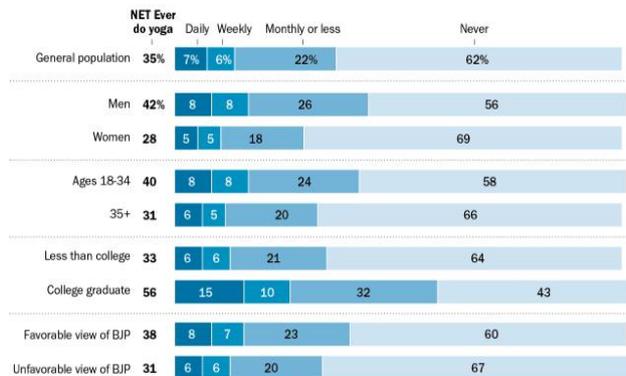
Title: "Effects of a Brief Mindfulness and Yoga Intervention on Binge Eating Behavior: A Randomized Controlled Trial."

Authors: T. B. Timko, J. L. Hormes, J. E. Chubski, and D. M. Schmidt.

Objective: The study aimed to investigate the effects of a brief mindfulness and yoga intervention on binge eating behavior among individuals with Binge Eating Disorder (BED).

Yoga more common among college-educated, younger Indians

% of Indian adults who say they practice yoga ...



In a noteworthy study conducted by researchers from the University of California, Los Angeles, and published in the Journal of Clinical Psychology in Medical Settings in 2015, the impact of yoga on health, particularly in addressing Binge Eating Disorder (BED), was examined. The randomized controlled trial involved 60 adults diagnosed with BED, with participants divided into two groups – a yoga intervention group and a control group. The yoga sessions, spanning eight weeks, incorporated mindfulness training, yoga postures, and breath awareness. Results revealed that participants in the yoga group experienced a significant reduction in binge eating episodes compared to the control group. Moreover, the yoga intervention demonstrated positive effects on emotional regulation, mindfulness, and overall well-being. This study suggests that a brief yoga intervention, blending mindfulness practices, can effectively mitigate binge eating behaviors and enhance psychological health among individuals grappling with BED, emphasizing the holistic benefits of yoga beyond physical well-being.

I. Challenges for the Right to Health and Yoga:

1. Inadequate Infrastructure:

- Limited healthcare facilities and resources pose a significant challenge in ensuring accessible healthcare services to all.
- Insufficient physical infrastructure and healthcare workforce exacerbate disparities, especially in rural and remote areas.
- Reducing the infrastructure gap requires substantial investment in healthcare facilities and human resources.

2. Limited Access to Healthcare:

- Socioeconomic disparities continue to hinder access to quality healthcare services.

- Marginalized communities, including low-income groups, women, children, and the elderly, face barriers to healthcare access.
- Addressing access challenges requires enhancing affordability, developing targeted healthcare programs, and addressing social determinants of health.

3. Cultural and Social Barriers:

- Deep-rooted cultural beliefs and practices sometimes hinder the adoption of modern healthcare approaches and the integration of traditional practices like yoga.
- Some communities may view medical interventions as a violation of religious or cultural norms.
- Promoting health literacy and cultural sensitivity are vital in overcoming social barriers and increasing awareness about the benefits of yoga and holistic healthcare practices.

4. Inequitable Distribution of Healthcare Resources:

- Regional disparities in healthcare infrastructure and resources present a considerable challenge.
- Urban areas often receive a disproportionate share of healthcare resources, leaving rural areas underserved.
- Redistributing resources to ensure equitable healthcare access is crucial to fulfilling the right to health for all.

II. Opportunities for the Right to Health and Yoga:

5. Legislative Support:

- The Indian Constitution recognizes the right to health as a fundamental right, providing a legal framework to ensure accessible and quality healthcare for all citizens.
- National policies, such as the National Health Policy 2017, aim to strengthen healthcare systems and promote holistic approaches like yoga.

6. Promotion of Preventive Healthcare:

- Integrating yoga into healthcare systems can contribute to preventive healthcare strategies.
- Yoga promotes physical and mental well-being, reducing the risk factors for various non-communicable diseases.
- By shifting the focus from curative to preventive healthcare, the potential burden on the healthcare system can be mitigated.

7. Global Recognition of Yoga:

- Yoga has gained worldwide recognition for its therapeutic benefits and mind-body connection.
- The United Nations has declared the International Day of Yoga, highlighting its importance and encouraging its practice.
- The global recognition of yoga paves the way for international collaboration in healthcare and research, providing opportunities for the exchange of knowledge and expertise.

8. Integration of Traditional and Modern Medicine:

- Combining traditional practices, such as yoga, with modern medicine enhances healthcare outcomes.
- Integrative medicine approaches that incorporate yoga alongside allopathic treatment are gaining recognition and acceptance.

Collaborative efforts between traditional healers, yoga practitioners, and medical professionals can create a more comprehensive and inclusive healthcare system.

Recommendations:

- **Legal Recognition:** Work towards establishing yoga as a foundational health entitlement within legal and policy structures.
- **Education Systems:** Introduce yoga initiatives in educational institutions to instill early healthy habits in students.
- **Healthcare Integration:** Incorporate yoga into national healthcare services as a preventive and healing method.
- **Research and Collaboration:** Support studies on the advantages of yoga and promote global collaborations to enhance its adoption.
- **Access and Awareness:** Improve public understanding and accessibility to yoga, particularly in marginalized regions.

Conclusion:

The White Paper on the Right to Health and Yoga provides valuable insights into the Indian Constitution's stance on health and its alignment with international perspectives. Recognizing the right to health as an integral part of the right to life and promoting holistic approaches to healthcare, such as the incorporation of yoga, can lead to improved health outcomes and general well-being. The case studies of Kerala and South Africa further exemplify the positive impact of prioritizing the right to health. To ensure a healthier and more equitable world, it is crucial for governments and healthcare systems to acknowledge, protect, and fulfill the right to health for all individuals.

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CHILD RIGHTS AND CONSTITUTIONALISM

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INTRODUCTION:

Child protection refers to the protection of children from abuse, violence, violence, and neglect. Protection also ensures that children acquire other rights related to survival, growth, development, and participation. When child protection does not work or is missing, child mortality is higher and children are at risk for physical and mental health, infections, educational problems, evictions, homelessness, and more. It involves recognizing that children are vulnerable and therefore reducing their risk by protecting them from harm and harm. Children's rights are unique human rights that apply to everyone under the age of 18. available and therefore accessible to anyone, anywhere.

Problems faced by children:

Economic disparities:

Limited access to quality education, healthcare, and malnutrition affects the most vulnerable. Children from poor backgrounds often have to limit their thinking, their time is limited, and their abilities are affected by circumstances beyond their control. Breaking the cycle of poverty can be difficult; This is a pattern that affects not only the current generation but also future generation.

Limited access to sanitation:

For many children in India, something as simple as access to clean water and sanitation is a luxury. Lack of safe, clean water poses serious health risks, exposing children to waterborne diseases and infections. The burden of collecting water or maintaining sanitation falls on the shoulders of young people, often forcing them to sacrifice education and leisure time.

Malnutrition:

Malnutrition affects millions of children in India. Our country is a leader in agriculture, but large part of our youth still faces problems such as malnutrition. Malnourished children are not only physically weak, but also suffer from serious psychological problems that affect their learning abilities and future abilities. Lack of adequate nutrition deprives children of the opportunity to be healthy and live a good life leading to great poverty and limited opportunities.

Gender inequality:

Gender inequality is also a major problem faced by children in India. Discrimination often results in girls receiving less education than boys. Long-established culture, early marriage, and expectations of family responsibility often force girls to drop out of school. Children work in many sectors, from light labor to agriculture, from domestic work to sales, mostly in fields of education, consumption, health, and wellness.

Child labor:

The working conditions faced by child workers are often harsh, dangerous, and lack rights and protections. These children are exposed to long hours of work with hazardous substances and physical and emotional abuse. This has a serious impact on their physical and emotional health, often leading to life-threatening and developmental abnormalities. The loss of educational and play opportunities further limits their mental and physical development.

Child trafficking:

Child trafficking is one of the biggest threats to children. Children are trafficked for many purposes, including forced labor, prostitution, and organ trafficking. This business often thrives due to poverty, lack of education, and conflict. Children who have been kidnapped or faced horrific situations where their human rights have been violated. From working in dangerous conditions to being forced into commercial sex exploitation, their lives are marked by trauma, violence, and loss of dignity. Many people lack access to education, healthcare, and basic needs. The mental and physical trauma of forced labor often haunts them for years.

Statistics:

There are 444 million children under the age of 18 in India. This represents 37% of the country's total population (2011 Census).

Education:

- Three-quarters of our nation's school-aged children are out of school a total of 99 million children are in school (2011 Census)
- Only 32 out of every 100 children complete school at the appropriate age (District Education Information System (DISE) 2014-15)
- Only 2% of schools score between 1 and 12 on school graduation (Region Education Information System (DISE) 2014-15).

CHILD LABOR AND EXPLOITATION**Child Labor and Trafficking:**

- There are 33 million children between the ages of 5-18 working in India. In some parts of the country, more than half of the children are working in the workforce (Census 2011).
- A child goes missing every 8 minutes in India. Kidnapping is the most common phenomenon targeting people.
- Most Common Crimes against Children in our country (District Crime Records Bureau (DCRB) 2014).
- Crimes against children have increased fivefold in the last 10 years. The second leading cause of death (Accidents and Suicides in India (ASDI) 2011).

ROLE OF THE CONSTITUTION IN CHILD PROTECTION AND CHILD RIGHTS

The legal history of child rights in India begins in the 1880s. The British government started this, and then our government followed the same path. In recent years, the government has critically reviewed child labor policies to determine the best way to address the issue under the Indian Constitution Act.

Art 14: This shows that all citizens must observe the principle of nondiscrimination. National law protects all people equally. The right to care for people in similar situations.

Art 15: Prohibition of discrimination based on religion, race, nationality, gender, or place of birth: The State will

not discriminate against individuals based on religion, race, ethnicity, gender, or place of residence. Birth or other reasons.

Art 21: The Constitution of India A provides for free education and training as the fundamental right of every child between the ages of 6 and 14 years as follows:

The State shall decide by law.

Art 22: This article protects against arrest and stipulates that persons in conflict with the law must be brought to the nearest judge or a child in need of care and protection within 24 hrs of arrest. The Protection and Protection of Children Act (2000) came into force within 24 hours of police presence.

Art 24: It is prohibited to employ children under the age of 14 in factories, mines, and other hazardous places. Federal Article 39 (e) and (f) require that children be protected from abuse and crime and that children have equality and opportunities appropriate to their age to protect the development of children and young people.

The State will ensure that children and young people are protected against exploitation and abandonment. According to Article 41, the State must take measures to provide education and convenience; According to Article 45, the State must ensure that all children receive free and compulsory education until they reach the age of 14, and according to Article 47, it must improve education and opportunities for children. Sanitation and improved nutrition are the primary responsibility of the state.

Some important ones are: Factories Act 1881, Children (Undertaking to Work) Act 1933, Child Employment Act 1938, Factories Act 1948, Child Employment (Amendment) Act 1951, Child Employment (Amendment) Act 1981.

Child Labor (Prohibitions and Regulations) Child Labor Law.

Purpose of the bill: To prohibit the employment of minors. Who is 14 years of age-old? Improve or change procedures for deciding when to work in groups. Manage situations where children can work without restrictions. (Care and Protection) Act, 2000 to consolidate and amend the law about alleged and found illegitimate children and to provide for the care, prevention, development, treatment, and integration into society through appropriate care, prevention, development, treatment, Integration The interests of children receiving care and protection. Child marriages were abolished in 1929 with the enactment of the Child Marriage Act (CMRA). However, due to the invalidity of the CMRA, a new law was passed in 2006. 77 years later, banning child marriages (PCMA, 2006). The Supreme Court said the provisions of the Protection of Children Act, 2006 are religious and applicable to all communities, including Muslims, and these provisions are also applicable to the personal rights of Muslims. This law is designed to prevent serious child abuse and protect the legal rights of vulnerable people in society. India has signed the United Nations Charter and ratified the Act; Therefore, this Act applies to the physical, emotional, intellectual, and social development of children.

Mehta v. Tamil Nadu. -The court ruled that children under 14 should not be allowed to do hazardous work and ordered the government to establish and maintain job training grants for children. Here, the Supreme Court was asked to consider the issue of the right to education within the scope of Article 41. These principles need to be included in the main laws. Both complement each other. States have equal discretion. Protecting families from 'Cattle Trafficking'

Conclusion

In India children cannot be separated from their families, parents and children remain together as an organization, hence the development and improvement of children's rights can only be achieved by the family New plans and programs for children of all children There is sufficient knowledge and information that it can be completed. To see. Their voices seem to be heard if policies are based on values, standards, and traditions they believe in. According to statistics, if the existing law is not enough, India can also handle foreign laws with a successful track record. Make international contracts and agreements. There should be stricter control, regulation, and decision-making of the law in India regarding children's privacy. It is undeniable that children in India face numerous problems and that violations of children's rights have increased since ancient times due to lack of understanding of their rights and lack of rights. Besides appropriate use of the law, including the establishment of appropriate laws or courts or other appropriate institutions, the law also calls for providing incentives for business recovery and this is the need of the hour. Small projects by NGOs like Smile Foundation and Make a Difference (MAD) and proper allocation of funds are some of the other important steps towards improving child rights in India. It has entered into force and some of these laws require the development of general and detailed provisions for the transfer of authority to existing institutions or institutions with a new design.

This ensures that rules and regulations are enforced and communicated promptly and is a faster, nonrushed way. Work with other agencies to ensure data is stored, tracked, and resources allocated appropriately.

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INDEPENDENCE OF JUDICIARY AND CONSTITUTIONAL MORALITY

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Advocate

I. INTRODUCTION:

We shall discuss later on about the Independence of Judiciary, Constitutional Morality, Pendency, Adjudication of various types of cases by our Learned judges. We also know that 'Justice delayed is Justice denied' but who cares for that and the huge pendency of cases with backlog speaks volumes of our Legal Competence, Independence of Judiciary, free, fair and honest adjudication of cases with equity, fairness and in accordance of the law.

II. THE INDIAN DEMOCRACY:

Now, therefore, we should discuss about the duties, responsibilities and morality of each Pillar towards the sustenance of each Pillar of Democracy. Now, therefore, we should discuss about the duties, responsibilities and morality of each Pillar towards the sustenance of each Pillar of Democracy.

The first is the Executive, which includes the President of India under Article-52 to Article-62, Executive powers and appointment etc. The Vice President, Article-63 to 71 and Power of President [as enshrined under Articles-72 to 73. The Council of Ministers, Article-74 to 75; The Attorney General of India, Article-76 and conduct of business of the Govt. of India, Article-77 to 78. Then there is Legislature, Parliament or Lok Sabha & Rajya Sabha the temple of Indian Democracy with 545 elected Members in the Lok Sabha for every five years and 275 Members in the Rajya Sabha with Secretary General for Administrative Affairs of the House.

Failure of Constitutional Morality, and Human Rights leads to jungle rule in any country.

III. INDIAN JUDICIARY AND IT'S INDEPENDENCE:

SUPREME COURT OF INDIA & 29 HIGH COURTS:

It has been alleged that nepotism, favouritism & casteism in appointment of judges to higher judiciary [supreme court and 29 high courts]

Whoever reads or learns about the Supreme Court Collegium headed by the Chief Justice of India since 1993 onwards, which recommends the names of the candidates, mostly prominent jurists practising in the Apex Court or all the 29 High Courts for appointment of judges to Higher Judiciary the procedure appears to be absolutely vague, un-Constitutional and favouring the candidates from particular community alone and may be a few from other communities. This itself proves beyond all reasonable doubts that the procedure adopted and being followed since 1993 Onwards is not only vague, questionable, doubtful of the sanctity of the Collegium, which itself is an opaque and un-Constitutional body.

Nowhere in the world the judges are appointed by the judges that also from a particular community..

The entire world makes fun of Casteism, which is prevalent in India for centuries and even after 76th Republic Day. We all must think as Indians and not to be known from our Castes, Creeds or Community.

If this trend allowed to be continued for the appointment of judges from particular community alone then I am afraid there will be serious conflicts between the communities giving rise to communal troubles.

It has been enshrined in Article-124 of the Constitution [sub clauses (1), (2), (3), (4), (5), (6) and (7) about the CJI and other judges of Supreme court, their appointment and functions with powers for adjudication of various types of cases] of the Constitution of India i.e. Bharat the Establishment and constitution of Supreme Court; judges of 29 High courts in each state and Subordinate judiciary [District & Sessions courts in each District] at the District level. We have Metropolitan Magistrates courts in all the cities.

IV. FUNCTIONING OF JUDICIARY & ADJUDICATION OF CASES:

But yet, it is not a secret that in every court of our great country, including the Supreme Court, all the High Courts and District Courts there is huge pendency of various types of cases, delayed is Justice denied’, as rightly observed in the case of Machung Lalung and the huge pendency of cases with backlog speaks volumes of our Legal Competence, Independence of Judiciary, free, fair and honest adjudication of cases.

V. APPOINTMENT OF JUDGES TO HIGHER JUDICIARY FROM NEAR AND DEAR ONES GROSSLY NEGLECTING THE MERITS, COMPETENCE, AND JUDICIAL EXPERIENCE AS JURISTS ETC.:

It is no secret that over the years for decades the sons, daughters, sisters, brothers, sister -in-laws etc. are being recommended for appointment as judges to Higher Judiciary by the ‘Supreme Court Collegium’ without any fair Competition.

If this trend is allowed to be continued for the appointment of judges from particular communities alone then I am afraid there will be serious conflicts between the communities giving rise to communal troubles and adding to the existing huge pendency of cases. The entire world makes fun of Casteism, which is still prevalent in India for centuries and even after 76th Republic Day. We all must think as Indians and not to be known from our Castes, Creeds or Community.

VI. APPOINTMENT OF JUDGES TO HIGHER JUDICIARY MUSTBE DONE THROUGH THE NATIONAL JUDICIAL APPOINTMENT COMMISSION:

Even after adopting the Best of Constitution in India on 26th day of January, 1950 there is serious dearth of justice being meted out to the 85% population. Therefore, it gives rise to speculations like the Efficacy, Sincerity, Efficiency, Honesty, Integrity, Expertise in the Laws, Correct Interpretation of legal provisions as enshrined in our Constitution. The Orders/judgements being passed gives rise to numerous doubts such as True Merits of a judge; his/her Competence and proper adjudication without any fear, favouritism, greed, Casteism personal ego or Political interference etc.

Now, therefore, the question of Meritocracy is no more there because of the fact that rapid access by marginalised communities of Higher education, they have to save our democracy which is under severe and of course imminent threat perception to our Best of Constitution only because its Chief Architect was from the lowest Strata of the so-called Hindu society [Dr. B.R. Ambedkar – from Mahar Community of Untouchables]. Hence, it is the social, national, moral and Constitutional obligation as also bounden duty of the Higher Judiciary to take serious cognizance of this threat perception not only to the Indian Constitution but to the society as a whole.

VII. SPECIAL POWERS OF SUPREME COURT:

Review of judgements or orders by the Supreme court subjects to the provisions of any law made by Parliament or any rules made under Article-145, the Supreme court shall have power to review any judgement pronounced or order made by it, Article-138 writ of certiorari, or any of them for any purposes other on of Federal Court under existing law to be exercisable by the Apex court]; Article – 136, Special leave to appeal in

Apex court, Article – 137, Review of judgements or orders by the Apex court, Article – 138, Enlargement of the jurisdiction of the Apex court, Article – 139 & 139-A Conferment on the Apex court of powers to issue certain Writs Parliament may by law confer on the Apex court power to issue directions, orders or writs, including writs in the nature of habeas corpus, writ of mandamus, writ of prohibition, writ of quo-warrant and [should voluntarily assign the work of appointment of judges to the Higher Judiciary Supreme Court.

VIII. HUGE PENDENCY IN VARIOUS COURTS:

While there is no doubt about the Huge Pendency of large number of cases of various types cases. As many as approximately Five Crores and Twenty-Five Lacs of cases (5,25,00,000) are pending in various courts in India, despite the fact that the Best of Practising Advocates, Jurists and judges & Magistrates [of the Hindu Community] from the Subordinate judiciary are being picked up by the High Courts Collegium and they are being recommended to the Supreme Court Collegium headed by CJI for appointment to the Higher Judiciary.

It is a pity that the people of India have to wait for decades for justice and according to a global survey shamelessly, Indian Adjudication of various types of cases stand at 79th place on global judiciary. Therefore, even a layman may be heard to say, “Tarikh pe Tarikh, but no timely adjudication of cases and justice delivery in India and in most of the Civil and Criminal cases the judgement is delivered by Indian courts to the next generation. Hence, the popular judicial adage, “Justice Delayed Is Justice Denied”.

We, the people of India, therefore, would like to invoke the Preamble to the Constitution of India, draw the kind attention of all the Chief Justices of the respective 29 High Courts in all the States in general and the CJI of Supreme Court of India in particular to the various judgements having been passed by the then Privy Councils with the emphasis that, “Brahmins should not be appointed as judges because they do not possess Judicial Character”.

As a matter of fact, the door to the Parliamentary Democracy in India leads to the Supreme Court and the CJI and other 33 Hon’ble judges of the Apex court have complete freedom and absolute authority as enshrined in the Constitution. But it is most unfortunate that the Legislature (Parliamentarians) and Executive have been dominating the Supreme Court for the reasons best known only to the Hon’ble judges of Apex court. We must recall that three Seniors judges of the Supreme Court has expressed about threat perceptions regarding the Independence of Judiciary in 2016 and addressed the Press Conference. In other words, frankly speaking this is almost the end of Indian Democracy.

IX. URGENT NEED TO SCRAP RESERVATIONS FOR SCs & STs IN LEGISLATURE:

The time has come that there is absolutely no need to continue the Reservations in the Parliament as also in the 29 States and 9 Union Territories for the SCs and STs.

X. NEED TO SCRAP MULTIPLE PENSION SCHEMES TO THE LEGISLATURES [M. Ps, M.L.A’s ETC.]:

It is fact that once a citizen is elected as a Corporator, MLA, MLC or MP for tenure of five years, he/she is eligible for hefty pension in addition to other benefits. If subsequently, he/she is elected as MP again he/she becomes eligible for another pension.

XI. STOP BACK DOOR ENTRY TO IAS CADRE POSTS:

It is not a secret that the present Govt is indulging and encouraging in backdoor entry for Executive Cadres like Joint Secretary/Directors without any Competition and interview and other formalities. According to an

estimate as many as 340 private persons have already been appointed as Joint Secretaries. factly.in/no-the-g...;https://factly.in/no-the-government-did-not=appointment-340.

We, the people of India, therefore, would like to invoke the Preamble to the Constitution of India draw the kind attention of all the Chief Justices of the respective 29 High Courts in all the States in general and the CJI of Supreme Court of India in particular to the various judgements.

XII. NO TRANSPARENCY IN THE SELECTION OF JUDGES TO HIGHER JUDICIARY BY SUPREME COURT COLLEGIUM HEADED BY CJI:

One fails to understand and justify the selection of judges to the Higher judiciary through the Supreme Court Collegium, which is absolutely an Opaque body of 4/5 judges without any transparency.

XIII. CONCLUSION:

There is absolute independence enshrined in Indian Constitution with the judicial Powers as indicated herein above.

But unfortunately, nobody can question about the dilly-dallying tactics by the entire judiciary, and if any citizen dares to question the judiciary or its authority about the delay etc. in adjudication, he/she has to face Contempt of the court.

Demerits of Supreme Court Collegium are, that there is absolutely no transparency in the selection and appointment of judges to Higher Judiciary by Apex Court Collegium, which is headed by CJI. One fails to understand and justify the selection of judges to the Higher judiciary through the Supreme Court Collegium, which is absolutely an Opaque body of 4/5 judges without any transparency.

The recommendation and appointment of judges by Supreme Court Collegium is absolute illegal because it is an opaque body. Therefore, judges to Higher Judiciary should be appointed by National Judicial Appointment Commission [NJAC] which was illegally ruled as un-constitutional.

Unless we the people of India, which includes the Indian Judiciary, Legislature, Executive and the so called Fourth Pillar of Democracy i.e. entire Mass Media respects our Best of Constitution and work and take all the decisions in accordance of the Preamble to the Constitution, we cannot claim the Vishwa Guru (so called Super Power). The indulgence and un-Constitutional approach to the Constitutional provisions enshrined therein must be followed in true spirit of the Constitution Framers, and there is provision enshrined in our Constitution itself, if situation demand for amending the Constitution.

Those who debated the Draft Constitution in the Constituent Assembly had debated for two years, eleven months and 26 days, they were very Learned to make and give it to us on 26th day of January, 1950 to make India i.e. Bharat a very strong and beautiful Nation of our dreams.

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BUILDING A JUST SOCIETY: EXPLORING THE INTERSECTION OF SOCIAL JUSTICE AND THE WELFARE STATE

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INTRODUCTION –

T. H. Marshall asserts that the establishment of true democracy is directly linked to the growth of the welfare state. The steady evolution of rights over time, starting with political rights in the nineteenth century, social rights in the twentieth, and civil rights in the eighteenth, further demonstrates this link. (Marshall,1950,p 48).

As early as the 1950s, there was a growing recognition of the importance of welfare and justice, which was solidified through agreements between workers, employers, and the state. In present times, many countries are striving to shift their policies in a way that allows for more state spending. However, the socialist approach to creating a welfare state has proven unsuccessful in many cases, leading countries to adopt more liberal principles. The neo-liberal ideology has gained dominance in the global landscape, resulting in a decrease in state control. This transformation is evident through the reduced role of the state in social welfare policies.

METHODOLOGY

JSTOR and Research Gate and some official websites were used as the database to find the source for the literature review since they had relevant articles related to the review. Initially, 26 articles were shortlisted after title and abstract review for full paper screening. Out of these 26 articles which were subjected to full paper reading, subsequently, 15 articles with relevant content were selected for the final review. The revised standards for reporting systematic reviews were followed in the format of this review. This paper approach was used to offer a strict and scalable mechanism for evaluating the body of accessible literature.

SOCIAL JUSTICE AND THE WELFARE STATE – ARGUMENTS: -

SOCIAL JUSTICE: -

The concept of justice has taken root in morals, legal, and political philosophy. In ‘A Theory of Justice’ (1971) John Rawls argued that “justice is fairness” (LACEY,1992).

The main focus of justice is the fundamental organization of society, or more specifically, how the main social institutions allocate basic rights and obligations and decide how to divide the advantages of social cooperation.(DeGrazia and Millum 2021)

The concept of social justice was developed by modern political thinkers such as Walter Garrison Runciman, David Miller, and William Galson. The concept of social justice was based on distribution.

Ronald Dworkin argued that “justice is equality and respect of individual rights” (LACKEY,1992).

WELFARE STATE: –

Looking back into the history, we can see that the state has constructed things to make people happy. However, we cannot say that those were welfare states because the majority of them were military states. The concept of welfare state was introduced in Germany in the year of 1880s by Bismark’s compulsory social insurance laws, which primarily benefited workers based on a dedicated tax.

The concept of the welfare state was introduced in the United Kingdom in 1942, and it became a major driving force in the country's reconstruction following World War II. The blueprint was based on the Beveridge report of 1944.

Definition - "A Welfare state is a state that is committed to providing its citizens with basic economic security by protecting them from market risks associated with old age, unemployment, and sickness"(Weir 2001)

The welfare state is a government concept in which the primary goal of the government is to protect its citizens from economic and social problems while also ensuring their well-being and rights.

SOCIAL JUSTICE AND THE WELFARE STATE –

The welfare state is founded on the concept of justice, there must be some foundation to demonstrate its legitimacy. Because the state is an idea created by people so for it needs to survive or for people to understand its importance a base is required. "The welfare state policies are among the most important mechanisms devised to ensure and maintain a certain level of social justice, defined as the equitable distribution of goods, positions, and burdens"(Sabbagh and Schmitt 2016).

Miller's tripartite concept of social justice is based on the principle of "equality, Needs, and merit"(Sabbagh and Schmitt 2016).

The Esping-Andersen has classified the Welfare state into three types. These are

1. In the liberal welfare state, social justice;
2. The Conservative welfare state and social justice
3. The welfare state under social democracy and social justice

In this the key concepts of social justice if Equality, Needs, and Merits.

1. IN THE LIBERAL WELFARE STATE, SOCIAL JUSTICE

The fundamental aim of the social-democratic welfare state model, known as "Equality," is considered to be social fairness. These were the fundamental traits of the Nordic nations. It consists of universal social programs funded by general taxes that provide all citizens, regardless of wealth or status, with equal social rights.(Sachweh 2016) (Korpi and Palme 1998)

social democratic welfare states are said to rest upon a "genuinely universalistic idea of solidarity" and "promote equality of status"(Sachweh 2016).

State policy is aimed at achieving equality of outcomes, while redistribution is primarily concerned with achieving equality of opportunity The social democratic welfare state makes an effort to balance a high degree of opportunity equality with a comparatively high degree of outcome equality.(white,2010)(Sachweh 2016)

2. THE CONSERVATIVE WELFARE STATE AND SOCIAL JUSTICE –

Another name for this concept is the "Bismarckian" welfare state. Social insurance programs are the main means by which conservative welfare regimes, which are prevalent in Continental Europe, arrange social safety. (Palier 2010).

The conservative welfare model places a strong emphasis on fostering state loyalty and social integration, which is defined as the upholding of social hierarchy and order. (Esping-Andersen 1990)

It prioritizes horizontal redistribution across the life course rather than vertical redistribution between classes in order to provide income security and stability.(Esping-Andersen 1990)

3. THE WELFARE STATE UNDER SOCIAL DEMOCRACY AND SOCIAL JUSTICE

The main concept is the design of institutions in the state the 'Need'. These are the main characteristics of Anglo-Saxon countries (Castles, 2010; Esping-Andersen, 1990).

Benefits are given to people in need, and services are supplied through the market, either directly or through private social insurance. The main benefits are that people can live at least somewhat respectable lives. (Miller, 1999, p. 210).

SOCIAL JUSTICE AND WELFARE IN INDIA –

Among the world's biggest democracies is India. The Indian constitution states that social equality is the ultimate goal. The Indian constitution contains an outline of the social welfare program. The preamble of the constitution contained phrases like "socialist," "social and economic justice," and "equality," which suggested that the state would play a significant role in ensuring the social welfare of its citizens.

Indian Constitutional Provisions Ensuring Social Justice –

Social justice is reflected in Part 3 of the Indian Constitution, while the idea of a welfare state is reflected in Part 4 of the Directive Principles of State Policy.

- The following are the fundamental rights listed in part – 3 some of which are open to everyone and some of which are exclusive to Indian citizens:
- Right to equality – Article 14 to 18
 - Article 19 safeguards some rights related to freedom of speech;
 - Article 20 protects against conviction for crimes;
 - Article 21 protects life and personal liberty;
 - Article 21(a) provides free and mandatory education for children aged six to fourteen.
 - Article 22- 23 - Right against of exploitation
 - Article 25 to 28 - Freedom of religious
 - Cultural and educational rights – (29-30)
 - Judicial remedies for enforcement of rights conferred by this part-3 of the constitution – article 32.

Articles 36 to 51 of Chapter IV of the Indian Constitution include certain directive principles of state policy that the state must adhere to when running the country. The most important of these directives are.

- Article 38 pertains to promoting the welfare of the populace, whereas
- Article 39 deals with providing adequate means of subsistence and equitable distribution of the community's material resources.
- Article 39(A): Free legal aid and equal justice
- Article 41: in some situations, the right to public aid, education, and employment.
- Article 43: Fair and humane working conditions and maternity relief
- Article 44: Ensure that all citizens have access to a uniform civil code across the nation;
- Article 45: Provide free and mandatory elementary education for children;

"The State is to be guided by the Policy principles outlined in this section. Although these principles are not subject to court review, the State has a duty to apply them in the creation of legislation as they are essential to the nation's governance.

The government of India gives some Welfare schemes –

- Pradhan Mantri Jeevan Jyothi Bima Yojana (PMJJBY)
- Pradhan Mantri Suraksha Bima Yojana (PMSBY)
- PDS
- Atal Pension Yojana
- Ayushman Bharat – Pradhan Mantri Arogya Yojana (AB-PMJAY)
- Pradhan Mantri Matritva Vandana Yojana
- Deen Dayal Upadhyaya Anthyodaya Yojana
- Pradhan Mantri Jan Dhan Yojana (PMJDY)
- Deen Dayal Upadhyaya – Grameen Kaushalya Yojana (DDU-GKU)

These are some of the welfare schemes introduced by the Indian government to promote social justice and the welfare of the people. These are some of the schemes that have helped people in some ways to improve their quality of living and well-being.

But inequality still exists in India and many areas require improvement. According to the latest Inequality Report, India ranks 127 out of 146 countries in terms of inequality.

CONCLUSION –

A welfare state plays a crucial role in achieving social justice. Social justice is all about ensuring a fair and equal distribution of resources, opportunities, and privileges in society. It's like the foundation upon which the welfare state is built.

For social justice to become a reality, the government or state needs to have the necessary means and conditions in place. Once they recognize the importance of welfare, they have a responsibility to implement policies and measures that create a welfare state. This way, they can actively work towards achieving social justice for all. By prioritizing the welfare of its citizens and striving for equity, a welfare state can help bridge the gaps and ensure that everyone has access to necessities, education, healthcare, and more. It's about creating a society where everyone has a fair chance to thrive and succeed.

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GENDER JUSTICE AND CONSTITUTIONAL FEMINISM IN INDIA: A STUDY AS REFLECTION OF INTERNATIONAL DECLARATIONS, CONVENTIONS & PROTOCOLS

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INTRODUCTION:

India is well-known for its rich cultural, geographic, and religious diversity, which has significantly shaped the country's social fabric. This diversity is a testament to the co-existence of various ethnicities, languages, traditions, and religious beliefs. However, the impact of this diversity on women's liberation in India is multifaceted, reflecting both progress and challenges. Cultural diversity in India manifests through a myriad of customs, rituals, and traditions and also perpetuate gender norms that may be restrictive for women. Geographic diversity further contributes to the complexity of women's experiences. India spans diverse landscapes, from bustling urban centres to remote rural areas. Religious diversity adds another layer to the dynamics of women's liberation in India. Various religions coexist in India, each with its own set of boundaries, beliefs and practices limiting the women.

Despite these challenges, India has witnessed significant progress in women's liberation. The country has produced influential female leaders in politics, business, and academia. Legal reforms have been enacted to address issues like dowry, domestic violence, and workplace harassment. Educational initiatives have also contributed to an increase in female literacy rates. However, the journey towards women's liberation is far from complete and achieving gender equality requires a nuanced understanding of the interplay between cultural diversity and women's liberation. Efforts to address these challenges should be inclusive and respectful of diverse cultural and religious perspectives

FEMINISM IN INDIAN CONSTITUTION – AIM TO ACHIEVE INTERNATIONAL STANDARDS:

Constitutional feminism in India refers to the ongoing efforts to interpret and implement the constitutional provisions to ensure gender equality and justice. Our Constitution, enshrines justice, liberty, equality and fraternity as fundamental principles and has played a crucial role in advocating equal rights for women, striving to attain constitutional dream of an egalitarian society.

One of the cornerstones of constitutional feminism in India is Article 15(1). This article prohibits discrimination on grounds of sex among other discriminatory parameters, challenging discriminatory practices against women and paving the way for legal reforms to dismantle gender-based disparities. The Right to Equality guaranteed by Articles 14 and 15 has been crucial in challenging discriminatory laws and practices. Over the years, there have been significant legal victories that have struck down discriminatory laws, such as those related to inheritance and property rights, reinforcing the constitutional commitment to gender equality. The right to live with dignity has been interpreted as an integral part of the right to life and personal liberty under Article 21, encompassing various aspects of women's lives, leading to legal interventions against practices like dowry harassment, domestic violence, and marital rape. The Directive Principles of State Policy, particularly Article 39(a) and (d), emphasize equal pay for equal work and the right to an adequate means of livelihood and addresses economic disparities. The two amendments to the Constitution mandated reservations for women in local governance institutions, has been very instrumental in their increased political representation.

Despite these advancements; challenges persist due to implementation gaps, societal attitudes and patriarchal norms continue to hinder the full realization of constitutional feminism in India. As a nation, India has made significant progress in advancing women's rights and promoting the constitutional dream of an egalitarian society. There is a continuous need for societal transformation to ensure realistic and true realization of justice, liberty, equality, and fraternity for all, irrespective of gender. The journey towards a more egalitarian society is an ongoing process, requiring sustained efforts from all stakeholders. The dynamic interplay between gender justice, constitutional feminism, and their reflection in India is complex and evolving narrative that intersects with international declarations, conventions, and protocols intended at endorsing equality and safeguarding women's rights.

It is crucial to acknowledge India's commitment to international agreements addressing gender equality. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹ has been ratified by India in 1993, signalling its dedication to end gender-based discrimination and endeavour in promoting women's rights. India's commitment to CEDAW has influenced domestic legal reforms, with constitutional feminism serving as a guiding principle. The Indian Constitution is a visionary document, reflecting assurance to gender justice and without explicitly using the term "gender," the Constitution ensures equality (Article 14), prohibits discrimination on grounds of sex (Article 15), guarantees equal opportunities in public employment (Article 16) and set the foundation for subsequent legal developments and efforts towards gender justice. Indian courts have played decisive role in interpreting and expanding the scope of gender justice within the constitutional framework. Landmark cases, such as *Vishaka's Case*², resulted in guiding principles addressing menace of sexual harassment in the workplace, filling legislative gaps and aligning India's legal landscape with international standards. The reflections of international declarations and protocols are evident in the legal battles for reproductive rights in India. The recognition of reproductive rights as a facet of women's autonomy has roots in international conventions like the International Conference on Population and Development³. India's legal framework, guided by constitutional feminism, has progressively addressed issues such as access to contraception, safe abortion, and maternal health, aligning with global perspectives on reproductive rights.

One significant aspect of this interplay is the impact of customary laws and religious practices on women's rights. While international conventions stress the universality of women's rights; the complex fabric of Indian society, with its diverse cultural and religious traditions, poses challenges. Issues like personal laws governing marriage, divorce, and inheritance often clash with the principles of gender justice, leading to a delicate balance between respecting cultural diversity and upholding human rights.

The dynamic interplay between gender justice, constitutional feminism, and international declarations is a nuanced journey reflecting both progress and challenges in India. The synergy between constitutional principles and international commitments is crucial in shaping a more equitable future for women in India; one that respects diversity while upholding the fundamental tenets of human rights and gender justice.

LEGISLATIONS, POLICIES AND PLANS IN INDIA: EFFORT TOWARDS GLOBAL STANDARDS:

India's legal framework has undergone significant transformations to align with various global instruments, aimed at promoting equality among genders and safeguarding women rights. At the heart of India's alignment with global instruments lies its commitment to the CEDAW, which is ratified by India in 1993. CEDAW has

¹ A landmark document of women empowerment, adopted by the United Nations in 1979.

² AIR 1997 SC 3011 (*Vishaka & Ors vs State of Rajasthan & Ors* on 13 August, 1997)

³ (ICPD) - UN conference held in Cairo from 5–13 September 1994 resulting Program of Action, which is the steering document for the United Nations Population Fund.

influenced legislative reforms and policy measures to eliminate discrimination based on gender. The landmark *Vishaka v. State of Rajasthan case*, drew inspiration from CEDAW and international human rights norms. These guidelines established the framework for addressing workplace harassment, demonstrating India's commitment to creating a safe and equitable work environment for women. Reproductive rights also showcase the alignment between India's legal framework and international standards. The ICPD influenced India's approach to reproductive health, emphasizing the importance of women's autonomy in decision-making. However, the extent of India's compliance with these global instruments is not without challenges. The ground reality is marked by gaps in enforcement, awareness, and accessibility, hindering the realization of women's rights as envisioned in international conventions. The effectiveness of India's legal framework is also tested in addressing gender-based violence. Access to justice remains a concern, with issues like delayed trials and societal attitudes contributing to the persistence of gender-based violence. The diversity of personal laws in India governing matters like marriage, divorce, and inheritance based on religious affiliations, poses a challenge to achieving a uniform standard in alignment with global instruments. India's compliance with global instruments requires continued efforts to bridge these gaps, ensuring that legal frameworks not only reflect international commitments but also translate into meaningful change for women across the diverse landscape of the nation.

JUDICIAL DECISIONS AND INTERPRETATIONS: DECISIVE EFFORT

Judicial activism in India has played a pivotal role in advancing gender justice by interpreting and shaping laws to address gender-based inequalities and promote the rights of women. The judiciary, through its progressive interpretations and landmark decisions, has been a driving force in challenging discriminatory practices, advocating for gender equality, and promoting social justice. One of the earliest instances of judicial activism in the realm of gender justice in India is the case of *K P S Gill (1985)*⁴, which addressed the issue of sexual harassment of women at the workplace, emphasizing the right of women to work with dignity. The cases of sexual-harassment are recognized as a violation of her rights; setting the stage for the subsequent development of guidelines in the *Vishaka case*. The *Vishaka guidelines* marked a significant milestone in addressing sexual harassment at the workplace. This proactive judicial intervention laid the foundation for subsequent legislative developments, culminating in the legislation namely the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013⁵. Judicial activism has also played a crucial role in safeguarding reproductive rights in India. In the case of *Suchita Srivastava vs. Chandigarh Administration (2009)*⁶, the Supreme Court addressed the issue of reproductive rights of women in the context of abortion, leading to amendments in the Medical Termination of Pregnancy (MTP) Act, 2021 which expanded availability to safe abortion services for Indian women. Landmark decisions by the judiciary have challenged discriminatory practices entrenched in personal laws. In the case of *Shah Bano vs. Mohammad Ahmed Khan (1985)*⁷ sparked debates on the need for a uniform civil code, challenging gender-based inequalities within personal laws. In states like Kerala, where matrilineal systems traditionally coexist with patriarchal norms, the judiciary has intervened to protect the rights of women the case of *Mary Roy vs. State of Kerala (1986)*⁸, affirmed a Christian woman's right to inheritance, challenging discriminatory provisions under the Indian Succession Act. While judicial activism has undeniably contributed to the advancement of gender justice in India, it is not without critiques. Some argue that the judiciary, by stepping into legislative domains, may overstep its constitutional bounds. The expansive interpretation of constitutional provisions,

⁴ 1996 AIR 309, (Mrs. Rupan Deol Bajaj & Anr. Vs. Kanwar Pal Singh Gill & Anr. On 12/10/1995)

⁵ Act 14 of 2013

⁶ AIR 2008 SC 582 (Suchita Srivastava & Anr vs Chandigarh Administration on 28th August, 2009)

⁷ AIR 1985 SC 945 (Mohammed Ahmad Khan vs Shah Bano Begum on 23rd April, 1985)

⁸ AIR 1986 SC 1011 (Mrs. Mary Roy vs State of Kerala & Ors on 24th February, 1986)

including Articles 14, 15, and 21, has been central to judicial activism in promoting gender justice. In addition to addressing specific cases, the judiciary has taken cognizance of broader issues affecting women. Judiciary in India has been a driving force in promoting gender justice by interpreting and shaping laws to address discrimination and advance the rights of women. The ongoing evolution of judicial activism in India will likely continue to influence and shape the trajectory of gender justice in the years to come.

ASSESSMENT OF PRESENT-DAY STATUS:

India's legal framework has undergone significant developments to align with global standards and benchmarks, displays the nation's commitment of upholding women rights and fostering a just and equitable society. An assessment of the extent to which India's legal framework aligns with global standards reveals both achievements and challenges across various domains. One key area of alignment is the commitment to gender equality, influenced by international instruments such as CEDAW. India's legal landscape has evolved to end gender-based discrimination, evident in laws combating sexual harassment, workplace inequalities, and promoting reproductive rights. While progress has been made, challenges persist in the effective implementation of these laws, reflecting a gap between legal provisions and on-the-ground realities. In the realm of human rights, India has made strides to align with international standards. The judiciary, through its activism, has been instrumental in interpreting constitutional provisions to protect individual freedoms. However, concerns remain about the use of preventive detention laws, limitations on freedom of expression, and instances of custodial violence, highlighting areas where India's legal framework may fall short of global benchmarks on human rights.

India's legal framework has made commendable strides in aligning with global standards across various domains. However, challenges in implementation, regional variations, and systemic inefficiencies highlight the need for ongoing efforts to ensure that legal provisions translate into meaningful outcomes to bring India's legal framework more closely in line with global benchmarks.

CONCLUSION:

In conclusion, the gender justice provisions embedded in the Indian Constitution and the nation's guarantee to feminism reflect dynamic interplay between domestic aspirations and global standards. The constitutional framework, enriched by principles of equality, non-discrimination, and justice, provides a solid foundation for addressing gender-based inequities. The judiciary's activism in interpreting and expanding these provisions demonstrates a commitment to aligning with international declarations and covenants. India's adherence to global standards, exemplified by its ratification of conventions like CEDAW, signifies a shared commitment to promoting gender equality on the international stage. However, the journey towards comprehensive gender justice is ongoing, marked by both progress and challenges. Bridging the gap between legal provisions and societal realities, fostering awareness, and ensuring effective implementation remain imperative. The dream of a truly egalitarian society requires continuous efforts, collaborative initiatives, and a nuanced understanding of the intersectionality of gender, ethnicity, and socioeconomic factors.

SUGGESTIONS AND RECOMMENDATIONS:

Achieving India's full adherence to international declarations, conventions, and protocols requires a multifaceted approach encompassing legislative reforms, institutional strengthening, public awareness, and international cooperation. Here are several recommendations and suggestions to enhance India's commitment to aligning its policies and practices with global standards.

Comprehensive Legislative Reforms:

- Regularly review and update existing laws to align them with evolving international standards. Establish a systematic process for periodic revisions to ensure that legislation remains relevant and in compliance with global norms.

Strengthening Enforcement Mechanisms:

- Invest in the capacity-building of law enforcement agencies, judicial bodies, and regulatory authorities to ensure effective implementation of laws. Adequate training and resources are essential to bridge the gap between legal provisions and on-the-ground realities.

Public Awareness and Education:

- Launch nationwide awareness campaigns to educate the public about international conventions and their significance in shaping domestic policies. Increased awareness fosters a sense of ownership and accountability among citizens.

Partnership with Civil-Society:

- Foster collaboration with non-governmental organizations and civil society groups actively working on issues covered by international conventions. Leverage their expertise, grassroots connections, and advocacy efforts to bridge gaps in implementation.

International Relationships:

- Actively engage in international forums, conferences, and associations to stay up-to-date of global developments and best practices. Participation in discussions at the global level provides valuable insights for refining domestic policies.

Integration of Sustainable Development Goals (SDGs):

- Align national development strategies with the Sustainable Development Goals; recognizing the interconnectedness of economic, social, and environmental aspects. This alignment demonstrates a commitment to a holistic approach that mirrors global aspirations.

Legal Aid and Access to Justice:

- Develop means of easy access to legal aid for marginalized and vulnerable populations, to guarantee that all citizens can benefit from legal protections. This includes addressing barriers to justice such as financial constraints and geographical remoteness.

Achieving India's adherence to international declarations, conventions, and protocols requires a coordinated effort involving legislative reforms, enforcement mechanisms, public engagement, and international relationship. By adopting these recommendations, India can reinforce its commitment to global standards; contributing to a more just, equitable, and sustainable world.

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RIGHT TO HEALTH & YOGA

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INTRODUCTION

Integrating yoga into education promotes holistic health that addresses physical, mental, emotional and spiritual well-being. Health in India, the right to health and the practice of yoga go hand in hand and promote general well-being. Rooted in ancient Indian traditions, yoga has gained worldwide popularity because it improves overall well-being. The Indian government is rapidly integrating yoga into health and educational institutions, recognizing its potential to improve public health. This brief review explores how India's yoga education and health programs relate to the right to health, highlighting the cultural value of yoga as a promoter of general well-being.

The history of yoga goes back thousands of years, originating in ancient India with roots in meditation and asceticism. Classical yoga was formalized in the Yoga Sutras of Patanjali in 400 AD. And described the Eightfold Path. Hatha yoga was born in the middle Ages with a focus on physical purification. Today, figures like Swami Vivekananda and B.K.S. Iyengar popularized yoga around the world. Today, yoga is versatile, encompassing a variety of styles, and practiced worldwide for physical, mental and spiritual well-being. However, its popularity has led to debates about cultural appropriation and commercialization. [1] [2]

LITERATURE REVIEW

The literature review provides an overview of existing research on the benefits of yoga on student well-being and academic achievement. It combines findings from factual studies and meta-analyses examining the effects of yoga on stress reduction, anxiety management, mood improvement and academic engagement. In addition, the review discusses theoretical frameworks and conceptual models that explain the mechanisms through which yoga affects various aspects of student health and academic performance.

INCLUSION OF YOGA IN EDUCATIONAL INSTITUTIONS

Accepting yoga as a necessary part of spiritual education and overall wellbeing is the first step toward making it a fundamental right on school courses. The combination is in line with the ideas of encouraging students' mental and physical well-being, stress management, and mindfulness. Yoga can help students develop good habits and coping strategies at a young age by being built into school policies. In addition, it supports the point that everybody has the fundamental right to have yoga education, ensuring that every student can take advantage of the transforming effects of yoga on their entire development and quality of life. Experts support integrating yoga into India's education system, mentioning its benefits for children's intellectual, physical, and social development. Yoga practice increases brain clarity for studying and boosts energy levels for sports and promotes healthy interpersonal interactions. In the digital age, lifestyle diseases and stress are on the rise. Yoga offers a balanced approach to mental, emotional, and physical well-being. Yoga may teach students self-discipline, positive motivation, and the science of living at schools and colleges, which can help them live more fit and balanced lifestyles.

YOGA PRACTICE ADJUSTMENTS FOR CHILDREN

Educational yoga poses should be modified according to their psycho-physical abilities, with longer poses with time. Exercise shouldn't be continued due to ongoing development because of the bones and hormonal systems. Understanding body elements, breathing, and the difference between stress and relaxation are essential. It is important to introduce new exercises steadily, pranayama, for example, should only be offered once correct breathing has been perfected.

YOUTH AND THEIR PROBLEMS IN 21ST CENTURY

India's most valuable resource is its young people. It describes youth as a period of preparing individuals to become active and responsible members of society. The United Nations defines youth as the age range of 15-24. Although the minimum time is 15 years, each country has a different maximum period ranging from 24 to 40 years. The National Youth Policy (2014) defines youth in India as those aged 15-29, accounting for approximately 27.5% of the population. Globalization opens up new opportunities for young people worldwide. Young people are diverse in terms of gender, sexual orientation, and other characteristics. Youth are now expected to do well, in addition to having more opportunities in their lives. Youths face frequent stress and demands from several institutions, colleges, and the media. Youth face multiple challenges, including family, academic, social, and personal issues.

FRAME WORK IN CONSTITUTION

The Indian structure does not give specific say on yoga as a human right of children. In any case, some of the arrangements indirectly support the promotion of yoga and comprehensive child education.

- i. **Right to Instruction:** Article 21-A of the Indian Structure ensures the right to instruction for children between the ages of 6 and 14. Whereas yoga instruction is not unequivocally specified, it falls inside the broader scope of all-encompassing instruction that points at the by and large improvement of the child.
- ii. **Directive Standards of State Approach:** Article 39(f) of the Indian Structure coordinates the state to guarantee that children are given openings and offices to create in a sound way and in conditions of opportunity and respect. This can incorporate activities to advance physical and mental well-being, such as yoga education.
- iii. **Protection of Children's Rights:** Different laws and arrangements in India centre on the assurance and welfare of children, counting their right to wellbeing and instruction. Whereas yoga may not be unequivocally specified, activities advancing all-encompassing well-being and push administration among children are encouraged.

MINISTRY OF AYUSH

Ministry of Ayush was established on November 9, 2014 with the objective of reviving the deep knowledge of our ancient medicine and ensuring optimal development and propagation of Ayush health systems. Previously, the Indian Institute of Medicine and Homeopathy (ISMandH), established in 1995, was responsible for the development of these systems. In November 2003, it was renamed as the Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy (Ayush). It focused on education and research in ayurveda, yoga and naturopathy, unani, siddha and homeopathy.

THE OBJECTIVES OF THE MINISTRY OF AYUSH INCLUDE

Establishing and maintaining centralized research and development facilities, training and setting standards in various aspects/verticals of Ayush healthcare systems (like RandD, education, herbs, pharmacopoeias etc.).

YOGA EDUCATION NOT AN ENFORCEABLE FUNDAMENTAL RIGHT

It's essential to understand that, notwithstanding the potential benefits education in yoga may have for people's health, it might not always be seen as an enforceable fundamental right in court. In general, fundamental rights refer to basic liberties and legal safeguards, like the freedom of speech, the ability to practice one's religion, and the right to a fair trial. Although it might be argued that access to schooling including holistic health education that might incorporate yoga principles is important to general health, it might not always be enforceable as a fundamental right in the same way that other recognized rights are. The scope of rights is frequently influenced by the legal systems and legal interpretations in particular jurisdictions. Legislative efforts and educational reforms can be used to promote for the integration of yoga education into educational systems. [3]

CONCLUSION

Integrating yoga into school curriculums can be a powerful tool for promoting student health and well-being. By providing teacher training, creating age-appropriate programs, and collaborating with stakeholders, schools can make yoga education an accessible and enriching experience for all students. This approach aligns with the right to health by empowering students to take charge of their well-being and build a foundation for a healthy life.

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INDEPENDENCE OF JUDICIARY AND CONSTITUTIONAL MORALITY: A CRITICAL ANALYSIS!

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INTRODUCTION

An independent Judiciary is a crusader and protector of the rights and liberties of Citizens. The underlying idea is that the judges must make their decisions unbiased, uninfluenced, and impartially. An independent judiciary is essential to the "Rule of Law." Judges must carry out their responsibilities without fear or favour. Judicial Independence is a condition pre-requisite for a democratic setup. French philosopher Montesquieu advanced "the idea of an independent judiciary. He was in favour of the separation of powers between the legislative, executive as well as judicial branches of government". Judges in the United Kingdom were appointed by the king and, like other royal employees, were subject to dismissal at their own discretion prior to 1701. The 1701 Settlement Act guaranteed judicial independence.¹ The Indian Constitution makes no specific mention of the judiciary's independence. But the concepts Rule of Law and the Independence of the Judiciary are the features of the Basic Structure Doctrine developed by the Indian Judiciary in the Keshvanand Bharati case.² The Supreme Court of India, in a landmark decision, made it clear that the independence of the judiciary is a fundamental component of the Constitution and that it cannot be altered, not even by Constitutional Amendments.³

Similarly, Constitutional Morality is also an important and philosophical concept. Constitutional morality drives judges to uphold the spirit of Constitutionalism. The doctrine of Constitutional Morality guided the judiciary to interpret Constitutional provisions effectively. Constitutional morality provides the base for progressive and transformative constitutionalism. In his 19th-century work "A History of Greece," political radical and historian George Grote introduced the idea of constitutional morality. Dr. B. R. Ambedkar introduced the concept of Constitutional Morality in the Constituent Assembly by quoting George Grote.⁴ In Dr. Ambedkar's view, constitutional morality serves as an effective means of coordinating the divergent interests of many parties and fostering administrative collaboration to resolve issues amicably, free from significant conflicts or the need for violent revolutions. Constitutional morality was an answer to the social inequality that existed at the time, and the theory essentially translated into respect for Constitutional democracy as the recognized system of government and administration among republic stakeholders.⁵

Following are the functional definitions of some of the relevant terms ;

Constitutionalism: It is a political theory that implies that a government or power holders keep their activities of governance within the tenets of the fundamental law which is the Constitution.

Independence of judiciary: The political concept of the judiciary's independence states that it should interpret the law and the constitution and deliver decisions entirely independent of the other arms of government, political parties, the general public, and any partisan interests.

¹ Shaaila Arora , Independence of Judiciary in India , International Journal of Law and Humanities , Vol. 4 Iss. 2, 714

² Keshavananda Bharati Sripadgalvaru and ors. Vs State of Kerala and Another (1973) 4 SCC 225 : AIR 1973 SC 1461

³ S. P. Gupta Vs. Union of India , AIR 1962 149

⁴ http://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-11-04

⁵ <https://www.visionias.in>

Constitutional Morality: It is a doctrine invoked by the Judiciary as the obedience to the core Principles of the Constitution by going beyond the literal interpretations of the Constitution. It dwells into the spirit of the Constitution by promoting counterpoise to the popular predominant public notions of morality.

Judicial Activism: It is judicial philosophy to play a proactive role in the Judiciary towards uplifting citizens' interests by going beyond the traditional role; of the interpreter and sometimes stepping into the shoes of the Executive or Legislature to do social, economic, and political justice.

Judicial Restraint: It is the exact opposite of judicial activism and argues that judges should have a strictly limited role, with the sole responsibility being to interpret the law; lawmakers and executive branch officials should handle the actual drafting of laws.

Judicial Creativity: Judges that use judicial creativity take a flexible and inventive approach to interpreting and administering the law, often introducing new legal concepts and policies, in a way that is not explicitly expressed in the language of the legislation.

Judicial Overreach: It's the situation where the judiciary transgresses the powers of the Executive and Legislature by exceeding its constitutional authority and becomes overactive.

RESEARCH OBJECTIVES:

The research paper seeks to explore the reach of the Independence of the Judiciary being the component of the basic structure framework of our country. The paper navigates through the idea of Constitutional Morality and its functional application to various landmark cases. The research aims to address the correlation between Judicial Independence as a means to achieve the end of Constitutional Morality. The research embarks upon the critical appraisal of overt and ambiguous, vague utilization of the doctrine of Constitutional Morality.

RESEARCH METHODOLOGY:

This article is purely based on the secondary data available in the form of Constituent Assembly Debates, numerous Constitutional and Legal Provisions, Precedents, Law Books, and Journal Articles. The research undertaken is purely doctrinal research. This researcher intends to carry out analytical and descriptive research to analyze and describe the concepts. This research paper attempts to underline the need for the concepts of Independence of Judiciary and Constitutional morality in upholding the 'rule of law' and also provides a critical appraisal of the same.

PROBLEM STATEMENT:

The judiciary is the guardian of the Constitution and it is bestowed with Independence to make it impartial in its deeds. Sometimes it leads to the subjective interpretation of the Constitution by individual judges by exploring the doctrine of Constitutional Morality. It may lead to judicial supremacy and prove incidental to the violation of the basic tenets of the Separation of Powers doctrine. It undoubtedly hinders the organic and natural growth or development of liberalism. It may act as a counterpoise to public morality and create distrust among the public towards organs of the state.

JUDICIAL CONNOTATIONS AND CONTRADICTIONS:

Constitutional Morality is held deeming principle by many scholars voicing out the Constitutional silences. A number of times in Indian Judicial History it has been utilized where the literal interpretations of Constitutional text are not favorable. Though Constitutional Morality as a terminology had been used in the Constituent Assembly, for a long time it didn't get mentioned except in passing remarks in Keshvanand

Bharati and S P Gupta (First Judges Case). It concretely got mileage from the Naz Foundation Case ⁶ in 2009. Afterward the tale of Constitutional Morality is used as a base in many landmark judgments. The Independence bestowed on the judiciary is expanded and conveniently used by Judges mostly in a subjective manner in the judicial process. Following are a few judicial connotations on Constitutional morality

In the case of Naz Foundation v. NCT Government and Ors. ⁷ the court differentiated public morality as well as Constitutional morality. Popular morality is different from morality based on constitutional values. Even if the majority opinion is correct, constitutional morality has to triumph above the public morality argument. In the case of K. S. Puttaswamy (Aadhaar) v Union of India⁸ the importance of the existence of constitutional morality plays a central role here. Justice Chandrachud contends that it is necessary to consider both the court's jurisdiction to examine the central government's actions and the central government's duty to abide by the court's ruling. Although the former is guaranteed by the Constitution, the latter is ensured by respect for the rule of law, and more specifically by "constitutional morality as an essential component of the rule of law." According to the narrative in the Manoj Narula v. Union of India ⁹ case, constitutional morality is a learned virtue. The fact that our people have not yet mastered it must be acknowledged. Since "constitutional morality is the foundation of good governance, democracy—best defined as the government of the people, by the people, and for the people—expects the prevalence of true orderliness, positive propriety, committed discipline, and sanguine sanctity. In the case of State (NCT of Delhi) v. Union of India, ¹⁰ the Constitutional morality in its strictest sense of the term implies strict and complete adherence to the constitutional principles as enshrined in various segments of the document. An additional pledge that" comes with granting a nation's constitution is that all citizens and high-ranking constitutional officials alike are required to revere the foundational principles of the document. The Constitution imposes this duty since it is the essential framework that serves as a guide to safeguard and guarantee that the democratic system that the people have been promised does not undergo any disruptions. The concept of "constitutional morality in the case of Navtej Singh Johar y. Union of India ¹¹ is not restricted to the simple observance of the fundamental principles of constitutionalism. Rather, it embraces virtues of a broad nature, such as fostering an inclusive and pluralistic society, while simultaneously upholding the other principles of constitutionalism. Its magnitude and sweep are not limited to the provisions and literal text that a Constitution contains". Moreover, the ideals of constitutionalism are ingrained in the State's mechanism for the benefit of all its citizens as a consequence of maintaining constitutional morality. "In the case of Joseph Shine v. Union of India,¹² constitutional morality—rather than the "common morality" of the State at any given point in history"—must direct the legislative process. The protection of certain rights is necessary for the free, equal, and dignified lives of all citizens in any democracy, according to constitutional morality. Respecting the moral principles outlined in the constitution necessitates upholding the protections against sex discrimination, equality before the law, and dignity. Within India's universe of constitutionalism, the basic rights chapter is like the North Star. Any attempt by varying majoritarian regimes to impose a specific social morality perspective unavoidably loses to constitutional morality. In the Independent Thought v. Union of India ¹³ case, the constitutional morality concept was used to challenge the dominant social norms that view women as men's property with no sexual

⁶ Naz Foundation Vs. Government of NCT and Ors., (2009) SCC OnLine Del 1762

⁷ Supra

⁸ (2019) 1 SCC 525

⁹ 2014 SCC Online SC 640

¹⁰ (2018) 8 SCC 501

¹¹ (2018) 10 SCC 1

¹² (2018) 2 SCC 189

¹³ AIR 2017 SC 4904

or bodily autonomy. Two judges “in the Indian Young Lawyers Association v. Union of India¹⁴ case used the concept of constitutional morality” in completely different ways that contradicted one another. While Justice Indu Malhotra held a minority dissenting opinion, claiming that the ability to possess and exercise one's own religious views was safeguarded by the moral principles of the Constitution, Justice Chandrachud saw “the exclusionary practice of women from the” Sabrimala temple as contrary to constitutional morality. The reasoning for these actions cannot even be contested in court. The judges thus employed the same theory to justify their fundamentally opposed judgments. Judges can then interpret it in a way that best fits their own consciences.¹⁵ The Supreme Court ruled in *Kantaru Rajeevaru v. Indian Young Lawyers Association*¹⁶ that “constitutional morality in a secular democracy would need harmonizing the fundamental rights”. It consists only of the principles outlined in the Preamble and other parts of the Constitution, particularly Parts III and IV, which serve as guidance. By ordering the Sabrimala review case to be considered by a nine-judge bench, the Court identified the question of what Constitutional morality actually means as a crucial constitutional problem. So, one can infer that in the near future, the judiciary could define Constitutional Morality conclusively.

In the words of then-Attorney General K K Venugopal, “Use of Constitutional Morality can be very dangerous and we can't be sure where it'll lead us to. I hope Constitutional Morality dies. Otherwise, our first PM Pandit Jawaharlal Nehru's fear that the Supreme Court will become 3rd chamber of Parliament might come true”.¹⁷ This strong and blunt opinion of the Attorney General creates doubt about Constitutional Morality in the legal minds. Also, “the Law Commission of India has recommended the abolition of the death penalty in India on the back of “prevailing standards of Constitutional Morality”¹⁸

CONCLUSION AND SUGGESTIONS:

In conclusion, this research paper recommends that no branch of democratic polity can be superior to the other one. All the 3 branches of Government- Executive, Legislature, and Judiciary have their own spheres and areas to work toward the betterment of the modern-day Welfare State. Recently, it has been observed that the philosophy of Constitutional Morality is repetitively used by Judges to justify their stand where the literal interpretations of Constitutional provisions are unsupportive. This concept needs to be jurisprudential scrutiny and justification. There is the possibility that the Judiciary in zeal and spirit of activism, may forget the boundary of ‘judicial self-restraint’ by using the oracle of Constitutional Morality. Again the vague and ambiguous concept of Constitutional Morality needs to be defined to provide a framework controlling judicial overreach. Judicial Creativity cannot be left open for the individual whims and fancies of judges. It seems an undemocratic characteristic has been acquired or attributed to the concept of Constitutional Morality by some scholars. One more question surface – whether the independent Judiciary shields itself with the armour of Constitutional Morality and makes overt use of the power of judicial review? Despite the statutory and Constitutional provisions to ensure judicial Independence the recent development shows that there is reluctance on the part of the judiciary to be governed by the Right to Information Act 2005 and National Judicial Appointments Commission Act, 2014. The time has come for the judiciary should be more accountable and transparent in its administration of justice justice-delivered system. However, the judiciary overpowering itself by certain deeming principles like Constitutional Morality and the versions of its meaning getting developed without certainty or answerability. A critical analysis of the concept of constitutional

¹⁴ (2019) 11 SCC 1

¹⁵ Dr Gireesh Kumar J , Arjun Philip George, Constitutional Morality and its Oracle , PalArch's Journal of Archaeology of Egypt / Egyptology 18(8), 44309-343. ISSN 1567-214x

¹⁶ (2020) 3 SCC 52

¹⁷ Times Now (Dec.9 , 2018, 8.39 AM) [Timesnownews.com/india/article-328266](https://timesnownews.com/india/article-328266)

¹⁸ Report No. 262 on The Death Penalty , Law Commission of India (2016)

morality may suggest the foremost important thing is that Constitutional morality is a counterpoise to public / social morality. The concept of constitutional morality creates distrust among the public towards organs of the state. It obstructs the organic and natural development of the society. It also encourages judicial supremacy. And, lastly, the lack of literature on the doctrine of Constitutional Morality incidentally causes many versions of it in judicial corridors. There is a need to delimit judicial Independence by setting boundaries so that the judiciary can balance an application of the doctrine. There should be a standardized definition of the concept. Obviously, the review petition of Sabrimala may bring clarity on the concept by the comparatively larger (nine) judges bench. Judicial values must be added to and supplemented by Constitutional Morality. Lastly, there is a need of commitment to the ideas and aspirations of the Constitution by all stakeholders.

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JUDICIAL ACTIVISM AND GOVERNANCE

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INTRODUCTION:

Judicial activism refers to the inclination of judges to interpret and apply the law in a manner that extends beyond strict adherence to legal texts, often reflecting their personal views or policy preferences. This phenomenon has a notable impact on governance, shaping policies and influencing the balance of power among different branches of government. While judicial activism can serve as a check on the potential abuse of authority by the legislative and executive branches, it also raises concerns about democratic accountability, as judges are not elected officials. The influence of judicial activism on governance is a subject of ongoing debate, with proponents lauding its role in addressing social injustices and protecting individual rights, while critics emphasize the potential erosion of legal certainty and democratic principles. Striking a delicate balance between the judiciary's active role and the foundational tenets of democracy remains a complex challenge faced by legal systems globally.

The legislative, executive, and judicial branches make up the democratic government 3 pillars. The three pillars of government make up the government's organs. The Indian Constitution, which is the ultimate law of the land, specifies the powers and functions. The legislature's main duty is to make laws; the executive branch's is to carry out these laws; the judiciary's is to uphold the rule of law and ensure that justice is done. The highest court system in India is given responsibility with three functions by the constitution. They are listed in the following order:

1. Has the responsibility of interpreting the Constitution to resolve any ambiguities in its language and to offer interpretations of many statutes.
2. As a protector of citizens' fundamental rights, as specified by the constitution.
3. To resolve appeals, cases transferred from lower courts, etc.

Judicial activism can be defined as decisions made by judges that appear to be motivated more by political or private goals than by the spirit of the law.¹ *Black's Law Dictionary* explains judicial activism as a:

"...Philosophy of judicial decision making whereby judges allow their personal views about public policy, among other factors, to guide their decisions."²

Judicial activism is the active role that the judiciary plays in advancing justice. The assumption³ of an active role by the judiciary is a broad definition of judicial activism.⁴ Because it restricts constitutional rights, *Ronald Dworkin* opposes a "*strict interpretation*" of the constitutional text.

¹ Ratchaya, S. K. (2021, June 7). Judicial Activism v. Judicial Restraint. *Libertatem*. Retrieved from <https://libertatem.in/articles/judicial-activism-v-judicial-restraint/>

² Ahuja, G., & Gupta, A. K. (2022, June 13). Judicial Activism: A Comparative Study Of India, South Africa And Pakistan. *Indian Journal of Law and Legal Research*. <https://www.ijllr.com/post/judicial-activism-a-comparative-study-of-india-south-africa-and-pakistan>

³ Anala, A. (2016). Public Interest Litigation and Judicial Activism. *International Journal of Creative Research Thoughts (IJCRT)*, 4(4), 337. Retrieved from <https://ijcrt.org/papers/IJCRT1134068.pdf>

⁴ Razia, Dr. (2017). Judicial Activism and the Protection of Minorities. *IJRDO - Journal of Social Science and Humanities Research*, 1-10, ISSN: 2456-2971. Retrieved from file:///D:/Users/Lenovo/Downloads/354-Article%20Text-627-1-10-20171230.pdf

“...To those recognized by a limited group of people at a fixed date of history.”⁵

The word of *Justice J.S Verma*, describes Judicial Activism as:

“...The active process of implementation of the rule of law, essential for the preservation of a functional democracy”.⁶

ROLE OF JUDICIAL ACTIVISM IN GOVERNANCE:

The judiciary, at its heart, is the defender of justice and the embodiment of fairness in our democratic structure. It's not just a branch of government; it's a compassionate guardian interpreting laws, settling disputes, and ensuring justice for every individual.

Justice N.V. Ramana, at an event, asserted that there is a need to *"Indianize our legal system"*,⁷ with the justification that the colonial system which is being followed currently may not be best suited to the complexities of India. The divergence between the applicable law and the society it relates to is inhibiting the search for justice, as intricate Indian cases must be addressed within the framework of outdated colonial laws. The main question now is the direction the judiciary should take. Sticking strictly to the law may lead to potential injustices while establishing new legal norms could be criticized as "judicial overreach." These two options are only applicable to extreme situations and not to typical cases. If done in good faith and within the court's jurisdiction, the latter can be understood as Judicial Activism.

The loophole in our governance & administration because of which there's a need for judicial activism is that democracy is a form of government where we as citizens surrender some of our rights to an elite body which we commonly know as the "government". Now, a government's primary duty is to make laws for the public benefit. But sometimes the legislature and executive might deviate from their paths & they start making decisions on the basis of their own benefits.⁸

So, who will check the validity of legislation? Or that the legislations are implemented fairly? Or is it good for every section of society? The judiciary as such cannot act unless an aggrieved party does not knock on its doors. Hence in such a situation, a substantial vacuum is created. Therefore, as per the "power void filling" theory, any organ of the state has to extend its influence to manage all the things and the only body that is competent enough to fill that void is the judiciary. Many people will argue that this is against the principles of democracy. Maybe they are partially correct, but they need to understand that there is a difference between giving "justice" & giving "legal justice" to the people. Now, it is important to decide what is more important the principles of democracy i.e. the procedural part of the legislative supremacy kind of thing, or the spirit of democracy i.e. the welfare of the public.⁹

⁵ Agrawal, P. (2014, November 13). Judicial Activism and Constitutional Challenges in India. Lawtopus Academike. Retrieved from <https://www.lawtopus.com/academike/judicial-activism-constitutional-challenges-india/>

⁶ Sharma, S. (2016, January). Judicial Activism with a Difference. *International Journal in Commerce, IT & Social Sciences (IJCISS)*, 3(1), 50. Retrieved from https://www.academia.edu/38631227/Judicial_Activism_with_a_Difference

⁷ Satyam, K. (2022, September 22). Judicial Activism and Governance. Constitution. Retrieved from <https://articles.manupatra.com/article-details/Judicial-Activism-and-Governance>

⁸ Satyam, K. (2022, September 22). Judicial Activism and Governance. Constitution. Retrieved from <https://articles.manupatra.com/article-details/Judicial-Activism-and-Governance>

⁹ Cambridge University Press. (n.d.). Power Vacuum. In Cambridge Dictionary. Retrieved December 8, 2021, from <https://dictionary.cambridge.org/us/dictionary/english/power-vacuum>

KEY EVENTS IN THE EVOLUTION OF JUDICIAL ACTIVISM IN INDIA:

Landmark judgments in India provide glimpses of judicial activism, where the judiciary actively interprets and shapes laws to address significant societal issues.

- 1973 - Kesavananda Bharati v/s State of Kerala - SC gave the power to strike down unconstitutional laws
- 1978 - Maneka Gandhi v/s Union of India – SC (Supreme Court) ordered free legal aid for the poor
- 1993 - Naz Foundation v/s Government of NCT of Delhi - Supreme Court decriminalized homosexuality
- 1997 - Vishaka v/s State of Rajasthan - The SC issued guidelines for preventing sexual harassment in the workplace.
- 2002 - MC Mehta v/s Union of India – The SC ordered clean-up of the Ganges River¹⁰
- 2006 - Laxmi v/s Union of India and ors - The SC's ruling placed limitations on the vending of acid
- 2012 - Right to Education Act - SC ordered universal access to education¹¹
- 2017 - Shayara Bano v/s Union of India & Others - The SC has ruled that the practice of immediate triple talaq is unconstitutional. Uttering talaq three times in 1 sitting to pronounce a divorce is considered null and unlawful.
- 2018 - Sabarimala Temple Entry case - restriction of women in Sabarimala Temple is unconstitutional

There have been notable cases of advantageous judicial activism on a significant scale in the country recently. High-profile politician Shibu Soren has been found guilty of a murder that took place in 1994. Tinsel's renowned Sanjay Dutt, known for his role in Gandhigiri, was found guilty under the Arms Act of 1993. Navjyot Sidhu, a former cricketer known for his spoken word, was found guilty of a road rage killing that took place 18 years ago. Despite criticism, judicial activism has significantly improved the masses' conditions in the country.¹²

MECHANISMS TO ENSURE JUDICIAL ACTIVISM ADHERES TO CONSTITUTIONAL PRINCIPLES:

Various countries have implemented a range of measures to address concerns about potential overstepping by the judiciary, emphasizing the delicate balance between maintaining an independent judiciary and preventing any branch from exceeding its constitutional authority.

In the United States, the Constitution provides a clear separation of powers among the government's 3 branches, with recent cases demonstrating the Supreme Court's commitment to interpreting constitutional provisions that reinforce the boundaries between branches, thereby preventing potential overreach.

In India, the doctrine of basic structure serves as a standard for judicial review, with the Supreme Court identifying certain constitutional features as part of its basic structure, limiting the scope of amendments that could alter these fundamental aspects. Germany's Federal Constitutional Court plays a crucial role in maintaining checks and balances by reviewing laws and executive actions to ensure compliance with the Basic

¹⁰ Testbook. (n.d.). "Judicial Activism - Concept, Evolution, Significance and Criticism. Retrieved from <https://testbook.com/ias-preparation/judicial-activism>

¹¹ Testbook. (n.d.). Judicial Activism - Concept, Evolution, Significance and Criticism. Retrieved from <https://testbook.com/ias-preparation/judicial-activism>

¹² Shukla", B. B. (n.d.). Judicial Activism in India. Scribd. Retrieved from <https://www.scribd.com/document/582692248/JUDICIAL-ACTIVISM-IN-INDIA>

Law. In Canada, the principle of cooperative federalism fosters dialogue between federal and provincial governments, particularly in judicial decisions related to constitutional matters.

The United Kingdom's Supreme Court has enhanced transparency efforts, with decisions accompanied by clear explanations and summaries to contribute to public understanding and accountability. Ethical guidelines for judges, found in many jurisdictions like the United States and Canada, ensure adherence to codes of conduct, as recent cases involving ethical considerations underscore the importance of maintaining public confidence. Legislative safeguards, exemplified by Australia's Judiciary Amendment (Commonwealth Model Litigant Obligations) Bill 2021, aim to enhance judicial accountability by introducing measures to review and address potential misconduct.

Continuing legal education requirements for judges are common globally, with recent initiatives in various jurisdictions focusing on keeping judges updated on legal developments and ethical considerations to ensure they remain well-informed in their roles.

CONCLUSION:

In conclusion, the concept of judicial activism carries both positive and negative implications. Beyond mere interpretation of laws, the judiciary becomes a beacon of hope, judicial activism in India is very essential for safeguarding fundamental rights amid a diverse socio-political landscape. Because it serves as a guardian deeply rooted in humanity, actively defending liberties, offering a voice to the unheard marginalized communities, addressing discrimination, and working towards positive societal change along with actively protecting individuals' well-being.

While it has played a crucial role in delivering justice to marginalized sections of society and advancing fundamental rights, there is a risk of overreach when the judiciary excessively intervenes and encroaches upon the constitutional powers of other government organs.

The research underscores the importance of a nuanced and well-guided approach to judicial activism, ensuring it remains aligned with constitutional principles while continuing to contribute positively to governance. It ultimately advocates for adapting legal systems to societal changes while maintaining a judicious balance between an active judiciary and democratic principles for effective governance.

But is it possible that judicial activism and governance can go together? The answer could possibly be ***YES!***¹³ Certainly, in the intricate dance of governance, where the delicate balance between judicial activism and effective governance is at play, it's akin to a symphony. Picture a scenario where our legal system is not just a set of rules but a living entity responding to social needs and wants. In India, where we don't strictly separate powers but delineate functions, our system takes on a quasi-federal nature.

Enter judicial activism, a proactive stance taken by the judiciary to cater to the unmet social needs, often not addressed by the executive or legislative branches. Imagine it as the judiciary saying, ***"If the people need it, we'll provide it."*** This, in essence, becomes a harmonious dance between governance and the judiciary, where the courts play a role in filling the gaps to meet social demands.

Critics might raise concerns, fearing judicial activism could tip the scales, but in this intricate dance, it's more of a balancing act. Democracy, far from being threatened, finds equilibrium through the counterbalancing of power between the public and the administration. Here, political sagacity is crucial; instead of branding

¹³ Satyam, K. (2022, September 22). Judicial Activism and Governance. Constitution. Retrieved from <https://articles.manupatra.com/article-details/Judicial-Activism-and-Governance>

verdicts as anti-democratic, it's about understanding the role of a stronger judiciary in stabilizing democracy, providing a reliable anchor for the people.

The people's faith in the judiciary is not just an expectation; it's a cornerstone of justice in society. The duty of the judiciary, therefore, is to keep this faith unshaken. It's not just about legal doctrines; it's a human endeavor, a promise to protect and uphold the faith that citizens place in the judiciary for justice and fairness. So, in this dance of governance, the judiciary's role isn't just legal; it's deeply human, resonating with the hopes and aspirations of the people it serves.

PROTECTING THE PROGENY (SAFEGUARDING CHILD RIGHTS IN THE DIGITAL AGE)

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INTRODUCTION

One mechanism that gives a democratic government credibility is the idea of Constitutionalism. In India, Constitutionalism is viewed as a logical extension of the nation's Fundamental system of Government.

Several legislations in India set out age as the sole factor for determination as to who is a child. While various age of the child is submitted by various regulations, maximum of which is 18 years.

Our Constitution ensures basic fundamental rights to the children regardless of their racial, ethnic, sexual, linguistic, religious, political and social backgrounds. They hold equal value just as any other human being. However, due to their physical and mental abilities, children are unquestionably the nation's future and require extra protection. It is appropriately stated by Cathy Cobley in her book¹,

"A child is a person and not an object of concern."

And yet, for a long time, children were not given much consideration by the society. The best interest of the children was decided by their parents without taking their child's opinion. In the present electronic era also, the child rights get affected because the rapid advancement in technology has impacted the policymaking in a haphazard manner.

Based on the above, it was hypothesized that there is an imperative need for making provisions for children strengthening their Constitutional Rights in Digital Age. The following **objectives** have been proposed to test this hypothesis:

1. To examine the current laws and whether they provide for protection of rights of the children in cyber era.
2. To evaluate how the children are more affected by the policymaking.

LITERATURE REVIEW²

The rights of the children may constitute a significant social concern today, but not too long ago it seemed ridiculous to even converse about their rights. In the pre-industrialization period, the children were treated as young adults since the age of six years and were socially and legally the property of their parents. Even at four or five years, some of them were forced to be child labourers. The children were seen as helpless victims of industrialization as they were compelled to labour sixteen hours a day in a drenched, inadequately ventilated environment, and physical punishment was frequently used. In addition to being the victims of molestation, the children were kept awake by harsh means.

The importance of education was realized in 19th Century, which is also termed as the "child-saving" era. There was a gradual shift of state of children from being treated as property to being perceived as a separate class. The realization of their recognition as a separate class gave rise to the idea of protection of rights of children from several risks to which they are subjected.

In the present times, the rights continue to protect children but the children in turn continue to get somewhat denied acceptance as active members of their own life. Their rights are conditional or controlled by their

parents or guardians. The notion that adult perspectives alone are adequate for determining needs of the offspring has to make way for the realization that their needs and wishes should be expressed by themselves in order to develop and put into effect social policies and practices.

LAWS FOR CHILD RIGHTS

The rights of the children are safeguarded by the Constitution of India and various other legislations in the country and across the globe. Some of them are highlighted as hereunder:

a) Constitution of India

Article 15 (3)	Prohibits Discrimination	Gives power to the State Government to formulate special measures for women and children.
Article 24	Prohibits employment of children in factories, etc	Forbids children under the fourteen years of age to engage working in mine, factory or other hazardous occupation.
Article 39 (f)	Principles to be followed by the State	Equal opportunities and conditions for healthy development should be provided for children.
Article 45	Provides for free and mandatory education for children	The State will make an effort to ensure that all children receive free, compulsory education until they turn fourteen.

b) Other Legislations

The Code of Criminal Procedure, 1973	Section 125 Order for maintenance of wives, children and parents	Children have right to claim maintenance from their father irrespective of his religion, so long as the children have no independent means of their own
The Juvenile Justice (Care and Protection of Children) Act, 2000	In accordance with Articles 15 (3), clauses (e) and (f) of Article 39 and Articles 45 and 47 of the Constitution	An Act to consolidate and reform the law pertaining to minors in conflict with law and children in need of care and protection
The Child Labour (Prohibition and Regulation) Act, 1986	In accordance with Article 24 of the Constitution	An Act to prohibit the engagement of children in certain employments and to control the conditions of labour of children in certain

		other employments.
The Right of Children to Free and Compulsory Education (RTE) Act, 2009	In accordance with Article 21-A of the Constitution	An Act that would ensure free and obligatory education for all children between the ages of six and fourteen.

Numerous other laws are enacted with respect to child rights, with a view to protect children and ensure their well-being.

REASONS FOR PROTECTING THE RIGHTS OF CHILDREN IN DIGITAL ERA

In all likelihood, the vast majority of youngsters from all over the world will find it impossible to separate their social and personal growth from the internet any time soon. It has benefits in addition to drawbacks. Benefits include increased awareness, self-expression possibilities, and access to knowledge. However, there are drawbacks as well, such as the potential for abuse and exploitation by adults, peer cyberbullying, and overuse, which puts youngsters at risk.

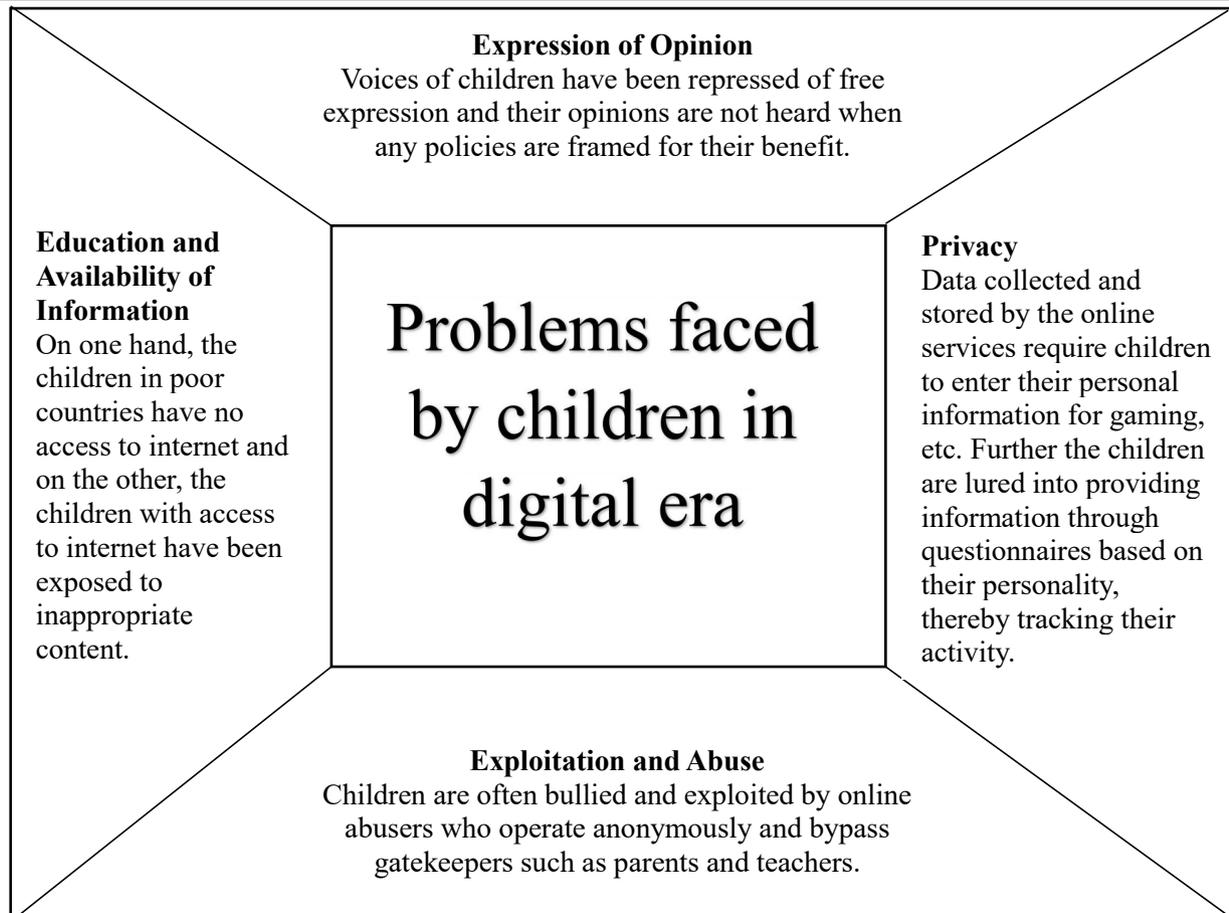
The world we live in today is very different from the world of a few decades ago. The technology has been revolutionized to such an extent that no age group has remained unaffected by its presence. The issues that children now face in the digital age are entirely different from those of the past. As for example, previously the problems faced by children were malnutrition, lack of access to education, child marriage, etc. whereas now the shift has been more towards problems like repression of freedom of expression, exploitation and abuse in the form of cyber bullying, etc. While the difficulties of the past have not completely vanished, they have greatly diminished, and it is now imperative that we address the issues of the present as they arise.

The Pew Research Centre in Washington DC conducted a study, according to which the parents of children varying from kindergarten to 12th reported that the screen time of their children has significantly increased after the pandemic. In India, the National Commission for Protection of Child Rights carried out a study in 2021, which found that more than thirty percent of the children between 8 to 18 years were using internet operated devices for online lectures and learning via the web. Furthermore, the internet usage was not restricted to education, kids also mentioned that they mostly used the internet to access games, music, study materials, and messaging apps. The study revealed that nearly 37.8% children have an account on Facebook and 24.3% children have an account on Instagram, both belonging to the age group of 10 years old - which is definitely a cause of concern.

The crux of the matter stated by the Supreme Court while declaring Right to Privacy as a Fundamental Right in 2017 is as follows- children across the globe are constantly found to create digital footprints on social media. Their definition of 'ABCs' has changed from Apple, Ball and Cat to Apple, Bluetooth and Chat and it goes on like D for Download, E for E-mail, so on and so forth. The mistakes they make as a child, haunts them their entire life, which should not be the case. Their privacy must be protected at all costs, not only in the digital world, but also in reality.

THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD VIS-À-VIS DIGITAL ERA

A thorough analysis of the effects of digital age on the children's rights, especially the ones highlighted in the Child Rights Convention has to be done. However, it is evident that all rights under the Convention are engaged by the internet revolution.



CONCLUSION

To sum up, problems faced by children in the age of technology are inevitable and different from what they faced in earlier centuries. The rights available for children in our Constitution should be shaped into the new legislation which protects them from the modern-day issues. The observations made above make it evident that the laws available for the protection of rights of the progeny, even though important, prove to be insufficient to tackle the problems faced by them in the era of internet.

The POCSO (i.e., Protection of Children from Sexual Offences) Act, 2012 is at the disposal of the children suffering through sexual offenses and furnishes provisions for harassment, intimidation, and threats made to children online. However, it does not deal with the problem of Cyberbullying.

RECOMMENDATIONS

Apart from preventive measures to be adopted in parenting, focus should also be made on the policymaking sphere. State should ensure that it safeguards the juveniles against risky and abusive content and while doing so, the digital rights of the children are not affected. Encouraging children to express themselves, protecting their privacy, facilitating their internet access, and ensuring that they are capable of identifying possible threats and knowing how to respond to them are the best forms of protection. The existing laws put all age-groups of children in same category, whether he's 5 or 15, when it is known that the problems faced by both are different.

The strategies that can be applied in law-making process are as follows:

- ✓ Including the opinions of children while framing laws for them.
- ✓ Segregating the age-groups to be in a better position to tackle their problems.
- ✓ Internet facilities to be provided to all the children who have negligible access to the internet at present.
- ✓ Make sure kids understand the risks and rights associated with using the internet, as well as what to do about them, from an early age on throughout their growth.
- ✓ By obtaining their consent for use of their information, ensuring that they feel empowered.
- ✓ Educate the children about their remedial rights in the form of official as well as legal complaint in case their rights are infringed.

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ENVIRONMENTAL CONSTITUTIONALISM IN THE 21ST CENTURY: NAVIGATING CHALLENGES AND OPPORTUNITIES

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INTRODUCTION:

The 21st century presents unprecedented challenges to the bedrock of democratic governance – constitutionalism. Environmental protection is one of the most pressing concerns demanding innovative solutions within constitutional frameworks. This paper delves into the complexities of environmental constitutionalism in India, focusing on how evolving governance structures, global collaborations, and judicial activism impact environmental protection and rights.

Environmental constitutionalism in India faces multiple challenges in the 21st century. Evolving governance structures, global collaborations, and judicial activism all present both opportunities and complexities. Navigating these complexities requires a multi-pronged approach, balancing innovation with constitutional principles, ensuring equitable participation, and upholding the rights of future generations. By harnessing the potential of collaborative partnerships, leveraging technology responsibly, and strengthening constitutional safeguards, India can pave the way for a more sustainable and just future.

LITERATURE REVIEW:

EVOLVING GOVERNANCE STRUCTURES AND THE ENVIRONMENT:

India has witnessed a rise in digital technologies within its governance structures. While these technologies offer potential for environmental monitoring and data-driven decision-making, concerns regarding data privacy, accessibility, and algorithmic biases need to be addressed. The Indian Constitution enshrines the right to life, which has been interpreted to include the right to a clean and healthy environment. Additionally, Article 48A and 51A (g) impose a duty on the State and citizens, respectively, to protect and improve the environment. These constitutional safeguards form the foundation for environmental action and hold immense potential for ensuring environmental integrity and intergenerational equity.

Speaking on lines of India, the Indian judiciary has played a pivotal role in upholding environmental rights and enforcing environmental laws. This dates back into the history when Indian Penal Code, 1860, defined public nuisance. Landmark judgments like the T.N. Godavarman case¹ and the M.C. Mehta cases² establish a strong precedent for judicial activism in environmental matters. However, concerns regarding judicial overreach and balancing the need for environmental protection with broader development goals need careful consideration.

INDIA AND THE GLOBAL PERSPECTIVE:

India engages in various global environmental agreements and collaborations such as Paris Agreement and COP28 are one of the key factors that addressed the concerns related to environment. These interactions offer opportunities for knowledge sharing, resource mobilization, and coordinated action on pressing issues like climate change.

¹ T.N. Godavarman Judgment: <https://blog.ipleaders.in/t-n-godavarman-v-thirumulpad-case-study/>

² M.C. Mehta Judgment: <https://indiankanoon.org/doc/1486949/>

However, the urge was realised after the Stockholm Conference where many acts such i.e. Wildlife Act, 1972; Water Act, 1974; Air Act, 1981 etc. Within five years of Stockholm Declaration, the Constitution of India was amended to include Protection and Improvement of Environment as constitutional mandate. The protection and improvement of environment is now a fundamental duty under Constitution Act of 1976. Govt., of India has set up a National Committee on Environmental Planning and Coordination.

Since, then there have been non-state actors that have contributed to the environmental constitutionalism at the national and international level to address the ongoing scenario such as GRI, ICC, etc. However, challenges exist in translating global commitments into effective national implementation, considering India's diverse socio-economic realities. Additionally, ensuring equitable participation and representation in global environmental decision-making remains a concern.

CONSTITUTIONAL FRAMEWORK AND SAFEGUARDS:

Environmental constitutionalism encompasses not only the rights but also the duties of the State and individuals (Bhullar, 2022)³. In India, the judiciary has played a pivotal role in shaping environmental jurisprudence, as there is no explicit reference to the right to the environment in the Indian Constitution or in any domestic environmental law (Ghaleigh et al., 2022)⁴. This has led to a situation where the sophisticated system of environmental rights in India is almost wholly a function of judicial intervention. The Indian Supreme Court, through its Public Interest Litigation (PIL) jurisdiction, has been instrumental in evolving an environmental jurisprudence, although this has raised concerns about the judiciary encroaching into the domain of policy-making, which is constitutionally the mandate of the legislative and executive branches of the government (Sivaramakrishnan, 2011)⁵. Furthermore, the phenomenon of judicial activism is crucial in balancing the need for justice with concerns about overreach. The role of constitutional safeguards in ensuring the integrity and inclusivity of democracy is underscored, particularly in the context of crucial rights like voting and how technological advancements impact the electoral process (Pandey et al., 2018)⁶. This is particularly relevant in India, where the democratic governance of 1.3 billion people necessitates a deep understanding of sub national heterogeneity crucial for designing inclusive governance structures, including environmental safeguards (Pandey et al., 2018).

DIGITAL TECHNOLOGY AND ITS IMPACT:

The evolving governance structures, including the influence of digital technology, have a significant impact on constitutional frameworks. This impact is not only limited to governance but also extends to environmental sustainability performance. The current global environmental law and governance regime has been designed primarily to address the worsening ecological crisis, and India, as a developing nation, faces the challenge of balancing economic development with environmental sustainability (Kotzé, 2012)⁷.

³ Bhullar, L. (2022). Environmental constitutionalism and duties of individuals in India. *Journal of Environmental Law*, 34(3), 399-418. <https://doi.org/10.1093/jel/eqac010>

⁴ Ghaleigh, N., Setzer, J., & Welikala, A. (2022). The complexities of comparative climate constitutionalism. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.4071820>

⁵ Sivaramakrishnan, K. (2011). Environment, law, and democracy in India. *The Journal of Asian Studies*, 70(4), 905-928. <https://doi.org/10.1017/s0021911811001719>

⁶ Pandey, A., Kumar, G., Dandona, R., & Dandona, L. (2018). Variations in catastrophic health expenditure across the states of India: 2004 to 2014. *Plos One*, 13(10), e0205510. <https://doi.org/10.1371/journal.pone.0205510>

⁷ Kotzé, L. (2012). Arguing global environmental constitutionalism. *Transnational Environmental Law*, 1(1), 199-233. <https://doi.org/10.1017/s2047102511000094>

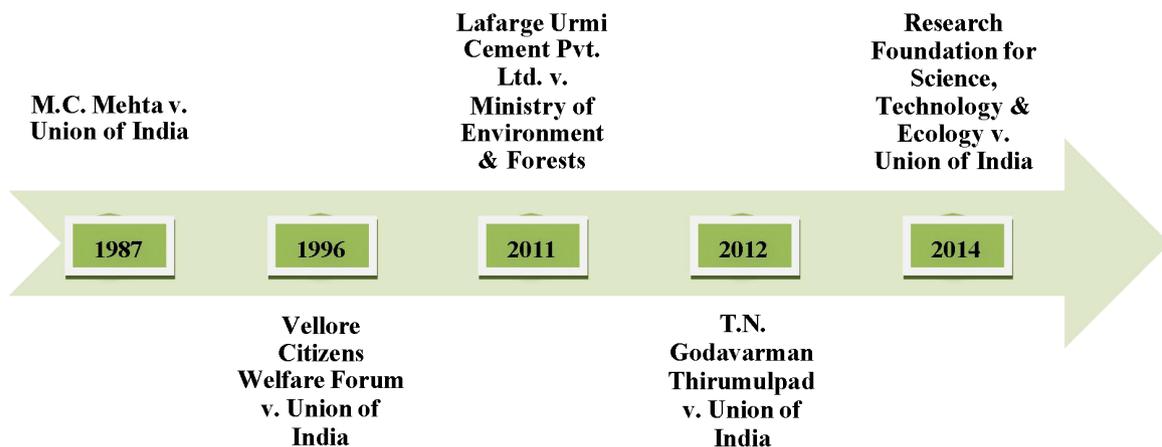
CHALLENGES AND OPPORTUNITIES:

By addressing these challenges and leveraging the opportunities presented, governments, civil society organizations, and other stakeholders can work together to strengthen environmental governance, enhance compliance with environmental laws, and promote sustainable development for the benefit of present and future generations.

RESEARCH METHODOLOGY:

TIME MAPPING METHOD:

A timeline mapping has been demonstrated to reflect the important events of the judicial activism in environmental cases has had a significant impact on Indian environmental policies and jurisprudence. While lauded for protecting environmental rights, concerns about judicial overreach remain a subject of debate. Here are some landmark judgments highlighting this complexity:



Timeline of Important Events in Formation of Environmental Constitutionalism

1. **M.C. Mehta v. Union of India (1987)**⁸: Established the "polluter pays" principle, making industries liable for pollution-related damages. This case also recognized the "right to life" enshrined in Article 21 to include the right to a clean environment.
2. **Vellore Citizens Welfare Forum v. Union of India (1996)**⁹: Recognized the "public trust doctrine," holding the government responsible for protecting environmental resources held in trust for the public. This case also highlighted the importance of public participation in environmental decision-making.
3. **Lafarge Urmi Cement Pvt. Ltd. v. Ministry of Environment & Forests (2011)**¹⁰: Set a precedent for stricter environmental impact assessments and public hearings for industrial projects. This case raised concerns about balancing developmental interests with environmental protection.

⁸ M.C. Mehta v. Union of India (1987): AIR 1987 SC 1086 | 1987 (1) SCR 819. Judgment available at: <https://indiankanoon.org/doc/1486949/>

⁹ Vellore Citizens Welfare Forum v. Union of India (1996): AIR 1996 SC 2715 | 1996 (5) SCC 647. Judgment available at: <https://main.sci.gov.in/jonew/judis/15202.pdf>

¹⁰ Lafarge Urmi Cement Pvt. Ltd. v. Ministry of Environment & Forests (2011): 13 SCC 120. Judgment available at: <http://www.indiaenvironmentportal.org.in/files/Lafarge.pdf>

4. **T. N. Godavarman Thirumulpad v. Union of India (2012)**¹¹¹: Emphasized the precautionary principle, advocating preventive action on environmental risks even with incomplete scientific certainty. This case also highlighted the duty of intergenerational equity, upholding the rights of future generations to a healthy environment.
5. **Research Foundation for Science, Technology & Ecology v. Union of India (2014)**¹²¹²: Ordered the National Green Tribunal to be established, a specialized body for expeditious disposal of environmental cases. This case reflects the judiciary's role in strengthening institutional responses to environmental challenges.

These landmark cases acted as eye openers to relook at the ongoing situation, there were some situations where the law also took consideration of state and individuals holding a great significance.

POLICY ANALYSIS:

An analysis of the policy matters are identified where policies have been redefined to the improvement of the evolving technological forefront, interest of the public and the role non-state actors to contribute in Environmental legislative measures. It also highlights on the overall approach in ensuring safety and safeguarding the integrity and inclusivity of democracy particularly in the context of crucial rights like voting and how technological advancements impact the electoral process.

CONCLUSION:

In conclusion, the Indian context presents a rich tapestry of challenges and opportunities in the realm of environmental constitutionalism. The role of the judiciary, the impact of evolving governance structures, and the need to balance environmental sustainability with economic development are crucial considerations in shaping the discourse on environmental constitutionalism in India.

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¹¹ T.N. Godavarman Thirumulpad v. Union of India (2012) 5 SCC 600. Judgment available at: <https://indiankanoon.org/doc/159581452/>

¹² Research Foundation for Science, Technology & Ecology v. Union of India (2014): (2014) 5 SCC 502 Judgment available at: <https://indiankanoon.org/doc/548962/>

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CRITICAL STUDY: CUSTODY OF CHILDREN IN INTERCULTURAL MARRIAGE'S, INDIAN LAWS AND CONSTITUTIONAL PROVISIONS

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INTRODUCTION:

We live in a global society, and due to globalization and worldwide job opportunities, it is common that people get transferred to different foreign countries.

While examining the Indian setting specifically, the latest statistics show that of the 25 million Indians in the world, there are non-resident Indians who have relocated to different states, started new families, and brought with them a host of new family conflicts. Recently, a large number of Indians, in hope of and in venturing for new opportunities, have decided to return and have established permanent residence there. Cross-border family interactions have created new challenges and opportunities in the field of family law conflict.

CHILD CUSTODY

Literally speaking, word "Child Custody" describes the direct legal relationship that exists between a parent and kid. Parents who have custody of their kid have the following rights:

Make all the decisions pertaining to the child's education, healthcare, and religious upbringing

A brief overview of custody laws prevailing in India

India has various personal laws to address social challenges resulting from its diverse communities and religious practices. The many personal laws that address child custody after a parent's divorce are the Hindu Minority and Guardianship Act [1], the Special Marriage Act [2], the Hindu Marriage Act [3], and the Guardians and Wards Act, 1890 [4] which is primarily secular in nature.

Child's custody - in an International Conflict

There are specific laws to each country and continent over custody of a child, but most of them have accepted a common convention. Because family law from several different nations intersects, problems involving custody of children abroad are significantly more complex.

The Hague Convention, 1980 is a common convention that came into force on 1/12/ 1983, which is ratified by a significant number of countries to date. As of present time, 126 states have ratified the Apostille Convention, which incorporates all of the remedies stipulated by The Hague Convention, and 96 countries are parties to it. The countries who are signatories to this are bound to follow all the laws that are mentioned in the convention. The countries that are not part of this convention tend to follow their law of land with respect to these issues depending upon the jurisdiction.

Whether India needs to be signatory of The Hague Convention?

The issue at hand is whether India is required to ratify the Hague Convention. is a very contentious question. It can be concluded from actual experience that India does not adhere to any of the Convention's tenets.

Provisions in India with regards to international custodial disputes

The anticipated response is that, yes, it is definitely a real time. Couples are relocating abroad due to the variety of employment prospects and expanding globalization, and this has led to an influx of new family issues that could eventually result in custody and separation disputes.

India lacks a uniform legal framework that is either comparable to or on par with international laws, despite having its own legal system for custodial matters in the form of numerous personal laws. Years have passed, according to reports in 2016-2017 India had taken initiative on this issues;

In June 2016, the WCD Ministry in India issued a draft of the Civil Aspects of International Child Abduction Bill, 2016¹, as well as a notice on the bill, No. CW-I-31/59/2016-CW-I, dated: 22/06/ 2016 (both available on the Bring Our Kids Home website²), which reflected the provisions of the Hague Convention and would have paved the way for India's accession. The draft measure allegedly said that a decision under the Hague Convention to return a child would not be final, and courts would have the authority to reject custody if the person caring for the kid was placing the youngster in significant bodily or psychological danger. The law also proposed a one-year prison penalty for any parent.

As of today, there is no specific Indian legislation addressing concerns related to child abduction or relocation from or into India. Before becoming a signatory to the Convention, India must first establish its own residence legislation. The Law Commission of India recently presented its 218th report, titled – “Need to consent to The Hague Convention on The Civil Aspects of International Child Abduction 1980” on 30/03/2009.

Work by Central Government

- On 22/06/2016, a proposal for establishing a draft of the ‘Civil Aspects of International Child Abduction Bill, 2016’³ was posted by the Ministry of Women and Child Development (MCWD) website.
- On 1/12/ 2017, the Supreme Court requested the Central Government to develop laws to prevent International Parental Child Abduction (IPCA)⁴.
- A “Bring Your Kids Home⁵” is working for the guardians whose children have been moved to another nation."

LANDMARK JUDGMENTS –

PRATEEK GUPTA V. SHILPI GUPTA & ORS. ⁶

The Supreme Court issued an important decision in this case regarding custody of a kid who resided in the United States and was subsequently brought to India by his father. Both children remained to reside in the United States with the respondent (mother). Without the mother's approval, the father seized custody of one of their children. Mother was granted temporary custody of the kid. The respondent subsequently claimed the writ jurisdiction of the High Court of Delhi via a Writ of Habeas Corpus against the appellant for custody of the kid.

¹ <https://wcd.nic.in/sites/default/files/Hague%20Convention.pdf>/ministry of women & child development

² <https://www.bringourkidshome.org/>

³ https://wcd.nic.in/sites/default/files/Draft_Implementing_Legislation_Hague_Convention_0.pdf

⁴ <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction.html>

⁵ <https://www.bringourkidshome.org/>

⁶ Prateek Gupta vs Shilpi Gupta 6 December, AIR 2018 SC (Supp) 674

Smt Surindar Kaur Sandhu v. Harbax Singh Sandhu⁷

The court's jurisdiction over child custody was disputed. The small boy was a British citizen, but his parents were Indian citizens. The Court dealing with Child Custody took up the interpretation of Section 6 of the Hindu Minority and Guardianship Act of 1956⁸. The Court noted that this Act established the father as the natural guardian of the minor son. It was also determined that the provision cannot outweigh the consideration of the minor's welfare, as well as the fact that India lacks proper jurisdiction in this matter.

Anuradha Anuj Sharma V Anuj Sharma⁹

The Kerala High Court, in a landmark ruling by a division bench consisting of Justice A. Muhamed Mustaque and Justice Sophy Thomas, has upheld a mother's fundamental rights to child custody, especially in circumstances requiring relocation abroad for professional progress. This decision was made in response to a mother's petition for permission to move to New Zealand with her kid, where she had obtained residency rights and work. The child's custody was granted to the mother by the High Court's division bench.

CHILD'S WELFARE AND RIGHTS EMPHASIZED

The Kerala High Court emphasized that the welfare of the child should be prioritized in custody disputes.

PROVISIONS FOR FATHER

It allowed the father short-term custody and visitation privileges, assuring his continuing engagement in the child's life. The mother was prohibited from altering the child's nationality without obtaining the father's consent, ensuring a balanced and protective approach to the child.¹⁰

CONCLUSION

Though renowned for its innovation, the Indian legal system occasionally takes years to reach a decision in certain instances. Since these issues have primarily affected India over the last ten to twenty years, most of them do not currently have a known solution. It may be extremely intense and emotionally draining for both parties and the attorneys involved in child custody proceedings, particularly when they occur in an overseas country.

India will not only assist thousands of non-resident Indians who are compelled to give up their child (or their career aspirations) due to India's current stance on the Hague Convention, by moving forward with the creation of new legislation or signing a landmark treaty, but it would also assist India in earning a reputation as a heaven-sent nation for safeguarding children's rights and welfare in addition to their cultural and religious protection.

It is also evident that India lacks a consistent system for resolving custody disputes involving foreign involvement. Regardless of whether your situation happens in a country that has signed the Hague Convention.

⁷ Smt. Surindar Kaur Sandhu vs Harbax Singh Sandhu & Anr on 11 April, 1984/ 1984 AIR 1224

⁸ <https://indiankanoon.org/doc/39958047/#:~:text=The%20natural%20guardian%20of%20a,of%20a%20minor%20who%20has>

⁹ <https://indiankanoon.org/doc/66228644/>

¹⁰ <https://www.livelaw.in/high-court/kerala-high-court/kerala-high-court-child-custody-mother-guardianship-relocating-abroad-238413>

SUGGESTIONS

- Indian judiciary has demonstrated impressive efforts in handling intercultural custodial cases, but a strong legal framework is still essential and India should have a more stable and uniform legal system.
- Relevant amendments are needed in Personal laws and in Guardians and Wards Act with specification of intercultural welfare of the child.
- The Central Government should initiate the enactment of a special code for custody disputes. Even when India moves toward a Uniform Civil Code, Right to life of the child and their culture should be considered.
- Signing bilateral agreements with other non-signatory nations.
- Joining The Hague Convention can also serve as an initial step towards resolving disputes involving the custody of children abroad. India will essentially have a strong legal framework for these international disputes.

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A BRIEF INSIGHT ON THE ROLE OF YOGA PRE COVID AND POST COVID ERA AND YOGA, AS A PART OF RIGHT TO HEALTH UNDER INDIAN CONSTITUTION

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Yoga call it an art, science or even a philosophy holds so much value since time immemorial and is practiced even in the current 21st Century. The Yogic Science is believed to be practiced since very dawn of the civilization. Its origin can be traced even before the birth of any kind of religious systems or belief systems; However, the yogic scientists consider Lord Shiva as the first guru in the field of Yoga. It is believed that the yogic science was bestowed upon the legendary saptarishis or seven rishis who further went on to spread the knowledge to different parts of the world including Asia, The Middle East, Northern Africa and South America. However, it could be said that the system of Yoga found its fullest expression in the Indian Subcontinent. The Sapatarishi “Agastya” was responsible who crafted a yogic way of life and kept travelling. Another evidence of Yoga having its roots in India is the Number of seals and fossil remains of Indus Saraswati Valley Civilization with Yogic motives and figures performing Yoga Postures. The seals could be an indication of another form of Yoga which is known as Tantra Yoga. Some Historians also suggest that Yoga was observed in the pre- Vedic period (2700 BC) and thereafter till Patanjali’s period. The main sources through which information related to Yoga practices could be found were the 4 Vedas, 108 Upanishads, Smritis, teachings of Buddhism, Jainism, Panini, 18 Puranas and the 2 Epics and many other smaller and larger resources,

Yoga is commonly understood as a therapy or exercise system for health and fitness while physical and natural health are some consequences of Yoga but the goal of yoga is quite more far reaching. Yoga is about harmonizing oneself with the Universe.

Before the Pandemic not many individuals were inclined towards practicing Yoga and Meditation. It was the yoga Gurus in India like His Holiness Gurudev Sri Sri Ravishankar , Sadhguru , SN Goenka and many others whose organizations offer yoga and holistic techniques to implement the healthy practice of Yoga in the daily lifestyle and routine . They have ensured to spread the knowledge related to a stronger mindset, body and how can one cope up with tough situations in life. Sometimes many therapists, counsellors, psychologists, psychiatrists, healers’ advice their patients / customers to practice yoga or attend yoga related workshops for a few days in order to slow down their daily lives. Before the arrival of the Pandemic India and many other countries suffered from economic problems like Recession, Reduction in work force, Inflation and which led to a high rise in anxiety, depression and many other physical health problems like as mild as obesity to as severe as cancer etc. Even Celebrities before the pandemic played a huge role in marketing of Yoga and meditation techniques as this is what kept them going in their hectic life. They have often encouraged people from different walks of life to practice yoga and meditation for a better life and to eat healthy. However no sooner did the lockdown begin in India most of the households in India made a mandatory decision of practicing Yoga and other meditation techniques in order to protect their mind and body from the deadly corona virus.

On 25th January, 2024 an order has been issued by the state education minister of Rajasthan Madan Dilawar regarding Surya namaskar practice in schools. This is done to integrate yoga in the education system and another reason is to set up a world record. From February 15th onwards students will be made to do Surya namaskar and the teachers will be given training by yoga teachers. This will be practiced across all government schools within the state of Rajasthan. The Surya namaskar sessions would be held during the

prayer meeting sessions. Even in the previous tenure of the famous minister Vasundhara Raje, Surya namaskar had been declared mandatory in government and private schools. However, a PIL was also dismissed which sought to make Yoga Mandatory in all schools. The Petitioner in March 2011 persuaded the Supreme court to seek response from the Centre on making yoga a compulsory subject in schools citing Section 7(6) and 8(g) and (h) of Right of children to Free and Compulsory education (RTE) act of 2009, and the National Curriculum Framework. The affidavit submitted by the human resource development authority, informed the Supreme court of India that the RTE Act does not specifically mention about the curriculum of yoga and hence it cannot be concluded that yoga education has become a fundamental right. Since education is also a subject in the concurrent list it would have been difficult to have yoga as a compulsory subject across all states in India.

The State has the obligation to provide health facilities to all the citizens, especially to children and adolescents in a welfare state. It is the obligation of the state to ensure creation and sustenance of conditions congenial to good health. However Right to health can still be secured without providing the facility of Yoga.

However, with the introduction of the new education policy post 2020 the Union education, skill Development and Entrepreneurship Shri Dharmendra Pradhan that since the NEP 2020 lays special emphasis on physical and mental well being of both students and teachers and hence apart from sports yoga should also be an integral part of health, wellness and physical education. He also suggested NCERT to conduct yoga Olympiads for young students.

The PIL filed and so many cities across India making yoga compulsory in schools and colleges have led to the emergence of a new bill which is Bill no 41 of 2023 titled “The compulsory yoga practice in schools and other education institutions bill, 2023” this has been initiated by Dr. Sukata Majumdar, MP

The Bill has the idea of making yoga a part and parcel in every youth’s life to make them excel in their respective fields. It is very difficult to establish a connection between Yoga and the Indian Constitution however Yoga should not be made mandatory but directory and obligatory according to me. Meditation and Yoga are activities done to reduce an individual’s anxiety and the same activity if made forceful may cause anxiety and triggers in the mind of the children but yogic philosophy should always be taught to young children along with physical practice so that India’s cultural heritage is also something which could make the youth of our nation even more proud of their country and motherland.

CONCLUSION

The Phrase Yoga Karmasu Kushalam clearly indicates that Yoga is a skill in action and by making it forceful and obligatory it would just degrade the beautiful practice theoretical and practical. Instead, a subject on Yoga should be introduced in schools and colleges and bonus 0.5 marks should be awarded to those candidates who learn the practical and theoretical aspect of this subject. Also, I am of the opinion that Yoga should still be considered under Right to Health because if Right to Sleep can be a fundamental Right, then why cannot yoga be included in the same. If not a Fundamental Right it could be included within the Directive Principles of State Policy as it’s the state’s responsibility to look after the welfare of its citizens.

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AN ANALYTICAL STUDY OF INDIA'S CONSTITUTION, JUDICIARY, AND GOVERNANCE: INSIGHTS AND RECOMMENDATIONS

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I. RESEARCH METHODOLOGY

The approach I used for my research paper and technique is called the "Integrative Approach of Qualitative and Quantitative Aspects." I spoke with friends, coworkers, and a few notable individuals. I also read through a few reviewed pieces of literature, and books and listened to interviews of well-known individuals who provided insightful feedback on the operation of the judiciary.

II. ORIGINS OF THE CONSTITUTION OF INDIA AND GOOD GOVERNANCE: AN ANALYTICAL APPROACH

THE CONSTITUTION OF INDIA AND ITS ORIGINS

Given that we all love the Indian Constitution, we must never lose sight of the struggles and sacrifices made by our ancestors for such a great document to come into being. But the real issue is, did we have a written constitution like the Constitution of India Act, 1950, or are we carrying on with the colonial heritage (legacy) left by various Acts and Regulations that the Imperial Government passed? The response to this query is negative. We did draw heavily on the Government of India Act 1935, earlier Acts and Regulations, as well as several Constitutions and international documents for much of our substance.

However, my question, along with my answers and recommendations is, where did these best practices originate from? The British; and how did they decide to draft such Acts and Regulations? Our struggle for freedom was what drove the colonial government to enact such Acts, not the other way around. I would want to bring up the Motilal Nehru Report (1928) to support my viewpoint. It discussed the construction of a federal form of government, equal rights for all citizens, including women, and the establishment of a Supreme Court. This was done to oppose the Simon Commission (1927), which did not have an Indian representative, and to contest the Colonial Hegemony. In addition, Dr. B.R. Ambedkar was asked why he had plagiarized passages from several international laws and constitutions. In response, he merely said that he had gone through different Constitutions of countries and had 'ransacked those provisions that ensured the best practices for his citizens (people) and that no fundamental ideas were protected by any patents.'¹

GOOD GOVERNANCE AND ITS ORIGINS

Before delving into the discussion of good and bad governance. It would be great if everyone knew that governance is the act of "to oversee a process" or "to govern." To deepen our understanding of governance, I would like everyone to fully recognize that, despite the term being developed in the 1980s and 1990s by the World Bank, governance practices and all of its forms can be traced back to ancient times as well as the contemporary age. The World Bank established three pillars for governance²:

1. The form of political regime;
2. The process by which authority is exercised in the management of a country' and social resources;
3. The capacity of governments to design, formulate and implement policies

¹ CAD, Vol. VII. 9th November 1948, p. 389

² World Bank, World Development Report 2002: Building Institutions for Markets 99-115 (2002)

The first part of governance deals with the organization of the government, while the second and third parts deal with the safeguards put in place to counter the whims and prejudices that cause the government to run inefficiently. The Indian Constitution is that safeguard document that permits India to have a strong Centre (Federal Polity) but at the same time keep a check on the 'Organs of the State', and it is via this constitution that the public may examine, scrutinize and enforce their rights against the government through channels such as Legislations, Parliamentary Committees, Public Service Delivery Mechanisms (Yojanas/Schemes), the Judiciary, and so on.

However such practices are not new to India but can be traced back to the Vedic Ages in India, Kautilya's Arthashastra, portrays the King's main duties are to make sure that the system of government is robust and the welfare of the public is supreme. The following is an overview of some of the crucial elements of the governance structure that the King should pay attention to³: -

- Strict ethical standards and a code of conduct;
- The king is the kingdom's servant;
- State leaders should be answerable, removable, and responsive;
- A stakeholder-centered idea is emphasized; and effective administration

The Preamble of our Constitution, which begins, "We the people of India... hereby adopt, enact and give to ourselves," is currently the greatest illustration of a modern governance paradigm. This leads us to the conclusion that Indian citizens are sovereign individuals. However, a person's sovereign identity is observed to become active once every five years, and numerous minor infractions go unnoticed. A more knowledgeable citizenry that transcends identities based on religion, caste, and creed is what the world needs right now.

III. JUDICIARY AND THE CONSTITUTION: A CRITICAL ANALYSIS

The Constitution of India is a 'Living Document that is ever evolving through time'. We can see this evolution through its judgments (Courts) such as the 'Basic Structure Doctrine'⁴, 'Right to Life, and Liberty'⁵ (inclusive of Substantive and Procedural Due Process of Law), 'Right to Privacy'⁶ (inclusive of Articles 14,19 and 21), or even the 'Decriminalization of Homosexuality under Section 377 IPC.'⁷

COMPOSITION OF THE JUDICIARY AT THE SUPREME COURT

There were eight Supreme Court judges, including the Chief Justice of India, when the Indian Constitution was passed. However, as of right now, the Chief Justice of India is one of the 34 authorized Supreme Court judges. As stated in Article 124(1), the Parliament has the authority to increase the maximum number of judges that can be appointed. The Supreme Court of India is composed of the Chief Justice of India and up to [thirty-three] judges unless the Parliament establishes a different number through legislation. The most recent modification was made by the Supreme Court (Number of Judges) Amendment Act, 2019, which set a thirty-three-judge maximum, in addition to the Chief Justice of India.

There are more judges because of the growing population, the need to address more legal topics, an inclusive judicial system, and the growing backlog of cases.

³ CSJ (2020) (06/32-33)

⁴ (1973) 4 SCC 225.

⁵ AIR 1978 SC 597

⁶ (2017) 10 SCC 1

⁷ 2018 INSC 790

TRIBUNALS OR QUASI-JUDICIAL BODIES

Several quasi-judicial bodies have been established under Articles 323A and 323B, respectively, to help with the backlog of pending cases in the Supreme Court and High Courts. These bodies (tribunals) are experts in their respective fields; for example, the NGT handles environmental concerns, while the NCLT and NCLAT handle company-related matters. However, an appeal from these Tribunals lies with the respective High Courts or the Supreme Court as the case may be which cannot be taken away⁸. As a result, there are more cases and backlogs in higher courts.

How have the Courts protected the Rights of its Citizens?

Outstanding and excellent judges have come from the Indian judiciary since the formation of our Constitution. Some judges, like Justice M.G. Ranade and Justice Badruddin Tyabji, had participated in or experienced the Freedom Struggle against colonial forces. Because of the legal framework (Constitution) and the movements that brought about India's independence, judges in India have always been brave, and proud of their past. In dark times, the judiciary offered a glimmer of hope and has undoubtedly always performed above expectations. Actually, due to diverse socioeconomic advancements and the government's adoption of distinct roles, the courts created a system of Social Action Litigation (PIL) to protect its citizens from the executive's arbitrary, unjust, and illegal actions. However, engaging an experienced advocate is costly, and in addition to being time-consuming and laborious, matters that are listed on the board may not be heard due to time constraints.

IV. JUDICIARY AND ITS GOVERNANCE STRUCTURE: A CRITICAL ANALYSIS

We all adore the judiciary because, when our liberties are violated, the average person looks up to it, and they haven't let us down at times. E-courts, e-SCR, virtual hearings, and other contemporary initiatives in good governance are only a few examples; nonetheless, let's examine the openness and governance of the judiciary in more detail.

Being a judge in a court is a difficult job, as Justice D.Y. Chandrachud noted in one of his interviews, especially when compared to other nations. Indian judges preside over the bench for about 200 days a year, while judges in American or Australian courts preside on the bench for fewer than 100 days. Because the judges in India are extremely busy throughout the week keeping up with other activities like preparing for the following day's hearing or reading the law, during their vacation time they either do case studies or finish judgments that are reserved to be given

APPOINTMENTS, TRANSFERS, AND ELEVATIONS TO THE HIGHER JUDICIARY

The most recent laws passed by the government were the 99th Constitutional Amendment Act and the National Judicial Appointments Commission Act of 2014. This Act was designed to recommend candidates for the positions of chief justice and judge, respectively, for the Supreme Court and High Courts. Nevertheless, the Supreme Court overturned it with a 4:1 majority⁹. Justice Chelameswar expressed his dissenting opinion, arguing that the Collegium system was inherently opaque, unaccountable, and biased, and "Judicial Primacy" was not included as a 'Basic Feature' of the Constitution, according to a two-step test¹⁰ designed to verify the constitutionality of the amendments (basic features are parts or species, whereas basic structure is the genus).

⁸ 1995 AIR 1151

⁹ (2015) AIR 2015 SC 5457

¹⁰ Oxford University Press (2018), Appointment of the Judges to the Supreme Court of India: Transparency, Accountability and Independence (Eds.) Sengupta, A. and Sharma, R. (p.160-163)

However, in today's age when government agencies are targeting opposition parties, minorities, and vulnerable groups, the judiciary must take on a remarkable role. Some outstanding judges, such as Justice S. Muralidhar¹¹, Justice A. Qureshi¹², and others, took some measures that led to displease the government leading to their transfer to another High Court or the Union Government's rejecting of the collegium's recommendations for their promotion to the Supreme Court.

IT'S INTERNAL MANAGEMENT

Courts operate on two levels internally: first, there is the interaction of the Judge(s) between the public, and the court staff (department/registrars); second, there is an interaction between this department/registrars and the general public.

Regarding the first relationship, it is noted that judges publish specific types of directions that court employees must abide by, either by notifications or conventions, practices, or regulations. For instance, certain Judges take up mentioning of matters in the morning while some post lunch, or most recently when the Supreme Court has issued directives for the pagination of soft copies. There is strict adherence to such kinds of issues.

On the other hand, the department is arrogant, careless, and complacent when it comes to offering services to the general people. In terms of the administration of justice, they are viewed as intermediaries between the public and the court; yet, delays in the administration of justice are caused by their rent-seeking practices, bureaucratic mindset, and at times disobedience of court-issued regulations.

V. SUGGESTIONS

I've concluded that our judiciary needs improvements in terms of its governance patterns after taking into account all the elements, viewpoints, and views of several professional researchers, jurists, judges, and bar members. Firstly, Article 312 of the Constitution should be amended, according to the proposal, to create a grassroots centralized system of District Judges known as the All-India Judicial Services, or AIJS. Secondly when it comes to the Higher Judiciary, Retd. Justice Rohinton Nariman suggests that the 'collegium at present is the worst but we don't have anything better,' hence he suggested a reformed collegium that would consist of retired judges of the High Courts and the Supreme Court respectively. This 'reformed collegium' of retired judges would in turn be selected by members of the bar association across the country as he categorically mentions the rationale behind it is that the 'Bar are our judges. Judges have judges and we are judged all the time by practicing judges. So, it is important to have practicing bars all over the country who vote for retired judges like the present, who are known for their independence....'¹³

Each court should form a distinct adjudicatory committee composed of eminent professionals from public administration, social work, law, governance, and other related subjects. This committee would convene and have the power to dismiss inept, dishonest, or indolent court staff with the approval of the judges. These committees would (should) therefore be endowed with the inherent authority to address the complaints of the common (wo)man, such as ensuring that court documents are transferred to departments for additional processing or obtaining certified copies on time. Finally, a short report of these committees needs to be sent to a Central Body ('Reformed Collegium').

¹¹ SC Observer. (n.d.). Justice Akil Kureshi Retires Without Elevation to the Supreme Court. Retrieved from <https://www.scobserver.in/journal/justice-akil-kureshi-retires-without-elevation-to-the-supreme-court>

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¹³ Justice RF Nariman- Bansari Sheth Lecture- 'Constitution: Check And Balances' *By Live Law*

VI. CONCLUSION

As said by one of the Senior Counsel in an interview 'Justice must not only be done but needs to be seen'¹⁴ and today the judiciary needs to take charge and hold the government and executive accountable for actions that are illegal, unjust, and corrupt. Prioritizing the "Welfare of Citizens" and our "Nation's Identity" over political interests is imperative.

Kautilya described both good and bad governance. He asserted, "(Government by) Rule of Law, which alone can guarantee the security of life and welfare of the people, is, in turn, dependent on (the) self-discipline (of the king)". He added, "In the happiness of his subjects lie his happiness; in their welfare his welfare. He shall not consider as good only that which pleases him but treat as beneficial to him whatever pleases his subjects". According to him, anything less would be a government failure.¹⁵

Keeping the message of Kautilya in mind and a shloka from the Epic of Ramayana ('रघुकुल रीत सदा चली आई प्राण जाए पर वचन न जाई')¹⁶ 'Raghukul reet sada chali aye, pran jaaye par vachan na jaaye.' "The tradition of the Raghukul family has always been to keep one's word, even if it means losing one's life." To fulfill its long-standing commitment to defending the rights of its citizens, the Judiciary will need to take on the roles of Protector, Defender, and Interpreter of the Constitution in a more comprehensive manner.

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CHILD RIGHTS AND CONSTITUTIONALISM IN INDIA: A HOLISTIC ANALYSIS

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INTRODUCTION:

The incorporation of child rights within India's constitutional discourse has evolved over time, with roots in the Constitution of 1950 and subsequent global developments. The Constitution, while not explicitly addressing children's rights, laid the groundwork for a framework that could be interpreted to protect these rights. The UN Convention on Rights of Child (CRC) plays significant part, emphasizing principles like non-discrimination and the most excellent interface of child. The basis for this incorporation stems from vulnerability of the children, investment in the nation's future, and a commitment to international standards. The evolution reflects a broader understanding of the rights of human and social justice, emphasizing explicit assurance of the children's rights within legal framework.

OBJECTIVES OF RESEARCH PAPER:

Essentials goals of this investigate are:

- To dissect the constitutional provisions pertaining to child rights,
- Explore significant judicial pronouncements, and
- Assess the effectiveness of authoritative measures in maintaining and advancing rights of children.

THE LEGAL PERSPECTIVE DEFINES A CHILD AS...:

The Constitution of India does not give a particular definition for the term "child". However, it is generally understood to refer to individuals under the age of eighteen, unless the law recognizes majority at an earlier age. Different laws in India define "child" based on their specific purposes. For example, the Indian Majority Act of 1875 sets the age of majority at 18 years, with certain provisions for minors. The Child Labour Act of 1986 considers a child to be someone under 14 years old, while the Child Marriage Restraint Act of 1926 applies to individuals under 21 years of age for males and under 18 years for females. Additionally, as per the Juvenile Justice (Care and Protection) Act of 2015, a child is defined as a person below 18 years of age.

CONSTITUTIONAL FRAMEWORK FOR CHILD RIGHTS:

A. THE RIGHT TO EQUALITY UNDER ARTICLE-14

Article 14 protects children from discrimination, specifically in acquiring education. Legal cases like *Mohini Jain versus the State of Karnataka* [AIR 1992 SC 1858] and *Unni Krishnan, J.P. versus. The State of Andhra Pradesh* [1993 AIR 2178, 1993 SCR (1) 594] illustrate equal protection for children, stressing the link between education and equality. These cases confirm the equal access to the education for all children, notwithstanding of economic or social barriers, promoting justice and fairness by preventing discrimination.

B. RIGHT TO EDUCATION (ARTICLE 21A)

Article 21A of the Constitution of India, post 86th Amendment Act of 2002, mandates free education for children aged 6 to 14. Right to Education (RTE) Act of 2009 enforces Article 21A, setting standards for

universal elementary education. In the matter of Society for Unaided Private Schools of Rajasthan versus. The Union of India [(1997) 6 SCC 241], the RTE Act's constitutional validity was affirmed, recognizing education as an essential right to diminish social and financial imbalances.

C. BEST INTERFACE OF THE CHILD GIVEN ARTICLE 21

Article 21 protects child rights, prioritizing well-being, protection, care, and overall development. It reflects a commitment to safeguarding shielding children from mistreatment, exploitation, and neglect, ensuring their rights are upheld in legal and policy contexts.

D. BAN ON EMPLOYMENT OF CHILD IN FACTORIES AND OTHER WORK UNDER ARTICLE 24

According to Article 24, bans the use of child who are under the age of 14 years old in factories, mines, or dangerous occupations. This is intended to prevent exploitation, safeguard children's health and development, and ensure their access to education. It is intricately connected to Article 21A, advocating for the fulfilment of right to education and guaranteeing children to access quality schooling to improve their potential and skills development.

E. ARTICLE 39(F)

Article 39(f) directs the Commission's policy to ensure that children have healthy development opportunities, the freedom to develop under conditions of freedom and dignity.

F. INITIAL CHILDHOOD CARE AND TUTORING PROVISION FOR CHILDREN UNDER SIX YEAR OLD UNDER THE ARTICLE-45

Article 45 requires the country to work towards providing early care and education to every child under the age of six years. Article-46 focuses on safeguarding vulnerable groups, such as children, from social injustice and exploitation. Additionally, Article-47 guarantees the right to adequate nourishment and a high quality of life.

LEGISLATION ADDRESSING CHILDREN'S RIGHTS; INDIA:

Act of children's

The first Children's Act, known as the 1920 Madras Children's Act, was established based on the references of the Indian Jails Committee from 1919-1920, followed by similar regional acts like the Bengal Children's Act and the Mumbai Children's Act. Subsequently, the Government of India enacted the Children's Act in 1960 for Union territories, all of which were eventually replaced by the Juvenile Justice Act of 1986.

CHILD LABOUR [PROHIBITION & REGULATION] ACT OF 1986

In 1986, the Act was introduced to create a comprehensive legal framework that restricted the employment of children under the age of 14 years in specific livelihoods. This Act aimed to regulate the working conditions for employed children and imposed stricter penalties for violations. The Act was later amended in 2016 to the Child 'and Adolescent' Labour (Prohibition and Regulation) Act, aligning it with the Rights of the Children to Free and Necessary Education Act of 2009. The amendments were made to strengthen child labour laws, encourage a child-friendly approach, and ensure the comprehensive development and welfare of children, demonstrating the law's pledge to safeguarding the constitutional rights and well-being of young individuals.

THE JUVENILE JUSTICE [CARE AND PROTECTION OF CHILDREN] ACT OF 2015

Progressing standards of the UNCRC, this enactment serves as India's essential legitimate system for tending to the wants of children requiring care and assurance. It addresses their requirements through a child-centric approach, focusing on their best interests by providing care, protection, development, treatment, and social reintegration.

THE RIGHT TO THE EDUCATION ACT OF 2009

The Right has affected the instruction scene by guaranteeing free and obligatory instruction for children aged 6 to 14. One outstanding accomplishment of this act is the incorporation of over 3.3 million understudies beneath the RTE standard, giving them with get to instruction openings. Furthermore, the Act has advanced impartial and reasonable instruction all throughout the nation, emphasizing the significance of inclusivity. By disposing of "no detention policies," straightforwardness has been brought to the essential instruction framework, permitting for superior observing of understudy advance.

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES [POCSO] ACT OF 2012

The Act is India's first special law addressing sexual crimes against children, defining a child as under 18. It safeguards all children from sexual assault, harassment, and exploitation, considering offenses "aggravated" when committed by individuals in positions of trust or authority. The Act builds up child-friendly legitimate strategies for announcing, recording prove, and indicting violations, guaranteeing the well-being of children all through lawful procedures.

CASE LAWS ON CHILD RIGHTS:

A. RIGHT TO LIFE AND SURVIVAL

Cases such as *Bandhua Mukti Morcha v. Union of India* AIR 1984 SC 802; underscore judiciary's focus on right to life and survival for children, exhibiting judicial activism in addressing issues like child work, trafficking, and the misuse of child. In these cases, judiciary interprets the right to life expansively, encompassing dignity and freedom from exploitation. Judicial activism extends to addressing legislative gaps, guiding the government on effective implementation and enforcement of laws related to child rights and protection. Overall, the judiciary emerges as a champion of children's well-being, contributing to social justice through its commitment to fundamental rights.

B. CHILD MARRIAGE AND CONSTITUTIONAL CHALLENGES

Cases such as *Independent Thought v. Union of India* [2017 10 SCC 800, AIR 2017 SC 4904]; illuminate constitutional challenges linked to child marriages. The analysis considers the legal and constitutional dimensions of preventing early unions and protecting children's rights. Constitutional challenges involve balancing societal norms with fundamental rights. International conventions, also impact protected scene concerning kid relational unions. In essence, addressing this issue requires navigating a complex interplay of constitutional principles, societal norms, and international commitments.

ARRANGEMENTS AND INITIATIVES:

The government of India has formulated range of rules focusing on overall development of children, encompassing their physical, mental, and social well-being. Various initiatives have been undertaken to promote the welfare and education of children. Here are some key policies:

THE NATIONAL PLAN FOR CHILDREN OF 2013

The plan of 2013 emphasizes on that each child is a profitable national resource, uniquely important. The updated language underscores the significance of every child as a distinct and crucial national resource. This move reflects the state's devotion to a right approach in tending to both existing and developing challenges confronted by children. To combat discrimination, it advocates for specific governmental initiatives and policies to improve the circumstances for children in society. Ensuring a nurturing environment of happiness, love, and understanding is recognized as every child's entitlement. Strengthening families through a robust social support system is crucial for nurturing and supporting children effectively.

NATIONAL HEALTH POLICY 2002

The initial health reform in 1983 aimed to ensure universal well-being, followed by the 2002 health policy prioritizing health issues in schools, focusing on centring on wellbeing instruction and normal school wellbeing screenings. This approach recognized the helplessness of children and highlighted the unequal access to the public health system, particularly for women, children, and socially disadvantaged groups. A key aspect of this policy was the emphasis on preventing communicable diseases like HIV/AIDS and actualizing widespread immunization against major preventable infections.

INTEGRATED CHILD DEVELOPMENT SCHEME (ICDS)

The conspire points to improve well-being of children in challenging conditions, mitigate factors leading to their vulnerability and risks of abuse, neglect, and separation from parents. The inclusion of the KhoyaPaya gateway in the Monitor Child application upgrades citizen engagement by providing a platform for reporting missing children and accessing relevant information efficiently. Found children are to be properly managed, and people can register using their mobile numbers on KhoyaPaya. The Kishori Shakti Yojana operates through Anganwadi Centres to empower adolescent girls, fostering self-confidence and dignity. It features initiatives like the Girl-to-Girl Approach and Balika Mandal Scheme.

BETIBACHAOBETIPADHAO

The Beti Bachao, Beti Padhao initiative aims to raise awareness and enhance the well-being of girls, tending to challenges related to declining child sex proportion and enabling ladies over their life cycle. This scheme is a collaborative exertion by the Ministry of the Women and Child Development, Health and the Family Welfare, and Human Resources Development. Its key components include nationwide awareness campaigns, enforcement of the PC&PNDT Act, promoting girl child education, and implementing multi-sectoral actions in selected areas. The initiative places solid accentuation on promoting attitudinal alter through preparing, the awareness programs, and activist gathering at grassroots level.

EMERGING CHALLENGES AND FUTURE DIRECTIONS:

A. DIGITAL AGE AND CYBER RIGHTS OF CHILDREN

In the digital age, children face risks like online safety issues and cyberbullying, necessitating legislative and educational interventions to safeguard their well-being. Concerns include exposure to inappropriate content and exploitation, highlighting the need for effective policies and awareness initiatives. Combatting cyberbullying requires legal measures and school policies while addressing cybercrimes and upholding rights like privacy and education. Promoting safe internet use involves global cooperation, digital literacy, and adapting laws to protect children online.

B. STRENGTHENING INSTITUTIONS AND IMPLEMENTATION MECHANISMS

The paper recommends strengthening institutions and implementation mechanisms to safeguard child rights in India. The suggested approach involves enhancing institutions and implementation mechanisms in India is vital to ensure child rights are upheld through legislative reforms, societal awareness campaigns, and stakeholder capacity building, creating a robust framework adaptable to evolving challenges within the constitutional framework.

CONCLUSION

In conclusion, the in-depth examination of child rights in India underscores the country's responsibility of defending also advancing children's well-being through a robust legal and constitutional framework. India's dedication is evident in constitutional provisions like the Right to Education, Equality, and Best Interests of Child, as well as specific acts such as the Child Labours Act and POCSO Act. The proactive role of judiciary in interpreting and enforcing child rights through landmark cases contributes to social justice and protection from exploitation. Government policies and welfare programs, including the National Policy for Children, demonstrate a comprehensive approach to addressing children's diverse needs. As India grapples with challenges in the digital age, there is an emphasis on the need for legislative measures, global collaboration, and digital literacy initiatives to protect children's online safety and cyber rights. Recommendations to fortify institutions and implementation mechanisms highlight the ongoing efforts required for effective enforcement of child protection laws. In summary, India's strides in recognizing children as rights holders reflect its commitment to fostering an environment where every child can thrive, promising a brighter and more secure future for the nation's youngest citizens.

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CONSTITUTIONAL FRAMEWORKS AND MENSTRUAL LEAVE: STRIKING A BALANCE IN THE WORKPLACE

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INTRODUCTION

In recent years, the discourse surrounding workplace equality has expanded to encompass a diverse array of issues, including the introduction of menstrual leave policies. Menstrual leave, is a concept rooted in acknowledging the unique physiological needs of individuals who menstruate, presents both a challenge and an opportunity for organizations striving to foster inclusive and equitable work environments. However, the integration of menstrual leave policies into workplace practices raises complex questions regarding constitutional rights, gender equality, and labor regulations.

The special introduction of menstrual leave policies reflects a growing recognition of the intersection between reproductive health and employment rights. Historically, menstruation has been shrouded in silence and stigma, relegated to the private sphere, and largely ignored in discussions of workplace accommodations. Yet, the acknowledgment of menstrual health as a legitimate aspect of employee well-being signals a significant shift in societal attitudes toward gender equality and bodily autonomy.

At the heart of the debate surrounding menstrual leave policies lies the tension between promoting workplace equality and upholding constitutional rights. On the one hand, proponents argue that menstrual leave offers a necessary accommodation for individuals experiencing physical discomfort and psychological distress during menstruation, thereby enhancing workplace inclusivity and support for marginalized groups. On the other hand, critics raise concerns about potential discrimination, gender stereotyping, and the equitable distribution of benefits among employees.

This research paper seeks to explore the multifaceted landscape of menstrual leave policies, with a particular emphasis on the delicate balance between workplace equality and constitutional rights. By examining the historical context, legal frameworks, and ethical considerations surrounding menstrual leave, this study aims to elucidate the complexities inherent in navigating reproductive health accommodations within the realm of employment law.

LITERATURE REVIEW:

After thoroughly reviewing the literature on the subject to have a comprehensive picture of the current situation, the researchers attempted to pinpoint the gap that needed to be filled. The articles that follow have been helpful in providing a quick notion of the discussions and recognizing the issues that underlie the era leave topic up to this point.

An estimate from the IMF states that by 2025, equitable gender participation in the workplace have boosted India's GDP by 27. Therefore, as this paper notes, gender equality and economic growth go hand in hand. This justifies offering women more favorable terms of employment and better working circumstances. The causes that contributed to the establishment of period leave in the United States have been examined in an article published by The New York Times. One of the main topics covered was the dehumanizing ways that menstruation is viewed and the taboos around it that transcend all geographic boundaries. An Aljazeera news piece explored the range of responses, including from Indian women, to Zomato's implementation of the

"period leave." It also highlighted the divergent opinions even within the female community over this women-centric strategy, with some supporting it and others opposing it.

The State of Bihar has actively implemented policy of granting female employees two days leave in each month since 1992, as previously reported by The Hindu. This is significant since the State is regarded as falling behind other states in terms of women's empowerment and gender equality. This article also emphasizes the suffering that female employees experience each month as a result of menstruation. The paper offered a comprehensive analysis of the notion of period leave in Manupatra. The Menstruation Benefits Bill introduced in 2017, is a private member's bill, and an examination of its various components were all covered in great detail. Additionally, it backed the period leave policies that several nations have implemented worldwide.

RESEARCH GAP AND QUESTION:

Out of all the insightful pieces mentioned above, the public's perspective and its analysis seem to be the one important component missing. The views and reasoning of significant stakeholders, notably employers, male and female employees, and women employees, are crucial to understanding this topic because it is generally of public interest. To ascertain if the thesis will have a positive or negative response, the researchers will thus attempt to analyze a small sample. In this study, we looked at many topics and factors pertaining to working women's period leave. This research also highlighted the opinions of male and female employees about gender equality in the workplace and period leave for women. The requirement for a period leave policy is the most significant finding of this study.

Through a critical analysis of existing literature, case studies, and policy documents, this paper endeavors to shed light on the following key questions:

1. How do menstrual leave policies intersect with constitutional protections for gender equality, non-discrimination, and individual liberties?
2. How do cultural norms, societal attitudes, and historical narratives shape perceptions of menstrual leave and reproductive health accommodations in different contexts?
3. What are the implications of menstrual leave policies for broader discussions of workplace equality, diversity, and organizational culture?

By interrogating these questions, this research paper aims to contribute a deeper knowledge of the intricate relationship between menstrual leave policies, workplace equality, and constitutional rights.

RESEARCH METHODOLOGY

Here, primary data about menstrual leave and its impact on women's well-being was gathered via a Google Form from both genders in the different sectors of different industries as well as students in other age groups attending college. Even secondary data in the form of relevant articles and journals was considered.

CONSTITUTIONAL PROVISION AND SOCIAL JUSTICE

India's Constitutional Preamble is evidence of the country's dedication to promoting a fair, inclusive, and just society. Fundamental to it is an unwavering commitment to achieving social fairness, which is the cornerstone of a peaceful country. It is an admission of previous injustices and a declaration of the state's duty to make amends for them. In this context of social justice, it is very necessary to address discriminatory practices that shall continue to exist in different areas of society. One such instance is the prejudice women experience because of their menstruation, a normal biological occurrence that regrettably has been met with stigma and

unfair treatment. This type of discrimination is diametrically opposed to the fundamental principles of equality and social justice that the Indian Constitution seeks to preserve.

A proactive start toward redressing this pervasive unfairness is the idea of menstruation leave. This strategy seeks to level the working field for women in the workplace and society by recognizing the particular emotional and physical difficulties that come with menstruation. Menstrual leave acknowledges that because it's a biological phenomenon outside of their control, women shouldn't have to endure unnecessary suffering or humiliation. By aiming to establish a setting where each person is treated equally and with dignity, this program is consistent with the fundamental principles of the Indian Constitution.

Menstruation leave creates a more diverse and accommodating work environment where people feel valued for who they are. With menstruation no longer posing an additional obstacle to juggling work responsibilities, women—who comprise a sizable share of the workforce—can now do so. This sets the stage for an inclusive and productive workplace culture that embodies the spirit of social justice visioned through the Constitution.

The values of Article 14 are embodied in menstrual leave, which promotes equitable treatment to all individuals while considering the various problems that different gender will encounter in the future. Workplaces that allow women to take leave during their menstrual cycles indicate a shift toward promoting an equitable atmosphere in which personal health and professional obligations are given equal weight. This proactive move demonstrates a greater comprehension of the particular obstacles that women may face and aims to address them in accordance with the more general objectives of equality. As a result, Article 14 of the Indian Constitution represents the country's everlasting dedication to justice and equality. The incorporation of menstruation leave into a policy initiation is a praiseworthy endeavor to broaden these ideals to encompass the realities of women. By recognizing the unique problems that menstruation presents and providing customized solutions, society makes progress in eliminating gender-based discrimination and fostering an environment at work where each person is able to reach their full potential.

Article 16 of the Constitution is a fundamental document that outlines the necessity of equal opportunity and fair treatment for all citizens, particularly with regard to public employment. It is a dedication to creating a meritocratic society in which a person's career path in the public sector is determined by their skills rather than their upbringing. Still, the seeming contradiction appears when one looks at how menstruation leave and other gender-specific laws are implemented within this framework. Despite popular belief, these kinds of laws can actually strengthen the principles of equality through acknowledging and resolving the problems that women face.

MENSTRUAL LEAVE AND HUMAN RIGHT

Menstrual leave and human rights are related in a number of ways. The right to health is among the fundamental human rights that are at risk. For certain women, menstrual pain and discomfort can be quite severe, which can have detrimental effects on their physical and emotional well-being. Every person is entitled to the best possible quality of health, which includes information on menstrual health and access to medical care. Menstrual leave is also directly related to gender equality and the absence of prejudice. It may be considered discrimination based on sex to prevent women from taking time off work or school during their menstrual cycle, which is illegal under international human rights legislation. States are expressly required by the Convention being kept as Elimination of All Forms of Discrimination Against Women (CEDAW) to take action to end discrimination against women in the workplace, including giving women equal rights and access to benefits and leave. But as was already indicated, there are worries that laws about menstruation leave can reinforce discrimination against women and gender stereotypes.

MENSTRUAL LEAVE IN COMBINATION WITH INTERNATIONAL LAW

Menstrual leave is a kind of leave that enables women to take time and rest off of work or education to address the pain and discomfort associated with their menstrual cycle. While several nations have passed laws or policies allowing for menstrual leave, menstrual leave is still not generally acknowledged as a legal entitlement under international law. For instance, Zambia became the first nation in Africa to implement menstruation leave in 2017, enabling working women to take one day off each month to coincide with their menstrual cycle. Taiwan, South Korea, and Japan are among the other nations that have enacted legislation or policies along similar lines. Menstrual leave is still a contentious idea, though, and others worry that it may reinforce prejudice against women and gender stereotypes. Furthermore, some critics contend that policies pertaining to menstruation leave could be exploited or utilized as a cover for discriminatory practices against women in the workplace. Women have the right to equal treatment in the workplace and are barred from discriminating on the basis of gender under international human rights legislation. Although international law does not expressly recognize menstrual leave as a legal right, women will be able to claim that they are the victims of discrimination if they are not allowed to take time from work as well as school during the menstrual cycle.

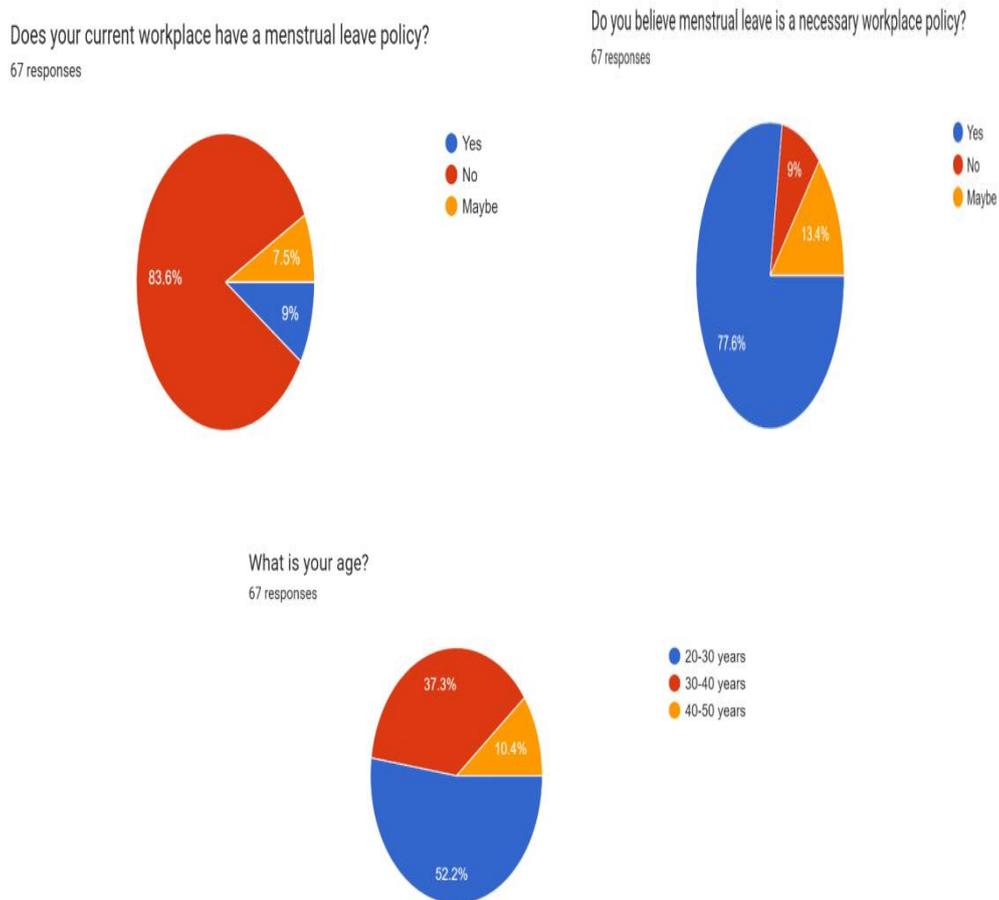
MENSTRUAL LEAVE AND LABOUR LAW

Menstruation-related leave policies have also been implemented by some Indian companies to acknowledge and solve the difficulties that women experience throughout their menstrual periods. Menstrual leave rules, however, have raised worries that they could be abused or misused by companies, or that they might result in discrimination against women when it comes to recruiting and promotion. It is critical to create precise criteria for menstruation leave and to make sure that employers are suppose to be held accountable for adhering to these guidelines in order to address these worries and guarantee that women are treated fairly and equitably in the workplace. *Harper v. Thiokol Chemical Corp.*, which the Fifth Circuit determined in 1980, appears to be the first federal case in United States. The Equal Employment Opportunity Commission, which reviews discrimination complaints from federal employees, has since rendered a decision in a harassment suit. Furthermore, allegations of menstrual discrimination based on disability are covered in two federal court proceedings. The most recent instance included a federal lawsuit where a worker claimed that she was dismissed by her employer for unexpectedly bleeding through her clothes while at work. Workers have, in the case—as in the Harper case—had some success utilizing these theories. When Bertha Harper went on maternity leave, her employer in Harper forbade her from going back to work until she had a "normal menstrual cycle." Harper filed a lawsuit after being fired by his work, alleging sexism. According to the district court, Ms. Harper was the victim of sexism on the part of the employer. As a result, the court determined that a policy implemented by the company that unfairly bases an employee's employment on their menstrual cycle constitutes sex-based discrimination.

The Indian industrial law, which aims to control the interaction between employees and management in industrial establishments, crosses paths with the menstrual leave policy. Regulation of working conditions, trade unions, collective bargaining, and industrial disputes are all covered under industrial law. Guidelines for awarding workers' menstrual leave are provided by the Industrial Employment (Standing Orders) Act, 1946. Although this Act makes no mention of menstruation leave specifically, several Indian businesses have implemented menstruation leave policies in an effort to acknowledge and solve the difficulties that women experience during their menstrual cycles.

DATA ANALYSIS AND FINDINGS

The researcher has analysed the answers to questions related to menstrual leave, to understand the overview of employees for acceptance of menstrual leave. The sample size of 66 peoples having a general and broad sample size, wherein both men and women were a part of the survey, and of both the classes employed as well as the non-employed sector of the society were considered, with that in mind, the researchers will be proceeding with the analysis of individual questions. Due to the nearly unanimous responses and lack of data to analyse, a few additional questions were excluded from the research. Menstruation and menstrual leave were two such questions that were to be answered by the responders. Since both responses were positive, the researchers moved forward with analysing the questions and answers to determine the extent to which the ideas covered below have been accepted. The data has been collected from varied age groups as can be seen below



The survey sample size has both males as well as females, but the number of females have outsized the male opinion with a ratio 70:30. In this sample size more than 90% of the people have been employed in different industries. If we look as the sample survey one question being that whether the organization has menstrual leave policy out of the 90% people employed more than 83% people do not have any such policy in the organization. The question that the researchers posed was whether or not menstruation leave should be paid in the event that it is granted. Given the same conditions, it is only fair that they be compensated for maternity benefits. According to our findings, the majority of women and all men agree that this should be the case. It

was discovered that some of the female responders had turned down the chance to receive compensation in order to take menstruation leave. As previously mentioned in prior articles, there are others who are skeptical and do not believe that menstruation leave is a legal entitlement. The next important issue was whether or not a person would personally take advantage of menstruation leave if it were offered. The intriguing finding was that even among those who had previously backed the establishment of the leave, the respondents themselves were hesitant to take it when it became available. This brings up the subject of menstruation as a source of societal embarrassment once more. There may have been a difference in the conversation about it on a personal level since people are still not at ease enough to even address it. The causes can have a variety of reasons, making it challenging to determine what they are. The second issue that the researchers wanted to know the answer to was if, if menstruation leave was implemented, it should apply to all organizations, regardless of the type of work they do, as opposed to just the ones that need it the most, meaning white collar jobs excluded. The majority of respondents stated that dealing with menstruation can be uncomfortable regardless of the type of work one does. The majority concur that menstruation leave should be available to all industries, not just a chosen few.

CONCLUSION

The incorporation of menstruation leave in India's workplace rules is a critical point of discussion between the fundamental principles enshrined in the Constitution and the demands of modern society. The broad goals of the Constitution—promoting social justice, increasing gender equality, and preserving each person's dignity—are deeply aligned with this progressive proposal. India can move closer to the goal of eliminating gender-based discrimination and creating an environment that is including all the rights, equitable, and deserving of human dignity by recognizing the particular challenges that menstruation presents and creating laws to address them. Fundamentally, the Indian Constitution upholds the principles of justice and equality. Menstrual leave embodies gender equality that the Constitution aims to attain by acknowledging menstruation as a biological fact that is unique to women. This strategy recasts the story to emphasize that real equality requires acknowledging and addressing the diverse needs of all genders. Per this perspective, menstrual leave serves as a trigger for tearing down the institutionalized discrimination that has historically kept women out of the workforce. The last point highlights how the Constitution's continued applicability and flexibility is demonstrated by the incorporation of menstrual leave into India's labor laws. It represents the idea of a just, equal, and respectable society as outlined in the Constitution. The Indian society makes a monumental step toward social justice, gender equality, and the unshakable dedication to the dignity of all of its residents by encircling legal provisions to promote women's well-being and resolving the difficulties presented by menstruation. The principles that direct India's progress towards a more future are affirmed in the constitution, making this change in policy more than merely a policy change.

CRITICAL ANALYSIS OF RIGHT TO EDUCATION FOR TRANSGENDERS IN INDIA

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INTRODUCTION

In the context of persons whose gender identity varies from the sex that was given to them at birth, the word 'transgender' is applied to encompass these individuals. Essentially, a transgender person may have been assigned a specific gender at birth, typically male, but their internal sense of gender aligns with the opposite gender, often female, or vice versa. Some individuals who seek medical assistance to transition from one gender to another may identify as transsexual or transgender, commonly known as Trans. The transgender community in India has a rich historical background and showcases a wide range of diversity. Many members also demonstrate exceptional talent in various visual arts. Unfortunately, the contributions of these individuals are often overlooked in Indian society, and they have been marginalized since the colonial era. Transgender individuals have faced social, economic, and physical challenges due to discriminatory practices against their community.

LITERATURE REVIEW

Rao and Nikhita (2022)¹ describe the community's struggles with familial rejection, harassment, societal stigmatization of their identities and lifestyles, harassment across domains, and limited employment opportunities. These issues hinder their lives and prohibit them from living with dignity in the nation.

Researchers have also explored how inadequate education limits transgender people's opportunities and results (Balu, 2020)². High community dropout rates, which limit educational levels to secondary or senior school, are a major concern, according to Das (2019)³. The author also discusses educational institution abuse, notably in schools and universities, which devalues and discourages transgender children from studying.

According to Singh (2019)⁴, it is crucial to promote awareness and understanding across all societal groups to address and lower the prevalence of violence towards the transgender community. Furthermore, the significance of education in fostering political and social autonomy within communities is also acknowledged. Education is recognized as a catalyst for improving the quality of life, not only for people themselves but for the entire community.

Dr. Chatterjee (2018)⁵ proposes a series of recommendations in the examination of challenges encountered by the transgender population in India. These suggestions encompass the dissemination of knowledge among

¹ Rao and "Nikhita (2022), Making India Transgender Inclusive: An In-Depth Analysis Of The Education Sector In India, <https://nhrc.nic.in/sites/default/files/Group%201%20June.pdf>

² Balu A. (2020). Confront Issues on Education of Transgenders in India. Global Journal For Research Analysis. Vol-9, Issue-2

³ Yasmin, G., Mullick, O., Ghosal, A., & Das, A. K. (2019). Gender recognition inclusive with transgender from speech classification. In Emerging Technologies in Data Mining and Information Security: Proceedings of IEMIS 2018, Volume 1 (pp. 89-98). Springer Singapore.

⁴ Singh, J. A., Siddiqi, M., Parameshwar, P., & Chandra-Mouli, V. (2019). World Health Organization Guidance on Ethical Considerations in Planning and Reviewing Research Studies on Sexual and Reproductive Health in Adolescents. *Journal of Adolescent Health*, 64(4), 427–429. <https://doi.org/10.1016/j.jadohealth.2019.01.008>

⁵ Chatterjee, S. (2018). Transgender ShiftsNotes on Resignification of Gender and Sexuality in India. *TSQ: Transgender Studies Quarterly*, 5(3), 311–320". <https://doi.org/10.1215/23289252-6900696>

students, educators, and other staff members regarding gender issues, the establishment of student clubs to promote the acceptance of the transgender community, and the provision of counseling services within educational organizations to support transgender students.

TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019⁶

The Parliament's legislation aims to tackle and eradicate discrimination experienced by transgender individuals in their access to education, employment, and healthcare. It also aims to recognize and protect individuals' basic right to self-identify and express their gender identity.

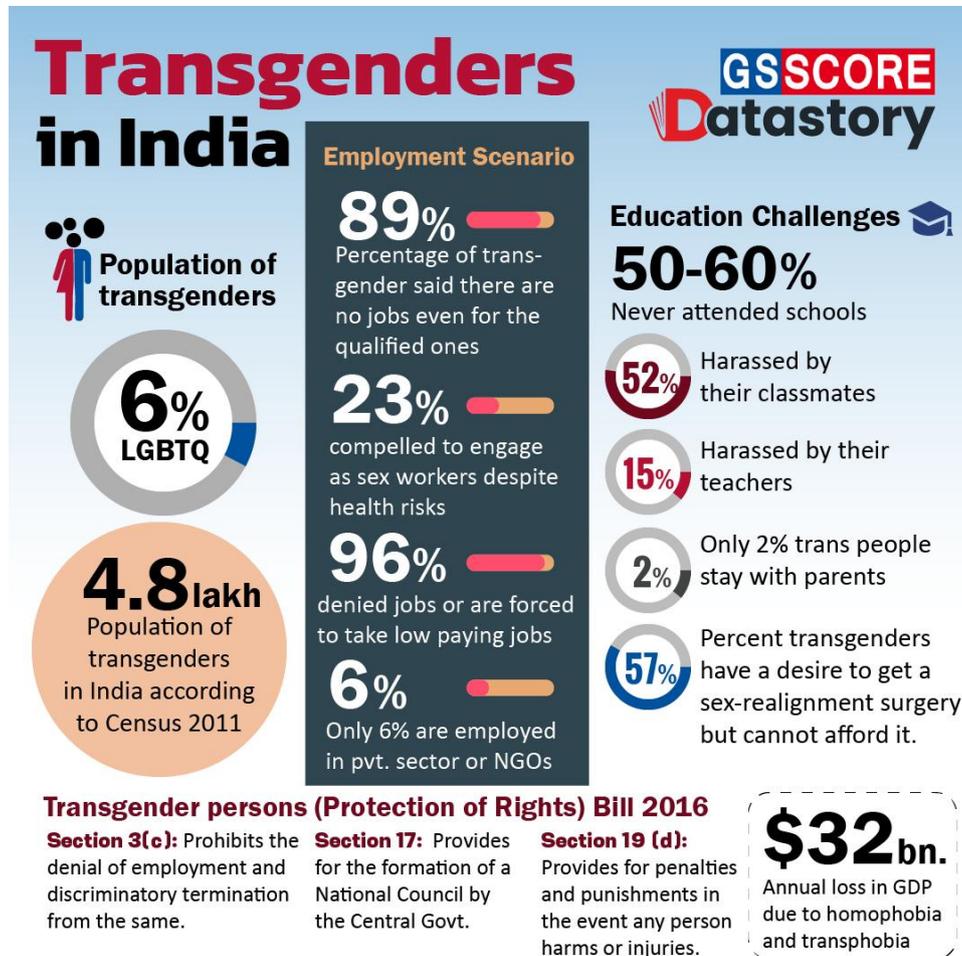


Figure 1: Status of Transgenders in India.⁷

TRANSGENDER LITERACY RATE

In the 2011 Indian Census, a significant milestone was reached with the recognition of individuals from the other-gender/transgender group for the first time. The rate of literacy among the transgender community in India was reported at 56.10 percent based on the census data. Mizoram had the highest literacy rate among transgender individuals at 87.14%, whereas Bihar had the lowest at 44.35%. The literacy rate for an estimated population of 4.88 lakh in 2011 was 56.10%, below the national average of 74.04%. The lack of inclusive

⁶ Transgender Persons (Protection of Rights) Act, 2019 (Act No. 40 of 2019)

⁷ Data Story: Transgender In India - GS SCORE, <https://iasscore.in/data-story/transgender-in-india>

classrooms in educational institutions is seen as a major factor contributing to low academic achievement and high dropout rates⁸

ANTI-BULLYING LAWS

Laws designed to address the issue of bullying are commonly referred to as ‘anti-bullying laws.’ These laws, whether implemented at the federal or state level, aim to combat bullying in educational institutions and businesses. According to a study, the enactment of anti-bullying laws at the state level in the United States has been associated with a reduction in instances of bullying, as well as a decrease in depression and suicidal thoughts. Notably, teenage girls and members of the transgender community have experienced the most significant positive impact from these laws. Numerous countries have taken measures to protect students from harassment in schools. For instance, on September 6, 2013, the former President of the Philippines, Benigno Aquino III, signed Republic Act 10627, also known as the Anti-Bullying Act of 2013, into law. This legislation mandates that all public and private schools in the country must have anti-bullying policies in compliance with federal regulations. Similarly, Canada implemented this regulation in 2012, while the provincial government of Quebec enacted its own anti-bullying legislation in the same year. The tragic death of Tyler Clementi, a student at Rutgers University, brought significant attention to the issue of bullying and led to increased awareness and support for anti-bullying legislation in the United States.

Following the incident, New Jersey took action to strengthen its anti-bullying laws by implementing ‘The Anti-Bullying Bill of Rights’. Considered the most stringent anti-bullying statute in the nation by Steve Goldstein, chairman of Garden State Equality, the legislation holds administrators accountable for investigating bullying claims. To ensure a comprehensive approach to preventing bullying against transgender youth, it is imperative for all states and districts in the U.S. to establish anti-bullying policies that protect sexual orientation and gender identity/expression. Providing effective training and opportunities for collaboration among educators and administrators can help encourage those who may be less inclined to prioritize the protection of transgender students from bullying within their schools.

Students are safeguarded against bullying related to their sexual orientation and gender identity by their peers, teachers, and school personnel through these regulations. It is worth noting that in certain jurisdictions, it is also unlawful to bully a student who is not transgender simply because they have a transgender friend or family member. In some states, districts, and schools, there are anti-bullying laws or policies that do not explicitly mention characteristics such as race or sexual orientation as grounds for bullying. However, research conducted by GLSEN indicates that these broad laws have no impact on the rates of bullying.⁹

The school's organization relies heavily on anti-bullying policies, which outline the expected behavior of students, the proper procedure for reporting incidents, and the consequences that will be faced by those who engage in bullying. These policies, which encompass various aspects such as conduct, reporting, and disciplinary actions, create a framework for educators to address the issue. The identification of bullying starts at the district level and is subsequently conveyed to individual schools as part of the policy making procedure.¹⁰

⁸ AmeyaThachappilly, Trans Students and Educational Spaces: The Need for Better Policies, Centre for Law and Policy Research(25/06.2022, 6:06 PM)<https://clpr.org.in/blog/trans-students-and-educational-spaces-theneed-for-better-policies/>

⁹ Heino “E, Ellonen N and Kaltiala R (2021) Transgender Identity Is Associated With Bullying Involvement Among Finnish Adolescents. *Front. Psychol.* 11:612424. doi: 10.3389/fpsyg.2020.612424

¹⁰ PDXScholar Dissertations, Pdxs., Dissertations, T., & Lauren Holliday, M. (n.d.). The Use of Anti-Bullying Policies to Protect LGBT Youth: Teacher and Administrator Perspectives on
INTERNATIONAL CONFERENCE ON CONTEMPORARY CONTOURS OF CONSTITUTIONALISM IN LIGHT OF CHANGING DIMENSIONS OF GOVERNANCE, JUDICIAL REVIEW & JUDICIAL ACTIVISM

To foster a more inclusive atmosphere for transgender youth and underscore the school's dedication to combating bullying, it is essential to implement school-wide initiatives aimed at prevention. These initiatives can encompass student-led anti-bullying programs, year-long campaigns, and collaborations between different schools. However, it is crucial to acknowledge that these programs should not be considered a substitute for comprehensive training of all staff members and ensuring their familiarity with the language outlined in the school and district's anti-bullying policy. Consequently, it is imperative for all countries to exert concerted efforts in enacting legislation that safeguards transgender students and promotes their right to equitable treatment in educational settings.

CHALLENGES OF TRANSGENDER EDUCATION

The obstacles faced by transgender individuals in accessing education are significant. In India, these individuals have long been subjected to discrimination and the denial of their fundamental human rights. The use of the term 'Third Gender' only exacerbates the problem, as it perpetuates feelings of inferiority among transgender individuals. Despite the recognition of their rights by the Supreme Court, transgender individuals continue to be marginalized in their everyday lives. This is largely due to the failure of states to enforce the laws and regulations that are necessary to protect and support transgender individuals. As a result, transgender students encounter numerous challenges in their pursuit of education.

• DEALING WITH TRANSPHOBIA AND PSYCHOLOGICAL STRESS

In comparison to individuals who identify as heterosexual, the transgender community faces a multitude of challenges stemming from harassment, discrimination, and intolerance within society. Regrettably, a few individuals harbor transphobic sentiments due to moral, religious, and societal beliefs, resulting in acts of aggression, negativity, and workplace mistreatment. As a result of these aforementioned factors, the community encounters a range of mental health issues, potentially leading to detrimental choices such as self-harm and suicidal ideation. The pervasive feelings of loneliness, anxiety, and insecurity they experience are direct consequences of societal attitudes.

• RIGID BINARY MODEL OF GENDER AND SEX

The conventional gender and sex framework adopted by schools poses challenges in providing equitable educational opportunities for transgender children. These students are often expected to conform to one of two predefined paths, disregarding the potential impact of their gender on their behavior. Consequently, young transgender individuals who do not identify with any specific gender may experience a sense of confinement and struggle to freely express themselves, leading to feelings of isolation from society.

• STEREOTYPICAL UNIFORMS

The binary structure is deeply ingrained in every school's operation. This principle extends to uniforms, seating arrangements, recreational spaces, and individual appearance preferences. Educational institutions commonly enforce a rigid distinction between 'girls' uniform' and 'boys' uniform.' Regrettably, transgender students are not afforded any provisions to accommodate their needs. They are obligated to select a uniform, even if it does not reflect their personal style. Any students who challenge these established beliefs expose themselves to the risk of public shame, disciplinary action, or expulsion.

- **INFRASTRUCTURAL AND SAFETY ISSUES**

The presence of separate bathrooms for male and female students on campus creates obstacles for transgender students who are prohibited from using locker facilities, communal areas, and changing rooms, making it challenging for them to access basic necessities.

- **USE OF DISRESPECTFUL NAMES AND PRONOUNS**

Respecting the human dignity of transgender youth involves using the name as well as the pronouns that align with their gender identity, regardless of their biological sex. Continuously using their former name and incorrect pronouns is considered disrespectful. Transgender youth can empathize with occasional confusion, as long as there is genuine effort to consistently use the appropriate name and pronouns.

CONCLUSION

The rigid gender binary must be either abolished or expanded to encompass a wider range of gender identities. Transgender individuals face discrimination and limited access to resources, resulting in lower educational and medical outcomes compared to cisgender individuals. The recent release of class X and XII results by the CBSE (Central Board of Secondary Education) in 2020 revealed a stark disparity, with only 19 transgender students in class 10 and six in class 12. This highlights the unequal distribution of rights. Non-conformity to binary norms often leads to punishment, sparking debates on transgender parity, legal frameworks, and regulations. However, there is still room for improvement in the implementation process. Prejudice stemming from lack of awareness and sensitivity persists, with transgender issues being completely overlooked in classroom textbooks. Therefore, there is a pressing need for sustainable policies and regulations grounded in human rights principles to empower individuals to assert their rights without fear. The absence of transgender community perspectives in legislative processes may account for the lack of inclusivity. Hence, community engagement is crucial for the comprehensive advancement of transgender individuals, enabling them to live with dignity. Ensuring a completely safe environment for transgender students in schools is imperative to prevent bullying by peers or teachers, which often leads to high dropout rates.

HEALTHCARE SYSTEM IN INDIA VIS-À-VIS UNITED STATES OF AMERICA

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INTRODUCTION

India is home to one of the largest healthcare providers in the world. Although India has a huge population and various other pressing challenges, the country provides free basic healthcare facilities to over one billion people. For example, the consistent effort of the Indian Government as well both private and public India's healthcare sectors has made some remarkable efforts regarding eradicating polio in 2011. At, *1.38 billion*, India's population is roughly 4 times *the population of the USA which is 329.5 million* (Goel, 2022).

While the healthcare systems of India and the United States have their unique characteristics and challenges, they share many similarities and can learn from each other's experiences as they pursue improvements in healthcare delivery. With a diverse and complex network of public and private sectors, both countries face divergent challenges and have different approaches to last mile healthcare for their citizens. (Feldscher, 2012)

COMPARISON OF 'RIGHT TO HEALTH' IN INDIAN AND AMERICAN CONSTITUTION

Right to health refers to the most attainable levels of health that every human being is entitled to. It forms an essential component of human dignity. It is the responsibility of the Government of a State, to ensure that this right is protected and promoted for all individuals, regardless of their gender, race, ethnicity, religion, or socioeconomic status.

RIGHT TO HEALTH IN INDIAN CONSTITUTION

International Conventions: India is a signatory of the Article 25 of the UDHR i.e. Universal Declaration of Human Rights (1948), by the United Nations, and which grants the right to the standard of living that is adequate for the health and well-being to humans including food, clothing, housing, medical care and necessary social services.

Fundamental Rights: Article 21 of the Indian Constitution guarantees a Fundamental Right to life & personal liberty. The right to health is inherent to a life with dignity.

Directive Principles of State Policy: Articles 38, 39, 42, 43, & 47 of the Constitution of India, puts the obligation on the State to ensure the effective realization of the right to health.

Constitutional protection armoured with Landmark Judicial Pronouncements, such as in the *Paschim Banga Khet Mazdoor Samity* case¹, made it the primary duty of the Government to secure the welfare of the people and provide adequate medical facilities for its people. (Kumar, 2023)

¹ *Paschim Banga Khet Mazdoor Samity & Ors v State of West Bengal & Anor.* (1996) AIR SC 2426

RIGHT TO HEALTH IN AMERICAN CONSTITUTION

Contrary to the fact, where right to health is clearly addressed in the Indian Constitution, the right to health is not recognized explicitly in the American Constitution. Although the United States has not ratified any International Human Rights treaty that defines the right to health, they do have the important Civil Rights Legislation i.e. the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964, which prohibit discrimination on the basis of race, colour, and origin, for utilizing the benefits of Government programs that promote equality in health.

HEALTHCARE IN INDIA VIS-À-VIS USA

The similarities between Indian and American healthcare systems, being very few, such as the complex mix of public and private healthcare and insurance systems, the difference between the healthcare systems of both the countries are indeed quite stark and hard to ignore. Whilst, America has close to 2.6 Doctors and 11.9 Nurses for every 1000 people, India has only 0.8 Doctors & 1.4 Nurses at the same metric. Similarly, the number of beds available per 1000 persons is 7X in the US, at 3.5 as opposed to 0.5 in India.

However, being truly optimistic, all numbers in India are certainly moving in the right direction, for example, the number of medical colleges and graduating doctors has increased by 18 per cent in the past few years. Synergies between the private sector and the Government were clearly seen during the Covid 19 pandemic crisis, where India was truly successful in managing the mortality rate of its people (Patel, 2016) .

Understanding the differences a little further, where India has a per capita spend of only about \$40 per person annually, America spends \$9,500 per person. This is clearly not only because people are consuming more healthcare in America, but rather because the price tag for healthcare in the US is exorbitant compared to India. For example one RTPCR test in the US could cost upwards of \$200 whereas in India it is less than \$10-15.

While the Indian Government has a cardinal goal to make healthcare accessible to its large population, America relies on commercial health insurance, Medicaid (Government insurance for those with limited income & resources) and Medicare (Government insurance for Senior Citizens).

The role of insurance has also been stark in comparing the healthcare systems of both the countries. The American system has different types of health insurance policies, especially those that cover all medical expenses incurred by patients, such as OPD, Doctor Consultations, and cosmetic treatments. It is a no brainer that the rate of insurance premiums charged by the American insurance companies is quite high compared to that in India, despite that, statistically, more than 91.4% of the population in America have health insurance coverage.

India on the other hand has a very low health insurance coverage penetration, at a mere 25%, that is mainly due to lack of awareness and education, although it is definitely on the gradual rise Year on Year. However, there is still a long way for India to go. In India, health insurance plans typically cover pre-hospitalisation and post-hospitalisation expenses. Most insurance policies do not offer OPD or doctor consultation coverage, and have multiple hidden exclusions, which eventually leave a huge medical burden on the patients (Kumar, 2023).

A major difference also covers the spending pools of both countries. While out of pocket expenses on health are only 10 per cent in the US, the number is a staggering 65 per cent in India, because of the low penetration of public and private insurance. Additionally, while the US allows for OPD coverage under insurance, in India, OPD has a negligible share. Incidentally, the OPD coverage in the US comes at a humongous cost of ~\$ 21,000, to ensure a family of 4, and which is 70 times more expensive than that in India (Goel, 2022).

Lastly with respect to the factors affecting the prognosis of a disease and its Outcome, despite having one of the most expensive medical systems, the outcome of medical treatment in America may not be the best, especially with the high death rates due to avoidable or treatable reasons such as nosocomial infections. In contrast to that, the healthcare statistics in India are infact quite good. In addition to modern treatment, India has numerous alternate and preventive medicine systems such as Ayurveda, Yoga, homoeopathy, naturopathy etc., to its aid, and which are now also gaining popularity and are being explored by the people of American. There is also a substantial difference in the population, transparency, use/misuse of funds, social status and geography between both countries (TimesPro, 2023).

OBAMACARE VERSUS AYUSHMAN BHARAT

In 2010, erstwhile President of America, Barack Obama passed the Affordable Care Act (ACA) or the famous ‘Obamacare’ to help reduce healthcare costs for families and ensure more people were able to access health insurance. Its primary goal was to slow the rising cost of health care by taking steps to make health insurance more available and more affordable to those who need it the most. It also required everyone citizen, to carry health insurance or face tax penalty.

The game changer with respect to Indian Public Insurance coverage has truly been the ‘Ayushman Bharat Yojna’, also called the ‘Pradhan Mantri Jan Arogya Yojana’ (PMJAY). It is a healthcare scheme launched by the Government of India with the single focus on providing health coverage to 50 crore eligible & economically challenged sections of society. After its launch in September 2018 it has now become the world’s largest government-funded healthcare program, by offering cashless healthcare benefits of up to Rs 5 lakh per eligible family per year across thousands of empanelled hospitals and healthcare providers across the country. It offers a range of healthcare services such as diagnostic tests, doctor consultations and treatment for a variety of diseases that can be accessed through a network of public and private hospitals across India. The Ayushman Bharat PM-JAY has successfully catered to 5.7 Crores hospital admissions worth more than Rs. 70,000 Crores of which 49% are female beneficiaries (Satpathy, 2021).

Some have suggested that there are some elements of the Obamacare Scheme in Ayushman Bharat. However a comprehensive comparison between the two cannot be made. Although the central aim of both healthcare schemes namely Ayushman Bharat and Obamacare, is at providing financial protection and improving access to healthcare for the vulnerable sections of the society, there is a key difference between the two schemes. While Ayushman Bharat is entirely funded by the Government of India, it has been a groundbreaking and futuristic healthcare scheme. In comparison, Obamacare was funded through a combination of taxes and penalties.

CONCLUSION

US Healthcare system is organised and we believe India is headed in the same direction. While India lags behind in size compared to the US in healthcare spending, the market is fast growing and has seen high disruption over the past few years. With the mission to cover over 50 Cr Indians, through the PMJAY program, the government is taking giant leaps in bridging the gap of the insured and uninsured sections of society.

The role of Healthtech startups is also noteworthy, in areas like Insurance, Electronic Medical Records, Corporate Health Coverage, Point of Care devices, Chronic Care etc is also noteworthy. Over 10,000 Healthtech start-ups in India, have amassed over \$2.2billion of funding, and will be an important game changer for Indian Healthcare in the next decade.

With strong backbone of AADHAR, UPI, India Digital Stack and the ABHA number under the ABDM (Ayushman Bharat Digital Mission), it will prove to be a game changer for Indian Healthcare to manage claims and have universal access to Patient Health Records.

SUGGESTIONS

Preventive Care has been a buzzword in Indian Healthcare for over two decades. However, the implementation of preventive care through timely health checkups, large adoption of point of care devices, fitness, healthy eating etc, has been low and has resulted in high treatment costs, for otherwise preventable diseases such as Diabetes, Cardiac, Cancer etc.

With changing demographics, young people opting for late marriage and fewer children, India will have a large senior citizen population in the next 20-25 years. The government must also start thinking about a comprehensive Senior Care model with old age homes, senior health insurance schemes and encouragement of startups in Senior Care etc.

State cooperation in faster adoption and reaching the desired targets for the PMJAY program should be encouraged and it is important for the success of the Ayushman Bharat mission.

In America, there are 44 states that have a provision in their state constitutions, which protect the right to keep and bear arms. However, the healthcare system can be arduous and painstakingly slow. In case you need to do a preventive pathology test, it is not covered in your healthcare plan, you would need to spend multiple times, through out-of-pocket expenses. It is important for reduction of costs and faster treatment, that American healthcare is made simpler and more accessible, particularly for preventive diagnostics.

Simple regulation for OTC (Over the Counter) drugs and generic medicines, can help in reducing the need to have a prescription for every medication, which involves scheduling an appointment with a medical practitioner, waiting for that appointment for days, then getting a prescription and then getting that fulfilled at a pharmacy.

Ancient Indian herbs like Turmeric, Ashwagandha etc. are gaining a lot of popularity amongst the American wellness community. It will help American Healthcare if they adopt other alternative forms of medicine, like homeopathy, naturopathy, Ayurveda to enhance their overall Healthcare system.

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GENDER JUSTICE AND CONSTITUTIONALISM

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INTRODUCTION TO CONSTITUTIONALISM

Constitutionalism is a fundamental tenet of governance that holds that the power of the state is both derived from and limited by an essential body of laws, or a constitution. In order to foster a system of government that is accountable to the people it governs and does not concentrate power in the hands of a select few, it is imperative that this concept be upheld. Fundamentally, constitutionalism supports a government of laws, in which each state action is predicated on and constrained by existing legal structures. This strategy aims to preserve a just society, respect the rule of law, and protect human rights.

By implementing the division of powers between the legislative, executive, and judicial branches, a state can achieve a fair distribution of power. This is made possible by the idea of constitutionalism. This division guarantees that no one party has unrestricted power, enabling the checks and balances system that is essential to safeguarding individual freedoms and averting totalitarianism.

THE CONCEPT OF GENDER JUSTICE

Former President, USA, Mr. Barack Obama quoted, "That's what twenty first century feminism is about; the idea that when everybody is equal, we are all more free."

Achieving fair treatment and opportunities for people of all genders is the core objective of gender justice, which aims to abolish discrimination, address structural and historical injustices, and remove the various obstacles to equality that still exist in countries all over the world. It guarantees that every person, regardless of gender identity or expression, has equal rights, opportunities, and access to resources. It is a cornerstone of a just and equitable society. This idea goes beyond simple legal equality to address the intricate interactions between a number of variables that lead to gender differences. It also includes political, social, and economic aspects. For example, the gender difference in economic participation and opportunity is still large, according to the World Economic Forum's Global Gender difference Report 2020, and closing this gap at the present rate of advancement is expected to take 257 years. Additionally, according to UN Women, women only make up 24.9% of national parliaments worldwide, indicating a considerable disparity in political participation. In order to achieve gender justice, conventional gender roles and conventions that support injustice and discrimination must be questioned. It necessitates a transformational strategy that targets the cultural and societal attitudes that support gender disparity in addition to concentrating on amending laws and regulations.

Warren Buffet, Chairman and C.E.O., Berkshire Hathaway stated, "Fellow males, get onboard. The closer that America comes to fully employing the talents of all its citizens, the greater its output of goods and services will be."

Efforts from everyone are needed to achieve gender justice, including legal reforms, economic empowerment, political participation, health education, and social and cultural change. Thus, gender justice pertains to the integration of women's interests and rights into the mainstream of society. In this context, justice entails more proportionate conduct, an end to violence, and the sharing of societal requirements equally.

INTEGRATING GENDER JUSTICE INTO CONSTITUTIONALISM

A major step towards acknowledging and institutionalising gender equality as a central tenet of legal and

social frameworks is the incorporation of gender justice within constitutionalism. The process is incorporating gender justice ideas into the constitution, which is a nation's ultimate legal document. This guarantees that all ensuing laws, policies, and practices are directed towards the attainment of gender equality. This complex interconnection necessitates:

Constitutional Amendments: Adding specific provisions on gender equality and non-discrimination to Constitution. For instance, the 1996 adoption of the South African Constitution is praised for its progressive approach to gender equality, as it clearly forbids discrimination based on a person's sex or gender and requires legislative actions to stop it.

Legislative Reforms: Passing and amending legislation to guarantee that it upholds historical gender prejudices, advances gender equality, and guards against violence against women. This covers legislation pertaining to parental leave, fair pay, domestic abuse, and sexual harassment. Leaders in the field include Iceland, whose Equal Pay Standard mandates that businesses demonstrate they compensate all workers fairly, irrespective of gender. In India, Prevention of Sexual Harassment (PoSH) Act, is a law designed to protect women and all employees from sexual harassment at the workplace.

Gender-Responsive Policies: Creating policies that consider the unique requirements and circumstances of all genders, making sure that the creation and application of policies are focused on attaining substantive equality. This includes gender budgeting, which has been used in a number of nations, including Austria and India, to evaluate the gendered effects of financial and policy decisions. Menstrual Leave Policy Bill has to be a way forward to improve health of working women.

Judicial Enforcement: Enhancing the judiciary's ability to interpret and execute laws and constitutional requirements in order to promote the ideals of gender justice. Many nations' courts have been instrumental in promoting gender equality. One such instance is the Supreme Court of India's historic ruling from 2014, which recognised transgender persons as a third gender and upheld their basic rights.

Societal Shift: Beyond legislative frameworks, a cultural transformation that values and acknowledges the contributions and rights of people of all genders is necessary to include gender justice within constitutionalism. To promote an environment of equality and respect, this calls for education, awareness-building, and the questioning of established gender conventions and stereotypes.

Impact and Challenges: Significant progress in gender equality and empowerment has resulted from the incorporation of gender justice into constitutionalism. Nonetheless, there are still issues to be resolved, such as ingrained cultural norms, reluctance to change, implementation gaps, and the ongoing need to monitor the successful application of gender justice concepts.

CASE STUDIES:

- India: The Shah Bano case (1985) and other decisions decided by the Indian Supreme Court upheld Muslim women's right to alimony, rejecting religious rules in favour of fundamental rights to equality and non-discrimination.
- Kenya: Although complete implementation is still difficult, Kenya's 2010 Constitution includes progressive gender equality measures, such as the requirement that no more than two-thirds of the members of elected public bodies be of the same gender.
- Germany: In 2017, the German Federal Constitutional Court declared that the country's current civil status legislation infringed against the right to privacy and mandated the inclusion of a third gender option on

birth certificates, therefore acknowledging the rights of transgender people.

These illustrations highlight how constitutional law may significantly advance gender equality. However, there are still obstacles in the way of achieving gender justice, including the gap that still exists between the law and reality, legal loopholes, and opposition to change. To tackle these obstacles, a comprehensive strategy is needed, integrating legal adjustments with awareness-raising, education, and cultural transformation.

CHALLENGES TO GENDER JUSTICE IN CONSTITUTIONAL LAW

Gender justice is still not fully realised globally, despite the progress made in passing legislation that are meant to support gender equality within constitutional frameworks. Enforced discrimination is intersectional with societal norms and stereotypes, under-representation in decision-making processes, legislative gaps and inconsistencies, access to justice and legal enforcement, and under-representation in society. These are the issues impacting gender justice in constitutional law. Gender justice activities must be inclusive and successful for everyone, which calls for complex and focused methods due to intersectionality.

STRATEGIES FOR OVERCOMING CHALLENGE:

- *Eradicating gender stereotypes via education and social change.
- *Promoting extensive legislation changes to remedy enforcement and protection loopholes.
- *Putting in place quotas and other policies to guarantee diverse representation in public life and governance across the board.
- *Enhancing judicial education on gender problems, awareness initiatives, and legal assistance all contribute to improving access to justice.
- *Use an intersectional framework when developing policies to address the multiple types of discrimination that marginalised groups experience.

SIGNIFICANCE:

Creating fair societies where everyone can reach their full potential without facing prejudice requires overcoming these obstacles. The pursuit of gender justice in constitutional law is a continuous process that calls for tenacity, international collaboration, and a dedication to intersectional and inclusive methodologies.

TRANSNATIONAL COMMITMENTS TO GENDER JUSTICE

International treaties and accords, which provide states with both practical frameworks and moral benchmarks, have had a substantial influence on the worldwide movement for gender justice. These international agreements highlight the significance of international collaboration and solidarity in attaining gender equality by offering a common standard for defending and advancing the rights of women and gender minorities.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): CEDAW, which was ratified by the UN General Assembly in 1979, is frequently referred to as an international women's bill of rights. It outlines the definition of discrimination against women and lays forth a plan for national action to put a stop to it. As of my most recent update, 189 nations had ratified the Convention, promising to establish suitable laws that forbid discrimination against women, eliminate any laws that discriminate against women, and incorporate the concept of equality of men and women into their legal frameworks.

Beijing Declaration and Platform for Action (1995): The goal of this historic worldwide policy framework is to advance women's rights. At the Fourth World Conference on Women in Beijing, China, it was ratified by 189

nations, establishing strategic goals in fields including women and poverty, health, education and training, violence against women, armed conflict, and the economy. Comprehensive approaches are required to attain gender equality in all domains of society, according to the Platform for Action.

Sustainable Development Goals (SDGs), particularly Goal 5: A specific aim (aim 5) of the SDGs, which were adopted in 2015, is to achieve gender equality and empower all women and girls. The SDGs offer a comprehensive agenda for global development by 2030, and they acknowledge gender equality as a goal in and of itself as well as a prerequisite for accomplishing all other objectives. Goal 5's indicators and goals concentrate on eradicating all kinds of violence and discrimination against women and girls, guaranteeing their full inclusion in public, political, and economic life, and granting them access to reproductive health and rights.

The Convention on the Rights of the Child (CRC) and its relevance to gender justice: The CRC covers the rights of girls and highlights the significance of non-discrimination, even if it is not solely gender-focused. It draws attention to problems like child marriage and education, both of which are essential to achieving gender equality and the empowerment of girls.

IMPACT AND CHALLENGES:

Due to these international agreements, there have been substantial global legislative and policy reforms that have increased awareness of gender issues and mobilised funding for programmes promoting gender equality.

Techniques to Fortify International Commitments: To increase these pledges' efficacy, the following is necessary:

- * Bolstering international oversight and enforcement systems.
- * Increasing the resources and backing of programmes promoting gender equality.
- * Encouraging the sharing of lessons learnt and best practices across nations.
- * Including the commercial sector, grassroots movements, and civil society organisations in advocacy and implementation initiatives.

SIGNIFICANCE:

Global recognition of the significance of gender equality for peace, security, and sustainable development is reflected in transnational commitments to gender justice. They emphasise how the world community is inter-related and that advancing gender equity is a common duty.

EVOLVING ISSUES AND FUTURE DIRECTIONS

Within the framework of constitutionalism, the quest for gender equity encounters a dynamic environment characterised by both advancement and novel obstacles. Constitutionalism and gender justice will be moulded in the future by our capacity to adjust to these shifts and use multi-disciplinary expertise and cross-border co-operation to solve the complex issues surrounding gender inequity.

EMERGING CHALLENGES:

- 1) Interdisciplinary Approaches: Gender justice issues are always changing, therefore solving them requires an interdisciplinary strategy that draws on knowledge from economics, political science, sociology, and technology. More efficient and inclusive legal frameworks may be created by taking into account the political processes of policymaking, the economic obstacles to equality, and the social constructions of

gender. Economic estimates, for example, show that reducing the gender gap in the workforce may boost the global GDP by \$28 trillion by 2025, underscoring the financial justification for gender equality initiatives.

- 2) Global Cooperation and Solidarity: International co-operation is crucial since many gender justice concerns are transnational, ranging from internet harassment to human trafficking. Global solidarity has the power to galvanise support for gender equality among both genders and beyond national boundaries, as demonstrated by initiatives such as the UN's HeForShe campaign. Global gender justice can only be advanced by strengthening international legal frameworks and encouraging collaborations between governments, businesses, and civil society.
- 3) Future Directions:
 - ❖ **Legal and Policy Innovation**: creating new legal frameworks and regulations to keep up with the development of technology and new societal challenges. This entails bringing privacy regulations up to date, setting up frameworks for cross-border legal collaboration, and making sure gender viewpoints are taken into account when developing AI and machine learning.
 - ❖ **Empowerment through Education**: giving education and awareness-building first priority in order to dispel gender stereotypes and advance gender equality from a young age. By putting in place thorough programmes for gender education, we can encourage support for gender justice in future generations.
 - ❖ **Inclusive Policy-Making**: Ensuring that women and gender minorities are represented and participate in all phases of the policy- and law-making processes. By addressing the varied needs and experiences of every community member, participative techniques can help find more fair and practical solutions.
 - ❖ **Technology and Cyber Harassment**: Gender-based violence has taken on new forms in the digital era, such as non-consensual sharing of private pictures, online harassment, and doxing. Due to the disproportionate impact on women and gender minorities, legal frameworks that can handle the issues of anonymity and jurisdiction that arise from online abuse are necessary.
 - ❖ **Human Trafficking and Migration**: The hazards of human trafficking and dangerous migration have increased due to global crises and wars; women and children are especially at risk. Fighting human trafficking and safeguarding everyone's safety and rights depend on bolstering international cooperation and legislative safeguards for migrants and refugees.
 - ❖ **Climate Change**: Gender-responsive climate policies are needed to address the gendered impacts of climate change, which include increased vulnerability to poverty, displacement, and violence following natural disasters. Another important way to address these disparities is to incorporate gender perspectives into environmental legislation and disaster response plans.

CONCLUSION AND CALL TO ACTION:

We have explored the intricate relationship between constitutionalism and gender justice during this presentation, highlighting both the advancements made and the on-going challenges that stand in the way of attaining gender equality. The conversation has shed light on the critical role such constitutional frameworks play in upholding gender justice while also drawing attention to the ever-changing issues that arise from shifts in society, technology, and the wider world.

The most important realisation is highlighted by the essential insights: gender justice is not only a part of social justice; rather, it is a fundamental component that supports the well-being, prosperity, and sustainability

of societies all over the world. Although there has been improvement, according to data from the World Economic Forum, no nation has yet attained complete gender parity, and at the present rate of development, it will take another 100 years for the gender gap to narrow globally. Given this harsh reality, there has to be a stronger and more steadfast dedication to gender equality, especially when it comes to constitutional legislation and governance.

CALL AND APPEAL FOR ACTION:

Policymakers: Urged to give top priority to incorporating gender equality measures into national constitutions and legal frameworks, making sure that laws change to meet new issues and prevent discrimination based on gender in all its manifestations.

Legal Practitioners: Encouraged to use their knowledge and power to support legislation that promote gender equity, offer legal assistance to victims of discrimination on the basis of gender, and foster an environment in the legal community that values justice and equality.

Civil Society and NGOs: are upon to keep up their campaigning and awareness-raising, promoting legislative reforms, and provide crucial assistance to underserved communities. More than ever, they play a critical role in keeping an eye on and holding governments responsible.

Academia and Researchers: tasked with producing data-driven analyses that provide light on how gender inequality affects society and how well legal systems advance gender justice. Public discourse, practice, and policy may all benefit from their study.

The Global Community: Invited to promote global cooperation and backing for gender justice campaigns, exchanging expertise, assets, and optimal methodologies across boundaries to expedite the global advancement of gender parity.

All facets of society must actively participate in the joint endeavour of achieving gender justice. The first step is to acknowledge the inherent worth of gender equality in creating just, successful, and resilient communities. Transforming this realisation into practical acts that alter our social, legal, and economic environments is the next—and maybe more difficult—step.

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BEYOND THE BENCH: EXPLORING JUDICIAL ACTIVISM IN ADVANCING WOMEN'S RIGHTS IN THE INDIAN LEGAL LANDSCAPE

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INTRODUCTION

The Indian legal landscape has witnessed a profound transformation in recent decades, characterized by the judiciary's proactive role in safeguarding and advancing women's rights. This dynamic interplay between judicial activism and the advancement of gender equality has been a defining feature of the nation's evolving legal system.¹ While the Parliament, as the legislative body, bears the primary responsibility of enacting laws and formulating policies, the judiciary has assumed a crucial role in interpreting and applying these laws in a manner that upholds the rights and liberties of women. Recognizing the inherent biases and structural inequalities that have historically disadvantaged women, the Indian courts have taken a proactive stance, leveraging their interpretative powers to ensure that the principles of gender equality and empowerment, enshrined in the Constitution, are upheld and realized in practice.²

Through a series of landmark judgments and progressive interpretations, the Indian judiciary has demonstrated an unwavering commitment to upholding the rights and dignity of women.³ These decisions have not only challenged long-standing societal norms and practices but have also served as catalysts for legal and policy reforms, fostering a more equitable and inclusive society. However, it is crucial to acknowledge that the judiciary's role in advancing women's rights is not without its challenges and critiques. Concerns have been raised regarding judicial overreach, where the courts are perceived as encroaching upon the legislative domain and usurping the role of elected representatives.⁴ Additionally, there have been instances where the judiciary's rulings have been perceived as reflecting personal biases and ideologies, rather than adhering strictly to legal principles and precedents.

Despite these challenges, the Indian judiciary's commitment to upholding the principles of gender equality and empowerment enshrined in the Constitution remains unwavering.⁵ Through their progressive interpretations and landmark judgments, the courts have played a pivotal role in shaping the legal landscape and fostering a more equitable and just society for women in India.⁶ This research paper aims to explore the profound impact of judicial activism on the advancement of women's rights in India. It delves into the historical context, examines seminal cases that have shaped the legal landscape, and analyzes the role of the judiciary in addressing gender-based discrimination, violence against women, and other critical issues. Furthermore, it highlights the challenges and critiques surrounding judicial overreach while acknowledging the judiciary's vital role in fostering a more equitable and just society for women.

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⁶ Herklotz, T. (2017). Law, religion and gender equality: literature on the Indian personal law system from a women's rights perspective. *Indian Law Review*, 1(3), 250-268.

HISTORICAL CONTEXT

The Indian judiciary's journey toward judicial activism in advancing women's rights can be traced back to the early years of post-independence India. The Constitution of India, adopted in 1950, enshrined the principles of gender equality and non-discrimination, providing a robust legal framework for the protection of women's rights.⁷ However, the interpretation of these principles into tangible outcomes has been a gradual and often arduous process. In the initial decades following independence, the judiciary maintained a relatively restrictive approach, deferring to the legislature on matters of policy and social reform.⁸ However, as the nation grappled with persistent gender inequalities and violations of women's rights, the judiciary recognized the need for a more proactive stance. This shift was facilitated by the advent of Public Interest Litigation (PIL), which allowed individuals and organizations to file cases on behalf of marginalized and vulnerable groups, including women.⁹ Through PIL, the judiciary gained the ability to issue far-reaching directives and guidelines, compelling government agencies and institutions to take affirmative action and implement policies aimed at safeguarding women's rights and addressing long-standing societal challenges. This newfound pro-activeness laid the foundation for a series of landmark judgments and progressive interpretations that have shaped the legal landscape and advanced the cause of women's rights in India.

LANDMARK CASES AND JUDICIAL INTERVENTIONS

The Indian judiciary has played a pivotal role in addressing various issues related to women's rights, ranging from gender-based violence and sexual harassment to property rights and reproductive autonomy. Several landmark cases have shaped the legal landscape and paved the way for greater gender equality. A brief analysis of the judicial strategy in different cases where the Courts have successfully issued their decision to reinforce the status of women can be found below.

1. Judiciary and Sexual Harassment

*Vishaka v. State of Rajasthan*¹⁰: In this case the Supreme Court has for the first time defined term 'sexual harassment' and provided detailed guidelines to the employer for prevention of sexual harassment of women at their work place. Some of the important guidelines are as follows:-

1. It is the duty of the employer to prevent the commission of acts of sexual harassment, to women employees at their work places.
2. The court also defined the term "sexual harassment" as it includes such unwelcome sexually determined behaviour as:
 - a) Physical contact and advances;
 - b) A demand or request for sexual favour;
 - c) Sexually coloured remarks;
 - d) Showing pornography;

⁷ Saini, V. S. V. (2024). Role of the judiciary in advancing women's rights under the Indian Constitution. *Motherhood International Journal of Research & Innovation*, 1(01), 39-45.

⁸ Larson, G. J. (Ed.). (2001). *Religion and personal law in secular India: A call to judgment*. Indiana University Press.

⁹ Sood, A. M. (2008). Gender justice through public interest litigation: case studies from India. *Vand. J. Transnat'l L.*, 41, 833.

¹⁰ AIR 1997 SC 3011

e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.¹¹

The court ordered the Central Government to enact a law on this point which paved the way for Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013.

2. MAINTENANCE AND JUDICIARY

Mohd. Ahmed Khan vs. Shah Banu Begum¹²The Shah Bano case highlighted the conflict between personal laws and the constitutional principles of gender equality. The Supreme Court ruled in favor of Shah Bano, a Muslim woman seeking maintenance from her divorced husband, overriding the provisions of personal law. This decision sparked a nationwide debate on the need for a Uniform Civil Code and highlighted the judiciary's commitment to upholding the rights of women, regardless of religious or cultural norms.

3. EQUALITY AND JUDICIARY

Githa Hariharan v. Reserve Bank of India¹³In this case, the Supreme Court struck down a discriminatory provision in the Hindu Minority and Guardianship Act, which granted preferential guardianship rights to fathers over mothers. The Court affirmed the principle of equal legal status for both parents, irrespective of gender, in matters of guardianship.

Air India v/s. Nargesh Meerza¹⁴ In this instance, a complaint was brought out alleging that the hiring practices of Indian Airlines and Air-India, which discriminate against male and female cabin staff, violate Article 14 of the Indian Constitution. Additionally, there is a requirement for female employees to wait four years after joining the military before getting married. If this is broken, they risk having their career terminated. The regulation that required air hosts to retire after their first pregnancy was declared illegal and hence unlawful by the Supreme Court, which also gave protection to female employees against discriminatory employment circumstances. Here, the Supreme has affirmed a woman's right to become pregnant and to marry whenever she wants.

Saveetha Samvedi and Another v/s Union of India¹⁵ A married daughter in this case filed an appeal to regularise the quarter that was given to her father. While she worked for an Indian railway, her two brothers did not work for the railway company. She maintained that she was the one who took care of her parents and that her brothers were not able to do the same so the quarters which her father was granted ought to be granted to her as well. The railway administration rejected her plea on the grounds that a married daughter was not qualified to have her railway quarter regularised. In favour of the married daughter, the court issued an order regularising a railway quarter. The Court passed an order of regularisation of a railway quarter in favour of married daughter. Earlier this right was available to the sons and unmarried daughters only. The Supreme Court has widened its scope and granted the right to married daughter also in order to empower her.

4. RAPE AND JUDICIARY:

Delhi Domestic Working Women's Forum v/s Union of India¹⁶: In this case the court granted the compensation to the rape victim considering the agony, pain and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurs as a result of rape.

¹¹ <https://shikshansanshodhan.researchculturesociety.org/wp-content/uploads/SS201904006.pdf>

¹² AIR 1985 SC 945

¹³ AIR 1999 SC 1149

¹⁴ AIR 1981 SC 1829

¹⁵ (1996) 2 SCC 380

¹⁶ (1995) 1 SCC 14

Chairman, Railway Board & Others v/s Mrs. Chandrima Das & Others¹⁷ In this case a Bangladeshi women was raped in the Yatri Niwas of the railway by a railway employee at Howrah Railway station. Though she was not Indian citizen but still the Supreme Court granted her compensation of 10 lakhs.

Independent Thought v. Union of India¹⁸ Addressing the issue of sexual violence against minors, the Supreme Court expanded the scope of the Protection of Children from Sexual Offenses (POCSO) Act to include non-penetrative acts of sexual assault. This landmark judgment demonstrated the judiciary's commitment to protecting the rights and dignity of children, particularly vulnerable girls.

These cases exemplify the judiciary's proactive approach in addressing gender-based discrimination, violence, and inequality. Through its interpretations and interventions, the Indian judiciary has played a crucial role in shaping and advancing the legal framework for women's rights.

5. GENDER-BASED VIOLENCE AND JUDICIARY

One of the most significant areas where judicial activism has made a lasting impact is in addressing gender-based violence and discrimination. The courts have recognized the inherent biases and structural inequalities that perpetuate violence against women and have taken steps to combat these issues through legal reforms and policy interventions.

For instance, in the case of **Laxmi v. Union of India**¹⁹, the Supreme Court acknowledged the gravity of acid attacks and issued comprehensive guidelines to regulate the sale of acid and provide compensation and rehabilitation for victims. Similarly, in the case of **Rajesh Sharma v. State of Uttar Pradesh**²⁰, the Court recognized the need for a comprehensive legal framework to address honor killings and directed the states to take preventive and punitive measures.

6. Reproductive rights and Judiciary

The judiciary has also played a vital role in addressing issues related to women's reproductive rights and bodily autonomy. In the case of **Suchita Srivastava v. Chandigarh Administration**²¹, the Supreme Court affirmed the right of a mentally ill woman to refuse termination of her pregnancy, upholding the principle of personal autonomy and bodily integrity.

CONCLUSION

The Indian judiciary's journey in advancing women's rights through judicial activism has been a remarkable one, marked by courageous decisions, progressive interpretations, and a commitment to upholding the constitutional principles of gender equality and non-discrimination. Through landmark cases and interventions, the courts have played a pivotal role in addressing issues such as sexual harassment, gender-based violence, property rights, and reproductive autonomy. However, this journey has not been without its challenges and critiques. Concerns over judicial overreach, inconsistent application of judicial activism, and the limitations of legal reforms in effecting societal change have been raised. Nevertheless, the judiciary's proactive approach has been instrumental in shaping the legal landscape and fostering a more equitable and just society for women.

¹⁷ AIR 2000 SC 988

¹⁸ AIR 2017 SC 4904

¹⁹ (2014) 4 SCC 427

²⁰ (2017) 3 SCC 821

²¹ AIR 2010 SC 235

As India continues to grapple with persistent gender inequalities and violations of women's rights, the role of the judiciary in upholding and advancing these rights remains paramount. Judicial activism, when exercised responsibly and within the bounds of constitutional principles, has the potential to catalyze meaningful social change and ensure that the rights and dignity of women are protected and upheld.

Moving forward, it is crucial to strike a balance between judicial activism and democratic accountability, while also recognizing the need for a multifaceted approach that combines legal reforms, policy interventions, and societal transformations. By fostering collaboration and constructive dialogue among the judiciary, legislature, civil society organizations, and the broader public, India can continue to make strides in advancing women's rights and creating a truly equitable and inclusive society.

JUDICIAL ACTIVISM AND GOVERNANCE

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Every Judge is an activist either on the forward gear or on the reverse.

– Justice Krishna Iyer

INTRODUCTION -

Irrespective of selection of Judges with the similar process, some of the judges are labelled as “Judicial activist” Is there a clear fundamental meaning to the term? Or is it just a general term of contempt that expresses whatever particular style of judicial behavior the speaker finds especially harmful? Many significant questions regarding the- function of courts in our democratic society are implied by this question.

A common perspective on judicial activism is one that is shaped by the Supreme Court and the Constitution. Judges in lower courts, however, are crucial to comprehending the global expansion of judicial authority.

In India, judicial activism is currently a contentious topic. Attempts to limit the authority of the courts and prevent people from justice, removal or transfer of judges those are working efficiently with honesty and sincerity. But the critics of judiciary has always claim that the judiciary have encroach the powers of other branches of government. On the other hand, court has always contended that they have carry out their rightful duties through Judicial Activism.

Former Chief Justice A.H. Ahmadi's statement underscores the significant role that judicial activism plays in shaping the judiciary's duties and prioritizing public interest over private interests.

courts are typically barred from engaging in a mechanical or literal interpretation of statutes. Instead, they are expected to approach statutory interpretation with careful consideration of various factors, including legislative intent, the purpose of the law, context, and the broader legal framework. The judges have to ascertain the makers intention while interpreting the statutes and not only these but also court has to maintain the applicability of the of the constitutional values in all arenas of social, political and economic situation. According to Justice Benjamin Cardozo, a court must give implement the true essence of what is written in the constitution in a continuity of life and expression.

Judiciary is one pious system. The spirit of judiciary can maintain by fighting for injustice and ensure that what is just, right and fair. Judges have to make decisions on a variety of matters including matters of national significance in addition to the normal arbitration. Therefore, judges play a vital and diverse function in the nation, occasionally serving as the highest authority for the wellbeing of its citizens.¹

Court authorities are not permitted to use a mechanical interpretation of a statute, much less a constitution. A judge must ascertain the writers' true intentions while interpreting a statute. With regard to a constitution, a court must maintain the Constitution's applicability to evolving societal political and economic situations. According to Justice Benjamin Cardozo, a court must give a constitution's language "a continuity of life and expression. In addition to define the laws that all lower courts must follow, an apex court is required to give voice and volume to principles that may otherwise go unheard. The apex court play a pivotal role in giving the

¹ Hellman, A. D. (n.d.). *Judicial activism: The good, the bad, and the ugly*. Scholarship@PITT Law. https://scholarship.law.pitt.edu/fac_articles/257/

voice and volume of precedents to all the lower courts that helps to determine the laws that may otherwise go unheard.

The constitutional courts often interpret the constitution in a manner that considers the original intent of the framers within the context of the times. However, this approach does not strictly bind them to the original intentions, as the constitution is a living document that must adapt to changing societal norms, values, and circumstances.

This approach acknowledges that a constitution should be a living document capable of adapting to changing societal conditions and norms. By allowing for judicial activism in interpreting the constitution, constitutional courts can ensure that the document remains relevant and effective in upholding the rule of law and preserving democratic principles. However, viewpoints on judicial activism might differ greatly based on how one views the judiciary's function in a democracy.

Some may view it as necessary for safeguarding rights and promoting justice, while others may see it as overstepping the bounds of judicial authority and interfering with the legislative process. Ultimately, the perception of judicial activity in constitutional interpretation is influenced by individual beliefs about the proper role of the judiciary in a democratic system. Indeed, the perception of judicial activism often hinges on one's understanding of the role of a constitutional court within a democratic system. Those who hold a more conservative or narrow view of the court's role may see any departure from strict textual interpretation as activism. They might believe that the court should only apply the law as written without imparting new meanings or adapting to contemporary circumstances. On the other hand, those with a broader understanding of the court's role may view judicial activism as a necessary aspect of its duty. They may see the court as responsible for giving meaning to ambiguous or open-textured provisions in the constitution, especially in light of changing societal norms and conditions. From this perspective, judicial activism is seen as essential for ensuring that the constitution remains relevant and effective in addressing contemporary challenges. Ultimately, perceptions of judicial activism reflect differing viewpoints on the proper balance between judicial interpretation and the separation of powers within a democratic system. It's a complex issue with various perspectives and interpretations depending on one's beliefs about constitutionalism and the role of the judiciary.

The idea of Governance existed for as long as human civilization. Define "Governance." It refers to the process of making decisions and the method by which they are carried out. The degree of indulgence displayed by subjects determines the quality of government to a great extent. In short, it describes the procedures involved in making decisions and putting them into action. It is the indulgence of the people that determines the quality of much of administration.

The Supreme Court's rulings have had a substantial impact on good governance in every field, including the environment, human rights, gender justice, education, minorities, police reforms, elections, and the boundaries of Parliament's constituent powers to amend the Constitution

Overall, the Supreme Court's jurisprudence in the realm of human rights and gender justice reflects its commitment to upholding constitutional values, promoting equality, and ensuring justice for all members of society. Its progressive interpretations and proactive interventions have significantly contributed to advancing the cause of human rights and gender justice in India.

MEANING AND ORIGATION OF JUDICIAL ACTIVISM-

In fact, judicial activism has a long history in the US, dating back to the Supreme Court's introduction of judicial review in the famous *Marbury v. Madison* decision (1803). The concept of judicial review was

established when Chief Justice John Marshall argued in this case that the Court might examine and declare laws unconstitutional if they were determined to be so. A law or executive action that is found to be inconsistent with the provisions of the Constitution may be declared unconstitutional and, therefore, void by the courts. The power of judicial review allows the judiciary, including the Supreme Court and lower federal courts, to examine legislation and executive actions to ensure their compatibility with the constitutional framework. This power is essential because it checks the authority of the legislative and executive branches to ensure that they do not exceed their constitutional bounds or violate citizens' rights.

It is important to remember that lower courts lack the authority to assess whether legislation are constitutional.

Historian Arthur Schlesinger, Jr. first used the term "judicial activism" in 1947.

Judicial activists in India began with Justice V.R. Krishna Iyer, Justice P.N. Bhagwati, and Justice O.Chinnappa Reddy, and Justice D.A Desai.

The main causes of judicial activism are as follows:

- The lawmakers' and the administration's inaction.
- Since it is undeniable that neither the legislative nor the executive branch have produced the intended outcomes.
- It happens as a result of the system's general inefficiency and inactivity.
- judicial activism often emerges in response to perceived infringements of fundamental human rights or instances where constitutional provisions are misapplied or abused.
- When individuals or groups feel that their rights are being violated by legislative or executive actions, they may turn to the judiciary for redress. In such cases, the courts may adopt a more proactive stance, intervening to protect rights and ensure adherence to constitutional principles.²

AREA OF JUDICIAL ACTIVISM-

In the landmark case of **Vishaka v. State of Rajasthan**, the Supreme Court of India addressed the issue of sexual harassment in the workplace, recognizing the absence of specific legislation to protect women's rights in this regard. In the absence of statutory provisions, the Court invoked Article 32 of the Constitution, which empowers individuals to seek enforcement of fundamental rights directly from the Supreme Court. The Court emphasized that Article 32 should be interpreted to mean that judgments and orders pronounced by the Supreme Court are binding and have the force of law under Article 141 of the Constitution. In other words, the decisions of the Supreme Court in matters of fundamental rights are authoritative and must be followed by all authorities and institutions within the country. it laid down comprehensive guidelines and procedures to prevent and address sexual harassment in workplaces and other institutions. These guidelines, known as the Vishaka Guidelines, were formulated to fill the legislative vacuum until suitable legislation was enacted by the Parliament.³

In the 1973 decision of **Kesavananda Bharati v. State of Kerala**, the Supreme Court ruled that the government's ability to change the constitution was limited and that some "basic features" of the document were unchangeable. The "basic structure" notion was formed by this choice.

² Judicial activism: The indian experience - washington university in st ... (n.d.). https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1443&context=law_journal_law_policy

³ Judicial activism and overreach. And. (n.d.). <https://vajiramandravi.com/quest-upsc-notes/judicial-activism-and-overreach/>

In the 1978 decision of **Maneka Gandhi v. Union of India**, the Supreme Court ruled that travel abroad was protected by the constitution as a personal liberty.

The government could not restrict this right without adhering to due process of law, the court further found.

Union of India v. National Legal Services Authority (NALSA) was indeed a landmark case where the Supreme Court of India recognized the rights of transgender individuals to self-identify their gender. The judgment affirmed the right to self-determination and upheld the dignity and equality of transgender people. This decision was a significant step towards recognizing and protecting the rights of marginalized communities in India. To name the few such as a Bandhuwa Mukti Morcha, Bihar Undertrials, Punjab Police, Bombay Pavement Dwellers, and Bihar Care Home, the judiciary has demonstrated its unwavering dedication to equitable procedural standards, prompt access to justice, and impeding arbitrary state action. Judicial activism in India has indeed touched upon various aspects of governance and social justice, including those mentioned such as health, child labor, political corruption, the environment, and education. Below are a few instances of judicial activism

HEALTH

The Supreme Court of India indeed delivered a significant judgment in 1995 affirming that the right to health is a fundamental aspect of the right to life guaranteed under Article 21 of the Constitution. This ruling came in the case of *Consumer Education and Research Centre v. Union of India*, commonly referred to as the "Vincent Xavier case." In this judgment, the Court emphasized that access to healthcare is an essential component of the right to life and declared that hospitals and doctors have a duty to provide medical treatment to seriously ill patients, regardless of their ability to pay. Refusal to admit such patients was deemed to be a violation of their fundamental right to life and could result in legal consequences. Furthermore, the Court held that hospitals and doctors could be held liable under consumer protection laws if they failed to provide adequate medical treatment or services. This marked a significant expansion of the scope of consumer protection laws to cover medical services, thereby ensuring accountability and redressal for patients who suffer from medical negligence or malpractice. When dengue fever struck Delhi in 1996, the Delhi High Court voiced its displeasure with the protocols in the public hospitals. It instructed the government of Delhi and the centre to expand the number of beds and medical personnel in respective hospitals' casualty emergency rooms. The Delhi government was sent with a *suomoto* notice by the Delhi High Court, requesting an explanation of its measures to eradicate dengue menace. In a different move, the Delhi High Court ordered the Municipal Corporation of Delhi to prosecute private property owners whose properties included standing water, which serves as a dengue mosquito's breeding ground.⁴

ENVIRONMENT

In 1996, the Supreme Court issued an injunction prohibiting any kind of construction within a 5-kilometer radius surrounding Suraj Kund and Badhkal Lake in Haryana. Numerous industries have closed as a result of the Supreme Court's stringent enforcement of environmental rules. Nearly thirty-nine thousand industries in Delhi's residential zones were shifted. In a different case, the Supreme Court mandated that all encroachments be removed and the greenery restored in Delhi's ridge area. It issued a number of directives to union and local governments to enforce the ridge's status as a notified forestry with more accountability and criticized the Land and Development Office of the Union Ministry for its poor performance over the years.

⁴ Role of judiciary in good governance. (n.d.).

https://highcourtchd.gov.in/sub_pages/left_menu/publish/articles/articles_pdf/goodgovernance.pdf

CHILD LABOUR

Even though there are several laws against the child labour, the system still exists. While resolving a public interest lawsuit in December 1996, the Supreme Court ordered the creation of a Child Labor Rehabilitation Worker Fund, which required employers of child labourers to compensate each worker with Rs. 20,000. The fund also recommended several steps to gradually rehabilitate working children.

EDUCATION

The Supreme Court ruled that no school could impose capitation fees on applicants because education is fundamental to human nature. The court worked to control counselling practices in engineering and medical schools. Public schools are required by the Delhi High Court to allocate a specific number of seats to the socioeconomically and economically disadvantaged groups in society.

CORRUPTION

The rulings and decrees of the Supreme Court during the 1990s have been like a breath of fresh air in a nation plagued by widespread corruption and a persistent deterioration of democratic principles. Numerous instances demonstrate the judiciary's bravery, inventiveness, and caution in handling several cases of corruption. For illegally and arbitrarily allocating 15 gas pumps from a discretionary quota, the former petroleum minister Satish Sharma was fined Rs. 50 lakhs by the court.

In 1995, the court awarded former Housing and Urban Development Minister Shiela Kaul exemplary damages of Rs. 60 lakhs for her decision to give her close friends and grandsons 52 stores and stalls in a desirable Delhi locale.

PUBLIC INTEREST LITIGATION: AN INNOVATIVE STEP TOWARDS JUDICIAL ACTIVISM

PIL is a remarkable treatment that is less expensive. In the *Asiad Workers* case, Justice Bhagwati said that "for the first time, the court's portals are being thrown open to the poor and the downtrodden." The judiciary needs to their standing as defenders of the status quo and the established order. The moment has arrived for the legal system to represent this nation's impoverished and struggling populace.

CONSTITUTIONAL GOVERNANCE AND HUMAN RIGHTS PROTECTION-

Our Indian judiciary is over burden with endless no of cases and also criticize for unusual long delays in resolving dispute, the massive backlog of cases it accrues annually, and its inadequate handling of the procedures, which results in very little progress being made.

The actions of the judiciary is depend upon the cases that general public brings before it. The affluent segments of society are naturally using the legal system to push their demands, given that one-third of the population is uneducated and lives in poverty. The system demands that people understand their legal rights and follow the procedures set forth by law, which is unrealistic given that one-third of the population is impoverished and uneducated.

They are not equipped to handle the protracted court proceedings, and the language and practice of law are foreign to their culture. Only when it is requested and people are unaware of where or how to obtain it can legal assistance also be helpful. It is true that the urban middle and upper classes benefit greatly from adversarial adjudication. The Indian judiciary has exhibited judicial activism by developing remedies and reliefs for social contexts that were not previously covered by jurisprudence. This proactive approach has been crucial in addressing emerging social issues and ensuring access to justice for marginalized groups. One

significant aspect of judicial activism in India is the relaxation of the locus standi doctrine. Traditionally, the locus standi doctrine required individuals to have a direct and personal interest in a case to bring it before the courts. However, recognizing the limitations of this approach, the judiciary has relaxed this requirement in certain cases, allowing public interest litigation (PIL) to be filed by individuals or organizations on behalf of marginalized or vulnerable groups.

CONCLUSION:-

In India, the judiciary is tasked by the Constitution with ensuring that the legislative and executive arms of government follow the law. The courts have the jurisdiction to declare a law invalid if it violates the Constitution or is outside the legislative authority of Parliament. In a similar vein, it has the authority to overturn any executive decision that shows illegality or arbitrariness which is guaranteed under article 13,21,32,226 and 277 of the constitution.

In cases where the law may not offer a remedy, the Supreme Court has been enunciated with the extraordinary powers under Article 142 of the Constitution to administer "complete justice" between the parties. There have been unexpected uses of this power in the past. Despite the absence of a specific provision in the Hindu Marriage Act that explicitly allows for divorce on the grounds of irretrievable breakdown of marriage, the couple was granted a divorce based on this premise. In many legal systems, including India, courts have the authority to interpret laws and apply principles of justice and equity, even in the absence of explicit statutory provisions. This clause results in the legislative structure of the Indian judiciary. In reality, judicial legislation is only finished when there is a deficiency in the pertinent body of law.

According to Article 142, Supreme Court orders and regulations are enforceable until and until Parliament enacts necessary legislation.

INDEPENDENCE OF JUDICIARY

The judiciary's ability to promote good governance is largely dependent on its independence. Having a competent, impartial, and autonomous court is the primary need for fairness. Since judges must administer justice not only between individuals but also between individuals and the State, their independence from the ruling government entails their independence from other branches of government as well. The Indian Constitution guarantees the independence and impartiality of the judiciary. According to Justice Chandrachud, the judiciary's independence is a "cardinal feature." He further noted that the judiciary, which serves as a "support of the rights and liberty of the people," is granted certain constitutional guarantees to protect its independence (Kumar and Bhatia, 1999)⁵

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INTERNATIONAL CONFERENCE ON CONTEMPORARY CONTOURS OF CONSTITUTIONALISM IN LIGHT OF CHANGING DIMENSIONS OF GOVERNANCE, JUDICIAL REVIEW & JUDICIAL ACTIVISM 100

LEGAL FRAMEWORKS FOR BALANCING BIODIVERSITY CONSERVATION AND HUMAN DEVELOPMENT IN INDIA: A COMPREHENSIVE ANALYSIS

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1.1 INTRODUCTION

India's extraordinary biodiversity is a testament to its diverse landscapes, spanning from the majestic Himalayas to the coastal plains and lush rainforests. This mosaic of ecosystems not only enhances ecological equilibrium but also enriches human well-being. The Himalayan region showcases a tapestry of alpine meadows, coniferous forests, and high-altitude wetlands, providing a sanctuary for iconic creatures like the elusive snow leopard, Himalayan musk deer, and a myriad of endemic bird species. Moving southward, the Western Ghats emerge as a biodiversity hotspot, adorned with tropical rainforests, grasslands, and moist deciduous forests. Here, a treasure trove of unique species such as the Malabar giant squirrel, Nilgiri tahr, and the captivating lion-tailed macaque find their home. Even in the harsh embrace of the Thar Desert, life perseveres, with inhabitants like the Indian bustard, desert fox, and an array of reptiles and insects uniquely adapted to desert existence. Lastly, the Sundarbans stand as a symbol of resilience, boasting the world's largest mangrove forest and serving as a vital habitat for the majestic Bengal tiger, saltwater crocodile, and a plethora of avian, aquatic, and crustacean species. India's biodiversity narrative is not just a story of ecosystems and species; it's a tale of harmony, resilience, and the delicate balance between nature and humanity. Biodiversity provides essential ecosystem services like pollination, soil fertility, water purification, and climate regulation, which are vital for agricultural productivity, clean water, and climate resilience¹. India's diverse flora and fauna offer a rich repository of genetic resources for pharmaceuticals, crop improvement, and biotechnological innovations, contributing to advancements in medicine and agriculture. Many indigenous communities in India have deep cultural and spiritual connections to nature, relying on biodiversity for traditional practices, rituals, and livelihoods². The country's natural wealth attracts millions of tourists annually, generating revenue and employment opportunities while raising awareness about conservation. Preserving India's biodiversity is imperative for sustainable development and the well-being of future generations. Conservation efforts, including protected area management, sustainable land-use practices, and community-based initiatives, are crucial for safeguarding this invaluable natural heritage. By recognizing the intrinsic value of biodiversity and adopting measures to conserve and sustainably manage it, India can ensure a harmonious coexistence between humans and nature while reaping the manifold benefits it provides.

1.2 LEGAL FRAMEWORK FOR BIODIVERSITY CONSERVATION

India boasts rich biodiversity, encompassing various ecosystems from dense forests to vast wetlands. The legal framework for biodiversity conservation in India is multifaceted, reflecting the country's commitment to preserving its natural heritage. At the core of this framework lies a combination of national legislation, international conventions, and policies aimed at safeguarding biodiversity. The cornerstone of India's legal

¹ <https://pbb.punjab.gov.in/national-biodiversity-authority-nba/>

² <https://twitter.com/nationalbiodiv?lang=en>

framework for biodiversity conservation is the Biological Diversity Act of 2002. This act aims to conserve India's biological diversity, regulate access to biological resources, and ensure equitable sharing of benefits arising from their utilization³. It establishes the National Biodiversity Authority (NBA) to implement its provisions and oversee biodiversity management at the national level. Additionally, it mandates the creation of State Biodiversity Boards to facilitate conservation efforts at the state level. Complementing the Biological Diversity Act are various other laws and policies that contribute to biodiversity conservation⁴. The Wildlife Protection Act of 1972 provides protection to wildlife and their habitats, designates protected areas, and regulates trade in wildlife and their derivatives⁵. Similarly, the Forest Conservation Act of 1980 regulates the diversion of forest land for non-forest purposes to mitigate environmental impacts. India is also a party to several international conventions and agreements concerning biodiversity conservation, such as the Convention on Biological Diversity (CBD). The CBD, ratified by India in 1994, serves as a global framework for conservation, sustainable use, and equitable sharing of benefits derived from biodiversity. India's National Biodiversity Action Plan (NBAP) aligns with the objectives of the CBD, outlining strategies and actions for biodiversity conservation. Furthermore, initiatives like the National Wildlife Action Plan and the National Forest Policy provide comprehensive guidelines for habitat conservation, wildlife protection, and sustainable forest management. Despite the robust legal framework, challenges persist in effectively implementing biodiversity conservation measures in India. These challenges include habitat loss, illegal wildlife trade, human-wildlife conflict, and inadequate enforcement of existing laws. Addressing these challenges requires concerted efforts from governments, civil society, and local communities to ensure the effective implementation of biodiversity conservation laws and policies across the country⁶.

1.3 HUMAN DEVELOPMENT IN INDIA

Human development in India and biodiversity conservation are intricately linked, as the preservation of biodiversity directly impacts the well-being and livelihoods of millions of people. India, with its rich natural resources and diverse ecosystems, faces both opportunities and challenges in balancing human development with biodiversity conservation. Firstly, biodiversity conservation plays a crucial role in sustaining human livelihoods in India. Many communities depend on natural resources for their basic needs such as food, medicine, and shelter. Biodiversity provides ecosystem services like pollination, soil fertility, and water purification, which are essential for agriculture, forestry, and fisheries, contributing to food security and economic prosperity. Moreover, biodiversity is closely tied to traditional knowledge systems in India. Indigenous communities possess valuable knowledge about local ecosystems and sustainable resource management practices⁷. Preserving biodiversity not only safeguards these traditional practices but also promotes cultural diversity and social cohesion. However, rapid economic growth and urbanization in India have led to habitat destruction, pollution, and overexploitation of natural resources, threatening biodiversity⁸. Deforestation, industrialization, and unsustainable agricultural practices pose significant challenges to biodiversity conservation efforts. These activities not only degrade ecosystems but also exacerbate social inequalities, as marginalized communities bear the brunt of environmental degradation. To address these challenges, India has implemented various policies and initiatives to promote biodiversity conservation while fostering human development. The National Biodiversity Action Plan aims to conserve biodiversity, promote sustainable use of natural resources, and ensure equitable sharing of benefits. Additionally, programs like the

³ <https://prepp.in/news/e-492-the-national-biodiversity-authority-nba-environment-notes>

⁴ <https://www.advocatekhaj.com/library/lawreports/biodiversitybill/4.php?Title=Biodiversity%20Bill&STitle=Establishment%20and%20constitution%20of%20National%20Biodiversity%20Authority>

⁵ <https://lawnotes.co/tag/the-national-biodiversity-authoritynba/>

⁶ Ibid

⁷ <https://www.ychlpysseu.edu.hk/~bio/share/0405/ecologyessay/gordon/11.htm>

⁸ <https://www.unep.org/news-and-stories/story/striking-balance-between-conservation-and-development>

National Rural Employment Guarantee Act and the Mahatma Gandhi National Rural Employment Guarantee Scheme provide employment opportunities in natural resource management, contributing to both poverty alleviation and biodiversity conservation. Furthermore, community-based conservation initiatives empower local communities to participate in decision-making processes and take ownership of natural resources. By recognizing the linkages between human well-being and biodiversity conservation, India can achieve sustainable development goals while preserving its rich natural heritage for future generations. Collaboration between government agencies, civil society organizations, and the private sector is essential to address the complex challenges facing biodiversity conservation and human development in India⁹.

1.4 CONFLICT BETWEEN CONSERVATION AND DEVELOPMENT

The conflict between conservation and development is a complex and multifaceted issue, particularly when viewed through the lens of biodiversity conservation. On one hand, India is recognized as one of the world's biodiversity hotspots, boasting a rich tapestry of ecosystems that support a staggering array of plant and animal species. On the other hand, the country is also experiencing rapid economic growth and industrialization, which often comes at the expense of its natural habitats and biodiversity. One major point of contention arises from competing land use priorities¹⁰. India's burgeoning population and expanding economy demand more land for agriculture, urbanization, infrastructure development, and industrial expansion. Protected areas, intended to safeguard biodiversity, often face pressure from adjacent development activities, leading to conflicts over land use and resource allocation. Furthermore, development projects such as dams, highways, mines, and industrial complexes can have significant environmental impacts, including habitat destruction, pollution, and disruption of ecological processes¹¹. These projects are often undertaken in ecologically sensitive regions, exacerbating the conflict between conservation and development. Indigenous and local communities dependent on natural resources for their livelihoods are disproportionately affected by such projects, leading to social unrest and displacement. While India has established a network of protected areas and enacted environmental laws to conserve biodiversity, implementation and enforcement remain major challenges. Weak governance, corruption, and lack of public participation often undermine conservation efforts and facilitate unsustainable development practices. This necessitates integrating biodiversity conservation into development planning processes, promoting sustainable land use practices, enhancing stakeholder engagement and participation, strengthening enforcement of environmental regulations, and investing in alternative development models that prioritize ecosystem health and human well-being. Ultimately, achieving a harmonious balance between conservation and development is essential for securing India's rich biodiversity heritage for future generations¹².

1.5 LEGAL MECHANISMS FOR BALANCING CONSERVATION AND DEVELOPMENT

balancing conservation and development in the context of biodiversity is crucial due to the nation's rich ecological heritage and its rapidly expanding economy. Several legal mechanisms have been established to address this delicate equilibrium, aiming to protect biodiversity while fostering sustainable development. The cornerstone of biodiversity conservation in India is the Wildlife Protection Act of 1972, which provides a comprehensive framework for safeguarding endangered species and their habitats. Under this act, various species are categorized for differing levels of protection, with stringent penalties for poaching and habitat

⁹ <https://www.thedailystar.net/law-our-rights/news/the-legal-framework-biodiversity-conservation-1911401>

¹⁰ <https://lawbhoomi.com/sustainable-development-in-environmental-law/>

¹¹ <https://www.lexinter.net/law/environmental>

¹² <https://www.weforum.org/agenda/2018/10/can-we-balance-conservation-and-development-science-says-yes/>

destruction¹³. Additionally, the Biological Diversity Act of 2002 establishes mechanisms for the conservation of biological diversity, sustainable use of its components, and fair and equitable sharing of benefits arising from the use of biological resources¹⁴. To address the need for sustainable development, India has enacted legislation such as the Environmental Protection Act of 1986, which mandates environmental impact assessments for projects likely to have significant ecological consequences. This ensures that development projects are evaluated for their potential environmental impact before implementation, enabling informed decision-making to mitigate adverse effects on biodiversity. Furthermore, the Forest Rights Act of 2006 recognizes the rights of forest-dwelling communities over traditional forest lands, empowering them to participate in conservation efforts while promoting their socio-economic development. This act emphasizes the importance of integrating local communities into biodiversity conservation strategies, acknowledging their role as custodians of forest ecosystems¹⁵. In addition to legislation, India has ratified international agreements such as the Convention on Biological Diversity (CBD), committing to the conservation of biological diversity, sustainable use of its components, and equitable sharing of benefits derived from genetic resources. By aligning with global conservation efforts, India demonstrates its commitment to biodiversity protection on a global scale. Despite these legal mechanisms, challenges persist in effectively balancing conservation and development in India¹⁶. Enforcement of existing laws remains a concern, with issues such as habitat fragmentation, illegal wildlife trade, and conflicts between conservation goals and development priorities needing continued attention¹⁷. In conclusion, India employs a multifaceted approach to balance conservation and development concerning biodiversity, utilizing a combination of legislation, community involvement, and international cooperation¹⁸. However, ongoing efforts are required to strengthen enforcement mechanisms, enhance stakeholder engagement, and address emerging threats to biodiversity conservation in the country.

1.6 INDIGENOUS AND LOCAL COMMUNITY RIGHTS

In India, the conservation of biodiversity intertwines with the rights and concerns of Indigenous and local communities. These communities have long been custodians of their local ecosystems, possessing traditional knowledge crucial for biodiversity conservation. Recognizing this, India has enacted various legal frameworks to safeguard their rights while promoting conservation efforts. The Biological Diversity Act of 2002 is a cornerstone legislation that acknowledges the vital role of Indigenous and local communities in biodiversity conservation¹⁹. It mandates the formation of Biodiversity Management Committees (BMCs) at the local level, ensuring community participation in decision-making regarding biodiversity management. These committees serve as platforms for communities to assert their rights, contribute traditional knowledge, and collaborate with governmental bodies for conservation initiatives²⁰. Additionally, the Forest Rights Act (2006) empowers Indigenous communities to manage and conserve forest resources traditionally accessed by them. By granting legal recognition to their land and resource rights, the Act enhances their role as stewards of biodiversity-rich ecosystems. This recognition is crucial for preventing land encroachment and promoting sustainable resource management practices within Indigenous territories. Furthermore, India's National Biodiversity Authority

¹³ <https://rksi.adb.org/publications/balancing-ecological-and-economic-development-through-sustainable-forest-management/>

¹⁴ <https://www.oas.org/en/sedi/dsd/Biodiversity/WHMSI/Documents/Legal%20Connectivity.pdf>

¹⁵ <https://snrd-asia.org/wp-content/uploads/2018/04/CPMA-Technical-Report-Series-No.-02.-Legal-Framework-for-Conservation-of-Coastal-and-Marine-Environment-of-India-A-Review.pdf>

¹⁶ <http://www.diva-portal.org/smash/get/diva2:1113437/FULLTEXT01.pdf>

¹⁷ <https://vmls.edu.in/environmental-law-balancing-conservation-and-development-in-a-changing-world/>

¹⁸ http://awsassets.wwfindia.org/downloads/mle_022_block_1.pdf

¹⁹ <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1180&context=djilp>

²⁰ <https://portals.iucn.org/library/sites/library/files/documents/EPLP-077.pdf>

(NBA) facilitates the equitable sharing of benefits arising from the utilization of biological resources²¹. This ensures that Indigenous and local communities receive fair compensation for their contributions to biodiversity conservation and sustainable resource utilization. The NBA's efforts aim to address historical injustices and empower communities economically, thereby incentivizing their active involvement in conservation endeavors²². However, challenges persist in effectively implementing these legal provisions. Issues such as bureaucratic hurdles, inadequate capacity-building, and lack of awareness among communities hinder their meaningful participation in biodiversity conservation. Moreover, conflicting interests between conservation goals and developmental projects often marginalize Indigenous and local communities, leading to their displacement and loss of traditional livelihoods²³. To address these challenges, there's a need for stronger enforcement mechanisms, improved coordination between governmental agencies and communities, and increased investment in capacity-building initiatives. Empowering Indigenous and local communities with knowledge, resources, and decision-making authority is essential for fostering inclusive and sustainable biodiversity conservation in India. Only through genuine partnership and respect for their rights can the nation achieve its conservation objectives while ensuring social justice and equitable development²⁴.

1.7 INTERNATIONAL OBLIGATIONS AND AGREEMENTS

Biodiversity conservation in India is a matter of international concern due to the country's rich ecological heritage and diverse ecosystems. India has ratified several international agreements and conventions aimed at preserving biodiversity, reflecting its commitment to global conservation efforts. One of the primary agreements India is party to is the Convention on Biological Diversity (CBD), ratified in 1994. This landmark treaty outlines objectives for the conservation of biological diversity, sustainable use of its components, and fair and equitable sharing of benefits arising from genetic resources. India's participation in the CBD underscores its recognition of biodiversity as a global common good requiring collective action. Additionally, India is a signatory to the Nagoya Protocol, a supplementary agreement to the CBD, which focuses on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization. The Nagoya Protocol strengthens India's efforts to regulate access to its rich genetic resources and traditional knowledge associated with biodiversity, ensuring that these resources are utilized sustainably and that benefits derived from their use are shared equitably²⁵. Furthermore, India is part of regional agreements such as the South Asian Association for Regional Cooperation (SAARC) and the Indian Ocean Rim Association (IORA), which provide platforms for cooperation among member states on biodiversity conservation initiatives. These agreements facilitate the exchange of knowledge, best practices, and collaborative efforts to address transboundary conservation challenges²⁶. On the domestic front, India has enacted legislation such as the Biological Diversity Act, 2002, and established institutions like the National Biodiversity Authority to regulate access to biological resources and ensure their sustainable use²⁷. These domestic measures align with international obligations and demonstrate India's commitment to implementing global biodiversity conservation goals at the national level. In conclusion, India's engagement with international obligations and agreements for biodiversity conservation reflects its recognition of the interconnectedness of global

²¹ <https://www.shiksha.com/online-courses/articles/principles-of-sustainable-development/>

²² https://www.pwc.com/gx/en/issues/esg/nature-and-biodiversity.html?WT.mc_id=GMO-ESG-ESG-FY24-CA-CNPB-T9-CI-XLOS-WBP-GMOS0003-EN-PSEDI-T1&gclid=Cj0KCQjwzZmwBhD8ARIsAH4v1gUECgWQcYh2nxSRxoT0Vp_YVBSfAA5QioucUOvu_1q_Y9t4FJV0oNYaAj6zEALw_wcB&gclsrc=aw.ds

²³ https://law.nus.edu.sg/apcel/wp-content/uploads/sites/3/2023/01/APCEL_WPS-2301.pdf

²⁴ https://www.pik-potsdam.de/avec/peyresq2003/talks/0917/sillence/background_literature/sustlaw.pdf

²⁵ <https://sdgs.un.org/goals/goal15>

²⁶ <https://forests.gujarat.gov.in/forest-conservation-act.htm>

²⁷ <https://pwnonlyias.com/upsc-notes/environmental-laws-and-policies/>

ecosystems and the importance of collective action in safeguarding biological diversity²⁸. By fulfilling its commitments under these agreements and enacting complementary domestic legislation, India is not only contributing to global biodiversity conservation efforts but also safeguarding its own ecological heritage for future generations²⁹.

1.8 ENFORCEMENT AND COMPLIANCE

Enforcement and compliance play pivotal roles in biodiversity conservation in India, a country renowned for its rich ecological diversity. With over 8% of the world's recorded species, India faces significant challenges in preserving its biodiversity amidst rapid urbanization, industrialization, and population growth. Effective enforcement and compliance mechanisms are critical to safeguarding the nation's natural heritage. Enforcement refers to the implementation of laws, regulations, and policies aimed at protecting biodiversity³⁰. In India, various legislative frameworks such as the Wildlife Protection Act (1972), Forest Conservation Act (1980), and Biological Diversity Act (2002) provide the legal backbone for biodiversity conservation. These laws delineate protected areas, regulate hunting and trade of wildlife, and mandate environmental impact assessments for developmental projects³¹. However, the effectiveness of enforcement often hinges on factors like adequate funding, infrastructure, and manpower. Compliance, on the other hand, pertains to adherence to these laws and regulations by individuals, industries, and governmental bodies. Ensuring compliance requires robust monitoring, surveillance, and accountability mechanisms³². India has made strides in this regard through initiatives like the National Biodiversity Authority (NBA), which oversees compliance with the Biological Diversity Act and regulates access to biological resources and associated knowledge³³. Additionally, the introduction of eco-sensitive zones around protected areas aims to mitigate human-wildlife conflicts and promote sustainable development practices. Despite these efforts, enforcement and compliance in biodiversity conservation face challenges. Corruption, lack of awareness, and conflicting interests often undermine conservation efforts³⁴. Encroachment, illegal logging, poaching, and habitat degradation persist as pressing threats to India's biodiversity³⁵. Strengthening enforcement requires synergizing efforts across governmental departments, enhancing community participation, and leveraging technology for real-time monitoring and enforcement³⁶. Furthermore, fostering a culture of compliance entails raising public awareness, engaging stakeholders, and incentivizing conservation-friendly practices³⁷. Empowering local communities through participatory conservation approaches can enhance compliance while promoting socio-economic development³⁸. In conclusion, enforcement and compliance are indispensable pillars of biodiversity conservation in India³⁹. Sustained efforts to bolster enforcement mechanisms, coupled with fostering a culture

²⁸ <https://www.unep.org/news-and-stories/story/striking-balance-between-conservation-and-development>

²⁹ <https://www.informationdiaries.in/2023/05/development-and-environment-conflict.html>

³⁰ <https://byjus.com/biology/difference-between-environment-and-ecosystem/#:~:text=Environment%20refers%20to%20the%20surroundings,elements%20interact%20with%20each%20other.>

³¹ <https://www.geeksforgeeks.org/what-are-environment-and-ecosystem/>

³² https://www.pwc.com/gx/en/issues/esg/nature-and-biodiversity.html?WT.mc_id=GMO-ESG-ESG-FY24-CA-CNPB-T9-CI-XLOS-WBP-GMOS0003-EN-PSEDI-T1&gclid=Cj0KCQjwZmWbD8ARIsAH4v1gUECgWQcYh2nxSRxoT0Vp_YVBSfAA5QioucUOvu_1q_Y9t4FJV0oNYaAj6zEALw_wcB&gclsrc=aw.ds

³³ <https://www.vedantu.com/biology/difference-between-environment-and-ecosystem>

³⁴ <https://education.nationalgeographic.org/resource/ecosystem/>

³⁵ <https://unacademy.com/content/upsc/difference-between/environment-and-ecosystem/>

³⁶ <https://mgcub.ac.in/pdf/material/202004060209470efc6ebd9b.pdf>

³⁷ <https://egyankosh.ac.in/bitstream/123456789/34292/1/Unit-1.pdf>

³⁸ <https://www.khanacademy.org/science/biology/ecology/intro-to-ecosystems/a/what-is-an-ecosystem>

³⁹ <https://youmatter.world/en/definitions/ecosystem-definition-example/>

of compliance, are essential for preserving India's ecological heritage for future generations. Collaboration between government agencies, civil society, and the private sector is imperative to address the multifaceted challenges facing biodiversity conservation effectively⁴⁰

1.9 CONCLUSION AND SUGGESTIONS

In India, the symbiotic relationship between biodiversity conservation and human development is becoming increasingly evident⁴¹. Biodiversity not only sustains ecosystems but also serves as a vital resource for human well-being, providing food security, clean water, medicines, and livelihoods⁴². However, rapid urbanization, industrialization, deforestation, and pollution pose significant threats to biodiversity. To address these challenges, a multi-pronged approach is essential⁴³. Conservation efforts must integrate traditional ecological knowledge with modern scientific methods, engaging local communities in sustainable practices⁴⁴. Additionally, policy frameworks need to prioritize conservation alongside economic development, ensuring the protection of natural habitats and species⁴⁵. Collaboration between government, non-governmental organizations, businesses, and communities is crucial for effective biodiversity conservation. Involve local communities in conservation initiatives, recognizing their role as stewards of biodiversity and raise awareness about the importance of biodiversity and foster a culture of conservation through education and outreach programs⁴⁶.

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⁴⁰ <https://www.open.edu/openlearn/mod/oucontent/view.php?printable=1&id=2737>

⁴¹ <https://collegedunia.com/exams/difference-between-environment-and-ecosystem-biology-articleid-7233>

⁴² <https://www.investopedia.com/terms/s/sustainability.asp#:~:text=In%20the%20broadest%20sense%2C%20sustainability,available%20for%20the%20long%20term.>

⁴³ <https://www.sustain.ucla.edu/what-is-sustainability/>

⁴⁴ <https://www.twi-global.com/technical-knowledge/faqs/faq-what-is-sustainability>

⁴⁵ <https://www.environmentalscience.org/sustainability>

⁴⁶ https://www.activesustainability.com/sustainable-development/what-is-sustainability/?_adid=02021864894

CHILD RIGHTS AND CONSTITUTIONALISM

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A. INTRODUCTION:

“Children are not things to be moulded but are people to be unfolded.”

– Jess Lair (former Montana State University professor, Bozeman, USA)

Proper care is always necessary to unwrap beauty behind every childhood activity. Child is not an object to be treated vehemently without any consent of that child. Child is a separate and individual human being holding rights equally as that of adult person unless restricted by law. There is no specific definition of Child in the Indian law. All treaties of rights for human on international level are applicable to children. Though universally through declarations, framework of childhood and associated rights are established, those are not getting effectively implemented.

Children's rights are always most important topic for debate. In the past Child abuse was associated with child – underfeeding, marriage, verbal or sexual abuse, labour, batteries, prostitution and pornography. Now, it is leading to poverty, malnutrition, lack of proper school or healthcare or nutrition issues due to weak provisions on direct benefits.

Children, as not a whole political entity, are not getting political support. Typically, they are defenseless on economical or physical or psychological basis. Though globalization is in its supreme stage, childcare didn't get proper attention. A narrow mind and selective approach pushes them on lowest level in social and political agenda.

B. LEGAL DEFINITION - CHILD:

Article 1 of the 1989 Convention on the Rights of the Child of the United Nations says that a child shall mean every person under the age of eighteen unless the majority is earlier, according to the law applicable to the child.

The Indian Majority Act of 1875 provides the age of a majority to be 18 years old and for a minor whose person / ownership is appointed a guardian or whose property, in the majority of 21 years, is under the supervision of the Court of Wards.

Under the Child Labour Act of 1986, the child shall mean an individual who was not 14 years old.

The Child Marriage Restraint Act of 1926 applies to a person who is not 21 years of age if a male, and not 18 years of age in case of a female.

As per the Juvenile Justice Act, 2000 a juvenile / child means a person not 18 yrs old.

C. RIGHT OF CHILDREN:

Government has taken several initiatives to eradicate poverty but major portion of society is still living in poverty. This economical inequality affects children prominently over following some of key rights:

Right to life, health, safe water, food, education, protection, freedom, identity, etc.

Children are the most vulnerable section of such economically backward sections. Understanding such violations of rights is a complex process. Generally, rights violation is not understood by children and thus crimes against them remains less reported or unreported.

a) Provisions of UNCRC (United Nations Conventions on Rights of Child):

1. Protection Rights: Safety from harms

Right to: Life (Article-6)

- : be with parents without separation (Article-9)
- : be protected from abuse of any kind (Article-19)
- : Special attention (Article-20)
- : Economic-exploitation protection (Article-32)
- : Protection against illicit-drugs (Article-33)
- : Sexual-exploitation protection of any kind (Article-34)

2. Promotion Rights: Full potential development with survival and life

Right to: health care with highest standard (Article-24)

- : Standard of living (Article-27)

3. Participation Rights: Promoting active voices

Right to: Identity (Article-7 & 8)

- : Free expression of views and getting listened to (Article-12 & 13)
- : Information access (Article-17)
- : Children with disability to enjoy the life with participation in society activities (Article-23)

b) Indian Constitutional Provisions for Welfare and Protection of Child:

1. Fundamental Rights:

- i Equality (Article-14 Rights)
- ii No Discrimination (Article-15(3) Rights)
- iii Personal Liberty & Life (Article-21 Rights)
- iv Education-free and compulsory (till 14 yrs age) (Article 21-A Rights)
- v Prohibition of Trafficking Human Beings, Forced Labour, Sexual Exploitation of Children (Article-23)
- vi Prohibition of Employment of Children in Factories, Hazardous Jobs, etc. apart from menial and small jobs. (Article-24)

2. Directive Principles of State Policies (DPSP):

- i No abuse & engage them in activities unsuitable to their age (Article-39(e))
- ii Ensure secured opportunities and facilities for children and protect them from exploitation and moral & material desertion (Article-39(f))
- iii Free and compulsory education (till 14 yrs age) (Article-45)
- iv Nurture education and economic interests of weaker section and protect from social injustices and exploitation (Article-46)
- v Obligation to improve standard of living, level of nutrition and public health of citizens (Article-47)

3. **Fundamental Duties-** Article 51 A(k)– Duty of every citizen, to provide education for his/ her child (till 14 years age)

4. **Constitutional Remedies-** Article 32 (Supreme Court) and 226 (High Court) Writs jurisdiction– for infringement of above rights.

c) Few Indian Law to restrict violations of the Child Rights:

1. Child Labour (Prohibition and Regulation) Amendment Act, 2016 is the second amendment in the Child & Adolescent Labour (Prohibition & Regulation) Act, 1986 after 2006 amendment (which was originated from amendment in The Factories Act, 1948) – prohibit child-labour employment and defined adolescent age between the age of 14 to 18 yrs.
2. The Immoral Traffic (Prevention) Act, 1986 (ITPA)
3. The Prohibition of Child Marriage Act, 2006.
4. The Right of Children to Free and Compulsory Education Act, 2009,
5. The Juvenile Justice (Care and Protection of Children) Act, 2015 re-enacted the Juvenile Justice (Care and Protection of Children) Act, 2000.
6. The Protection of Children from Sexual Offences Act, 2012 (POCSO Act)

D. ISSUES OF CHILDREN RIGHTS IN INDIAN PROSPECTIVE:

Violations of children's rights are not often intended. Lack of resources is appearing as a main reason. India's income falls between lower middle levels. Indian population is second largest in the world. Thus it becomes hard for Government to reach every family. The major lacuna is observed in Healthcare and education of child

a) HEALTHCARE-

Indian economy is growing fast. But, India witnesses world's worst level of child malnutrition. So, it has largest anti-malnutrition program. 50% children below 3 yrs are underweight and 1/3rd wealthiest children are over-nutrient. This shows effects of economic inequality. With government efforts, poverty and malnutrition start reducing and thus child mortality is improving throughout India. Kerala is leading to successfully reduced poverty and malnutrition, and improved child mortality rates in India as follows:

Healthcare Regional variations (2005-06) National Family Health Survey-3:

State	Kerala	Maharashtra	Bihar	UttarPradesh	India
Women - received no care for antenatal (%)	0.1	7.3	65.7	33.5	22.8
Perinatal mortality rate*	10.8	35.8	58.7	59.5	48.5
Infant mortality rate	15.3	37.5	61.7	72.7	57.0
U5 mortality rate	16.3	46.7	84.8	96.4	74.3

- Mortality rate = deaths/1000births.

Further, as per the WHO 2015 data, Child mortality in India reduced over the decade (1 in 5 deaths worldwide in children below-5years'-age occurs in India). Indian Child mortality (52.7%) is higher than Bangladesh (41.1%) and Nepal (39.7%), which are considered poorer (Gross National Product per capita at international dollar rate - India - 5350, Bangladesh - 41.1 & Nepal - 39.7) and have fewer doctors per 10,000 population (India - 7, Bangladesh - 3.6 & Nepal - 2). Further, millennium development goal targets (SDG) for child mortality till 2015 were not achieved by India. However, Sample-Registration-System (SRS) Statistical Report 2020 (dated 22/09/2022) shows reduction in such issues progressively from 2014 and following table shows effective implementation to achieve SDG till 2030:

INDICATOR	2014	2019	2020
Crude-Birth-Rate	21	19.7	19.5
Total-Fertility-Rate	2.3	2.1	2
Early-Neonatal-Mortality-Rate-0-7 days	20	16	15
Neonatal-Mortality-Rate(NMR)	26	22	20
Infant-Mortality-Rate(IMR)	39	30	28
Under-5-Mortality-Rate(U5MR)	45	35	32

b) EDUCATION –

As per the Periodic-Labour-Force Survey (PLFS) analysis and the Unified-District-Information System for Education (UDISE) (2018-19), there are nearly 1.2 lakh single-teacher schools in the country and an overwhelming 89% are in rural areas. Lack of Digital Infrastructure means overall availability of desktops or laptops in schools is 22% for all India, with rural areas (18%) than urban areas (43%) and internet in schools is 19% all over India - only 14% in rural areas compared to 42% in urban areas. As per BBC report (10 May 2022), almost third of 5-8 years old do not have access to a smart phone to help with their learning at home. During Covid pandemic children from poor families faced maximum impact as schools were closed.

However, now the significant progress has been shown by the Indian Education sector related to e-learning. As per Unified Digital Information on School Education (UDISE) report, various facilities are improved like Electricity Facility improved from 80.2 % to 86.6 % from 2019-20 to 2021-22. Similarly for same period, Internet Facility improved from 22.3 % to 33.9 % & Computer Facility improved from 39% to 44.9%. Means, stronger measures are taken by the Government but the target is yet to achieve.

E. POLITICAL UNWILLINGNESS FOR CHILDREN ISSUES:

A classic example of People's Voice for Child Rights - Telangana State (PVCR- TS), working for child rights from each district of the Telangana State, wherein it had submitted a list of child-specific demands to BJP,

BRS, and Congress, the three major political parties of Telangana in (as per New Indian Express newspaper dated 28 November 2023). No tangible response or inclusion in political manifestos was done by any of them though 35% of the population in Telangana belongs to 0-18-year-old children. Ironically, it's better to give voting rights to children, as it seems like the only solution to make political parties address the concerns of children.

There are a range of laws in India and policy measures to protect the interests of children. It reveals that support for children's rights is still not achieved in India due to such political averseness. Though the constitutional provisions, legislations, and policy of the state prevailing in India for the enforcement of children's right are strong enough, necessity of Constitutionalism is imminent to control Political averseness

F. REMEDIES ON POLITICAL AVERSENESS – CONSTITUTIONALISM:

“The constitutionalism or constitutional system of Government abhors absolutism – it is premised on the Rule of Law in which subjective satisfaction is substituted by objectivity provided by the provisions of the Constitution itself.” (The Supreme Court – Rameshwar-Prasad Vs UoI-2006)

Constitutionalism is a legal principle which ensures balance of democratic principles with better control on exercise of the powers of government. In (The Supreme Court – Coelho Vs. Tamilnadu State) case, Constitutionalism advocates principle of legality, basic structure and role of Courts to interpret legislation to protect fundamental rights. In *Minerva Mills Ltd. Vs. UoI* (1980), Chandrachud, CJ, opined that – *“The Constitution is a precious heritage and, therefore, you cannot destroy its identity”*.

Constitutionalism Principles means amalgamation of following principles:

- a) **Separation of Powers**– (governance divided in Legislature, Executive and the Judiciary) to prevent power monopolization by providing checks and balances.
- b) **Responsible and Accountable Government**– electors right to demand answers from their government or revoke its powers by voting oppositors.
- c) **Popular Sovereignty**– means government derives its legitimacy and authority from the people.
- d) **Rule of Law**– Government belong to the laws, not to men. Essential components (by Dicey):
 1. Except for a specific breach of established law, nobody should be punished.
 2. Law is above everyone.
 3. Courts' vital role to protect individual's rights and freedoms.
- e) **Independent Judiciary** (Article 50)– essence of any liberal democracy and free society. If it is not independent, entire rule of law will be in jeopardy.
- f) **Individual Rights** (Part III of the Constitution)– highest pedestal for constitutionalism and ensured by the Constitutional Courts i.e. the Supreme Court and the High Courts.
- g) **Control of the military**– Government controls the military.
- h) **Police Accountability**– Uphold individuals' the rights, freedoms and dignity. Constitutionalism is a mechanism associated with the provision of legitimacy, legality to a democratic government. Constitutionalism is very much required and having great importance to protect every fundamental right

established by our written Constitution. Over the period, the Constitution of India has been improved by bringing various legislations with appropriate governance through robust mechanism and proper administrative procedures. However, due to malicious intention of few politicians and few members of administrative body, the government is seemed to be moving away from good governance with every passing year. The rich are getting richer and the poor are getting poorer. Therefore, effective constitutionalism is required which will bring up through educational reforms. Making people aware of their rights will further strengthen constitutionalism. Then, with the political will, protection of children's right will become easy.

G. THE WAY FORWARD:

The Government initiatives in Healthcare like Ayushman Bharat Yojana, National Health Protection Scheme, Central Government health scheme, National AYUSH Mission, RashtriyaSwasthya Bima Yojana, Senior Citizen Health Insurance Scheme, etc. are really helpful for improving life for common people.

Further, the Government initiatives in education sector is also remarkable like for Students- National Education Policy(NEP) 2020 or STARS Project or Kala Utsav or for schools -Mid-Day meal or Sarva Shiksha Abhiyan or for Digital Education PM E-Vidhya, DIKSHA or for Girls- Beti Bachao, Beti Padhao, PRAGATI or for disabled students- SAKSHAM or for school teachers- NISHTHA or for mental health of students- Tele MANAS etc.

The only necessity is to bring back political will to effective implementation of such schemes. Strengthening constitutionalism by increasing system of checks and balances over the Governments and Political parties will reduce criminalization and influence of money power into the corridors of politics. With the present computer world, it is now coming under control. This will ultimately benefit the weaker section of society and will boost required support for children too. The commitment from all members of the society is necessary for welfare of child and then child can bring prosperity for the nation.

“Children re-invent your world for you.” – American actress Susan Sarandon

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MULTI DIMENSIONS OF ENVIRONMENTAL CONSTITUTIONALISM

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There is "no happiness without liberty, no liberty without self-government, no self-government without constitutionalism, no constitutionalism without morality--and none of these great goods without stability and order.

Clinton Rossiter¹

The foundation of Indian constitutionalism is the idea of the rule of law, where the Constitution is the supreme law of the land, and all government actions must conform to its provisions. The judiciary plays a vital role in upholding constitutionality by ensuring that laws and government functions comply with the provisions of the Constitution. Most national Constitutions contain environmental provisions in the form of rights and duties. The environmental rights and duties of the state often come under the spotlight given the concept of environmental protection, which is an inseparable part of the Indian Constitution.

The Constitution of India is not a root but a living document that evolves and gets rich with time. The special provisions on environmental protection under the Indian Constitution are also the result of the continuously evolving capacity of the fundamental law of the land. The Preamble of the Constitution of India ensures the basic socialist character of the Indian society and the self-respect of the individual. It suggests a good quality of life and an atmosphere free of pollution which every citizen should enjoy. According to Mciviever,² "Earth's surface and all its natural - Natural resources, land, water, mountains, grounds, minerals, plants, animals and All natural powers that affect human life by existing on earth She comes under geographical environment. The Indian law as 'Environment (Protection) Act, 1986' defines environment as "Environment includes Air, Water, and Land and inter-relationships that exist between water, air, land and humans, other living beings, plants, micro-organisms, and property." In the general sense, the word comes from the French verb *environner*, which implies to encircle, enclose, or surround. The surroundings or circumstances in which living things, including people, animals, and plants, exist are referred to as the environment. Therefore, the natural world encompasses all living things, including humans, animals, and plants, as well as the physical structures that support them. The environment includes water, fire, air, land, trees, plants, animals, human beings, and the results of their various activities, etc. On the other hand, the environment has also been given importance in our ancient Indian culture. Environmental protection has been given special importance in Indian culture. In ancient Indian culture, human life has always been seen in the tangible or intangible form in the association of earth, water, air, sky, sun, moon, river, trees animals and birds, etc. The inter-dependent relationship between man and nature was deeply understood by the Indian sages. The sages who grew up in the lap of nature, while accepting the importance of trees and water, have said in a verse "*Vrikshaad varshati parjanya parjanyaadanna sambhava*" That is, trees are water, water is food, food is life". Our ancestors i.e. sages, sensitive to the environment, planted long-lived and health-useful trees in their penances, residences, and ashrams, and given their importance, they were revered for their protection and promotion. He understood the usefulness of trees, rivers, lakes, ponds, and wells. Not only this, but the abundant presence of soil, grains, animals, and birds, all is the basis of human life, considering that our ancestors gave everyone a place in their worship. We are the bearers of that great culture whose public mind lived every moment of life by dedicating it to nature and the environment. The truth is that when we say world, this world includes not only the group of human beings but

¹ An American historian and political scientist at Cornell University (1947-1970)

² MacIver R M Society, page 107.

all the variables of the universe. Animals, birds, trees, rivers, and mountains are all worlds and the spirit of sharing with all is a people's vision. Taking everyone along is public policy and in the midst of all this, life is a journey of life. Environment has a special place in Indian Vedic culture. Our culture has been fully aware of its conservation and development. Here, human life has always been seen in an abstract form in the association of earth, water, air, sky, sun, moon, river, trees animals, birds, etc. Since these environmental components are essential to human existence, we must safeguard them. Our life is intimately related to the environment. Indian culture believes that this body is composed of the five elements (Kshiti, Jal, Fire, Air, Sky). In our Vedic texts, these five elements are also considered to be an indicator of auspicious-inauspicious, favorable, and unfavorable conditions for humans, because the human body is formed from the subtle part of these five elements. Even among these five elements, pure air and water are very important for human life, because the power in our life and soul is transmitted only through air. Along with this, the air is the basis of our life, the aquatic element, which also flows in our arteries along with blood, and as a result of these elements our life force, force, and energy are formed. Therefore, protecting these elements is to protect humans and this beautiful creation in the true sense, because our environment is formed by these elements. In Indian culture, special importance has been given to the environment. Various elements of the Indian environment have been revered as "gods" in India from ancient times. Lord Krishna Says "Patram Pushpam Phalam Toyam, Yo Mey Bhaktya Prayachchati Tadaham Bhakti Yupa hrutam Asnaami Prayataatmanaha"³ Earth has been given the status of "mother." The Sutra "Mata Bhoomi Putro Aham Prithivya" means the 'Earth' is an our 'mother' and we all countrymen are the children of this earth. Similarly, many other components of the environment like peepal, tulsi, bargad, amla, vat trees are worshiped as sacred.

Ancient environmental Juristerology related to the environment of ancient Indian culture has been included in the basic fundamentals of our Indian Constitution. Environmental constitutionalism in India is a multi-pronged approach to integrate environmental principles and protection into the legal and governance framework of the country. This concept enshrined in the Indian Constitution recognizes the basic right to a hygienic and safe environment as well as the Directive Principles guiding sustainable development. It includes a wide range of laws, policies, and institutions aimed at protecting natural resources, addressing climate change, and promoting ecological sustainability. Recent trends include climate action, air quality management, green finance, biodiversity conservation, and the promotion of renewable energy. India's approach to incorporating environmental principles and protections into the country's legal and governance framework is known as "environmental constitutionality". This idea, which has its roots in the Indian Constitution, accepts both the basic right to a hygienic and safe environment and the guiding principles of sustainable development. Environmental constitutionality, which reflects India's commitment to striking a balance between progress and environmental management, is constantly changing as the country grapples with the twin challenges of economic growth and environmental protection. Yet environmental constitutionality continues to evolve, reflecting the country's commitment to balancing progress with environmental stewardship.

Prior to India's independence from the British rule, many environmental laws were in existence, but the real inspiration to bring a well-rounded and fully developed framework came only after the 'United Nations Convention on the Human Environment (Stockholm, 1972)'. With the effect of this International Declaration and the powers conferred by the Parliament in the Constitution, the National Council for Environmental Policy and Planning within the Department of Science and Technology was established in 1972. This Later, in 1985, the Planning Council developed into the official "Ministry of Environment and Forests," which is still the top administrative entity in charge of enforcing environmental protection laws. Following 'the Stockholm Conference, in 1976, environmental concerns were given constitutional sanction by the 42nd Amendment of the Indian Constitution, which enshrined environmental considerations in the Constitution, the Directive

³ The Bhagavad Gita (9.26)

Principles of State Policy, and the Fundamental Rights and Duties. "No person shall be deprived of his life and personal liberty except under obligations established by law", states Article 21 of the Indian Constitution.

Since the Supreme Court's 1978 ruling in *Maneka Gandhi vs. Union of India*, Article 21 has occasionally been construed generously. This article gives the fundamental right to life and it includes the right to environment and the entitlement to be free from the threat of illness and infection. The right to a healthy environment is an important feature of the right to live a human life with dignity. The Dehradun Quarry Case, also known as the *Rural Litigation and Entitlement Centre v. State of UP* case,⁴ brought attention to the right of citizens to live in a healthy environment under Article 21 of the Constitution for the first time in 1988. This was the first case of its kind in the country in which the Supreme Court had directed to stop mining (illegal mining) in this case keeping in mind the issues related to environment and environmental balance under "The Environment (Protection) Act 1986". The Indian Supreme Court recognized the right to live in a pollution-free environment as a basic right to life granted under Article 21 of the Indian Constitution earlier in 1987 in the matter of *M C Mehta v. Union of India*.⁵ Article 19(1)(a) and Article 21 of the Indian Constitution give every citizen the right to live a peaceful life and a better environment. In the 1993 case of *P.A. Jacob vs. Superintendent of Police*,⁶ the High Court of Kerala had clarified that the freedom of speech guaranteed under this Article in the Indian Constitution does not permit any citizen to play loudspeakers and other noisy devices etc. at loud volume.

Article 19(1) (g) of the Indian Constitution gives Every Indian citizen the freedom to conduct any type of business, etc. according to his choice, but there are some restrictions too. No citizen can do any such work, which has any adverse effect on society and the health of the people. Environmental protection is inherent in this Article of the Constitution.

In the 1954 case of *Cooverjee B. Barucha v. Excise Commissioner and Chief Commissioner Ajmer*,⁷ the Supreme Court had clarified that wherever there is any disagreement between the freedom to do business and environmental conservation, the court has to decide by striking a balance between environmental interests and the right to select business and business. Public Interest Litigation writ under 'Articles 32 and 226 of the Constitution of India' is the result of the section of environmental petitions. The Supreme Court of India has given many unprecedented and public interest decisions regarding the environment. The Supreme Court has said that it is possible to move forward on the path of development only by taking prior precautions to protect the environment and keep the environment pure.

Over the past few years, the number of cases before courts related to environmental pollution, ecological destruction, and conflicts over natural resources has increased. The majority of these instances necessitate the use of scientific knowledge and environmental jurisdictions as essential components to support court decisions. Experts in these fields must possess a high degree of scientific and contemporary technological proficiency.

"Sustainable development" refers to growth that satisfies current demands without jeopardizing the capacity of future cohorts to perceive their own needs and aspirations. Sustainable development is the pathway to the future we want for all. It offers a framework to generate economic growth, achieve social justice, exercise environmental stewardship and strengthen governance.⁸ In the case of "*Vellore Citizens Welfare Forum v. Union of India*,"⁹ the Supreme Court discussed this principle in detail. "Sustainable development" has been acknowledged as a component of Indian legislation. Two essential components of sustainable development are

⁴ 1989 AIR 594 1989 SCC Supl

⁵ 1987 SCR (1) 819; AIR 1987 965

⁶ AIR 1993 Ker 1

⁷ 1954 AIR 220, 1954 SCR 873, AIR 1954

⁸ Ban Ki-moon, eighth secretary-general of the United Nations between 2007 and 2016

⁹ 1996 AIR 2715

polluter pay theory and protective theory. The state government is required under the "precautionary principle" to identify and address the causes of environmental deterioration. The Supreme Court stated: "We now have no qualms about holding that To stop the deterioration of the Environment from occurring to the two lakes, namely Badkal and Surajkund. It has become imperative to completely halt all building near the lakes. The 'polluter payment concept' states that companies that emit pollutants should bear the financial burden of mitigating or repairing environmental damage. As to the Supreme Court of India's interpretation, the polluter pays principle is a valid concept that entails not just paying the injured parties but also rehabilitating the environment and incurring full culpability for damages. Since repairing the damaged environment is a necessary step in the process of sustainable development, the polluter bears full responsibility for both the costs associated with compensating each victim and with restoring the ecosystem. It is clear that the Indian Supreme Court has been instrumental in safeguarding and enhancing the country's environmental conditions. Public interest litigation cases have increased the courts' jurisdiction even further. The judiciary plays an important and admirable innovative and inventive function. Given Numerous clauses of the constitution as well as other laws contained in the various Indian laws relating to environmental protection, the Indian Supreme Court has held that there are essential features of "sustainable development" such as the "precautionary principle" and "polluter pays principle" as per the environmental protection law of the country. Principles are part of environmental constitutionalism in India. In the case of *Sher Singh vs Himachal Pradesh*,¹⁰ the Supreme Court held that the citizens of India have a fundamental right to a healthy, clean, and decent environment. While India has made significant progress in environmental constitutionality, it also needs to balance economic growth with environmental sustainability. It also addresses challenges related to addressing pollution and conservation of natural resources in a densely populated and rapidly developing country. Efforts are on to strengthen environmental protection and sustainable development in India. It emphasizes how crucial it is to save the environment for both present and future generations.

There are hundreds of laws in the country for environmental protection. These laws are openly violated and that is why India comes in the category of the most polluted countries in the world. India has no shortage of environmental protection regulations, but the way these laws are being applied is not up to par.

The implementation of environmental regulations and other duties outlined in the Indian Constitution must be expeditiously accomplished, methodical, and effective.

The Indian courts, together with the "National Green Tribunal", have played a noteworthy and commendable inventive and innovative role in this age. Even though the environment and nature conservation are a legal issue, to keep it clean and protected, collective efforts have to be made by creating necessary understanding and harmony among all the components of society. Environmental protection can be made effective only when there is knowledge of the constitutional provisions related to environmental awareness, development of environmental education, and environmental sensitivity to make people sensitive to the environment. It is possible to state with certainty that it is possible to control pollution effectively only through legal efforts as well as collective harmony and mutual understanding. Maintaining ecological and environmental balance unaffected in the Indian scenario is a task that is not only the job of the government or the judiciary but also every society, each person, group, community, business, and association has to do. As stated in "Article 51-A (g) of the Indian Constitution", this is not just a social obligation but also a basic duty for everyone.

¹⁰ AIR 1996 SC 149

FUNDAMENTAL RIGHTS OF DIFFERENTLY ABLED PERSONS

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INTRODUCTION:

The disability study should be geared from constitutional perspective in so far as, the laws to disability were came into subsistence after 1987 such as, The Mental Health Act, 1987; The Rehabilitation Council Of India Act, 1992; The Persons with Disabilities (Equal Opportunities, Full Participation and Protection of Rights), Act, 1995 etc, till that time, persons with disabilities use to enforce their rights in view of Article 32 or Article 226 of the Constitution of India.

The study of the constitutional provisions also presuppose the immense worth owing to the fact that the Constitution of India is regarded as philosophical spring for all legislations which are to be enacted in the luster of constitutional framework. If the laws made by the legislature goes against the constitutional provisions then, such laws to that extend will be inoperative in view of **Article 13** of the Constitution of India.

INDIAN CONSTITUTIONAL PROVISIONS AND DIFFERENTLY ABLED PERSONS:

THE FUNDAMENTAL RIGHTS AND DIFFERENTLY ABLED PERSONS:

The Constitution of India contains the provisions for fundamental rights which are used by physically challenge persons for protecting their rights. The Constitution of India guarantees various kinds of fundamental rights to persons including to those who are anguishing from physical as well as mental disabilities. The idiom “Disability” is not defined under **Article 366** of the Constitution of India but, disability could not be a ground for denying the fundamental rights to persons with disabilities.

The fundamental rights like equality before law as endowed with by **Article 14**; protection against double jeopardy ensured by **Article 20**; right of personal life and liberty recognized by **Article 21** are available to any person whether he is a citizen of India or not whereas, fundamental rights like, right to have an opportunity of public employment under **Article 16** ; freedom of speech and expression under **Article 19** are accessible only to those who are citizens of India in view of **Article 5 and Article 6** of The Constitution of India. This principle will be applicable to persons with disabilities too.

The Constitution of India directs the State to ensure that the disabled citizen shall have an opportunity to secure the justice by way of protecting, preserving and enforcing their fundamental rights.

The fundamental rights which are guaranteed to the person are clustered under the following heads:

- i. Right to equality (Article 14 to Article 16);
- ii. Freedom of speech and expression (Article 19);
- iii. Fortification against pro facto legislation and double jeopardy (Article 20);
- iv. Right of personal life and liberty (Article 21);
- v. Protection from unlawful detention (Article 22);
- vi. Protection from Immoral Trafficking
- vii. Prohibition on child employment (Article 24);
- viii. Religious minority and cultural rights (Article 25 to Article 30)
- ix. Right to loom the Supreme court of India beneath Article 32 of the Constitution of India.

These fundamental rights are gazed as under:

i. RIGHT TO EQUALITY

Article 14 ensures equal treatment and equal protection before law to all persons within the landscape of India.

This Article is comparable with the equality provision as contained in The Universal declaration Of Human Rights¹. It means that amongst equals law should be equal and must be equally administered. It further states that likes should be treated alike.

Therefore, it has been observed that Article 14 contemplates reasonableness in the State action, the dearth of which would entail the insolence of Article 14 of the Constitution. It ensures the right of equality to any person including those persons who endure from one or more disabilities. It shelters all persons including persons tormenting from disabilities from the capricious act of the State and recognizes the rule of law by treating all persons equal before law. Therefore, it has been observed that if the State differentiates any person on the grounds of his or her disabilities without any reasonable validation then, the action on the part of the State would tantamount to arbitrary action and such action would be the violation of Article 14 of the Constitution of India.

The Supreme Court of India in the case of **Jagannath Prasad Vs. State of Uttar Pradesh**², it was held that “Equal protection of laws” does not signify that every law must have universal application throughout the country irrespective of differences in circumstances.

It is important to note that the right to equality has been declared by The Supreme Court in **Keshavananda Bharati Vs. State of Kerala**³, and subsequently in numerous other cases following it including **Indra Sawhney Vs. Union of India** [infra] to be part of the basic feature of the Constitution of India. Preamble to the Constitution also highlights the principle of equality to be one of the basic creed of the Constitution.

Article 15 of the Constitution of India ensures protection against discrimination at the public place and recognizes right of accessibility to disabled persons at hotel, public restaurant and entertainment without any restriction. In view of this article, disability cannot be a grounds to discriminate any physically challenged persons at the public place.

Articles 15(3) and 15(4) constitute exceptions to the same while providing for the State to create exceptions or special provisions in favour of women, children and for the advancement of any socially and educationally backward classes of citizens. It has been observed that even as on today, the physically challenged persons endure from undemocratic treatment at the diverse places.

It was held for example in the Delhi High Court case of **Naz Foundation v. Government of NCT and Ors**⁴, it was observed that “constitutional provision must be construed not in a narrow and constricted sense but in a wide and liberal manner so as to anticipate and take into account of changing conditions and purposes so that the constitutional provisions does not get fossilized but remains flexible enough to meet the newly emerging problems”.

Elaborating on this principle, the Supreme Court in **Dr. Jagadish Saran and Ors Vs. Union of India**⁵, has held that “Even apart from Articles 15(3) and 15(4), equality is not degraded or neglected where special

¹ Article 7 of Universal Declaration of Human Rights

² AIR 1961 SC 1245

³ AIR1973 SC1461

⁴ 160(2009) DLT 277

⁵ (1980) 2 SCR 831

provisions are geared to the larger goal of the disabled getting over their disablement consistently with the general good and individual merit.” **Article 16** ensures the right of equal opportunity to citizens in public employment. No citizen shall be denied merely on the grounds of his disability from having an opportunity of public employment.

On the basis of this judgment, it has been observed that no person who is citizen of India and who fulfils all the requirements for the particular post of public employment can be denied from having an opportunity to such employment merely on the grounds of disabilities.

Article 16 further provides reservation in public employment for the backward classes predominantly for schedule caste and schedule tribe. It will be observed that every citizen of India has a fundamental right to apply in any public employment. However, this Article does not ensure the fundamental right of employment but it merely gives right of equal opportunity in matters of public employment.

The true connotation of the term “Equal opportunity” does not mean simply equality in matters of public employment but which depends on ability or suitability or excellence for that post as may determined by the authority in this behalf . Here, term public employment will include all post either permanent or temporary and will also include provision relating to salary increment pension gratuity superannuation and retirement.

This Article permits the authority to make the reasonable classification of the employees so as to achieve the specific object. It also does not prohibit the authority from making rules in connection of that employment provided such rules should be reasonable in nature. In view of this Article, it has been observed that any physically challenged person who is citizen of India will have a right of equal opportunity in matters of public employment provided such person should have prescribe qualification and should be fit for that post .

The issue of reservation in matters of public employment of the persons with disabilities came up for explication before the Supreme Court in the case of **Indra Swahani Vs. union of India**⁶, popularly known as “Mandal judgments”. In this case, in the year 1990-1991, the Government of India issued official memorandum by way of circular their by extending 27% reservation to other backward class and 10% reservation to economical backward class. This matter was referred to 9 bench judges of the Supreme Court. The majority of the judges [6] ultimately upheld the reservation in favour of other backward classes but turned down the reservation policy in favour of the economically backward classes.

Meanwhile, the general secretary of the National Federation of the Blind filed an intervention application on the ground that the persons with disability should be integrated in the category of backward classes. But, it was held that the persons with disabilities cannot be included under backward classes in view of Articles 15[4] and 16[4] of the Constitution of India. However, such person is entitled to get protection under Articles 15[1] and 16[1] of The Constitution of India.

Commenting on the right to economical Justice with reference to persons with disabilities, the Supreme Court in the case of **K C Vasant Kumar Vs State of Karnataka**⁷, Vecant Ramaya [J] held that the physical disability, poverty and place of habitation are the crucial factors in view of Article 16[4] of the Constitution of India.

In the case of **Indra swahani v/s union of India** [supra] even the descending judges held that persons with disabilities are entitle to fortification or positive discrimination or reservation in view of Article 14, Article 15 and under Article 16 of The Constitution of India.

11 1992 Sub[3] SCC 217

⁷ 1985 SCC[714]

ii. RIGHT OF PERSONAL LIFE AND LIBERTY:

Article 21 of the Constitution of India declares that No person shall be deprived of his personal life and liberty except according to procedure established by law.

This Article ensures protection against the State sortie upon the personal life and liberty of individual except according to procedure established by law; however such procedure should be reasonable and fair, disability is no more ground for the censure of this right.

Right to life in view of Article 21 would mean, right to live with poise; uncontaminated environment; right to health; speedy trial; right to minimum wage during the suspension of the service; right to education and to treat the women with politesse and morality. Right to liberty would include freedom to move; right to privacy; legal assistance; medical assistance; protection against custodial violence etc.

It is well settled law through the copious judgments of the Supreme Court of India that right to life as did surefire by Article 21 of the Constitution of India is an overarching right and would subsumed all other several rights. In the case of **Francis Coralie Vs. Union Territory of Delhi**⁸, it was held that right to life would include right to live with human dignity which would make the human life more meaningful and erudite furthermore, would include right to adequate nutrition; clothing and shelter .

In the case of **Chameli Sing Vs. State of U.P**⁹, the Supreme Court of India held that right to life guaranteed by any society would include, right to have elegant environment; right to water; education; medical facility; shelter and any other rights as guaranteed by the Constitution of India and by the Universal Declaration Of Human Rights. In this regard, it is ablaze for the disability rights to have the allusions of the judgments delivered by the courts in India regarding the right to life and liberty as provided by Article 21 of the Constitution Of India.

in **Shantee Star Builder Vs. Narayan Khimlal**¹⁰, it was held that right to life would include right to housing. in **P.Gupta Vs. State of Gujrat**¹¹, the Court held that the right to life would also include right to passable housing. In **Bhanduwa Mukti Morcha Vs. Union of India**¹²; **Mohinee Jain Vs. State of Karnataka**¹³ and **Oni Krishan Vs. Union of India**¹⁴, the Supreme Court held that right to life would also embrace right to education. In **Consumers Education and Research Center Vs. Union of India**¹⁵, therein The Court held that right to life would also include right to health. Additionally, in the case of **Peoples Union for Civil Liberty Vs. Union of India**¹⁶, it was held that right to life would contain right to have proper food.

It is relevant to note that in the milestone diktat of the Supreme Court in **A.K. Gopalan Vs. State of Madras**¹⁷, it was held that the right to life under Article 21 was mutually exclusive of the fundamental freedoms guaranteed under Article 19. But in Maneka Gandhi case (supra) the Supreme Court of India gave broader interpretation to Article 21 of the Constitution of India and held that Article 14, Article 19 and Article 21 of the Constitution of India were not mutually exclusive to each other.

⁸ 1981 1 SCC 608: AIR 1981 SC 746

⁹ 1996 2 SCC 5549

¹⁰ 1 SCC 1990 520

¹¹ 1995 2 SCC 182

¹² 1984 3 SCC 161

¹³ 1992 3 SCC 666

¹⁴ 1993 1 SCC 645

¹⁵ 1995 3 SC 42

¹⁶ CWP 196 of 2001

¹⁷ AIR 1950 SC 27

The Supreme Court bestowed the broader interpretation to the right to life to include, right to livelihood, this was reiterated by the Supreme Court in **Olga Tellis Vs. Bombay Municipal Corporation**¹⁸, it was held that the “inhibition against deprivation of life extends to those limits and faculties by which life is enjoyed.” Thus, on the basis of this judgment, it has been observed that right to life would also include right of livelihood including of selling the Articles in the train compartment by persons with disabilities with a view to earn the means for their day to day life and, the negation of such right would amount to impudence of Article 21 of the Constitution Of India.

The Supreme Court held in **P. Rathinam v. Union of India**¹⁹, the term “life” has an expanded span in Article 21 and defined “Life” as, “The right to live with human poise and the same does not connote continued drudgery. It takes within its fold some of the fine graces of civilization which makes life worth living and that the expanded concept of life would mean the tradition, culture and heritage of the person concerned”. This view has been further followed and endorsed by the Supreme Court in **Cerc Vs. Union of India**²⁰.

Article 21A provides that the State shall provide free and compulsory education to all children of the age of six to fourteen years by enacting suitable legislation. The 86th amendment further inserted Article 51A (k) making it a fundamental duty on part of a “parent or guardian to provide opportunities for education to his child between the age of six and fourteen years.

iii. RIGHT TO APPROACH SUPREME COURT:

Article 32 of the Constitution of India bestows preeminence on the Supreme Court of India to issue pertinent writ for the buttressing the fundamental rights of the persons. For this reason, Article 32 is cogitated as the backbone of the Constitution of India and forms part of fundamental rights. The Supreme Court of India is ruminated as the custodian of the Constitution of India in shielding fundamental rights of the persons including fundamental rights of physically challenged persons.

CONCLUSION:

This study highlights the importance of the constitutional provisions in ensuring the Fundamental Rights of differently abled persons in India. It emphasizes that the Constitution of India, particularly Articles 14, 15, and 16, provides a framework for ensuring equal opportunities and protection for all citizens, including those with disabilities. The study also underscores the significance of the Supreme Court's interpretations of these provisions in cases such as **Indra Sawhney Vs. Union of India** and **K C Vasant Kumar Vs. State of Karnataka**, which have further strengthened the legal protections for persons with disabilities. The research paper concludes that the Indian Constitution, through its provisions and judicial interpretations, has made significant strides in ensuring the rights of differently abled persons. However, it also notes that there is still a need for more comprehensive and inclusive legislation to address the specific needs and challenges faced by these individuals. The researcher has suggested that the government and other stakeholders should work together to create a more inclusive and accessible environment that allows persons with disabilities to fully participate in society and enjoy their fundamental rights on an equal basis with others.

SUGGESTIONS:

1. **Legislative Reforms:** The government should consider enacting specific legislation that addresses the needs and challenges faced by persons with disabilities. This legislation should be designed to ensure equal opportunities and protection for all citizens, including those with disabilities, and should be based on the principles of the Indian Constitution.

¹⁸ AIR 1986 SC 180

¹⁹ (1994)3 SCC 394

²⁰ AIR 1995 SC 922

2. **Accessibility and Inclusivity:** Public spaces, institutions, and services should be designed and implemented to be accessible and inclusive for persons with disabilities. This includes ensuring that physical infrastructure, communication systems, and information are accessible to all, regardless of their abilities.
3. **Education and Awareness:** Educational programs and awareness campaigns should be conducted to promote understanding and acceptance of persons with disabilities. This includes educating the public about the rights and needs of persons with disabilities and promoting a culture of inclusivity and accessibility.
4. **Inclusive Employment Opportunities:** The government and private sector should work together to create more inclusive employment opportunities for persons with disabilities. This includes providing reasonable accommodations and ensuring equal access to job opportunities and career advancement.
5. **Healthcare and Rehabilitation Services:** The government should ensure that healthcare and rehabilitation services are accessible and inclusive for persons with disabilities. This includes providing specialized services and support systems that cater to the unique needs of persons with disabilities.
6. **International Cooperation:** India should continue to engage with international organizations and other countries to learn from their experiences and best practices in promoting the rights and inclusion of persons with disabilities. This includes participating in international forums and agreements that promote disability rights and inclusion.
7. **Monitoring and Evaluation:** The government should establish a system to monitor and evaluate the implementation of policies and programs aimed at promoting the rights and inclusion of persons with disabilities. This includes conducting regular assessments and evaluations to identify areas of improvement and ensure that the rights of persons with disabilities are being protected and promoted effectively.

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DEVELOPMENT OF CORPORATE GOVERNANCE IN EVOLVING ECONOMIES: AN INDIAN PERSPECTIVE

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INTRODUCTION:

The progression of corporate power has occurred as a dynamic process shaped by various economic, social, and regulatory factors over time. Initially, corporate control was mainly related with guarding the concerns of shareholders, ensuring accountability, and enhancing transparency in corporate decision-making. However, as corporations have become more complex and interconnected, the focus of corporate control has expanded to encompass broader stakeholder interests, involving employees, buyers, groups, and the environment.

Historically, corporate control practices have evolved in response to corporate scandals, regulatory reforms, and changing market dynamics. For instance, the collapse of Enron and WorldCom in the early 2000s led to increased scrutiny of corporate boards and executive compensation practices, prompting regulatory reforms like the Sarbanes-Oxley Act in the United States. These reforms aimed to improve corporate accountability, strengthen internal controls, and boost the independence and effectiveness of corporate boards.

In modern years, there has been a growing distinguishing of the value of environmental, social, and governance (ESG) factors in corporate decision-making. Investors, regulators, and other participants are progressively insisting greater transparency and disclosure around issues such as climate change, diversity and inclusion, human rights, and ethical business practices. Consequently, many companies are combining ESG issues into their corporate control frameworks and reporting practices to mitigate risks, drive long-term value creation, and enhance their reputation and brand.

The advancement of corporate control is likely to continue as companies navigate the challenges and opportunities of an increasingly complex and interconnected global economy. Key trends shaping the forthcoming of corporate power include the intensification of digital technology, the growing influence of institutional investors and proxy advisory firms, and the emergence of new regulatory frameworks focused on sustainability and responsible business conduct. Ultimately, successful corporate control will remain essential for building trust, fostering innovation, and creating viable merit for all participants in the years to come.

India has experienced three substantial fundamental incoherence between 1850 and 2020. The era spanning 1850 to 1947, during which India was ruled by British colonial, marked a pivotal era in the country's economic and social development. This era was marked by colonial rule, during which Indian business groups began to emerge. The managing organization system arose during this era as an establishment aimed at tackling the dual encounters of capital shortage and a lack of managerial expertise. This system facilitated industrialization and escorted to increased ownership concentration.

From 1947 to 1991, India operated under a control economy context implemented through five-year plans and a licensing system. During this period, Indian corporations were governed by colonial regulations, many of which reflected the interests and preferences of British employers. The Companies Act of 1866 underwent revisions in 1882, 1913, and 1932, while the Partnership Act was enacted in 1932.

Successful corporate control directly influences financial performance and shareholder value. By implementing robust control mechanisms, companies can enhance operational efficiency, mitigate risks, and make more informed decisions.

LITERATURE REVIEW:

Birla (2009) observes that “colonial legislation deployed the HUF as the universal model for the customary organisation of trade”.

Hazari (1966), as quoted in Khanna and Palepu (2005) defines business group as, “area over which decision-making authority sway”. Khanna and Palepu (2005) elaborate that “the decision-making authority in question was almost always a family, though it could be a close-knit ethnic community as well.”

Birla Committee, 1999: The Securities and Exchange Board of India (SEBI) established a committee in 1999, chaired by Kumar Mangalam Birla, a member of the SEBI Board. This committee aimed to elevate corporate governance standards by focusing on the perspectives of investors and shareholders. Its primary objective was to formulate a 'Code' aligning with the Indian business environment.

Naresh Chandra Committee, 2002: On August 21, 2002, the Department of Company Affairs formed the Naresh Chandra Committee to investigate various corporate governance issues.

However, the committee's report received limited attention regarding shareholder rights and related matters. Nevertheless, paragraph 2.5 of the report gained significance as it was referenced by the subsequent Narayana Murthy Committee in formulating recommendations on shareholder rights.

Narayana Murthy Committee, 2003: SEBI appointed a committee chaired by N. R. Narayana Murthy, the Chairman and Chief Mentor of Infosys Technologies Limited, in 2003. This committee was allotted a task of evaluating existing corporate governance norms and enhancing them to align with the evolving market economy.

OBJECTIVES OF THE STUDY:

1. To understand the evolution process of corporate governance
2. To understand the e-governance system operating in India through CSR model
3. To predict the trends in corporate governance

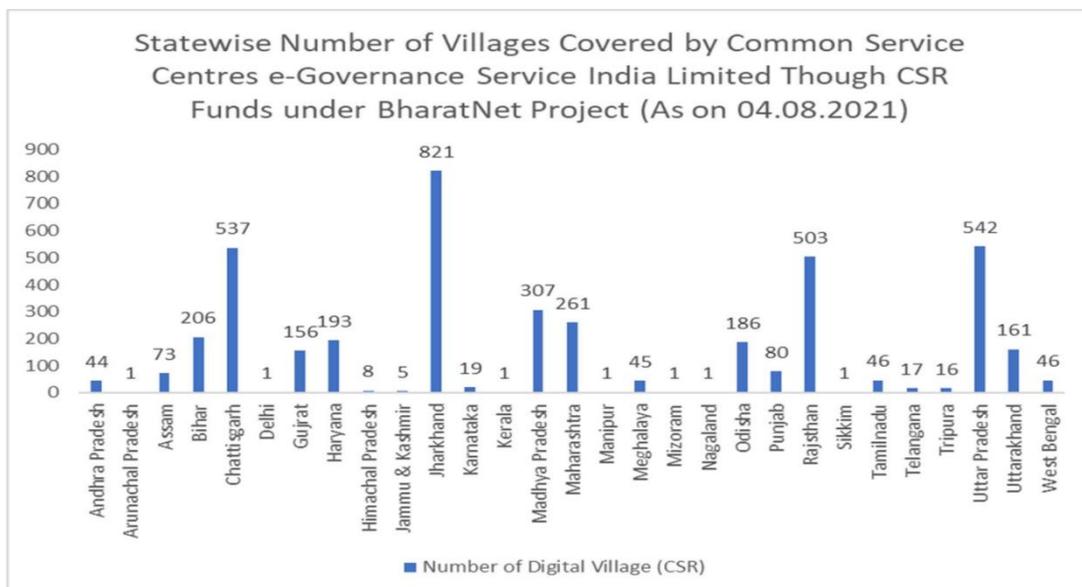
DISCUSSION:

The state wise number of villages covered by common service Centers E-Governance service India Limited through CSR Funds revealed the following statistics.

State wise Number of Villages Covered by Common Service Centres e- Governance Service India Limited Through CSR Funds under Bharat Net Project (As on 04.08.2021)	
State	Number of Digital Village (CSR)
Andhra Pradesh	044
Arunachal Pradesh	01
Assam	073
Bihar	206
Chattisgarh	537
Delhi	001

Gujrat	156
Haryana	193
Himachal Pradesh	008
Jammu & Kashmir	005
Jharkhand	821
Karnataka	019
Kerala	001
Madhya Pradesh	307
Maharashtra	261
Manipur	001
Meghalaya	045
Mizoram	001
Nagaland	001
Odisha	186
Punjab	080
Rajsthan	503
Sikkim	001
Tamilnadu	046
Telangana	017
Tripura	016
Uttar Pradesh	542
Uttarakhand	161
West Bengal	046
India	4279

(Source: <https://www.indiastat.com/Home/DataSearch?Keyword=corporate%20governance%20india> Retrieved on 27th January. 2024 at 4.45 pm)



CONCLUSION AND RECOMMENDATIONS:

The Common Service Centre (CSC) initiative by the Government of India is commendable for its efforts to enhance accessibility to government services and promote transparency in service delivery. Some recommendations for further improving the initiative are listed as follows:

1. The government needs to urgently take actions to verify that the State Common Service Centers (SCAs) achieve their rollout targets as swiftly as possible.
2. Alongside the rollout of centers, connectivity options should be promptly provided to ensure seamless operations.
3. Despite substantial funds being allocated for connectivity, there's often a gap between allocation and implementation on the ground. State Governments need to take accountability for expediting the process and determining efficient systems for tackling pending issues and monitoring execution.
4. The government has integrated the CSC scheme with the e-Gram initiative. Additionally, SCAs should explore alternative connectivity options like WiMax, especially in remote areas lacking phone lines.
5. It has been noted that the distribution of villages covered by Common Service Centre E-Governance Service India Limited through CSR Funds varies across states. This disparity warrants attention and corrective measures in certain regions of the country.

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CONSTITUTION AND GENDER EQUALITY

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INTRODUCTION:

"Gender" is known to be a socio-cultural term that is used to describe roles and behaviors that are socially assigned to "males" and "females" in a given society, while "sex" refers to a physiological and biological phenomenon that defines man and woman. Gender is a historical, social, as well as cultural construct that arises from the power dynamics between men and women, wherein men are viewed as greater than women. Gender, then, can be understood as a notion created by humans, whereas 'sex' refers to a person's natural or biological traits.

A simple description of gender inequality is the discrimination against women on based on their sex. Society has historically viewed women as the weaker sex. Men now hold a superior position over her. She faces discrimination, abuse, and exploitation in our homes as well as in the outside world. Discrimination against women is a common occurrence worldwide, but it is especially pronounced in Indian society.

LEGAL AND CONSTITUTIONAL SAFEGUARDS AGAINST GENDER EQUALITY:

The "preamble to the Constitution of India discusses the goals of attaining social, economic, and political justice for everyone as well as equality of opportunity & status for all of its citizens. This includes positive efforts to eliminate gender inequality. Women also have the same voting rights as men in our political system. In addition to other grounds like caste, race, religion, or place of birth, Article 15 of the Constitution forbids discrimination on the basis of sex. The state is permitted to make any special provisions for women as well as children under Article" 15(3). In addition, the DPSP (Directive Principles of State Policy) includes a number of measures that protect women from discrimination and work in their favor.

In addition to these constitutional safeguards, the Parliament has passed a number of protective laws to end the exploitation of women and grant them equality in society. For example, the Sati (Prevention) Act, of 1987 was passed in order to outlaw and criminalize the cruel custom of Sati, and the Dowry Prohibition Act, of 1961 was passed in order to end the practice of dowry; the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, approved in the year 1994 to stop female infanticide, the Equal Remuneration Act of 1976, the Special Marriage Act of 1954, which grants legal status to married people who marry irrespective of their religion or caste, and numerous other similar Acts. In addition, the parliament periodically amends existing laws to better protect women in response to the altering requirements of society. For instance, section 304-B had been added to the IPC, 1860 to make bride-burning and dowry-death specific offenses that carry a maximum sentence of life in prison.

Therefore, there are numerous legal protections and avenues for women to be protected. In addition, the Indian Evidence Act and the Criminal Procedure Code both contain provisions that give women security and protection. With the recent enactment of a law protecting women from domestic abuse, the government's piecemeal approach to protecting women has advanced. Gender issues are getting more attention now that the NCW and the State and NHRC have been established.

ROLE OF JUDICIARY:

Regarding women's emancipation, the Indian judicial system has independently and successfully intervened. For example, In *C.B. Muthamma vs. Union of India*,¹ a senior Indian Foreign Service employee filed a writ petition to claim that she had been unlawfully and unconstitutionally refused a promotion to Grade I. She drew attention to the discriminatory nature of several Civil Service rules against women. Before her marriage could be formally consummated, a female employee of the government had to obtain written consent. After getting married, she might be asked to leave the government at any point if it was determined that her obligations to her family and home would prevent her from carrying out her duties as an employee of the government in a timely and effective manner. The petitioner was discriminated against on multiple occasions because she was forced to deal with the repercussions of being a woman. It was decided by the Court, through the judges P.N. Singhal and V.R. Krishna Iyer, that: "This writ petition by Ms. Muthamma, a senior member of the Indian Foreign Service, bespeaks a story which makes one wonder whether Article 14 and 16 belong to myth or reality. The credibility of the Constitutional mandates shall not be shaken by governmental action or inaction but it is the effect of the grievances of Ms. Muthamma that sex prejudice against Indian womanhood pervades the service rules even a third of a century after Freedom. There is some basis for the charge of bias in the rules, and this discrimination in the heritage of service rules. If high officials lose hopes of equal justice under the rules, the legal lot of the little Indian, already priced out of the expensive judicial market, is best left to guess."

The Court continued its remarks on the discriminatory rules by saying: "Discrimination against woman, in traumatic transparency, is found in this rule. If a woman member obtains the permission of the government before she marries, the same risk is run by the government if a male member contracts a marriage. If the family and domestic commitments of a woman member of the service are likely to come in the way of the efficient discharge of duties, a similar situation may arise in the case of a male member. In these days nuclear families, intercontinental marriages, and unconventional behavior, one fails to understand the naked bias against the gentler of the species."

In *Air India vs. Nargesh Mirza*,² The SC ruled that the Air India Regulations prohibiting pregnancy and retirement from the services of air hostesses were unconstitutional because the requirements they set forth were irrational and completely unreasonable. The disputed regulation 46 stipulated that an air hostess would leave the company upon turning 35 years old, getting married within 4 years of starting work, or becoming pregnant for the first time, whichever came first. The Managing Director was granted complete discretion under Regulation 7 to raise the 45-year-old retirement age. Due to their violations of Article 14, which forbids arbitrariness and unreasonableness, both of these regulations were overturned.

In the landmark case of *Githa Hariharan vs. Reserve Bank of India*,³ the court determined that a mother can serve as a natural guardian for her child even if her father is still living. This ruling has significant implications for gender equality. The Hindu Minority and Guardianship Act, 1956's section 6(a) is incompatible with the constitutional guarantee of equality in gender because the word "after" was interpreted to mean 'in the absence of her'. The Court observed: "Gender equality is one of the basic principles of our Constitution and in the event the word 'after' is to be read to mean a disqualification of a mother to act as a guardian during the lifetime of the father. The same would definitely run counter to the basic requirement of the constitutional mandate and would lead to a differentiation between males and females. The normal rule of interpretation shall have to bow down to the requirement of the Constitution since the Constitution is supreme and the statute shall have to be in accordance therewith and not de hors the same. The father by reason of a

¹ (1979)4 SCC 260

² (1981)4 SCC 335

³ (1999) 2 SCC 228

dominant personality cannot be ascribed to have a preferential right over the mother in the matter of guardianship since both fall within the same category and in that view of the matter the word 'after' shall have to be interpreted in terms of constitutional safeguards and guarantee so as to give a proper and effective meaning to the word used.”

In *Neera Mathur vs. LIC*,⁴ the court acknowledged that one of the most crucial components of individual liberty was privacy. The petitioner in this case was fired for giving false information to the LIC, and the SC was shocked to discover that the LIC had requested dates of menstruation and previous pregnancies. According to the Supreme Court, conducting such investigations was prohibited because the questionnaire constituted an invasion of privacy. The right to privacy was included in the personal liberty guaranteed by Article 21. Where relevant, one could look for health-related information. It was pertinent to the sale of insurance coverage, but not to the job seeker.

In *Bodhisatwa Gautam vs. Subhra Chakraborty*,⁵ The accused, a teacher, persuaded the complainant, a student, to cohabit with him under false pretenses of marriage. He deceitfully underwent marriage ceremonies in addition to giving false assurances of marriage. When she found out she was pregnant, the accused forced her to have an abortion. He disowned her, claiming there was no marriage, when she asked him to support her. He faced prosecution under several IPC sections. The Supreme Court decided that rape violated a woman's right to live with dignity and freedom as well as being illegal under the Penal Code, rejecting the prosecution's request to have the prosecution drop its case.

“... It is a crime against basic human rights and it is also violative of the victim's most cherished Fundamental Rights, namely, the right to life contained in Article 21. To many feminists and psychiatrists, rape is less a sexual offense than an act of aggression aimed at degrading and humiliating women.”

In *Vishakha versus the State of Rajasthan*⁶, The SC developed guidelines for the protection of working women who are sexually harassed at work because there was no legislation in this area. The Court declared:

“Gender equality includes protection from sexual harassment and the right to work with dignity which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. In the absence of domestic law occupying the field, formulating effective measures to check the evil of convention and norms is significant for the purpose of interpretation of the guarantee of the Constitution and the safeguards against sexual harassment implicit therein and for the formulation of guidelines to achieve this purpose.”

The judiciary has taken notice of the injustices done to women in private matters in relation to the efforts towards a Uniform Civil Code. The Court has expressed its concern in a few rulings that highlight how urgent it is for personal laws to be uniform. Among the significant cases in which the Court expressed concern is *Mohd. Ahmad Khan vs. Shah Bano Begum*⁷

We should have abundant maleness in males and should change attitude of the society towards women. The male members of the family are also expected to take initiative in household work. They should give respect and equal treatment to the women in their families.

⁴ (1992) 1 SCC 286

⁵ (1996) 1 SCC 490

⁶ (1997) 6 SCC 241

⁷ (1985) 2 SCC 556

CONCLUSION:-

Despite the numerous laws protecting women and Supreme Court rulings that support them, the status of oppressed and impoverished women has not improved. They continue to face various forms of violence, and the legislature and judiciary sometimes fail to treat women with respect in society. Owing to a strong patriarchal mentality and an unfavorable social environment, their goal was not achieved. Bigamy, child marriages, rising dowry demands, and harassment of women for dowries are just a few of the many evils that still affect women today. Rape and molestation are now commonplace, and malnutrition and illiteracy are rising at an alarming rate.

SUGGESTIONS:-

- The true transformation of human society won't occur until men adopt a different mindset and begin to view women as equals rather than inferiors.
- Awareness about gender justice should their on domestic as well as social level. Sometimes family support is there, but women facing problems on a societal level,
- Only legislative enactments in support of women are not sufficient, awareness about their rights and strict implementation and protection are required,
- To reform law e.g. with respect to violence against women; force men to respect women,
- Giving more property rights and economic independence to women and
- Make favorable policies for women, e.g. Reservations in education and employment.

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RIGHT TO HEALTH AND YOGA

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ABSTRACT

Health is one of the quintessential factors for the development of a country as human development and socio-economic development of the country are consonance to each other. Right to Health is also a perquisite as development of the nation depends upon the healthy population. The basic law of the State safeguards individual rights and promotes national wellbeing. It is the duty of the State to provide an effective mechanism for the welfare of the public at large. Fundamental rights are preconditions for any human to act with sufficient freedom and to be allowed sufficient choice to realize their potential. It becomes a responsibility for the Indian government as well as the society to preserve and protect the tradition of Yoga which has originated in the country itself thousands of years ago. Through a critical analysis of relevant laws and landmark court judgments, this paper aims to provide a comprehensive overview of the right to health as a fundamental right in India and its implications for public health and social justice and yoga can serve as a tool for maintaining better public health at all levels and duty of the citizens to preserve this ancient tradition associated with our culture.

INTRODUCTION

The phrase “HEALTH IS WEALTH”¹ is now gaining immense popularity considering the fact people around the world are suffering from life threatening diseases and ailments. The devastating impact of COVID-19 pandemic has led many experts shift their focus on maintaining a healthy lifestyle. One can have ample sum of money and other luxurious facilities, but if they don't have a proper health, they will never be able to enjoy the fruits of their earned wealth.

Health is one of the vital elements for the progress and development of the nation. It is a condition in which a person is both physically and psychologically fit and free from all forms of illness and pain. Right to Health is one of the basic rights of every human being. Although the Constitution of India has not explicitly mentioned the right, the Supreme Court has ruled right to health as a fundamental right under Article 21 of the Indian Constitution. It is the duty of the State to provide proper healthcare facilities as development of the nation and good health of citizens go hand-in-hand.

The 21st century has witnessed massive developments in almost all sectors, but it has come with a heavy price. It has brought in various risks such as pollution, chemical exposure and climate change having long lasting effects on the health of the people. Evidences from Intergovernmental panel on climate change² have proved that climate change has led to spread of some highly infectious diseases and increased heatwave related deaths. As human development is directly related to the socio-economic development of the country, it has now become evident that there is a need to give an adequate attention on the healthcare sector of India by the Government.

India is privileged to be the country where the Yoga tradition came into existence. The very concept of health was defined in one of the oldest ancient texts in 600 B.C. quoted, “samadosha samaagnishcha samadhatu

¹ The term health is wealth gained popularity from the year 1860 when an American Philosopher Ralph Waldo Emerson quoted “The first wealth is health.”

² Intergovernmental Panel on Climate Change is a body formed by the United Nations for assessing the science related to climate change.

malakriyaaha Prasanna atmamanaindriyaha swastha ityabhidheeyate³ which means that a person is said to be healthy when his doshas, digestive fire, tissues and excretion are in equilibrium, in addition to a person's mind, sense organs and soul being in a pleasant state.

Yoga, being one of the oldest cultures in India, has also become one of the key elements in guiding people towards holistic approach to health and well-being. The practice of this ancient science has created awareness physically, mentally and spiritually. Moreover, considering the fact that the level of pollution and climate change is having a devastating impact on the environment, it has become necessary to practice Yoga on daily basis to maintain or build one's health. Yoga also imbibes different values not only improves mental health but also safeguards humanity.

The paper will highlight the key provisions under the Indian Constitution which indirectly guarantees right to health to its citizens. It will also highlight steps taken by India towards Health and Yoga. It will also critically assess the law laid down by the judiciary through landmark rulings with respect to Right to Health. It will conclude by providing suggestions that how the law laid down can be effectively implemented on the ground. The study has used secondary data i.e., public and existing information and data used by others to draw upon the conclusion of the topic.

OBJECTIVES

- (i) To highlight key provisions under Constitution of India that ensure Right to Health and Yoga to its citizens.
- (ii) To highlight the activeness of judiciary in protecting Right to health and yoga as a fundamental right through landmark rulings.
- (iii) To suggest measures through which the law developed through laws and judicial interpretation can be effectively implemented at 'Ground Level.'

CONTRIBUTION OF INDIA TOWARDS HEALTH AND YOGA

The Constitution of India provides an obligatory duty on the Government to safeguard the Right to Health of every individual irrespective of caste, creed, gender and religion. The Supreme Court has also ruled Right to Health as a Fundamental Right by expanding the scope of Fundamental Rights in the Constitution of India.⁴

The Indian Government has taken some major steps to ensure proper healthcare facilities to its citizens. For instance, the Ministry of Health and Family Welfare introduced National Health Mission with an aim of providing the highest possible level of health to all its citizens irrespective of their age. It focuses on giving universal access to all healthcare facilities without burdening the financial capacity of people thereby intending to strike a balance between quality of health and reasonable expenditure.⁵ Besides this, the Government also introduced four major healthcare schemes, namely PM-Ayushman Bharat Health Infrastructure Mission (PM-ABHIM), Ayushman Bharat Health & Wellness Centres (ABHWCs), Pradhan Mantri Jan Arogya Yojana (PMJAY) and Ayushman Bharat Digital Mission (ABDM).⁶

India is also the country where the practice of Yoga originated way back during the ancient period. The contributions of Sage Patanjali, Ved Vyasa, Adi Shankaracharya, T. Krishnamacharya, Swami Kuvalyananda,

³ Sushruta Samhita, Sloka No. 33 (Written by Susruta, a famous physician and surgeon in the 6th century)

⁴ Article 21 of the Constitution of India, 1950

⁵ The National Policy envisages Equity, Affordability, Universality, Quality of Health and Accountability as key parameters.

⁶ The then Union Minister of State for Health and Family Welfare, Dr. Bharati Pravin Pawar had stated about these schemes during the Parliament Session in Rajya Sabha.

Swami Sivananda, B.K.S. Iyengar has given India the credit of being the pioneers of spreading the awareness of this ancient science all around the globe. The yoga sutras of Sage Patanjali are considered to be the most valuable knowledge of ancient India. However, it was in the late 20th century when Baba Ramdev started to promote Yoga as a self-development tool, especially among the middle class, through organising mass yoga camps across the country. He became a public face for his spectacular postural practice.

Our Honourable Prime Minister Narendra Modi also played a key role in promoting Yoga at an international level. He proposed to celebrate 21st June as an International Yoga Day while addressing the General Assembly of United Nations in 2014. His proposal got unanimous support from all the UN Member States as a result of which International Yoga Day⁷ was officially recognized. Even today, millions of people celebrate on 21st June creating awareness about the benefits Yoga has on our physical and mental health.

In spite of all these valiant efforts, India's healthcare industry is facing serious challenges with a need to cope up with growing threats of health issues, especially in the rural areas. This is because India's expenditure on public health⁸ is peanuts, which is a major issue considering the fact that it is the second most populous country in the world. The lack of adequate funding by the government on healthcare not only poses significant risk on the health system but also puts the fundamental rights of citizens in jeopardy. It has become important to take necessary steps for implementing effective healthcare policies and ensure that such policies are being implemented at ground level.

KEY PROVISIONS OF INDIAN CONSTITUTION ON RIGHT TO HEALTH

The Constitution of India has not expressly mentioned Right to Health as a Fundamental Right. It is through the judicial interpretation of the apex court that Right to Health has been held as an intrinsic part of Article 21 of the Constitution of India.

RIGHT TO HEALTH AS A FUNDAMENTAL RIGHT

- (i) **Article 21:** The article ensures that every citizen of India shall be not deprived of his life or personal liberty. This provision of the Constitution has been beautifully interpreted by Supreme Court highlighting various precedents that are binding upon the country to be followed. Right to Health is, therefore, an inherent and inescapable part of a dignified life under Article 21.

RIGHT TO HEALTH UNDER DIRECTIVE PRINCIPLES OF STATE POLICY

Although the Directive Principles are not legally enforceable, yet it casts duty upon the government to take measures in order to provide proper healthcare facilities and healthy conditions to its citizens for better public health. Some key provisions which confer Right to Health are:

- (i) **Article 39(f)**⁹: This article has casted an obligation on the State to provide opportunities and necessary facilities to children for their development in a healthy manner and are protected against exploitation. This article ensures perseverance of health and safety of children.
- (ii) **Article 47:** The article casts primary duty upon the state with respect to raising the standard of living of its people and improvement on public health for the betterment of the society. It also ensures to prohibit the consumption of drugs which are fatal for health, except when used for medicinal purposes.

⁷ International Yoga Day is considered as a big achievement for India due to Global Recognition, Health and Wellness Promotion, Global Diplomacy and Boost to Tourism.

⁸ India's expenditure on public health was 1.29% of GDP in 2019-20 and 2.1% of GDP in 2022-23.

⁹ Substituted by the Constitution (Forty-second Amendment) Act, 1976 (w.e.f. 3.1.1977).

- (iii) **Article 41 & 42:** Article 41 imposes duty upon the state for public assistance particularly for those who are sick and disabled. Article 42 envisage primary responsibility on the State to protect the health of infant & mother by maternity relief in order to ensure a life of human dignity.

OTHER IMPORTANT PROVISIONS

- (i) **Article 243-G:** This article highlights the importance of empowering Panchayats to play an active role in local governance, planning, and development as per the law laid down by the State Legislature. It confers powers and responsibilities on Panchayats empowering them to frame necessary policies in the interest of social health.¹⁰
- (ii) **Article 243-W:** This article highlights the importance of empowering Municipalities to play an active role in local governance, planning, and development as per the law laid down by the State Legislature. It confers powers and responsibilities on Municipalities empowering them to frame necessary policies in the interest of social health.¹¹
- (iii) **Article 51-A (f):** This article obligates a primary duty on every citizen of India to safeguard the heritage of our composite culture. Yoga being an exclusive part of the Indian Culture, the citizens of India should take responsibility on their shoulder to preserve the same.
- (iv) **Article 32 and 226:** The citizens of India have a right to approach to Supreme Court and High Court to enforce their fundamental rights, if the same are violated by the State.

RIGHT TO HEALTH THROUGH JUDICIAL RULINGS

The judicial activism with respect to right to health has been laid down beautifully by the Supreme Court. They have recognized right to health as a basic component to right to life enshrined under article 21 of the constitution of India safeguarding human life and promoting public health.

The case of State of Punjab V/S Mohinder Singh Chawla¹² is considered to be one the landmark ruling on the aspect of right to health where the apex court clearly stated that right to health is an intrinsic part of right to life under article 21 of the constitution of India. They also held that the government has an obligatory duty to provide proper medical assistance to each and every citizen. Following this, the apex court again dealt with the same issue in the case of Kirloskar Brothers Ltd V/S Employees State Insurance Corporation¹³ and held that preservation of human life is of utmost importance and that Article 21 of the Constitution bounds the State to safeguards the right to life of each and every citizen.

The apex court expanded the scope of Article 21 in the case of Bandhua Mukti Morcha V/S Union of India & Others¹⁴ and held Right to Health to be an intrinsic part of Right to Life and puts a compulsion on the government to provide medical aids to people. The apex court emphasized the importance of Public Health as a primary duty of the State in the case of State of Punjab and Others. V/S Ram Lubhaya Bagga and Others¹⁵ upholding the fact that it is the primary duty of the State to improve public health guaranteed under Article 21 read along with Article 47 of the Constitution of India. It also held that the provisions of health facilities cannot be unlimited, it has to be to the extent to which finance permits.

¹⁰ Provided in the ELEVENTH SCHEDULE (Point No. 23) added by the Constitution (Seventy-third Amendment) Act, 1992 (w.e.f. 24.4.1993)

¹¹ Provided in the TWELFTH SCHEDULE (Point No. 6) added by the Constitution (Seventy-fourth Amendment) Act, 1992 (w.e.f. 1.6.1993)

¹² (1996) 113 PLR 499

¹³ 1996 (2) SCC 682

¹⁴ (1997) 10 SCC 549

¹⁵ (1998) 4 SCC 117

In C.E.R.C. V. Union of India¹⁶, the apex court held that the State is bound under Article 21 to protect the health and vigour of the worker while he is in service or post-retirement. An issue arose before the Supreme Court in Parmanand Katara V/S Union of India¹⁷ where doctors refuse to give treatment to the victim until all legal formalities are completed. The court took a very strict view on this aspect and held that perseverance of health is the top priority and the doctors shall provide medical aid at the earliest without any discrimination.

In P Sivaswamy V/S State of Andhra Pradesh¹⁸, the apex court held that Article 42 of the Indian Constitution casts duty upon the State to enact laws that secure just and humane conditions of work. The Supreme Court in Vincent Panikurlangara V/S Union of India¹⁹ held that public health maintenance and improvement should be given high priority, if not the top, as these are very essential elements for the very survival of human beings. The Supreme Court in the case of Paschim Banga Khet Mazoor Samity V/S State of West Bengal²⁰ held that in a policy framed for state welfare, it is the primary duty of the government to not only ensure welfare of its people but to also provide adequate medical facilities.

YOGA AND HEALTH

Health is addressed in different ways in yogic language. Patanjali Yogasutra explains Yoga as a state of mind that is in the state of awareness and peace simultaneously, the state termed as *citta vritti nirodh*.²¹ From Yoga perspective, a person is considered to be healthy when he is able to control his breath, he is at peace of mind, has an optimistic approach and is capable of controlling his emotions.

The practice of Yoga, as explained by Maharishi Patanjali starts with things which a person shall not do i.e., through Yamas and Niyamas,²² the ethical and self-disciplinary principles of Yoga. It even goes further “*jāti-deśa-kāla-samaya-anavacchinnāḥ sārva-bhaumāḥ mahāvratam*”²³, which means that the practice of Yama shall be supreme, obligatory and shall not be conditioned by caste, region, time and occasion. The practice of Yamas and Niyamas not only improves health but will also cater to development of a better human being.

Whenever we talk about Yoga along with health, the concept of a balanced and healthy diet can never be skipped. Hatha Yoga elaborates the concept of balanced diet²⁴ stating to eat that is fresh and has a pleasant state and keeping one-fourth stomach empty in order to live a healthy life.

From the above points, it can be very well stated that Health is a by-product of Yogic practices, and if a person practices on a daily basis, he is assured of living a healthy and peaceful life. Sage Patanjali says, “*sa tu dīrgha kāla nairantarya satkāra sevito dṛḍhabhūmiḥ*” which means that a devotee will live a healthy life if he practices Yoga continuously, without any break and with deep devotion.²⁵

CONCLUSION AND SUGGESTIONS

Even before the Indian Constitution, the concept of living in a healthy manner was already into existence through various Yogic texts. This shows how important it is for humans to live a healthy life. Despite this, the government has not taken effective steps to improve current healthcare infrastructure of India. No doubt, the

¹⁶ AIR 1995 SC 922

¹⁷ AIR 1989 SC 2039

¹⁸ AIR 1988 SC 1863

¹⁹ (1987) 2 SCC 165

²⁰ 1996 (4) SCC 37

²¹ Patanjali Yoga Sutra Chapter 1 Sutra 2

²² Patanjali Yoga Sutra, Chapter 2 Sutra 30 and 32

²³ Patanjali Yoga Sutra Chapter 2 Sutra 31

²⁴ Balanced Diet is known as ‘MITHARA DIET’ as per Hatha Yoga Pradipika (Chapter 1, Sloka 58)

²⁵ Patanjali Yoga Sutra, Chapter 1 Sutra 14

efforts are appreciable, but it is not working on the ground level. No doubt, there is an improvement in public access to healthcare facilities, challenges in rural areas are posing an obstacle to achieve the desired goals.

With Right to Health being declared as a fundamental right under the ambit of Article 21 of the Constitution, it becomes a duty of the government to provide necessary facilities and infrastructure for betterment of a healthy living to all its citizens. It is important to recognise rights of the citizens to use the healthcare system of their choice. It should be recognized as a fundamental right, and they should never be prevented from making that decision.

Moreover, Yoga being part of improving physical, mental and spiritual health, not taking steps to maintain public health will automatically violate the fundamental rights of the citizens i.e., Article 21 of the Constitution of India and it will be open for them to enforce such rights through appropriate forum.

The citizens of India are also duty bound under the Constitution of India to value and preserve our rich heritage of our composite culture²⁶ and since Yoga is associated with the Indian culture for more than thousand years, it becomes the imperative for the society to protect and preserve this ancient practice. By practicing Yoga, they will not only promote the discipline but will also maintain their health through regular practice.

SUGGESTIONS

- i. There should be increase in the investments in the healthcare sector, especially in the rural areas with focus on increasing the number of hospitals, clinics and having adequately trained medical professionals to manage the same.
- ii. A special team should be instituted under the supervision of the healthcare ministry which should look after the implementation of medical schemes and policies introduced by the government at the ground level.
- iii. Just like the government promoted the Yogic Culture by celebrating 21st June as the International Yoga Day, they should ensure that the practice is not restricted to a one-day celebration. They shall ensure that the practice of Yoga is inculcated and practiced by the society on a regular basis.
- iv. Yoga should be made a compulsory subject in all educational institutions to make kids learn and aware about this beautiful culture originated in India. It will not only help them to maintain their health but will also enable them to develop as a better human-being.

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²⁶ Article 51-A (f) of the Constitution of India

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DISTRIBUTIVE JUSTICE IN INDIA A CRITICAL EVALUATION OF THE RESERVATION POLICY- EMPLOYMENT AND EDUCATION

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INTRODUCTION

Constitutional provisions laid out was a temporary measure to uplift historically disadvantaged groups, to overcome the socio-economic gaps of centuries of discrimination. Now the reservation policy has undergone various constitutional amendments.

The reservation system in India strives to eliminate social inequality as to disadvantaged communities, aims to grant underprivileged equal participation in access to education and governmental jobs. The policy focuses equitable participation, in all areas. The cardinal constitutional provisions include Articles 15(4), 15(5), and 15(6).

This paper critically evaluates the reservation policy in India, the historical context, constitutional schemes, judicial contributions, agitations for increased reservation benefits, consequent anti-reservation movements, and the current scenario of the reservation system

The paper aims to focus the effectiveness and fairness of the reservation policy in achieving distributive justice in the Indian scenario- history, rationale, legal framework, judicial interpretations, community demands, and contemporary challenge

The reservation system in our nation was founded as a result of the long-standing social system. The system's primary goal is to elevate the under privileged and grant them their rights. The main aim is to bring reservation policy; for the downtrodden castes and tribes .Further it extends to SEBC (socially and educationally backward class) and EWS (economically weaker sections) and the underprivileged.

The clauses 4,5 and 6 added to Article 15 by way of amendments to the Indian Constitution explicitly includes it, followed by Articles 16(4) and 16(6) of the Indian Constitution, which considers the economically disadvantaged or members of the lower classes sufficient representation,.

HISTORY OF RESERVATION IN INDIA:

The history of India's reservation policy begins with the exclusion of people who were considered as the untouchables. The system of educational reservation was initiated by Shahu Maharaj of Kolhapur. The Communal Award of 1932, which was passed later, established separate electorate for depressed classes. Subsequently in 1932 The Poona Pact stood ratified reserving some seats for the weaker sections of Hindus. The Indian government established up the second socially and educationally backward classes commission (The Mandal Commission) in 1979 for finding out the socially or educationally backward classes and for the advancement of the classes, 27% of the government employment in India was set aside for OBCs who constitute about 52% of the population. The SC/ST reservation was initially aimed for a term of 10 years. Later on, it got extended to address the issue of social disparity.

In the Post-independence era the Constitution enshrines reservations in educational institutions and government sector for downtrodden castes. The Mandal Commission report in 1990 extended reservations to OBCs, causing widespread debates and protests. Further constitutional amendments expanded to include economic backwardness within OBCs and other forward caste communities.

Distributive justice intends to ensure equitable opportunities made available for all citizens. In the Indian context, the policy is to address historical and social inequalities. This paper is a comprehensive evaluation of the reservation policy in India, its history, constitutional schemes, and contemporary challenges.

CONSTITUTIONAL SCHEMES

Initially the reservation was only for SC/ST.

OBC included in the year 1991 by A 15(5) and EWS by Articles 15(6) and 16(6)

The following clauses were added by Amendments to Articles 15 and 16 further extending the reservation scheme mainly overcome the hurdles created by judicial pronouncements in various aspects.

Article 15 (4)¹

Gives the State the authority to create special laws for the advancement of any people who belong to socially or educationally underprivileged groups, as well as for Scheduled Castes and Scheduled Tribes.

Article 15(5)²

Particular consideration is given to the socially and educationally deprived classes, or SC/ST, when it comes to admission to private educational institutions, with the exception of minority institutions.

Article 15(6)

Special provisions for admission to educational institutions, including private institutions other than minority institutions, and employment opportunities for economically disadvantaged groups, other from those listed under sections 15(4) and 15(5)³.

Articles 16 (1) & 16(2) deals with reservation as to employment under state. **Articles 16(4), 16 (4-A), 16(4-B) & Article 16(5)** are exceptions to Article 16

Meanwhile by Article **16 (4-A)**⁴ the State was given the authority to reserve seats for SCs and STs in cases of promotion if the State determines that they are underrepresented in state services.

Article 16 (4-B) seeks to end 50% limit for SC/ST s and other backward classes in backlog vacancies.⁵

Article 16 (6) provides the State permission to set aside 10% of government positions for members of the Economically Weaker Sections (EWS) of society.⁶

Currently in India reservation in education and employment extends to the downtrodden classes SC/STs, as well as for socially and educationally underprivileged sections and Economically Weaker categories (EWS) of forward caste.

WHY RESERVATION POLICY?

The reservation policy aims the principle of compensatory justice, to address the discriminatory approach faced by marginalized and downtrodden communities due to caste and socioeconomic inequalities. It is to

¹ Constitution (1st amendment) Act, 1951

² Constitution (93rd amendment) Act,2005

³ Constitution (103rd amendment) Act,2019

⁴ Constitution (77th amendment) Act,1995

⁵ Constitution (81st amendment) Act,2000

⁶ Constitution (103rd amendment) Act,2019

provide equal opportunities in education, employment, and political representation, thereby promoting social justice and acceptance.

Judicial Contributions in Reservation Policy: The judiciary has played a pivotal role in interpreting reservation policy in India the Champakam DoraiRajan v. State of Madras⁷ judgment. The SC ruled that the technique of reserving seats based on race, religion, and caste was invalid because it contravened Article 15 (1) of the Constitution.

In the landmark case Balaji v. State of Mysore⁸.the Apex Court criticized the scheme of reservation policy. The scheme was originally intended to eliminate social ostracism highlighted with caste label, but that there is failure to control reservation policy. The Court Observed reservation going up to 68% would amount to fraud up on constitution.

The Landmark judgments in the Cases⁹upheld the constitutional validity of reservations, approving for creamy layer excluding privileged members of reserved categories.

The Supreme Court fixed 50% reservation cap on caste-based reservations.

Dr. Jaishri Laxmanrao Patil v. The Chief Minister & Anr.¹⁰

The case was considered and 5 judge Constitution bench, headed by J.Ashok Bhushan, Passed order referring matter to larger Bench, to interpret (102nd Amendment) Act, 2018 , and the issue of establishing National commission for backward class under Article 338 B.

The case focuses, The Maharashtra Act No. LXII of 2018 intended to provide reservation of Seats in admission of Socially and Educationally Backward Classes to Educational Institutions and appointment in Public Services, wherein the Marathas were declared as “Socially and Educationally Backward Class”.

According to Section 4 of the Act, Marathas, who are classified as a socially and educationally backward class, are entitled to a 16% seat reservation in educational institutions and a 16% appointment reserve in public services. A public interest litigation¹¹ was brought in the Bombay High Court, and the Act was upheld by the court. However, the Bombay High Court lowered the percentage of reservation to 12% in public jobs and 12% in educational institutions.

But The Apex Court rejected the provisions of the relevant (SEBC) Act, 2018.

In the landmark EWS Case Janhit Abhiyan v. Union of India¹² the 5 Judge Bench had upheld the EWS quota by 3:2 majority opinion, held that providing 10% reservation to the EWS of unreserved section will not contravene the 50% reservation cap enunciated in the Mandal Case. By the judgement now the reservation policy extends to Individual apart from the criteria of caste. Thus the 103 rd. Constitutional Amendment of 2019 stands constitutionally valid and now is not violative of the basic structure principle of the Constitution.

The EWS quota provision was upheld by a five-judge constitution panel that approved by 3-2 majority in favor of the 103rd Constitutional Amendment of 2019. Judges Maheshwari, Trivedi, and Pardiwala ruled that

⁷ AIR 1957 SC 257

⁸ AIR 1963 SC 649

⁹ Indra sawhney & Ors v. Union of India,AIR 1993 SC 477 , Nagaraj v. Union of India, AIR 2007 SC 71.

¹⁰ AIRONLINE 2021 SC 240

¹¹ Research [https:// main.sci.gov.in/ supremecourt/ 2019/23618/ 23618_2019_35_ 1502_23840_ Judgement_09-Sep-2020](https://main.sci.gov.in/supremecourt/2019/23618/23618_2019_35_1502_23840_Judgement_09-Sep-2020). Pdf(Last visited 31st January 2024)

¹² (2022 Sc online Sc 1540)

the legislation was lawful and did not violate the equality code or the fundamental framework of the Constitution.

AGITATIONS FOR INCREASED RESERVATION BENEFITS:

Communities seeking inclusion in reservation manifested by widespread protests and demonstrations. Various communities including forward castes in India have agitated for increased reservation benefits over the years which influenced policymaking, and the government's responses to these demands.

Recently we had witnessed the Maratha reservation agitation in Maharashtra and the Jat reservation movement of Haryana. We must acknowledge social inequalities that prevails and that requires reassessments of the reservation policy.

ANTI-RESERVATION MOVEMENTS IN INDIA:

While reservation has been a tool for social justice, it has also raised criticism and resistance the reservation policy caused opposition from different sections of the upper castes. The arguments regarding the quality of education and efficiency in government services due to accusations of 'lower standards' recruiting reserved categories further ignited the debate.

Allegations are that Reservation policy deep roots caste system. Religious communities are fighting for increased reservations irrespective of social backwardness. Criticism is that Merit must be made sole criterion in fixing reservation, also minimum qualification must be fixed, for reserved and general category. Dilution of qualification for admission in educational institutions and qualifying examinations and in promotions adversely affect efficiency of government services.

Those in support of the reservation system argue, through economic equality alone social equality can be reached. By the reservation scheme snatching maximum opportunity against upper caste is the apt method. Reasonable power and resource sharing among all sections of the society must be the goal. Against dilution of quality ,they assert that, capitation fee ,NRI ,management quota are there in medical and Engineering colleges ,with money power and without merit they secure admission, nobody making outcry as to diminishing quality of the said Engineers and Doctors.

RESERVATION SYSTEM IN INDIA; CURRENT SCENARIO:

There are drawbacks, still the reservation policy has significantly contributed to increased representation of downtrodden marginalized communities in education or in obtaining and jobs under the State. Still challenges remain, there remains:

- Creamy layer problem: The exclusion of creamy layer that the benefits reach the most disadvantaged class within reserved categories.
- Misuse: Addressing fraudulent claims and focusing the fair implementation of the reservation policy.
- Emerging social inequalities: The reservation schemes required to address the needs of society facing new forms of discrimination, such as economic backwardness.
- In conclusion fostering dialogue to build a more inclusive social fabric and fraternity acknowledging challenges and potential areas for improvement.

CONCLUSION:

India's reservation policy still remains a complex scheme give thought to the ongoing scuffle for distributive justice. Obviously there are achievements in addressing historical inequalities, it still requires critical

evaluation as to its limitations and adapt ability it to evolving social realities. Moving forward, a balanced approach is required, for the affirmative action with meritocratic policies and encouraging a more equitable and inclusive society. The reservation schemes must reach the needy sections of society.

In conclusion, this paper is focusing reservation its historical evolution, constitutional schemes, judicial contributions, agitations raised, and contemporary challenges. The analysis aims to address the role of reservation policy in achieving distributive justice and put forward recommendations for a more inclusive and effective policy. India's Reservation System requires reformulation. Reservation scheme intended to protect the underprivileged with equal opportunity and social status, but got up to be used for other purposes, diverging from their cardinal goal, emanated in the minds of Constitution's makers. The political parties are constructing voting banks manipulating the policy.

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JUDICIAL ACTIVISM TO PROVIDE DISTRIBUTIVE JUSTICE THROUGH SOCIAL JUSTICE

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“In these days of difficulty, we Americans everywhere must and shall choose the path of social justice, the path of faith, the path of hope, and the path of love toward our fellow man.”

— Franklin D. Roosevelt ¹

The system of any society cannot be run smoothly without law and according to the principle of social contract, when humans started living in a community in ancient times, it gave birth to the concept of state to deal with the problems of community life. The state used a tool called law to fulfill the requirements of the community or societies and to maintain peace and order, and the tool called law was born to control the society, by the society, and on the society. Whose ultimate goal was to achieve justice. “Justice grows out of recognition of ourselves in each other that my liberty depends on you being free too”.²

The idea of social contract rejected any kind of arbitrary power over the life and liberty of man and accepted power for an operation whose aim was to protect and promote the public welfare. Therefore, society was in favour of a judicial system in which every section of the society gets welfare and accepts the welfare nature of the state. Social justice is a concept based on the belief that all individuals in society should have fair and equal access to resources, opportunities, and rights. It seeks to guarantee that each individual, regardless of their background or circumstances, is treated with respect and has the ability to participate fully in the political, social, and economic life of the community. Creating a society is the main goal of social justice that is inclusive, just, and where systemic inequalities are minimized or eliminated. This includes addressing issues of discrimination, poverty, and other types of social inequalities.

Distributive justice is a subset of social justice that is specifically concerned with the fair allocation and distribution of resources, benefits, burdens, and opportunities within society. It seeks to answer the question of how resources and advantages should be distributed among individuals and groups. The main Distributive justice's goal is to guarantee that the allocation of resources is equitable, recognizing that not everyone starts out with the same advantages or faces the same challenges. This concept is often associated with economics and wealth distribution.

While social justice encompasses various dimensions, and distributive justice is an important facet of ensuring that the vantage and opportunities of society are distributed inclusively. Social justice and distributive justice are both concerned with addressing existing inequalities. Social justice looks at a vast range of inequalities, while distributive justice focuses specifically on economic and resource-based inequalities. The fundamental principles of both concepts include fairness and equality. Social justice fight for establish a fair and impartial society, and distributive justice aims to achieve fairness in the allocation of opportunities and resources.

Distributary justice is a concept in political philosophy and ethics that can implement social justice according to the principles of constitutional morality while maintaining social morality in society. Distributive justice is a concept that addresses the equitable distribution of all goods controlled by the state in society. It believes

¹ Former President of America

² Barack Obama

that there should be a large degree of fairness in the allocation of goods. The philosopher Kant saw the purpose of human communities as the creation of a community in which the freedom of each individual is equally respected as the freedom of all other individuals. Two important broad principles given by the modern jurist John Rawls are, first, the equal liberty principle, providing equal rights to people and second, the difference principle, providing a system of inequalities that benefits everyone fairly. While clarifying his judicial theory, Rawls rejected Bentham's utilitarian theory because in achieving maximum happiness for the maximum number of people, a section of society will be deprived of happiness. In his book 'Theory of Justice'³, he has proposed such a justice system in the society where both equality and freedom are accessible. Therefore, Rawls emphasized the following things –

1. Everyone ought to have equal personal rights and freedoms.
2. Everyone ought to have equality of goods and fair opportunity.
3. Efforts to reduce economic inequalities should provide maximum benefits to those persons who are less advantaged.

According to Rawls, a justice system which is free from bias and should be provided to every person of the society considering his social status. Through this article of mine, an effort has been made to clarify the theory of 'distributive justice' under social justice since the function of the state is multifaceted. All powers of governance have been granted to the state by the Constitution and the Indian Constitution cares about justice, freedom, equality, integrity and dignity. The concept of justice depends on the interpretation of the Constitution. Justice, including social justice, economic justice, and legal justice, is guaranteed by the Constitution which are integral part of the principle of distributive justice. The phenomenon of 'distributive justice' relies on two important points: first, equitable distribution, not only of materials and resources, but also of rights, duties, and liabilities, and second, justice is a measure, not only of those who are governed but also for those who ruled. The Indian Constitution contains several provisions that aim to promote 'distributive justice' and address social inequalities. These provisions are a fundamental component of the Constitution's commitment to achieve justice by eliminating social inequalities for all citizens. The recognition of fundamental rights in India underlines the commitment to individual liberty, equality, and justice. These rights are essential for the functioning of a democratic and pluralistic society, providing a framework for the protection of the rights and freedoms of citizens. The recognition of fundamental rights in India is the cornerstone of the constitutional framework, which ensures that individuals are protected from arbitrary actions of the state and promotes a just and egalitarian society. The dynamic nature of equality in India reflects the understanding that the principle of equality is not static but evolves to address changing social norms, attitudes, and challenges. Since India is a democratic country that is full of diversity based on "religion, race, caste, gender, birth place, language and has its own special culture", due to this responsibility on the state increases further, hence distributive justice. Achieving 'social, economic, and political justice' through law appears to be a difficult task, and keeping in mind that the state should not turn away from this task, the framers of the Constitution established the rule of law through Article 14 In which 'equality before the law' was provided as a fundamental right and reasonable classification was recognized for achieving social justice, as well as keeping in mind the changing nature of society and the demands of time, the Supreme Court in E. P. Royappa case established and said that 'equality is a dynamic concept' which has different forms and dimensions. Rejecting the conventional theory of equality in the matter of E. P. Royappa vs. State of Tamil Nadu,⁴ the Court interpreted the concept of reasonable classification in a new form and said that it cannot be bound by theoretical boundaries or traditional principles. If there is any kind of arbitrariness in the action of

³ John Rawls

⁴ AIR 1974 SC 555

the state then it is a violation of Article 14, that is, protection against arbitrariness is the new concept of the right to equality. Social change is a continuous process that never stops. The law also has to change its form accordingly.

The constitutional framework in India reflects a commitment to democratic principles, the rule of legislation, and the defense of personal freedoms. It has evolved over the years through amendments and judicial interpretations to suit the changing needs of the diverse and dynamic Indian society. The judiciary in India plays a multidimensional role in promoting distributive justice by interpreting constitutional provisions, protecting fundamental rights, addressing socio-economic imbalances, and actively engaging in issues affecting the equitable distribution of resources and opportunities within the society. Its role is important in maintaining the democratic framework of the country and maintaining the rule of law. Judicial activism can catalyze to achievement of distributive justice within the framework of social justice. The judiciary's engagement with emerging social norms and its interpretation of constitutional provisions contributes to a more equitable and fair society. The judiciary, particularly the Supreme Court, is entrusted with the responsibility of interpreting and protecting the provisions of the 'Constitution of India'. It acts as the guardian of fundamental rights and ensures that laws and government actions follow constitutional principles. The judiciary actively intervenes to protect the rights of minorities, disadvantaged groups, and weaker sections of society. It has played an important role in the interpretation and implementation of laws related to social justice and affirmative action. The judiciary contributes to the development of legal principles through its landmark decisions, adapting the law to changing social norms and needs. Historical decisions often shape the legal landscape and guide future legal interpretations. The role of the judiciary with respect to distributive justice in India is important in interpreting and implementing constitutional provisions, protecting fundamental rights and addressing issues related to social and economic justice. The Indian judiciary, including the Apex Court and various High Courts, plays an important role in shaping legal principles and policies aimed at achieving distributive justice. The 'Supreme Court of India', through its active role, has been changing the concept of social justice with time.

In case of *Chiranjit Lal Chowdhuri Vs Union of India and Others*⁵, the Supreme Court made it clear that under Article 14, if in special circumstances a person can be treated as a class and special protection can be provided, then only on the basis that a law applies to a person It does not become illegal. However, Article 14, does not purport or mean that each law must have universal application. Thus, comes the principle of "like should be treated alike and unlike should be treated differently". The concept of equality was presented in a new form in *Air India vs. Narges Meerza*,⁶ conceiving and giving birth to a child is a natural right related to the dignity of a woman and the state cannot deprive any woman of this right. The Supreme Court, while playing its active role in expanding the principles of natural justice, also interpreted Article 21 in a new form after *Maneka Gandhi vs. Union of India*⁷ In which the right to live a dignified life is included under physical freedom. Justice Shri P. N. Bhagwati said that the term personal liberty used in Article 21, is a term with a very broad meaning and it includes every such right that protects the personal liberty of a person and some of them have the status of a specific fundamental right and whenever a person is deprived of this right by law, then such law must be made by following due procedure, to whom should necessary to comply with the provisions of 'Article 14 and Article 19' hence this new interpretation of 'Article 21'. Later, many rights were given the status of fundamental rights under Article 21. In recent years, the Apex Court has placed the responsibility of the state in providing social justice under the principle of distributive justice.

⁵ AIR 1951 SC 41

⁶ 1981 AIR 1829

⁷ 1978 AIR 597, 1978 SCR (2) 621

In the matter of *Joseph Shine vs. Union of India*,⁸ the Supreme Court gave women an independent existence, breaking a conservative tradition regarding the physical freedom of women. The 158-year-old IPC Section 497 was declared unconstitutional and repealed. Besides, keeping in mind the demand of the changing society, it also rejected its 1985 decision '*Smt. Sowmithri Vishnu vs. Union of India and Anr*'⁹ in which this section was upheld. Strengthening the social status of women, the Supreme Court expressed its opinion on the following points-

- IPC Section 497 is a violation of Article 21, of the Indian Constitution which gives every person has the right to live a life with dignity.
- Section 497 exhibits arbitrary behavior. A woman has the same right to live her life as a man. This section showed the legal sovereignty of a man over a woman, which is illegal. Therefore, “the wife is not the property of her husband.”
- This section legally violates the privacy right.
- Section 497 also violates ‘Articles 14 and 15 of the Constitution’ as it discriminates based on gender and only men are punished under it.
- In the present scenario, it is not appropriate to consider adultery as a crime, it is an 'archaic idea' in which the man is considered the culprit.
- Section 497 supports institutional discrimination, anomalies and inequalities.
- The principle declared under Section 497 supports the fact that after marriage a woman ceases to exist, which is contrary to the principles of constitutionally protected fundamental rights, hence adultery may be immoral but not illegal.

This case was the demand of the progressive society. With the young generation, young ideas also arrive in society, which we cannot suppress with the help of old ideas. The law aims to harmonize social interests, not to create friction between interests and our judiciary has always kept this in mind. It is important to respect the views of the youth who support modern thinking beyond the traditional society and who have a scientific approach because their participation in society is also equal and the Supreme Court fully supported it through its decision. If we observe the history of homosexual marriage, we will find that in ancient times, such marriages were recognized and even today such marriages are prevalent among the tribals, but the British declared it invalid and classified it as a crime. The reality is that this class is also an integral part of society and they should also get equal protection from the state. The Supreme Court recognized this class and legalized homosexual marriage. In various cases of *Lata Singh vs. State of Uttar Pradesh (Inter Caster marriage)*,¹⁰ *Shafin Jahan v Ashokan K.M (Hadiya Marriage Case)*,¹¹ *Shakti Vahini vs. Union of India (Honor killing case)*¹² and *Laxmibai Chandaragi vs. State of Karnataka*¹³ Court held that A basic right is the ability to select one's life partner which is protected under article 21 of the Indian Constitution. it was said that choosing a life partner of one's choice is part of Article 21. In *Asha Ranjan vs. State of Bihar*,¹⁴ it was held that the choice of an individual is an inextricable part of dignity and such choice can't be succumbed under “class

⁸ AIR 2018 SC 4898

⁹ 1985 AIR 1618

¹⁰ (2006(5) SCC 475)

¹¹ A.I.R 2018 SC 357

¹² (2018) 7 SCC 192

¹³ AIRONLINE 2021 SC 85

¹⁴ (2017) 4 SCC 397.

honor” or “group thinking”. In *K.S. Puttaswamy vs. Union of India*,¹⁵ the personal matrimonial affairs of the individuals are covered under the ‘right to privacy’ provided by article 21. It is a basic right under the Indian Constitution. It was also made clear that the responsibility of making law in this regard rests with the State Legislature and parliament. Similarly, the class that does not follow the traditional rules of marriage is also given permission by the court to live in a living relationship. In the matter of *Khushboo vs. Kanniammal*,¹⁶ the Court held that if two adults live together with their consent then their relationship is not illegal. Subsequently, in 2015, the supreme court in *Indra Sarma vs. VKV Sarma (Live-in-relationship case)*¹⁷ further expanded the rights of partners in a live-in relationship.

The Supreme Court of India illuminated that “A woman who lives with a married man knowing that he is not married is considered to be in a ‘domestic relationship’ under the Protection of Women from Domestic Violence Act, 2005, She will be eligible to claim relief like maintenance and compensation, even if these relationships are not recognized as marriage under Indian law. The court also said that an odalisque cannot maintain a relationship like marriage as such a relation would not be monogamous and would not be exclusive. Recent decisions by the judiciary, such as the decriminalization of homosexuality in *Navtej Singh Johar vs. Union of India*,¹⁸ have enhanced the rights of sexual minorities. Shows recognition. The dynamic nature of equality is evident in changing attitudes towards LGBTQ rights.

Along the same line, In the same line, there is another issue which requires social justice from the state and that is the most despised women group in the society, who belong to a particular religion, are the victims of social gender discrimination. And to date, a uniform law could not be made for them. Article 44, which imposes the responsibility on the Government to implement the ‘Uniform Civil Code’, has not yet taken any action in this direction. Women of the same country are governed by different personal laws. while the Supreme Court of India had given instructions to the government to implement the ‘Uniform Civil Code’ in the *Mohd. Ahmed Khan vs. Shah Bano Begum*¹⁹ and *Sarla Mudgal, & others. vs. Union of India*,²⁰ but till now no positive work has been done in this direction. Therefore, whether it is the issue of the Uniform Civil Code or triple talaq or the issue of temple entry or succession rights, women have always been victims of social inequality. The rule of law has not been fully implemented even today and while we are celebrating the Amrit Mahotsav of Independence.

We limit the concept of distributive justice only to the equal distribution of economic resources, whereas the state has all the power to run a country and is the only one to give rights, yet till date, the equivalent level of equality is not implemented in the country. It may have happened and some sections are still neglected. There is no fixed principle of distributive justice., sometimes it also creates conflict between different social justice. The opposition of supporters of the feminist concept to transgender classes or the rejection of adultery and live-in relationships by those who believe in the institution of marriage are examples.

While social justice is an extensive and overarching goal of creating a just society, distributive justice plays a specific role in ensuring that resources and opportunities are distributed equitably within that society. The two concepts are interconnected and mutually reinforcing in the pursuit of a fair and inclusive social order. Distributive justice is related to an individual, while social justice is related to collective justice, due to which sometimes There is a disagreement between the two, but it is only by working together with one person that a

¹⁵ (2017) 10 SCC 1

¹⁶ AIR 2010 SC 3196

¹⁷ 2013 AIR SCW 6783

¹⁸ AIR 2018 SC 4321

¹⁹ AIR 1985 SC 945

²⁰ 1995 AIR 1531

society is formed, hence every person's wish and the state must respect the needs and the court also must provide justice. The Indian judiciary plays an important role in maintaining and promoting distributive justice by interpreting and implementing constitutional provisions, protecting fundamental rights, ensuring the implementation of affirmative action policies and actively engaging in issues associated with social justice. Through its judgments and interventions, the judiciary contributes significantly to the ongoing pursuit of a more just and equitable society in India. Social progress gives origin to new ideas, and recognition of it is required for the advancement of the country. We must introduce a new concept of distributive justice so that the rights received in every area can be distributed equally.

In short, we can at least be aware of their impact on the equitable distribution of justice. Justice is, therefore, not a truth, but a viewpoint towards the facts that need to be implemented for the justification of our Indian Constitution. The separation of the powers between the executive, legislative, and judicial branches is a vital principle in India's democratic governance. The dynamic nature of equality in India is evident in the adaptability of the judiciary to social changes and emerging perspectives. Legislators, both at the central and state levels in India, play an important role in shaping laws and policies that directly affect the distribution of resources and opportunities. Its goal is to create a more just and equitable society by addressing historical injustices and promoting inclusive development. The Indian legislature plays an important role in eliminating socio-economic inequalities and promoting inclusive growth. Overall, the article highlights the symbiotic relationship between judicial activism and the dynamic nature of equality in the Indian legal context and emphasizes the judiciary's vital role in forming a more equitable and just society. The dynamic nature of equality in our country is exemplified by the adaptability of constitutional principles, recognition of changing social realities, and commitment of the judiciary to deal with emerging challenges. This reflects an ongoing process of reassessment and reinterpretation to ensure that the principles of equality remain relevant and effective in promoting a just and inclusive society. The constitutional framework in India reflects a commitment to distributive justice through a combination of, 'directive principles of state policy', fundamental rights, affirmative action, and state empowerment to enact legislation for the welfare of its citizens. The evolving nature of jurisprudence and judicial activism further shapes the application of these principles in contemporary society. The concept of judicial activism to provide distributive justice through social justice" refers to the active role played by the judiciary in promoting just and equal allocation of resources, benefits, and opportunities within the society. Judicial activism includes judges taking an active stance in the interpretation and application of the law to address social issues and promote justice. regarding distributive justice, which focuses on ensuring the equitable distribution of resources and niche, judicial activism becomes a tool to pursue social justice.

“CONSTITUTIONAL FUNCTIONARIES - BASIC STRUCTURE DOCTRINE”

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INTRODUCTION: -

In the historic 1973 case of *Kesavananda Bharati v/s State of Kerala*, the Indian SC (Supreme Court) established the legal doctrine known as the Basic Structure Doctrine. According to the doctrine, the Indian Parliament cannot change or remove any of the fundamental provisions of the Indian Constitution through the process of constitutional amendment.

The Indian Supreme Court has identified several basic features of the Indian Constitution that are protected by the Basic Structure Doctrine, including Constitution Supremacy, Democratic and republic form of government, Separation of powers, Secularism, Federalism, Rule of law, Judicial review and Fundamental rights.

SUPREMACY OF THE CONSTITUTION:-

The idea of the Constitution's Supremacy asserts that all other laws and government actions must be guided by the provisions of the Constitution, which is the final law of the land. This means that no law or action can be valid if it violates the Constitution's principles.

The Supremacy of the Constitution is an essential feature of democratic societies because it ensures that the government operates within the limits of its power and is accountable to the people. It also protects individual rights by ensuring that the government does not infringe upon them. Any law or government action that is contrary to its provisions is deemed unconstitutional and invalid, and the judiciary has the power to strike it down.

The Supremacy of the Constitution is important because it provides a framework for the government to operate and ensures that the principles enshrined in the Constitution are respected and upheld. It also gives a mechanism for individuals to challenge the actions of the government if they believe they are unconstitutional.

REPUBLIC AND DEMOCRATIC FORM OF GOVERNMENT:-

A Republican form of government is one in which the people elect representatives to act as their representatives while keeping ultimate power. In a republican form of government, representatives are elected to make laws and govern on behalf of the people, but the people retain ultimate authority over their government. This type of government is also known as a representative democracy.

A Democratic form of government is a system of government in which power is directly exercised by the people, rather than by representatives. In a democratic form of government, citizens have the right to vote directly on laws and policies, and the majority rules. This type of government is also known as a direct democracy.

SECULARISM:-

The political and philosophical doctrine of secularism promotes the separation of religious organizations and doctrines from governmental and state affairs. It is based on the idea that religion should not have any role in

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the governance of a country and that individuals should be free to practice any religion, or no religion at all, without fear of persecution or discrimination.

In a secular society, the government is neutral towards all religions, and treats everyone equally, regardless of their religious beliefs. This means that laws and policies are not based on any religious doctrine, but are instead grounded in principles of reason, logic, and empirical evidence.

SEPARATION OF POWERS:-A key principle of governance is the separation of powers, which assigns an authority of government among the executive, legislative, and judicial branches. The idea behind the separation of powers is to ensure that no one branch of government becomes too powerful, and also that each branch acts as a check and balance on the other two branches.

The separation of powers is an important feature of democratic governance because it ensures that no one person or group can become too powerful or authoritarian. By dividing the powers of the government, the separation of powers creates a system of balances as well as checks that help to prevent abuse of power and protect individual rights.

FEDERALISM:-

A political system known as federalism divides authority between the federal government and local & state governments. In a federal system, the federal government has certain duties and powers, and state and local governments have additional duties and powers.

One of the main advantages of federalism is that it allows for a degree of local autonomy and decision-making. By allowing regional governments to have their powers and responsibilities, federalism can lead to policies and programs that are better tailored to the needs of specific regions and populations.

Another advantage of federalism is that it provides a system of checks as well as balances on the power of the central government. By dividing power between multiple levels of government, federalism can help prevent abuse of power and protect individual rights.

Waman Rao v. Union of India² In this case, the SC held that *the Parliament could not amend the Constitution in a way that destroyed the federal character of the Constitution*

S.R. Bommai v. Union of India³ In this case, the SC held that *the principle of federalism was part of the Constitution's basic structure and that the Parliament could not use its powers under Article 356 to dismiss state governments on political grounds.*

RULE OF LAW: -

The rule of law is a principle of governance which emphasizes that all individuals and institutions within a society, including government officials and institutions, must follow the law and be held accountable to it. This principle is based on the belief that no one is above the law and that the law should be applied equally to all people, regardless of their social status, wealth, or political power. The rule of law has several key characteristics, including:

Predictability and consistency: The law should be clear, stable, and predictable so that people know what is expected of them and what will happen if they violate the law.

² (1981) 2SCC 362

³ AIR 1994 SC1918

Transparency: The law should be made available to the public, and legal proceedings should be conducted in an open and transparent manner.

Accountability: Government officials and institutions must be accountable to the law and to the people they serve. They must be held responsible for any violations of the law, and there must be legal mechanisms in place to ensure that they are held accountable.

Access to justice: All individuals should have access to a fair and impartial legal system, regardless of their social status, wealth, or political power.

Protection of individual rights: The law should protect the fundamental rights and freedoms of all individuals, and any limitations on those rights must be justified and proportional.

The rule of law is a fundamental principle of democratic governance and is enshrined in the constitutions of many countries around the world. It is important for promoting stability, predictability, and fairness in society, and to ensure that governments are responsible to the people they serve.

JUDICIAL REVIEW:-

A court's ability to examine and possibly invalidate actions taken by the legislative or executive branches of government is known as judicial review. Judicial review's fundamental tenet is that the courts have the power to interpret the Constitution and decide whether a particular law or course of action is constitutionally acceptable. A court can declare a law or action null and void, essentially invalidating it, if it determines that it is unconstitutional.

Judicial review is crucial because it makes sure that people's rights are upheld and that the government stays within the letter of the law. In situations where the other branches of government might be going beyond or encroaching on people's rights, it can be particularly important.

However, the power of judicial review can also be controversial, as it involves unelected judges making decisions that can have far-reaching implications for public policy. Some critics argue that judicial review can be undemocratic and can undermine the ability of elected representatives to make policy decisions.

Despite these criticisms, the power of judicial review has become an important part of many democratic systems and is seen as an essential check on the power of the other branches of government.

FUNDAMENTAL RIGHTS: -

A person's fundamental rights are a set of fundamental freedoms and rights that are thought to be necessary for their safety and welfare. These rights are typically enshrined in the constitutions of democratic societies and are often regarded as the cornerstone of a free and just society. Fundamental rights can include a wide range of protections, like the right to freedom of expression, freedom of assembly, freedom of religion, and freedom of the press. They can also include protections against discrimination based on race, gender, or other characteristics, as well as the right to due process of law, the right to a fair trial, and the right to privacy.

The concept of fundamental rights has its roots in the Enlightenment and was later enshrined in the Universal Declaration of Human Rights, which was adopted by the United Nations in 1948. Many countries have since incorporated fundamental rights into their own constitutions or legal frameworks. The protection of fundamental rights is considered to be a cornerstone of democratic governance, as it helps to ensure that individuals are able to live free and dignified lives, without fear of persecution or discrimination. It is the responsibility of governments and other institutions to uphold and protect these rights and to ensure that they are not violated by any individual or entity, including the government itself.

Indira Gandhi v. Raj Narain⁴ In this case, the SC struck down certain amendments to the Constitution that had been passed by the Parliament in the aftermath of the Emergency. The Court held that the amendments violated the Constitution's basic structure, including the principle of free and fair elections.

Minerva Mills v/s Union of India⁵In this case, the SC held that the Parliament could not amend the Constitution in a way that destroyed the balance between the fundamental rights along the directive principles of state policy.

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⁴ AIR 1975 SC1590

⁵ AIR 1980 SC 1789

GOVERNANCE AT CROSSROADS: ANALYZING THE INTERSECTIONS OF RULE OF LAW AND CONSTITUTIONALISM IN INDIA

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INTRODUCTION

The rule of law and constitutionalism are mutually reinforcing concepts that work together to create a just and stable society. While these ideologies have distinct roles and potential tensions, their shared commitment to principles like equality, accountability, limited government and due process makes them essential components of any well-functioning legal and political system. In recent years much commonality has emerged in their scope and legal applications. This intersection has strengthened the jurisprudence of both the ideas. The ever growing jurisprudence of constitutional law requires the growth of the related ideologies and principles.

In recent years there has been a transitional shift in the way the settled and conventional approach to rule of law has changed. This shift has the potency to narrate the growing ideas and direction of the growing jurisprudence. The researchers have attempted to provide a context for this change as under.

RULE OF LAW

The concept of Rule of Law has been derived from the principle of legality (*la principe de legalite*), which signifies the government based on the principles of laws and not that of men.¹

The rule of Law was propounded by Prof. Dicey, according to whom, the rule of law includes three principles:

- Supremacy of Law- Dicey was always against the administrative discretion. He emphasized that everything must be written down expressively ruling out the scope of discretion for the authorities. He believed that wherever there is any room for discretion or discretionary power is granted to the authorities, it will lead to arbitrariness.
- Equality before Law- Dicey propagated that the laws must be the same for one and all. Every individual be it a common man or the king or the administrative authorities must be subjected to the same laws and must be treated similarly when comes before the laws.
- Predominance of Legal Spirit- Dicey kept reliance on the Judicial system. He focussed on the importance of the court of law for granting and the enforcement of rights. As per Dicey, the judicial organ is the supreme body which should, by applying its judicial mind, specify what rights are available to the citizens and what are the duties of the government.

In India we have adopted the same concept as given by Dicey but with some major modifications to meet our needs. We have incorporated it into our legal system by maintaining the supremacy of law (i.e.) no one is above the law and the law is supreme. The concept of rule of Law is deeply embedded in our Constitution. Our forefathers have within the Constitution of India specified the powers and duties of all three organs of the government, the legislative powers of the union parliament and the state legislature have been demarcated

¹Yadav Kumar Alok, “*Rule of Law*”, International Journal of Law and Legal Jurisprudence Studies, ISSN: 2348-8212, Vol 4 Issue 3.

within Schedule VII. Fundamental rights are the basic rights of the citizens which the government is duty bound to protect and grant to the citizens. In case of any infringement of the rights, the constitution itself under various Articles like Articles 32² and 226³ of the Constitution provides for the writ jurisdiction of the Supreme Court and High Court respectively, through which the rights can be enforced.

The concept is intrinsic in the governance of the nation, but unfortunately, it finds no place in the Constitution of India but rather has been adopted through constitutional principles and judicial decisions. Supreme Court in judgments like *Indira Nehru Gandhi v. Raj Narain*⁴ and *S P Gupta v. Union of India*⁵ has held that the Rule of law is a basic feature of our constitution and cannot be taken away through any constitutional amendment. The courts held that the nation should be governed by the law of the land and not as per the whims and fancies of the ruler. The ruler is also bound by the laws, its powers are limited and it cannot act arbitrarily. It is one of the founding principles on which governance depends. It ensures the implementation of various laws like equality before laws by ensuring limited powers of the government and thus it is an important governing principle.

CONSTITUTIONALISM

Constitutionalism is a set of behavioural patterns for the governance of the nation, the shape, and structure that the government takes after the enactment and adoption of the Constitution. It checks the administration and the powers of the executive authorities, to ensure that the governance is as per the law of the land and the authorities do not misuse the power granted to them by way of laws. It keeps a check on the executive exercise of its powers and ensures that the citizens are able to fully exercise and enjoy their rights. It upholds the principle of democracy, the constitutional foundation of “for the people, of the people, and by the people”, ensuring that the government works only for the betterment of the people and the nation as a whole. It is regarded as the antithesis to arbitrary rule.⁶

In India, constitutionalism helps in upholding the various other fundamental principles of the Constitution like:

- Sovereignty, by ensuring that the government is of the people, by the people, and for the people,
- Rule of Law, by ensuring that the governmental authorities derive their powers from the laws passed by the legislature,
- Limited Government, by ensuring that the powers of the government are specified and the authorities act within the specified boundaries, without misusing their powers,
- Separation of powers, by ensuring that the three organs of the government function within their demarcated areas and a proper check and balance is maintained.

²The Constitution of India, 1949, Article 32: Remedies for enforcement of rights conferred by this part- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this part.

³The Constitution of India, 1949, Article 226(1): Power of High Courts to issue certain writs- Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

⁴*Indira Nehru Gandhi v. Raj Narain*, AIR1975SC2295.

⁵*S P Gupta v. Union of India*, AIR1982SC149.

⁶Babie Paul T. & Bhanu Arvind P., “*The Form and Formation of Constitutionalism in India*” (2022), Laws 11:33, available at <https://doi.org/10.3390/laws11020033>.

Just like the rule of law, constitutionalism also does not expressively find a place for itself in the Constitution of India, but it has been discussed in the constituent assembly when the Constitution was being framed and it has been imbedded in the spirit of the Constitution. Indian Courts have also in numerous instances have discussed about the concept of constitutionalism, thereby enlarging its interpretation.

The researchers in this paper are trying to study and research about the concept of the rule of law and constitutionalism, the interlink between the two concepts with reference to Indian laws. The research will provide certain instances from the Indian legal framework to prove that both concepts go hand in hand. Then the researcher will conclude the paper after analysing the role of the judiciary in interpreting and expanding the concepts.

INTERTWINING BETWEEN RULE OF LAW & CONSTITUTIONALISM

Rule of Law and Constitutionalism are often used interchangeably and are considered to be two sides of the same coin, but in reality, the concepts share various similarities and are still different from each other, yet both of these concepts are crucial and work for the betterment of the nation. There exist different schools of thoughts, expressing different opinions regarding the relations between the rule of law and constitutionalism. A particular school believes that the concept of constitutionalism is nothing just an extended version of the rule of law. It gets its origin from the concept of the rule of law and they both have the same interpretation. The second school of thought believes that there are few similarities between the two concepts. They both believe in the supremacy of law but constitutionalism is more of a political concept where in it keeps a check on the powers of the governmental authorities, so to ensure that the rights of the citizens are not violated by the government. On the other hand, the rule of law is a judicial concept, which means that it symbolizes that everyone should be treated in an equal and fair manner and must be protected equally when they encounter to the law of the land. Lastly, the third school of thought believes that both concepts are totally different from each other. They both talk about the supremacy of laws but in different contexts, for the rule of law the supremacy of law is seen with regard to justice delivery whereas, in the case of constitutionalism, the supremacy of law is to ensure the supervisory functions.⁷

In the Indian context, we can see that Supremacy of Law and Limited government is common in both concepts. Let's take the example of the right to equality as provided under Article 14 of the Constitution, it is the fundamental right provided to the citizens and the state cannot by passing any law abridge this right (rule of law). The government can make reasonable classifications but cannot discriminate due to the Basic Structure Doctrine (constitutionalism). The procedure of amendment is also, mentioned in the Constitution, the government has to follow the amendment procedure for the particular type of constitutional amendment and cannot surpass the procedure (constitutionalism). Lastly, the rights and liabilities are provided under the Motor Vehicle Act, wherein the penalty is provided for over speeding, breaking the signal etc (rule of law), the authorities cannot arbitrarily charge or impose any sort of penalty (constitutionalism).

ROLE OF THE JUDICIARY vis-à-vis RULE OF LAW & CONSTITUTIONALISM

Indian Courts have in a series of judgments and at different times either Suo moto or when answering to any petition has talked about the powers of the government and the limitations on it by virtue of the rule of law and constitutionalism. It has through its powers of judicial review has scrutinised the laws and different

⁷Chaturvedi Raunak, "Constitutionalism and Rule of Law- A Compendious Analysis of the two Complementing Terms", International Journal of Creative Research Thoughts, ISSN: 2320-2882, Volume 8, Issue 10, October 2020.

legislation so to ensure their constitutionality. While referring to Article 13⁸, the Supreme Court has categorically specified the powers of the government that it cannot pass any law that violates any of the fundamental rights given under part III of the Constitution. What is a law and what all are included within the definition of the law is also specified in the article itself, and it includes the rules and orders made by the executive authorities. Thus, not just the laws passed by the legislature but also the rules, orders, and notifications issued by the administrative authorities or the governmental bodies must be in consonance with the fundamental rights of the citizens.

Supreme Court in the case of *State of Bihar v. Sonawati Kumari*⁹ held that all the authorities are bound by the rules and principles that are passed by the legislature, thereby focusing on the principle of limited government. Court took a different view in *ADM Jabalpur v. Shivkant Shukla*¹⁰, where it delivered the darkest judgment by literally interpreting the Constitution and upholding the government's action of suspension of Articles 14¹¹, 21¹², and 22¹³ to be valid and constitutional. It was Justice H.R. Khanna, who in his dissenting judgment talked about the powers and the extent of the powers of the government as given by the Constitution. In his minority decision, he delivered that the government must act as per the laws of the land and they do not enjoy absolute powers, their powers are limited by the Constitution itself. Then in *Bacchan Singh v. State of Punjab*¹⁴, the court interpreted the rule of law by holding that the principle holds three basic assumptions, which are the existence of an independent judiciary for protecting the rights, the existence of a democratically elected legislative assembly, and the laws are made by the elected legislative assembly only. The court ruled out the powers of the government to make arbitrary laws that violate the rights of the citizens. In *Maneka Gandhi v. Union of India*¹⁵, the court held that fundamental rights are the basic rights provided by the constituent assembly members to the citizens of the country. It imposes a negative obligation on the government to ensure that the citizens are not deprived of these rights as granted to them by the Constitution of India. Similarly, in *Kesavananda Bharti v. State of Kerala*¹⁶ the court emphasised on the directive principles of the state policies, holding that they are non-justiciable but despite of that, it is an obligation on the government to ensure that the policies and laws formulated by them are in accordance with these principles as they provide a framework and a direction for the government to work accordingly. The same was then upheld by the court in the case of *State of Kerala v. N.M. Thomas*¹⁷, where it held that directive principles supplement fundamental rights and help the state in arriving at the desired objective.¹⁸ The courts have in cases like *Union of India v. Raghubir Singh*¹⁹ and *Som Raj v. State of Haryana*²⁰, given itself the

⁸The Constitution of India, 1949, Article 13(2): Laws inconsistent with or in derogation of the fundamental rights- The State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

⁹*State of Bihar v. Sonawati Kumari*, 1961AIR221.

¹⁰*ADM Jabalpur v. Shivkant Shukla*, 1976AIR1207.

¹¹The Constitution of India, 1949, Article 14: Equality before Law- The State shall not deny to any person equality before the law or the equal protection of the Laws within the territory of India.

¹²The Constitution of India, 1949, Article 21: Protection of Life and Personal Liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law.

¹³The Constitution of India, 1949, Article 22(1): Protection against arrest and detention in certain cases- No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

¹⁴*Bacchan Singh v. State of Punjab*, AIR1980SC898.

¹⁵*Maneka Gandhi v. Union of India*, AIR1978SC597.

¹⁶*Kesavananda Bharti v. State of Kerala*, AIR1973SC146.

¹⁷*State of Kerala v. N.M. Thomas*, AIR1976SC496.

¹⁸Babie Paul T. & Bhanu Arvind P., "The Form and Formation of Constitutionalism in India" (2022), Laws 11:33, available at <https://doi.org/10.3390/laws11020033>.

¹⁹*Union of India v. Raghubir Singh*, 1989AIR1933.

power to supervise the actions of the government, so to ensure that there is no arbitrary exercise of power.

CONCLUSION

The above analysis gives a unique but critical perspective on this growing interlinkage between these two ideas. The role of judiciary is now important to set the further trajectory of the concept. What can be concluded now is that the interlinkages have the potency to offer a better and more evolved pathway for protection of constitutional rights of the citizen. Also it can serve the idea of limited government, check and balance on government functioning and providing a framework for accountability of the government in this time of increased diversity of functions that government is performing. The further trajectory is going to be an interesting phenomenon for constitutional scholars.

²⁰*Som Raj v. State of Haryana*, 1990AIR1176.

A STUDY ON REPRESENTATION OF WOMEN IN THE SUPREME COURT OF INDIA AND THE BOMBAY HIGH COURT

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INTRODUCTION

Gender representation within the judiciary is a critical aspect of ensuring a fair and diverse legal system. This research aims to delve into the current landscape of women judges in two pivotal institutions of the Indian judiciary – the Supreme Court of India¹ and the Bombay High Court². Recognizing the importance of a balanced and inclusive bench, this study seeks to analyze the extent of women's participation rate for seven decades in one of the three main pillars of our democracy. By shedding light on the nuanced dynamics within these esteemed courts, the research aspires to contribute valuable insights that can inform policies promoting equality and fostering a more representative judiciary in India. Despite significant strides in recent years, the presence of women judges in the Bombay High Court and the Supreme Court of India remains relatively low compared to their male counterparts. This disparity raises important questions about inclusivity, diversity, and the barriers that women face in pursuing careers in the judiciary. In this context, it is essential to explore the historical context of women's participation in the legal profession in India as the research paper is based on theme of gender justice³ & constitutionalism⁴.

EMPOWERING WOMEN - A LEGAL FRAMEWORK IN INDIA

In India, several legal provisions exist to promote gender justice, ensuring equality and protection for all genders. Some key provisions include:

- 1. Constitutional Safeguards:** The articles of Constitution such as Art. 14, Art. 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth, Art.16 prohibits discrimination in employment in any government office. However, the government can allow reservation for any community if they are not adequately represented in service or posts under the State, and Art. 39 states that the state will make sure that they provide sufficient sources of subsistence to all people, along with women, equal wages for equivalent work.
- 2. Laws against Discrimination:** Various laws, such as the Equal Remuneration Act, 1976, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, aim to prevent discrimination against women in the workplace and ensure a safe working environment.
- 3. Legal Aid and Support:** The Legal Services Authorities Act, 1987, ensures access to justice by providing free legal aid and services to women and other marginalized groups.
- 4. 73rd and 74th Constitutional Amendment Acts of 1992:** Reserve one-third of seats for women in Panchayati Raj institutions⁵ (PRIs) and urban local bodies.

¹ The Supreme Court of India is the highest judicial body in the country. It was established on January 26, 1950.

² The Bombay High Court was established in 1861 by the Indian High Courts Act and inaugurated on August 14, 1862.

³ Gender justice refers to the pursuit of equality and fairness between individuals of different genders.

⁴ Constitutionalism is a political philosophy and legal framework that emphasizes the supremacy of the constitution as the fundamental law of the land.

⁵ The PRIs is the system of local self-government in rural India.

5. Women Reservation Act, 2023: The President of India gave assent to the Constitution (106th Amendment) Act. This act provides one-third reservation for women in Lok Sabha⁶ and State Legislative Assemblies.

These are some of the key legal provisions aimed at protecting the rights and interests of women in India. However, implementation and enforcement remain significant challenges, and efforts are ongoing to improve the effectiveness of these laws.

OBJECTIVES

The objectives of the research paper are:

- 1) To examine the historical trend in the presence of female justices in the Supreme Court of India from 1950 to 2020.
- 2) To investigate the historical data regarding the participation of women judges in the Bombay High Court from 1950 to 2020.
- 3) To analyze and draw comparisons between the gender representation of judges in the Bombay High Court and the Supreme Court of India during the specified period.

RESEARCH QUESTIONS

Based on above objectives this research study aims to find answers for below stated questions:

- 1) What is the longitudinal progression of the number of women judges in the Supreme Court of India from 1950 to 2020?
- 2) How has the representation of female judges evolved in the Bombay HC from 1950 to 2020?
- 3) In what ways can we compare the gender distribution of judges between the Bombay High Court and the Supreme Court of India during the specified timeframe?

LITERATURE REVIEW

1. Rijju, K. (2023) the Union Minister of Law & Justice in a written reply in Lok Sabha informed that Appointment of judges to the Supreme Court and the High Courts is done under provisions of Articles 124, 217 and 224 of the Constitution of India which do not provide for reservation for any caste or class of persons. Though, the Government remains dedicated to social variety in the appointment of Judges in the Higher Judiciary and has been requesting the Chief Justices of High Courts that while referring proposals for appointment of Judges, due attention be given to appropriate applicants belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, Minorities and Women to ensure social variety in appointment of Judges in High Courts.

2. Chandrashekar, S., Sanyal, D., Tripathy, D., & Jain, T. (2020) in their special article emphasized on examination of the developments of women's entry into the lower judiciary between 2007 and 2017, across numerous states at two levels (civil judge [junior division] and district judge [direct recruitment from the bar]), points to a direct relationship between methods of recruitment and women's representation in the judiciary.

3. Kashyap, G., (2021) in her article published on Supreme Court Observer an online journal analyzed the number of female judges in all the 25 High Courts present in India. As per her analysis 11.7% of all the

⁶ The Lok Sabha, constitutionally *the House of the People, is the lower house of India's bicameral Parliament*

current judges of the 25 High Courts in India, are women. The High Court of Madras has the highest number of women judges (13) followed by the High Court of Bombay (8). The High Courts of Manipur, Meghalaya, Patna, Tripura and Uttarakhand do not have a woman judge.

4. **Shankar, U., & Chowdhury, S. (2019)** in their paper aims to enquire upon the omnipresent multiplicity aspect that prevails in the higher judiciary on convention in India. The article objects to inspect the existence and consequence of gender diversity in the process of appointment of Supreme Court judges.

5. **Bora, S (2021)** in her book has chapter that looks at the nuances of gender dynamics in the Indian judiciary since independence. The Supreme Court has only eight female judges, or 11 per cent and there has never been a female chief justice of India. The book also contains chapter that will look at the historical representation of women in the judicial system, followed by a consideration of what gender ‘objectivity’ denotes in the course of judgments. The book has evaluated most of South Asian countries and contain chapter regarding Indian Judiciary as well

6. **Sood, Y., & Showkat, S (2021)** in their tries to examine the factors leading to an insufficient representation of Women in the Indian Judiciary and the Judicial and Social influences.

RESEARCH GAP

Numerous researches have been done pertaining to the ratio of female judges in the Supreme Court of India and several other High Courts of different states. However, a precise study has not been commenced with regard to Bombay High Court. In several other studies the ratio of female judges is available nevertheless a comparative ratio of male and female judges’ year wise has not been explored in any of the previous studies. This paper emphasizes on analyzing the ratio of female judges of Supreme Court of India and Bombay High Court in comparison to male judges and also further examines the trend of seven decades from 1950 to 2020.

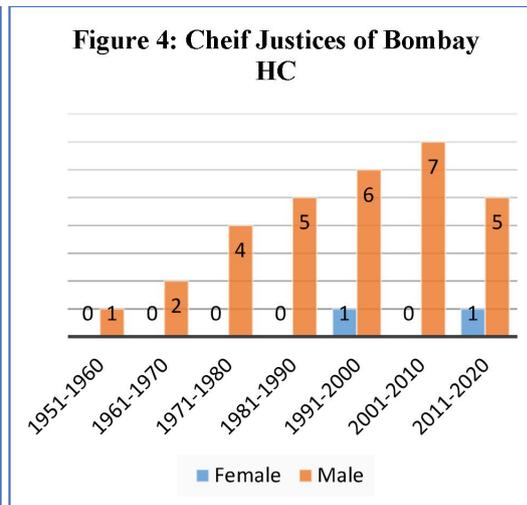
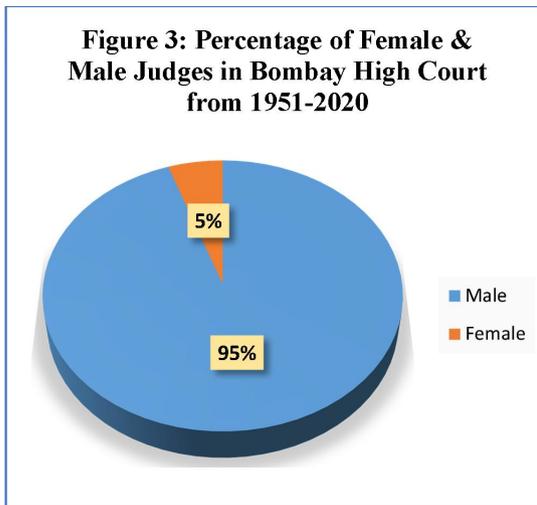
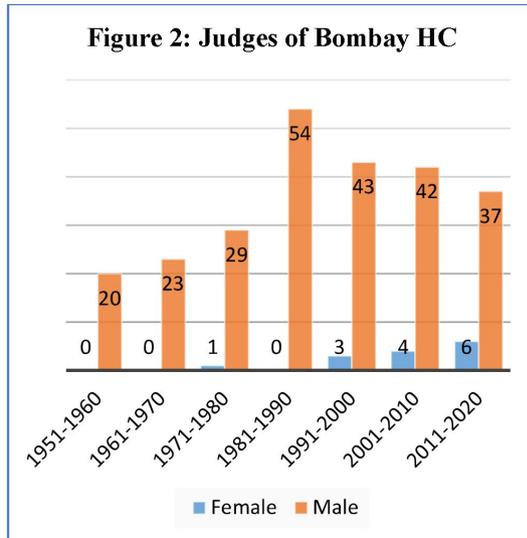
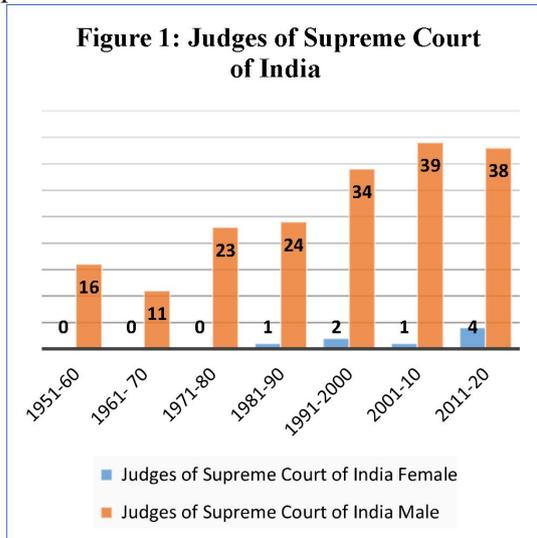
DATA ANALYSIS, INTERPRETATION & RESULTS

Table 01: Judges of SC of India		Judges of Bombay HC		Chief Justices of Bombay HC		
Year	Female	Male	Female	Male	Female	Male
1951-60	0	16	0	20	0	1
1961- 70	0	11	0	23	0	2
1971-80	0	23	1	29	0	4
1981-90	1	24	0	54	0	5
1991-2000	2	34	3	43	1	6
2001-10	1	39	4	42	0	7
2011-20	4	38	6	37	1	5
Total	8	185	14	248	2	30
Percent	4%	96%	5%	95%	6%	94%

Interpretation: The provided table illustrates the distribution of male and female judges in the Supreme Court (SC) of India, Bombay High Court (HC), and the positions of Chief Justices of Bombay HC⁷ within the Bombay HC. It reveals a significant gender disparity, with females occupying only 4% to 6% of judicial seats, while males hold 94% to 96%. This data underscores profound inequality within the Indian judiciary. Over the

⁷ In India, the Chief Justice of the High Court is the presiding member of the High Court. The chief justice is appointed by the President after consultation with the chief justice of India and the governor of the state concerned.

past seven decades, the appointment of female judges in the Supreme Court has been minimal, with only eight appointments. Similarly, in the Bombay HC, out of 262 judges appointed in the last 70 years, merely 14 have been female, with only two attaining the position of Chief Justice. Notably, the table does not compare Chief Justices of Supreme Court of India⁸ because since the 1950s, there has not been a single female Chief Justice in the Supreme Court of India.



Interpretation: Figure 1 illustrates the distribution of male and female justices of the Supreme Court of India. It is evident from the graph that male justices have dominated the position from the 1950s until 2020. Figure 2 depicts the distribution of male and female justices in the Bombay High Court. The representation of female justices is notably lower compared to their male counterparts. Figure 3 presents the percentage of male and female justices in the Bombay High Court over the last seven decades, portrayed through a pie chart. Only 5% of appointments in the past 70 years have been female justices. Figure 4 displays the distribution of Chief Justices in the Bombay High Court among males and females. This trend has persistently shown a lower contribution from females.

⁸ The chief justice of India is the chief judge of the Supreme Court of India as well as the highest-ranking officer of the Indian Judiciary.

LIMITATIONS, SCOPE & SUGGESTIONS OF THE STUDY

A. Limitations: -

1. **Limited Scope:** - The research paper is precise to the provided data. Additional aspects like inclusive study of female judges, their background, education qualification, etc. could provide a more comprehensive understanding and the factors accountable for limited appointments of female judges in the Supreme Court and Bombay HC.
2. **Unavailability of Data:** One major limitation is unavailability and incompleteness of data of official websites. Incomplete tenure of judges, no tenure of additional judges and other information is missing on official websites that made it difficult to reach more accurate results.

B. Scope & Suggestions: -

1. Policy Implications of the research paper:

- a) Implementation of existing laws and policies: This involves ensuring that the laws and policies already in place are effectively executed to promote gender equality in the judiciary system.
- b) Formulation of new policies such as seat reservations: This entails the development of new policies, such as the reservation of seats, aimed at addressing gender disparities and promoting diversity.
- c) Workplace equality encompassing equal job opportunities: This refers to ensuring that all individuals, regardless of gender, have equal access to job opportunities in the Judicial System.

2. Paved way for Further Research:

- a) Comparative analysis of all High Courts in India: Conducting a comparative study of all High Courts across different states in India would provide valuable insights into the extent of gender parity within the judiciary system at the state level.
- b) Comparative study with higher courts in other countries: Comparing the status of gender equality in Indian higher courts with those in other countries would shed light on India's position in the global context and identify areas for improvement.
- c) Primary research through surveys and interviews on the reasons for male dominance in the judiciary: Conducting primary research, including surveys and interviews, to explore the factors contributing to male dominance in the judiciary would help identify and address underlying issues inhibiting gender equality in this field.

CONCLUSION

The research paper underscores the profound gender disparity prevalent within the higher echelons of the Judicial System. India has initiated the 'Beti Bachao Beti Padhao Scheme'⁹ with the aim of promoting gender equality. However, the question arises: how can women from less privileged backgrounds advance if the apex institution of India, namely the Judiciary, exhibits such glaring inequalities in gender representation? The Women's Reservation Act of 2023 mandated that one-third of seats in the legislative system be reserved for women. The urgency of the situation underscores the pressing need for similar provisions within the judiciary.

⁹ The scheme was launched by the Prime Minister on January 22, 2015 at Panipat, Haryana. The Beti Bachao Beti Padhao (BBBP) scheme is a personal campaign by the Indian government that aims to improve the efficiency of welfare services for girls.

Further research aimed at identifying the underlying implications contributing to this gender inequality would facilitate the eradication of these barriers.

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CONSTITUTION'S DARK MATTER: CONTEMPORARY CONTOURS OF CONSTITUTIONALISM IN INDIA THROUGH ACTIVIST REVIEW BY THE COURT

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This paper aims to identify and study the interpretation of the Constitution of India in the light of our Constitution's dark matter to deal with the gaps, silences, or abeyances in it. Judiciary creatively supplies illumination and vigour to the Constitution by deciphering the Constitution's dark matter. The implications arising from the scheme of the Constitution grab the attention of the courts; these implications are called as the Constitution's dark matter.¹ Similar to the dark matter of the Universe, our visible and tangible Constitution has dark matter that assist in filling gaps and resolving disputes through innovation. The activist review of the Supreme Court of India in the direction set by constitutionalism forms the fascinating study of this paper.

Implied Rights Doctrine- Recognition of finer graces of civilization

The Ninth Amendment to the US Constitution saves rights retained by the people in addition to rights enumerated. The absence in Indian Constitution of a similar provision has not handicapped the SC to recognize derivative rights. As if resolving, the SC ruled that it must regard Art 32 as the cornerstone of the democratic edifice and said that to protect the fundamental rights zealously and vigilantly was its solemn duty.² The ambit of fundamental rights has been continuously expanded to include various rights where the Constitution has maintained silence. These rights are called implied/implicit/derivative/unenumerated rights. SC has spelt out that it identified unenumerated rights in two ways- traced under specific articles of Part III or identified them with values or ideals. It illustrated that privacy was grounded in the concepts of liberty, freedom, dignity and the idea of individual self-development.³

SC has guaranteed right against arbitrariness⁴, freedom of media⁵, rights to livelihood⁶, environment⁷, food⁸, night shelters⁹, road¹⁰, internet¹¹, electricity¹², travel abroad¹³, right against hand cuffs¹⁴, rights to legal aid¹⁵, speedy trial¹⁶, choose marriage partner¹⁷, rights of the trans gender¹⁸, rights to privacy¹⁹, know²⁰, euthanasia or

¹ per Justice Chelmeshwar in Puttaswamy v UOI, (2017) 7 SCC 1 guaranteeing right to privacy. (Puttaswamy)

² Prem Chand Garg v Excise Commissioner, AIR 1963 SC 996 at 999.

³ See Supriyo v UOI, AIR 2023 SC 5283 pp5353-4

⁴ E P Royappa v State of Tamil Nadu, AIR 1974 SC 555; see also for manifest arbitrariness, Joseph Shine v UOI, https://main.sci.gov.in/supremecourt/2020/24369/24369_2020_3_501_41473_Judgement_31-Jan-2023.pdf

⁵ Brij Bhushan v State of Delhi, AIR 1950 SC 129

⁶ Olga Tellis v Bombay Municipal Corporation, AIR 1986 SC 180

⁷ Subhash Kumar v State of Bihar, AIR 1991 SC 420

⁸ PUCL v UOI, (2004) 12 SCC 104

⁹ PUCL v UOI, 2014 www.supremecourtfindia.nic.in

¹⁰ State of HP v Umed Ram, AIR 1986 SC 865

¹¹ Anuradha Bhasin v UOI, (2020) 3 SCC 637

¹² Om Prakash v Balkar Singh, 2022 SCC Online P&H 3733

¹³ Maneka Gandhi v UOI, AIR 1978 SC 597

¹⁴ Prem Shankar v Delhi Administration, AIR 1980 SC 1535

¹⁵ M H Hoskot v State of Maharashtra, AIR 1978 SC 1548

¹⁶ Hussainara Khatoon v State of Bihar, AIR 1979 SC 1360

¹⁷ Shakti Vahini v. Union of India, (2018) 7 SCC 192

the right to die with dignity²¹, right of public to road safety²², rights to health²³, medical care²⁴, sleep,²⁵ right against sexual harassment²⁶, right to NOTA in elections²⁷ right to consensual sex with person of same sex and no discrimination on sexual orientation²⁸ etc. The mention of these remarkable decisions has indeed become so common place today. SC has boldly observed that the fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience.²⁹

SC recognized the right to choose a marriage partner as an aspect of dignity under Art 21: When two adults marry out of their volition..., they have the right to do so... any infringement of the said right is a constitutional violation³⁰. The court said that the right to intimacy emanates from an individual's prerogative to engage in sexual relations on their own terms and recognized right to intimacy as part of right to choose a partner and to determine the nature of relationship.³¹ However a 5- judge Constitution Bench refused to recognize right to marry as a fundamental right recently in Supriyo v UOI.³² Pointing out that the Constitution does not expressly recognize a fundamental right to marry³³ the court opined that an institution cannot be elevated to the realm of a fundamental right based on the content accorded to it by law even though the marital relationship reflects on values like dignity, life and liberty³⁴. The majority feared that the gender-neutral reading of Special Marriage Act to validate queer marriages will tread upon judicial legislation³⁵. The majority judges refused to give legal status to agreed unions and to direct the legislature to give a legal framework to them without getting into the teeth of separation of powers³⁶

Recently in Anoop Baranwal v UOI³⁷ SC has held that right to vote is an expression of the choice of the citizen, which is a fundamental right under Article 19(1)(a). Claiming the right as an indispensable tool shaping the destinies of people, the court said that it is reflected in Art 21. Reminding the right to vote of women and the oppressed classes that is protected under the Constitution, the court ruled that the right to vote is not limited only to Article 326, but flowsthrough Article 15, 17, 19 and 21. Article 326 must be read along with these

¹⁸ NALSA v UOI, AIR 2014 SC 1863

¹⁹ Puttaswamy

²⁰ State of UP v Raj Narain, AIR 1975 SC 865

²¹ Common Cause v UOI, 3 (2018) 5 SCC 1

²² Common Cause v UOI, AIR 1996 SC 1619

²³ CERC v UOI, AIR 1995 SC 922

²⁴ P B Khet Mazdoor Samity v State of W B, AIR 1996 SC 2426

²⁵ Ramlila Maidan Incident v Home Secretary, Union of India, (2012) 5 SCC 1

²⁶ Vishaka v State of Rajasthan, AIR 1997 SC 3011

²⁷ PUCL v UOI, (2013) 10 SCC 16

²⁸ Navtej Singh Johar v. Union of India, 2018 1 SCC 791

²⁹ PUCL v UOI (Right to know of voters) AIR 2003 SC 2363

³⁰ Shakti Vahini v. Union of India, (2018) 7 SCC 192 para 44. See also "The right to marry a person of one's choice is integral to Article 21 of the Constitution... Intrinsic to the liberty which the Constitution guarantees as a fundamental right is the ability of each individual to take decisions on matters central to the pursuit of happiness" SC in Shafin Jahan v. Asokan, (2018) 16 SCC 368, para 21

³¹ Per Chandrachud J. in Navtej Singh Johar v. Union of India, (2018) 10 SCC 1, para 67.

³² Supra n 3

³³ Id at p 5360

³⁴ Ibid

³⁵ Id at p 5367

³⁶ Id at p 5477

³⁷ (2023) 6 SCC 161

provisions opined the court. Magnificently the court declared the right to vote in direct elections as a fundamental right, subject to limitations laid down in Article 326³⁸.

In Puttaswamy, calling for resilient and flexible interpretation of the constitution the Supreme Court clarified that the meaning of the constitution cannot be frozen on the perspectives of the time of adoption of the constitution. The Constitution must evolve with the felt necessities of time.³⁹ Further it ruled that any invasion of life or personal liberty must meet the three-fold requirement of law, need ie legitimate state aim and proportionality.⁴⁰

Derivation from Directive Principles of State Policy (DPSP)-Indian Constitution's DPSP mandate and guide the state in establishing a just socio- economic order without making them enforceable in courts. Fundamental rights and Directive Principles have been held to constitute the core of human rights in India. Directive Principles have been observed to be embodiment of social and economic rights.⁴¹

In releasing and rehabilitating bonded labourers, the SC in *Bandhua Mukti Morcha v Union of India*⁴² pronounced that right to live with human dignity was enshrined in Article 21 and derived its life breath from the DPSP and particularly Article 39 (e) and (f)(health and strength of workers and dignity of children) and Arts. 41(right to work) and 42(humane conditions of work). In *Vishaka* while laying down guidelines to protect women from sexual harassment in workplaces pointed out Art 42 (Humane conditions of work) and Art 51A (e) (Fundamental duty to denounce practices derogatory to the dignity of women). Equal pay for equal work⁴³, a directive to the state was read into Art 14.⁴⁴ In *Gujarat Mazdoor Samity v State of Gujarat*⁴⁵ while protecting the right of workers to double wages for overtime, the SC observed that the Factories Act is an integral element of the vision of state policy which seeks to uphold DPSP in Articles 38, 39, 42, and 43. Denial of fair working conditions and overtime wages ensured by hard- won⁴⁶ Factories Act was held violative of Art 21(right to dignified life) and Art 23(right against exploitation)⁴⁷

Dark matter inspired from international human rights– SC has drawn great inspiration from international human rights law. It has shown tremendous activism sighting the duty of the state to foster respect for international law⁴⁸ and the objectives of the judiciary mentioned in the Beijing Statement.⁴⁹In *Nilabati Behera vs. State of Orissa*⁵⁰Art 9 of ICCPR was referred to support right to compensation as a public law remedy under Article 32. In *Vishaka* SC construed constitutional provisions in the light of CEDAW and laid down guidelines to prevent sexual harassment of women in work places. The court said that it is an accepted rule of construction to read the international conventions and norms when there is no inconsistency.⁵¹ In *Apparel Export Promotion Council v AK Chopra* the SC observed that in cases involving human rights, courts must

³⁸ See pp 358-9 para 401

³⁹Puttaswamyat p263

⁴⁰ Id at 264

⁴¹ *Ashoka Kumar Thakur v UOI*, (2008) 6 SCC 1 at p 515

⁴² (1984) 3 SCC 161

⁴³ Art 39(d)

⁴⁴ *Randhir Singh v UOI*, AIR 1982 SC 879

⁴⁵https://main.sci.gov.in/supremecourt/2020/11439/11439_2020_34_1501_24245_Judgement_01-Oct-2020.pdf

⁴⁶ Para 43

⁴⁷ Para 44

⁴⁸ Art 51

⁴⁹ The objectives and functions of the Judiciary include ensuring rule of law for all, promoting attainment of human rights and impartially administering law. See *Vishaka* and *Anoop Baranwal Supra*.

⁵⁰ 1993(2) SCC 746

⁵¹ *Vishaka* pp3015-17

ever remain alive to international instruments and apply them if not inconsistent with Indian law.⁵² In *Jolly George Verghese v Bank of Cochin*⁵³ the SC looked up at Art 11 of ICCPR and decried imprisonment for sole inability to pay contractual obligation and interpreted CPC accordingly. Reading Art 5 of UDHR and Art 7 of ICCPR into Art 21, SC humanized physical incarceration in *Francis Coralie Mulin v UOI*.⁵⁴ In *D K Basu v State of WB*⁵⁵ SC pointed out UDHR and ICCPR to drive home the commitment of India to appoint SHRCs in states. In *Suchita Sachdeva v Chandigarh*⁵⁶ SC has considered UN Declaration on Rights of Mentally Retarded Persons.⁵⁷ In *Gita Hariharan v RBI* SC has pointed out CEDAW to assure equal rights of spouses.⁵⁸

Doctrine of implied limits- Recognition of guarantee against autocracy

Judiciary too circumscribes the powers of government wherever necessary by constitutional interpretation to strengthen constitutionalism. In the words of Justice Sikri, “While expounding the Constitution, powers and limitations are implied from necessity or constitutional scheme.”⁵⁹

Judicial exposition of implied limits on powers though they are expressed in general terms is quite luminescent: Parliament’s power to amend the constitution is limited by the basic structure doctrine: *Keshavanandha Bharathi v State of Kerala*.⁶⁰ Legislative power to delegate law making powers to the executive is limited by the doctrine of excessive delegation. Essential legislative function of laying down the policy cannot be delegated⁶¹ the President’s /Governor’s power is limited in the scheme of the real executive ie the Cabinet form of government⁶². Interestingly, the Court has self- imposed restrictions curbing its powers of judicial review to interfere in policy decisions so that we do not have a government run by the court.⁶³

In *DC Wadhwa v State of Bihar*⁶⁴, the court was constrained to quash the ordinances kept live for periods ranging upto 14 years by re-promulgating them. The court refused to allow the colourable exercise of power subverting the democratic process labelling it as a fraud upon the constitution.

Constitutional legitimacy v electoral legitimacy - Free and fair elections have been held to be part of the basic structure. To strengthen the Election Commission SC has interpreted A. 324 to include wide powers to ensure a meaningful democracy by insisting on information of candidates contesting election while submitting nominations⁶⁵, in websites of political parties and local newspapers⁶⁶.

On the ground of conviction Ms J Jayalalitha was ineligible to contest elections yet her party projected her as chief ministerial candidate and upon winning she was sworn in as Chief Minister. Holding that peoples

⁵²AIR 1999 SC 625 at 634

⁵³ AIR 1980 SC 470

⁵⁴ AIR 1981 SC 746

⁵⁵ AIR 2015 SC 2887

⁵⁶ AIR 2010 SC 235

⁵⁷ AIR 2010 SC 235

⁵⁸ AIR 1999 SC 1149

⁵⁹ *Keshavanandha Bharathi v State of Kerala*, AIR 1973 SC 1461 para 282

⁶⁰ *Supra*

⁶¹ *In Re Delhi Laws Act*, AIR 1951 SC 332

⁶² *Shamsher Singh v State of Punjab*, AIR 1974 SC 2192; *State of Gujarat v R A Mehta*, AIR 2013 SC 1563; *State of Punjab v Governor*, https://main.sci.gov.in/supremecourt/2023/44896/44896_2023_1_19_48220_Judgement_10-Nov-2023.pdf; *NCTD v UOI* (2018) 8 SCC 1

⁶³ See *Supriyov UOI*, *supra*: *Manoj Narula infra* 69

⁶⁴ AIR 1987 SC 579

⁶⁵ *UOI v ADR*, (2002) 5 SCC 294

⁶⁶ *Public Interest Foundation v UOI*, (2019) 3 SCC 224

mandate cannot confer qualification the appointment was struck down as unconstitutional; the Constitution prevails over the will of the people.⁶⁷

In *Manoj Narula v UOI*⁶⁸ hearing a public interest litigation challenging the appointments of persons with criminal charges as ministers, SC pointed out that the Prime Minister and Chief Minister are holding positions of constitutional trust and as conscience of the Constitution, it advised the PM and CMs to avoid persons who have been charge sheeted for offences involving moral turpitude and offences under chapter III of Representation of People Act 1951⁶⁹. It exercised restraint by not reading into constitutional provisions eligibility conditions for legislators and ministers, not provided therein.⁷⁰

Appointment of election commission- In *Anoop Baranwal v UOI*,⁷¹ considering Article 324(5) of the Constitution as intended to ensure the independence of the Election Commission free from all external political interference, the SC declared that the appointment of the Chief Election Commissioner and the Election Commissioners shall be made on the recommendations made by a three-member Committee comprising of the Prime Minister, Leader of the Opposition of the Lok Sabha and the Chief Justice of India. The court justified the direction under A. 142 power to do complete justice. SC has recently adopted a course correction in *Sita Soren v UOI* by laying down that legislators do not enjoy privilege under A. 105 if they accept bribes for voting.⁷²

The bright side of the Constitution's dark matter is that it is entrusted to the judiciary to decode.

⁶⁷B R Kapoor v State of TN, AIR 2001 SC 2707

⁶⁸ (2014) 9 SCC 1

⁶⁹ Id at p 76

⁷⁰ (2014) SCC 1 at pp55-6

⁷¹ (2023) 6 SCC 161

⁷²10177_2014_1_1501_51211_Judgement_04-Mar-2024.pdf

RETHINKING ON THE TRIALS AND THE TRIBULATIONS OF THE UNDERTRIAL INMATES: A SYNERGIC STATE FAILURE IN INDIA

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INTRODUCTION:

Prison has always been a place for the reformation of the convict. It has never meant to be a place to keep the Undertrials for such a long period of time. India's problems with prisoners awaiting trial are the result of a collective failure of the state. These are stigmatized individuals; their pleas are rarely heard, their voices are frequently silenced, and their entire lives are spent in dark, overcrowded prisons not because of the crime they have committed but rather to the sluggishness and inactivity of the justice system.³ A well-known English proverb states, "Justice delayed is justice denied. For some like Machang Lalung⁴, who burned through 54 years in jail without preliminary, it's an impactful sign of our disappointment as a general public.

As per the report of Amnesty International titled "Justice Undertrial: A study of pre-trial Detention in India", which emphasized on the data from the National Crime Records Bureau and data from the organisation, over the past ten years, the proportion of prisoners awaiting trial as a percentage of all inmates in Indian Jails has nearly exceeded 65%.⁵ This alarming statistics places us only slightly better than Pakistan but considerably worse than nations like Uzbekistan. Even more troubling and slow and no chronological investigation is a breakdown for the people that make up this astounding number.⁶ Another statistics says that in India 42 percent Undertrials have not completed their secondary education.⁷ This ratio has a tendency to dehumanise the sufferings that each and every Undertrial goes through from past many years.

Undertrials from the lower echelons of society and members of minority communities clog our jails. We as a system have failed to provide these prisoners with a speedy and fair trial, which is a constitutional guarantee. This systemic failure affects people from underrepresented groups or oppressed classes. Minorities, SCs, and OBCs make up almost 92% of the undertrials. A lot of these people are punished before they even do the wrong thing. Caste is another significant factor. In the legal executive, practically 90% of the appointed authorities have a place with the upper position. Nearly 75% of lawyers belong to the upper caste, even among them.

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³ Shakib Lone, The Trials and Tribulations of Undertrial Prisoners in India, The Probe, Jul. 2022, <https://theprobe.in/investigations/the-trials-and-tribulations-of-undertrial-prisoners-in-india/>.

⁴ Samudra Gupta Kashyap, He lost 54 years of life in jail- and dies two years after his release, The Indian Express, December 26, 2007, 00:49 AM

⁵ National Crime Records Bureau (Ministry of Home Affairs) Government of India, Prison Statistics India 2021 (26th edition). Available at ncrb.gov.in, https://ncrb.gov.in/sites/default/files/PSI2021/Executive_ncrb_Summary-2021.pdf (last visited Apr 31, 2023)

⁶ Surpreet Kaur, The Trials and Tribulations of Undertrials, (2013), <https://www.thehindu.com/opinion/open-page/the-trials-and-tribulations-of-undertrials/article4795498.ece>.

⁷ Ajoy Kumar Kumar, Trials and Tribulations of Undertrials in India, The Pioneer, Nov. 2017, <https://www.dailypioneer.com/2017/columnists/trials-and-tribulations-of-undertrials-in-india.html>.

Our Prime Minister Narendra Modi recently advocated for reforms regarding prisoners who have not yet been tried.⁸ He was speaking at a joint conference of chief justices of high courts and chief ministers that Undertrials must be granted bail and he requested that district-level committees led by district judges be established to do so. In addition, he advocated for the use of the local language in court to make justice more understandable and accessible to prisoners. However, numerous of these reforms have not yet been put into action.

Article 21 of the constitution expresses that no individual will be denied of his life or freedom besides by the fair treatment of regulation yet the NCRB information shows a consistent expansion in the quantity of detainees passing on in jails the nation over anticipating their preliminary. There have been instances in which a person was sentenced to just one year in prison but ended up serving four. In *Hussainara Khatoun & Ors. v. Home Secretary*⁹ it was noticed that the documentation kept before the Authorities and amongst the list of Undertrials and maximum were those who were languishing in Jails due to delay in their trial and for which they could have been sentenced; if convicted. This depicts a shocking situation and demonstrates a complete disregard for human values. It demonstrates the indifference of our legal and judicial systems, which are able to remain unmoved by such immense suffering and misery brought on by an entirely unjustified deprivation of personal liberty. In the case of *Arnesh Kumar v. State of Bihar*¹⁰ decision, it was determined that approving confinement is a grave capability. It should be done with extreme care and mindfulness because it affects residents' freedom and opportunities. But after all these efforts we are still lacking the speedy justice.

Collective State Failure:

All powers related to imprisonment of Undertrial lies in the State. It is the State to take care of the Prison Justice system and the issues related to the overcrowded Prisons. It's been noticed that many Undertrials are not released even when they have already furnished their half of the maximum punishments because they are least aware of their Fundamental Rights, Preamble of the Indian Constitution and the duties as an abiding citizen. After the amendment in 2005 in the Criminal Procedure Code, section 436¹¹ and 436 A was added which clearly states that the Undertrials are having the right to apply for bail if the person has served half of the maximum punishment and if a person is indigent in nature then the person may be released without any surety or bond. Even after these provisions still it's seen that the gaps are there in its enforcement. In the case of *UT of J&K v. Jai Parkash*¹², it was demonstrated the tragic state of the Undertrial who was denied bail while serving 22 years of jail without trial because a fine of Rs. 30,000 was not paid. On November 21, was finally released on bail as part of the remissions granted under "Azadi Ka Amrit Mahotsav". This happened even after the provision of Section 436A of Criminal Procedure Code, 1973 which clearly states that the indigent person should be released on bail without any surety bond. It depicts the helpless state of the Undertrial and sorry state of the affairs of the State. There are many other incidents also which take place on a regular basis when it comes to this issue. According to the Prison Statistics India Report 2021, between 2016 and 2021, there were 9.5% fewer prisoners who were convicted of a crime, whereas there were 45.8% more prisoners who were awaiting trial.

⁸ Narendra Modi bats for bail for undertrial prisoners, The telegraph online, May 2022.

⁹ 1979 AIR 1369

¹⁰ (2014) 8 SCC 273

¹¹ If the alleged offense qualifies for bail, the accused person has the legal right to get bail. This right may be exercised in front of the police station or, if the case is transferred to the Magistrates Court, in front of that court. Bail is a right in cases of bailable offenses, not a favor.

¹² 1991 SCC (2) 32

Inhumane Conditions in Prison:

The Indian Constitution's Preamble, often known as the "Blueprint," expressly declares that "Justice" is to be administered equally to all people, regardless of their nature, and that all accused persons shall receive a speedy trial. The right to life with dignity is guaranteed under Article 21¹³ of the Indian Constitution, which inherently includes the right of prisoners to better living conditions. However, it is clear that the circumstances of their survival are seriously dubious. Now, the question is why we don't promote Health Sensitization for Prisoners when we are already leading forward towards Gender Sensitization. Actually, the mindset of some authorities that jails need to prevent a prisoner from relapsing into crime is a major factor in why conditions in prisons are so horrible.

There are various issues in the proper functioning of Prison majorly overcrowding of Prisoners, Corruption by the Prison authorities in providing the facilities to the Prisoners, No sanitation which leads to their poor health status. Prisoners are less treated as human beings so it is not even expected to treat them as Citizens. And the rights that are discussed are Human rights which should be provided to each and every human residing in Prison. The main root of this issue is the overcrowding of the Prisons which ultimately impact on all the other causes. According to the jail manual, there are more prisoners in each cell than should be housed which anyhow creates the division of availing the facilities provided for that particular cell and the facilities of washrooms, medical room, food are provided as per the capacity allotted in Jail Manual and Regulations. Due to these conditions the Prisoners suffer a lot in availing their basic necessities.

The Undertrials are kept with the Convicts and living with the convicted makes it unsafe for the undertrials since they are kept with them. Lifetime Convicts are heinous in nature as they have done heinous offences too and their mental state is different than the accused ones. So, there must be formation of different cells for the accused and convicts. For lowering the range of Undertrials it is mandatory to speed up the process and this process can only be performed when all the three pillars i.e. Police, Court and lawyers act actively participating and collaborating with each other. There were many other steps taken by the Government to fasten the trial process and then after 2000, Fast track Courts were formed but the issue was still not resolved properly. There are still some lacunas in it which needs to be addressed. Information and Communication Technology was a very good initiative and virtual hearings were started during COVID which ultimately saved lot of time of the people but it doesn't come up with good results because the authorities handling the virtual hearings were not trained enough with ICT and they were able to conduct it smoothly.

Data Analysis:

Every year the actual capacity of the Prisons is increasing but ironically, the number of Prisoners is more than the occupancy. As per the Prison Statistics Report of India for the year 2019, 2020 and 2021 released by NCRB, "Ministry of Home Affairs" and the data depicts a great concern regarding the conditions of Prison system.

¹³ Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by laws

Year/Types and Occupancy	No. Of Prisons	Actual Capacity	Total no. Of Prisoners at the end of the year	Total no. Of Undertrials
2019	1,351	4,00,934	4,81,387	3,32,916
2020	1,306	4,14,033	4,88,511	3,71,848
2021	1,319	4,25,609	5,54,034	4,27,165

Table 1: Total number of Prisoners and Undertrials as per the capacity¹⁴

This analysis shows that the number of Prisoners is more than the occupancy rate.

- In 2019 the actual capacity of the Prison is 4, 00,934 whereas the number of Prisoners at the end of the year is 4, 81, 387 and ultimately 69.15% of the Prison Population are Undertrials.
- In 2020 the actual capacity of the Prison is 4, 14,033 whereas the number of Prisoners at the end of the year is 4, 88,511 and ultimately 76.11% of the Prison Population are Undertrials.
- In 2021 the actual capacity of the Prison is 4, 25,609 whereas the number of Prisoners at the end of the year is 5, 54,034 and ultimately 77.10% of the prison population are Undertrials.

Table 2: Total number of Undertrials on the basis of the types of Offences¹⁵

Year/ Offences	Total No. Of Undertrials	Offences against Human Body	Offences against Property	Offences against Rape	Offences against Dowry death	Offences against Liquor & Narcotic Drugs	Offences against Arms & Explosives	Offences against SC/ST Communities
2019	3,30,487	1,64,945	74,713	34,368	13,287	41,985	11,625	2,627
2020	3,71,848	1,86,114	77,531	40,545	14,465	53,369	13,463	4,394
2021	4,27,165	2,08,595	94,160	44,134	14,402	66,881	14,677	4,846

This analysis shows that the number of Undertrials charged under various Offences.

- In 2019 the actual number of Undertrials are 3,30,487 in which the Undertrials charged under Offences against Human Body are 49.9%, Undertrials charged under Offences against Property are 22.6%, Offences against Rape are 10.3%, Offences against Dowry Death are 4.0% , Offences against Liquor & Narcotic Drugs are 12.7%, Offences against Arms and Explosives are 3.5% and Offences against SC/ST Communities are 0.7% of the maximum number of Undertrials in India.
- In 2020 the actual number of Undertrials are 3,71,848 in which the Undertrials charged under Offences against Human Body are 50.5%, Undertrials charged under Offences against Property are 20.8%, Offences against Rape are 10.9%, Offences against Dowry Death are 3.8%, Offences against Liquor &

¹⁴ National Crime Records Bureau (Ministry of Home Affairs) Government of India, Prison Statistics India 2021 (26th edition). Available at ncrb.gov.in, https://ncrb.gov.in/sites/default/files/PSI2021/Executive_ncrb_Summary-2021.pdf (last visited Apr 31, 2023)

¹⁵ National Crime Records Bureau (Ministry of Home Affairs) Government of India, Prison Statistics India 2019 (24th edition). Available at ncrb.gov.in, https://ncrb.gov.in/sites/default/files/PSI2019/Executive_ncrb_Summary-2019.pdf (last visited Apr 31, 2023)

Narcotic Drugs are 14.3%, Offences against Arms and Explosives are 3.6% and Offences against SC/ST Communities are 1.1% of the maximum number of Undertrials in India.

- In 2021 the actual number of Undertrials are 4,27,165 in which the Undertrials charged under Offences against Human Body are 48.8%, Undertrials charged under Offences against Property are 22.0%, Offences against Rape are 10.3%, Offences against Dowry Death are 3.3% , Offences against Liquor & Narcotic Drugs are 15.6%, Offences against Arms and Explosives are 3.4% and Offences against SC/ST Communities are 1.1% of the maximum number of Undertrials in India.

Year/Time period of Imprisonment	5 years and more	3-5 years	2-3 years	1-2 years	Upto 1 year
2019	5,011	14,049	22,451	44,135	2,44,841
2020	7,128	16,603	29,194	54,287	2,64,636
2021	11,490	24,033	32,492	56,233	3,02,917

Table 3: Total number of Undertrials on the basis of Sentences & Incarceration¹⁶

This analysis shows the no. of Undertrials in Prison on the basis of Sentences and Incarceration.

- In 2019, the number of Undertrials charged with the punishment of 5 years and more are 1.5%, charged with the punishment of more than 3 years but less than 5 years are 4.2%, charged with the punishment of more than 2 years and less than 3 years are 6.7%, charged with the punishment of more than 1 year but less than 2 years is 13.3%, charged with the punishment of upto 1 year is 74.0%.
- In 2020, the number of Undertrials charged with the punishment of 5 years and more are 1.9%, charged with the punishment of more than 3 years but less than 5 years are 4.4%, charged with the punishment of more than 2 years and less than 3 years are 7.8%, charged with the punishment of more than 1 year but less than 2 years is 14.5%, charged with the punishment of upto 1 year is 71.1%.
- In 2021, the number of Undertrials charged with the punishment of 5 years and more are 2.6%, charged with the punishment of more than 3 years but less than 5 years are 5.6%, charged with the punishment of more than 2 years and less than 3 years are 7.6%, charged with the punishment of more than 1 year but less than 2 years is 13.1%, charged with the punishment of upto 1 year is 71.0%.

As per the analysis of the following years it is noticed that in 2019 Undertrials occupied 83% population whereas the maximum population in Undertrials are having the punishment of upto 1 year which constitute 70% of the maximum population. In 2020, Undertrials occupied 76.1% population whereas the maximum population in Undertrials are having the punishment of upto 1 year which constitute 71.1% of the maximum population. Also, in 2021 Undertrials occupied 77.1% population whereas the maximum population in Undertrials are having the punishment of upto 1 year which constitute 71.2% of the maximum population. This clearly depicts that Undertrials are more in population than the total actual capacity of the Prison and maximum are kept in Prisons without trial. Even if we have a look at the statistics and provide justice as per the years of the Punishment allotted to them then also it can be presumed that the population will be reduced.

¹⁶ National Crime Records Bureau (Ministry of Home Affairs) Government of India, Prison Statistics India 2020 (25th edition). Available at ncrb.gov.in, https://ncrb.gov.in/sites/default/files/PSI2020/Executive_ncrb_Summary-2020.pdf (last visited Apr 31, 2023)

Legal Developments in Speedy Justice:

Speedy justice is a fundamental human right that ought to be respected and the fight of Undertrials started a long way back. The venerable English newspaper The Indian Express wrote about the plight of undertrial detainees in 1979, marking the beginning of significant judicial intervention on the subject. The newspaper published a number of articles detailing the appalling conditions that thousands of prisoners endure while serving lengthy sentences without ever being tried. The story prompted a lawyer activist to file a writ petition with the Supreme Court. After accepting the case, the Supreme Court of India only reached a significant conclusion in 1979 with the Hussainara Khatoon judgment which clearly stated a fast trial constituted a fundamental constitutional right for criminal defendants.

The High Court halted the proceedings in *State of Bihar v. Uma Shankar Ketriwal*¹⁷ on the grounds that the prosecution, which started 16 years ago and is still ongoing, is abusing the court's process and should not be permitted to continue. The Supreme Court, which declined to overturn the High Court's ruling in the appeal, stated that there must be a time limit placed on the length of time that criminal litigation can continue during the trial stage because it causes significant harassment to the accused.

The right to a fast trial was deemed to be a vital component of the fundamental rights to life and liberty in the case of *Katar Singh v. State of Punjab*¹⁸. The bench decided in *Abdul Rahman Antulay v. R.S. Nayak* that the type of case should dictate specific provisions and rules pertaining to the accelerated trial and dismissal of cases.

Thus, it can be said that the accused has a right to a swift trial, which includes all phases, including the investigation, inquiry, trial, appeal, revision, and retrial.

The Executive has recently made some constructive decisions involving convicts awaiting trial. For instance, the Ministry of Law and Justice developed "The Mission Mode Programme for Delivery of Justice & Legal Reforms-Undertrial Programme" "in 2010 in response to the issue of the high pendency of undertrial cases. By July 31, 2010, the plan hoped to resolve two-thirds of all pending cases and relieve jail overcrowding. In order to secure the release of undertrial inmates who were legally eligible to be released, the Mission Mode Programme worked with state governments to identify these individuals and connect them with the Legal Service Authority.

The most definite answer to the situation of undertrials came in 2014. On September 5, 2014, the Supreme Court Bench issued a number of structures to several entities in charge of the nation's criminal justice system after observing little discernible progress on its earlier directions. In a major departure from its previous orders, the Court directed court authorities in every state to expedite the ongoing trial process and release offenders who had served "half of the maximum sentence prescribed for the offences under Criminal Code." Noting the gross carelessness of its previous judgement on undertrials, the SC declared the problem of undertrials remaining in jails to be "serious" and directed the Center to convene a meeting of home secretaries of all the states to find a solution. In *Common Cause Case*¹⁹, the Supreme Court ruled that even those accused of small infractions must endure lengthy delays in order to have their cases heard. If they are helpless and impoverished, there is no one to bail them out, so they rot in jail. By itself, the prolonged pending of criminal cases acts as an oppressive engine. In order to safeguard and enforce the citizens' right to life and liberty, guaranteed by Article 21, the Court adopted a set of basic guidelines for releasing those who were still facing charges on bail or personal bonds where their cases had been pending for at least a year.

¹⁷ (1981) 1 SCC 85.

¹⁸ (1981) 1 SCC 85.

¹⁹ (2018) 5 SCC 1

During COVID 19 Supreme Court issued guidelines to each and every state to release maximum to maximum undertrial prisoners from the Prison on bail in which Punjab, Delhi and Haryana played a very active role and irrespective to the guidelines released the highest number of Prisoners but the NCRB reports depicts a concern by showing the increment in the number of Undertrials which actually create a gap between the facility and reality.

Conclusion:

In the event of a miscarriage of justice, numerous developed nations have enacted stringent laws requiring the State to compensate victim. According to paragraph 6 of Article 14²⁰ of the International Covenant on Civil and Political Rights (ICCPR)²¹ states that unless it is established that the defendant's failure to disclose the unidentified fact in a timely manner was entirely or partially attributable to him, the person who was punished as a result of the conviction is entitled to compensation in accordance with the law. If a person was found guilty of a crime by a final decision and that conviction has been overturned or he has been given a pardon on the grounds that a new or newly discovered fact shows that there was a miscarriage of justice. However, India has not yet adhered to these legal provisions. In a recent judgment²² of the Hon'ble Supreme Court it was held that every Undertrial is having an unrestrained right to participate and apply for bail in case of bailable Offences from beginning from investigation to Appeal. There is a need of various steps to be taken from the end of Justice providing Bodies and also, there is a need of process of reengineering to be done by involving the executive, legislative, and judicial branches in the solution-finding process. It is necessary to look upon the working of the proper functioning of Lok Adalats. Generally, Compromise occurs frequently in family conflicts, hence it is vital to speed up the process since compromise is mainly the end of several family dispute cases. Psychology plays a very important role in human's life in the sense that the convicts are already aware of their judgment and they have the understanding to live in Prison for the designated amount of time allotted to them but the accused are still holding out hopes because their verdict is not delivered and still presume they will be released from the prison being "Not Guilty". Now, this hope gets affected when they live with convicts under the same roof. There is a stigma in the society that the Undertrials when released on bail or on "Not proven Guilty" are treated alike convicted ones which impact a lot on the psychological mindset of the individual and makes difficult to survive in the society on release. There must be a concept of Open Prisons for the Undertrials so that they can live their life with the basic human rights and help their families financially. Every concept is having some pros and cons but simultaneously we need to focus on the progress and well being of the human. Open Prison gives an opportunity to the Prisoners to live and earn in a free atmosphere and not caged in bars which creates a bar of security to survive in society after release. Additionally, it is also to be noted that the accused are kept in the same environment along with the convicts which harms their mental state and make them acquire the attributes of Convicts as the surrounding area. Collectively, the State needs to alter their surroundings, and they should keep away from convicts because they tend to be hard-core criminals, making the environment harmful for them. We frequently discuss the benefit of the doubt, the burden of proof, and the presumption of innocence, but this cannot be limited to the written word and these principles must be carried out in letter and spirit.

²⁰ All people shall be treated equally before courts and tribunals, according to Article 14 of the ICCPR. Everyone has the right to a fair and public hearing before a qualified, unbiased, and independent tribunal that has been created by law in order to determine the outcome of any criminal charges against him as well as his rights and obligations in a lawsuit.

²¹ Article 6(1) of the ICCPR states that every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

²² S.L.P.(CrI.) No. 2640 of 2022

“CRITICAL ANALYSIS OF EFFECTS OF INTERNATIONAL DECLARATION, CONVENTIONS & PROTOCOLS ON CONSTITUTIONAL GOVERNANCE WITH SPECIAL REFERENCE TO HUMAN RIGHTS”

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INTRODUCTION:

Indian Constitution is the mode of governance, and that constitutionalism incorporates the ideals of democracy, human rights, equality, fraternity, liberty, separation of powers, etc. which are essential for good governance¹. Fostering good governance is needed for acknowledging human rights. The safeguard and implementation of human rights will be impossible without the rule of law, independence of judiciary and other organizations of contemporary times which are essential mechanisms of good governance. It is evident that transparent and participatory governance should be a precondition for continuous respect for human dignity and the safeguard of human rights. Constitutional governance indicates the way the government enhances the living standards of the individuals by providing welfare measures in the form of social security, justice and liberty². It also makes provisions for an equal & equitable access to opportunities for personal growth, affording participation in the decision-making in public affairs, nourishing an independent judicial system following natural justice and maintaining accountability of the all the three organs of the Government. UNCHR had provided that the chief attribute of good governance involves transparency, responsibility, accountability, participation, and responsiveness to the requirements of the people. Good governance is thus connected to a conducive atmosphere in a country where citizens can freely enjoy Human.

India is a signatory to UDHR embraced by the UNGA as the Magna Carta of Human Rights on 10th December 1948. Provisions of Part III which stands for Fundamental Rights and Part IV for directive principles bear a close resemblance to the categories of Human rights incorporated in UDHR Rights. Apart from this, even the fundamental duties held in Part IV A, are in harmony with Article 29 (1) of the UDHR.³

Thus, Fundamental Rights, Directive Principles, Fundamental duties along with the basic tenets enshrined under the Preamble and other provisions of the constitution, highlights the objective of Constitutional governance for securing, promoting, and enforcing the basic minimum human rights representing ideals of liberty, equality, and human dignity.

The provisions of UDHR like Preamble and right to self-determination, obliges the state party to abide by constitutional governance when it provides that all states must reaffirm faith in upholding integral dignity and inalienable rights of all citizens as the basis of liberty, fairness and peace in the world, which implies obligations and responsibilities' The essential right of self-determination enshrined in UDHR focuses on the rights of all people to enjoy all categories of rights without outside interference. However, UDHR merely proclaimed basic human rights, but it did not provide for any machinery for its enforcement.

¹ Hon'ble Justice AK Sikri, "Constitutionalism and the Rule of Law: In a Theatre of Democracy" Publisher: Eastern Book Company, ISBN13: 978-8119114054.

²<https://humanrights.gov.au/about/news/speeches/promoting-human-rights-good-governance-rule-law-and-democracy> visited on 30th Jan 2024.

³ Seervai, H.M., Constitutional Law of India, 155, (New Delhi: Universal Book Traders, I, 4th ed., 1999) Seervai, H.M., Constitutional Law of India, 155, (New Delhi: Universal Book Traders, I, 4th ed., 1999)

These rights have been further expressed in subsequent conventions having enforcement mechanisms, includes, ICCPR and ICESCR were adopted by the UNGA in 1966. UDHR, ICCPR and ICESCR along with their optional protocols constitute an international bill of human Rights. UNGA has also adopted other essential human rights accords dealing with specific subject matters including the rights of vulnerable and disadvantaged groups like women, children, minorities, refugees, migrant workers, labourers, indigenous person, differently abled person, old age and infirm people, All the states who are signatory to these conventions are required to abide by the provisions enshrined therein and incorporate them into their domestic legislations as a part of constitutional governance with an intent to protect human rights of the weaker groups.

The functional commissions and specialised agencies of the UN have instituted several mechanisms to assist in safeguarding human rights.

Rule of Law and Constitutional governance:

Aspect of the Rule of law is exceptionally vital element of good governance for the promotion of human rights, which not only values the national law but is also important for respect for international human rights law.

The Rule of law is well stated in the provisions which proclaim that all are alike before the law and are entitled to all rights, without discrimination, to the equal protection of the law. Also, the democratic principles are intrinsic in the right to self-determination, the right of freedom of peaceful assembly and association and the right to take part in the government⁴.

Thus, all the principles and values enshrined in the universal bill of rights and other major Human rights treaties reflect the connotation of the rule of law, democracy, and constitutional governance. These are established to comply with their obligations under international conventions and to grant efficient remedies for human rights violations.

Role of Executive:

India follows dualism theory and doesn't allow international treaty that is ratified by India to be automatically enforced in the Indian legal system, but the constitutional governance provides that Indian Government must respect its treaty obligations. Article 51 provides for respect to international treaties. Article 51(c) mandates the State to further recognition for international law and treaty obligations while dealing with other states.

It emphasizes on international cooperation and promotion of universal peace and safety. However, it does not sanction the judiciary to administer international law in their decision-making if its not part of domestic legislation. Article 37 requires that these mandates, including international legal obligations, in Part IV would have to be implemented through appropriate legislations.

Article 73 provides extended power to the Government to enforce international treaties through national legislations. Thus, these articles provide Parliament with the complete authority to implement international law into the domestic legal system. These provisions are to be read with Article 246 which seeks to authorize the executive to enter into treaties and agreements.

This relationship between these Articles of the Constitution has been explored in various cases decided by

⁴ “Constitutionalism and the Rule of Law: A Perspective of its Evolution over Seven Decades” Sanjay Hegde 01 November 2023 available on <https://www.moneylife.in/article/constitutionalism-and-the-rule-of-law-a-perspective-of-its-evolution-over-seven-decades/72452.html> visited on 1/22/24, 11:23 PM.

apex court from time to time⁵.

Role of Legislature:

India is signatory to ICCPR and ICESCR which was ratified on March 27, 1979. Such ratification incites commitment by the State to grant to the individuals the rights contained in the two Covenants.

In order to accomplish this, the Constitution provides for an implementation mechanism through Article 253 which inter alia, vests power in the Parliament to make laws implementing international instruments to which India becomes a party. This provision appears in Part XI which seeks to outline and determine the scope of legislative powers shared between the Central Government and the Federal structures, i.e., States. Article 253 should be read along with Article 73 and Schedule VII. Article 253, empowers the Parliament to make laws on subjects listed in Schedule VII, to implement international treaties, agreements, conventions, or decisions taken in international conference, association or other body. Thus, Preamble, fundamental rights and DPSP under the Indian Constitution and the international humanitarian law contain the principles and values on which the Indian Constitutional governance is based.

Accordingly, developments in international law have paved way to various human rights legislations in India like Protection of human rights Act, 1993, Prevention of Sexual Harassment Act, POCSO Act, Biodiversity Act etc.

Role of Judiciary: The judicial system has an important role to play in confirming better public governance. The verdicts of Hon'ble Apex Court have made a significant contribution in the constitutional governance ranging in different areas like environment, human rights, gender justice, education, minorities rights, jail reforms, elections and even limits on constituent powers of Parliament to amend the Constitution.

Judiciary through its judicial activism helped in developing human rights legal philosophy in India based on international principles. Even though Article 253 is helpful in realizing the international agreement but, some limitations are imposed on the administrative power of the Government of India, where the higher judiciary ensures that global law is not in conflict with municipal law and if it does then the municipal law will succeed.

The Hon'ble Supreme Court held that if there were a conflict between the domestic law on one side and the international law or the provisions of any treaty obligations on the other, the courts would give effect to domestic law. If two interpretations of municipal law are there the courts should prefer that interpretation which makes the domestic law to be in accord with the international law.

In *Kesavananda Bharati vs State of Kerala*, the Hon'ble Apex Court observed that the UDHR may not be a legally binding instrument, but it shows how India had the conception of the human rights at the time the Constitution was adopted. In another landmark case Hon'ble Supreme Court has held that, UDHR was implemented by the UNGA on December 10, 1948 while debates in the Constitution were going on.

Hence, it must be assumed that the makers of the Constitution were influenced by the provisions of the Universal Declaration, while framing Part III, the Fundamental Rights. In several cases the Declaration has been referred to in the decisions given by Higher judiciary. In another case, Hon'ble Justice Beg, held that the intention of making certain rights as fundamental is to secure them from the illegal invasion by executive, legislature and judicial organ of the state. The judiciary has recognized these fundamental rights as natural rights or human rights.

⁵ Dhar, Kaushik, Domestic Implementation of Human Rights (February 19, 2012). Available at SSRN: <https://ssrn.com/abstract=2007967> or <http://dx.doi.org/10.2139/ssrn.2007967>

Fundamental Rights and Human rights under ICCPR 1966:

Fundamental rights ensured under the Indian Constitution may be divided for the sake of convenience in two categories, i.e. specified fundamental rights and other fundamental rights. The specified basic rights are those rights which are there in the Covenant as well as these rights specifically enumerated in the Constitution.

This division is helpful to make them comparable with the human rights guaranteed to the individuals under ICCPR. However, there are several rights which, though are not specified in Part III by name as fundamental rights have been regarded as fundamental by the Supreme Court by enlarging the meaning and scope of the fundamental rights. Although in *A.D.M., Jabalpur v Shukla*, the Supreme Court held by a majority of 4:1 that the Constitution did not recognize any natural or common law rights other than that expressly conferred in the Constitution, this perspective has changed especially after 1978. The judiciary gave broader interpretation and held that, the rights which are not exclusively mentioned in the constitution may be regarded as fundamental rights if it is essential part of the fundamental right.

The following are the rights which are contained in the ICCPR are available to the citizens of India despite their not being specifically mentioned in the Constitution. Right to privacy, right to travel abroad, Right to speedy trial, Right to provide legal assistance, Right of prisoners to be treated with humanity, Right to compensation, Right to information.

Directive Principles and Human Rights under ICESCR 1966:

Rights enshrined in the ICESCR are not mentioned in Part III, but they are provided in Part IV which stands for the DPSP. The directive principles are necessary in governance of the Country which are to be observed as a guiding principle by present and forthcoming governments. Numerous rights cherished in the ICESCR are incorporated in the directive principles which are non-justiciable.

Thus, we can see that all rights like right to equal pay for equal work, the right to protect the childhood of work and for maternity work, the right to work, etc. are recognised in the Covenant as well as in our Indian Constitution. However, these rights being stated in Part IV are not enforceable in the court of law. But recently some of these rights are considered as fundamental by the Supreme Court by enlarging the extent of the fundamental rights stipulated in Part III. This has done by broadening the ambit of the right to life under Art.21 of the Constitution.

In this case, the Supreme Court investigated the provisions of the Universal declaration to interpret the Right to Education as a concomitant to Fundamental Rights enshrined under Part III. The words in the declaration regarding Education were held to be inclusive under Article 21 of the Constitution, which was thus to be guaranteed and enforced by the Judicial activism. In *(NALSA) vs. Union of India*, in this case where transgender was recognized as the third gender, the court also mentioned that domestic law will supersede the international law. Thus, Judiciary has time and again preserved the constitutional morality while upholding constitutional governance and international agreements.

SUGGESTIONS:

When it emanates to safeguard the human rights there are certain challenges which our country face that include awareness of human rights among both administrative authorities and common public, because of a lack of understanding of the relevance of fundamental human rights including economic, social, and cultural rights and the third-generation human rights i.e. collective rights.

Another problem which requires attention is of priorities of administration struggling for scarce resources, including economic and social development, and aggravating environmental concerns, intensified by frequent

changes in governmental regime leads to inability to enforce human rights at the domestic level. Other issue involves the complicated reporting obligations on governments mentioned in different treaties and covenants and the constraint to settle human rights with existing customary laws.

These are some of the primary issues which are required to be well-thought-out by government intended to launch national human rights mechanism including the prospect of using human rights legislation to set out effective protections and not merely making such institutions as a toothless tiger wherein it merely acts as a recommendary body. Another thing which is required to be addressed is strengthening the role played by social organisation in promoting, protecting and monitoring human rights.

The judiciary and the legislature always play an important roles in standard setting, and alleviating human rights violations and in promoting its importance but equally the changing administrators every five years having different ideologies should understand their responsibility to respect them through constitutional governance.

CONCLUSION:

However widespread the global humanitarian law and its mechanisms may be, rights can only be enjoyed when there is a practical means of probe and enforcement. Keeping this in mind, strengthening the function of the judiciary and the legal aid system should be a high priority. It is evident from different judgements given by judiciary at different times, the Hon'ble courts have shown due regard to the view formed by the executive through any administrative action violating the personal liberties or human rights of an individual should be necessarily subject to judicial review based on fair procedure established by law. Judiciary has, thus, played a critical role in checking on the executive to ensure good governance by maintaining rule of law. Indian courts have also tried to give effect to global law in many of their decisions subject to the provision that they are in consonance with the domestic laws of the land. Thus, this strengthened the applicability of global law in the domestic legal system. Human rights, thus, go hand in hand with responsibilities and accountability of all the three organs which leads to effective constitutional governance.

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