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A TRUE VISIONARY

*“You see things and you say **Why?** But I dream of things that never were and say **Why not?**”*

- George Bernard Shaw



Shri Jagannath Gupta
(1950 - 1980)

*Also a true visionary...who dared to dream!
He lives no more but his dreams live on....and on!*

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From the desk of the Chief Editor

The legal landscape in India is continually evolving, shaped by dynamic interactions between law, policy, and societal needs. In this edition of our law journal, we present a diverse range of scholarly discussions that address pressing legal concerns and contemporary debates. The contributions in this issue reflect the intellectual depth and analytical rigor of legal professionals and scholars, offering insights into critical areas of law and governance.

The *article Stress and Strain in Central-State Relations and Conflict of Interest in Framing Taxation Policies in India* examines the delicate balance of fiscal federalism in India, exploring the tensions and conflicts that arise in taxation policies between the central and state governments.

A thought-provoking work, *Whether it is a Myth or Truth that Legal Profession has Become a Business or Trend?*, delves into the commercialization of the legal profession. The study raises fundamental questions about the ethics, responsibilities, and evolving nature of legal practice in contemporary society.

The intersection of law and technology is critically examined in *Protecting Personal Data in the Pursuit of Speedy Justice: A Multifaceted Challenge*. This article underscores the challenges of safeguarding personal data while ensuring the expeditious administration of justice, highlighting the complexities involved in balancing efficiency with privacy concerns.

Another paper, *Is Social Media Driving the Risk of Cyber Crimes?*, brings to light the growing threats posed by digital platforms. The discussion explores how social media contributes to cybercrime, emphasizing the need for stringent legal measures and public awareness to mitigate these risks.

The role of digital forensics in combating document fraud is analysed in *Digital Forensic Examination of Counterfeit Documents: Techniques and Tools: Ink-Sight into Digital Counterfeit Documents: A Legal Perspective*. This article provides a technical and legal overview of forensic methodologies used to detect and prevent document-related fraud.

Finally, *Judicial Activism in India: A Critique* offers a well-reasoned critique of judicial activism, examining its impact on the separation of powers and the rule of law in India.

I hope this edition stimulates thoughtful discourse and contributes to the ongoing debates within the legal fraternity. The insights presented reflect the diverse challenges and opportunities that lie ahead in the Indian legal system. I extend my sincere gratitude to the authors for their valuable contributions and to our readers for their continued engagement with our journal.

Sincerely,



Prof. (Dr.) Pallavi Gupta
Thanking You

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STRESS AND STRAIN IN CENTRAL-STATE RELATIONS AND CONFLICT OF INTEREST IN FRAMING TAXATION POLICIES IN INDIA

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Pritam Mehta

Student, National Law University, Ranchi

ABSTRACT

The principle of mutatis mutandis applies when we speak of taxation norms in a federal country as to what essentials to be grouped into non-taxable and taxable. With the advent of the Indian Constitution, there was a clear cut intention that there shall be separation of powers and each carrying its own sub powers. Legislature brings beauty as it is responsible for the functioning of a country to a larger extent. It is a federal country and there is distribution of powers as well but maintaining them is a herculean task since it is one of the essential elements of good governance. Taxation powers between the centre and the states cannot go hand in hand until there is enough resource allocation as the deficiency leads to a conflict which would not work in the favour of the development and growth of the country. Conflict is bound to arise in such a situation as states have a larger responsibility in comparison with the central government as it is always seen that a nation is made up of its states so states must regulate themselves in order to bring the nation on par with other countries. The federal structures of the countries bring half the problem to void as there no department or government is overburdened. The Indian Constitution makes it crystal clear that there should be transfer of funds from Centre to the States.

Key words: Taxation, Federal, Distribution of powers, Legislature, Conflict

Introduction

In February, 2024, the states of Karnataka, Kerala and Tamil Nadu expressed dissent and dissatisfaction towards the Centre for unfair tax revenue allocation ahead of the general elections. This led to the Karnataka's Chief Minister posting on X that it had received 4.71% in the 14th Finance Commission and this figure reduced to 3.64% in the 15th Finance Commission¹. This further highlighted a significant part of the tax allocation to the states, that is, the criteria used for distribution, high weightage being given to income distance, the distance of the state's income from the state with the highest income, and population². Looking at these figures, one can tell that the tax allocation conflict remains a hot topic. Taxes being the largest source of income in India as the money collected is used in the development and administration of the nation by the government. The Organization of Economic Cooperation and Development conducted a study across various federal nations with the title "Navigating Conflict and Fostering Co-operation in Fiscal Federalism" which highlights the intergovernmental disputes and the recommendations that could be made for resolving these disputes. It cites an example saying that during a national program, the central government may raise the tax while on the counterpart, the state government might not want so in order to alleviate the citizens' burden. Hence this balancing of fiscal powers is required and it varies from country to country depending on its circumstances, subnational autonomy and institutional structure³.

Due to this disbalancing, the judiciary always has to step in and resolve the dispute which exposes the deeper sides and brings out a new dimension to the existing conflict, that is, that it cannot be resolved politically and it can only happen through the intervention of judiciary by suggesting cooperation, communication and conflict

¹ The Indian Express, Centre-state tax sharing row: No problem with formula, <https://www.newindianexpress.com/business/2024/Feb/11/centre-state-tax-sharing-row-no-problem-with-formula-say-experts#:~:text=Recently%2C%20Karnataka%20Chief%20Minister%20Siddaramaiah,decrease%20of%20107%20basis%20points> (Dec. 14, 2024).

² *Ibid.*

³ Sean Dougherty and Tatiana Mota, Navigating conflict and fostering co-operation in fiscal federalism, 48, OECDpublishing, 3, (2024), https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/07/navigating-conflict-and-fostering-co-operation-in-fiscal-federalism_98bc9f50/3d5c8c20-en.pdf.

resolution mechanisms. Like there are several examples at the global level such as the National Economic Policy Board in Brazil⁴ and the National Cabinet in Australia⁵ which are impactful in promoting resolution of disputes outside the court and improve intergovernmental relations. In a study conducted by de Biase & Dougherty in 2021⁶ and de Mello & Ter- Minassian in 2022⁷ Both the studies aimed at one inference that the way COVID- 19 pandemic highlighted the importance and need of cooperation and coexistence to address issues which are too complex and as such not a one man's thing by 'policy coordination, resource management, transparency, and regulatory framework. Talking about the Indian context, the Article 256⁸, the Constitution of India says: “No tax shall be levied or collected except by the authority of law.” Hence this stipulates that the government in no circumstances can impose a tax which is not passed as a law and the determining powers rest with the Central Government, State Government, and local authorities like municipal corporations. Before diving into the provisions of taxes, it is important to delve into the topic of territorial nexus which forms the basis of the tax distribution between the centre and the states. Therefore, the territorial nexus is nothing but a connection between the subject and the object so that there is enough ground for imposition of taxes. According to Shapiro and Vanden Eynde 2023, the conflict in India in relation with fiscal incentives increased when a new tax regime was introduced in 2009 which in turn increased the value of controlling territory for sub- national governments⁹.

RESEARCH OBJECTIVE

This research paper aims to analyze the intergovernmental conflict in relation with the taxes and the imposition of taxes across the world with a larger focus on the Indian context. It also recommends the ways in which the conflict can be resolved by citing the secondary sources such as the studies conducted and the inferences obtained therein.

WHY DO WE HAVE TAXES?

As held earlier, the taxes form the largest source of income for the government which is extensively the main agenda of every country imposing tax on its citizens. Yet, the ideal tax collection remains far from perfection as it can only be achieved by 'excessive government borrowing, and should do so without discouraging economic activity and without deviating too much from tax systems in other countries.¹⁰

WHAT ARE THE CHALLENGES FACED BY THE DEVELOPING COUNTRIES WHILE THEY IMPOSE TAXES?

1. In many developing countries, there are instances when the workers who are involved in agriculture or small enterprises are paid seldomly and some are paid in cash, “off the books.” These people do not spend enough in large stores to record sales hence the modern system of raising revenue like income taxes and consumer taxes becomes null and high tax expectation by the government is thrashed to a level.
2. It is often seen that most of the developing countries do not have well- educated and well- trained staff.
3. It is also because of the informal structure of the developing countries economy that the policymakers do not have enough data to assess the impacts politically on the tax system hence perpetuates inefficient tax structures.
4. Since there are some developing countries that do not have enough tax policies that are imposed on rich people or them paying property taxes or personal income. It is also because of their great influential power or the political influence or their richness that interferes in making laws that are imposed on them.

⁴ Confaz Fazenda, <https://www.confaz.fazenda.gov.br/> (last visited Dec. 15, 2024).

⁵ Australia National Cabinet, <https://federation.gov.au/national-cabinet> (last visited Dec. 15, 2024).

⁶ de Biase & Dougherty, 2021

⁷ De Mello & Ter- Minassian, 2022.

⁸ INDIA CONST. art. 256.

⁹ Shapiro, J N, O Vanden Eynde , “Fiscal Incentives for Conflict: Evidence from India's Red Corridor”, Review of Economics and Statistics, 105, 217- 225.

¹⁰ International Monetary Fund, <https://www.imf.org/external/pubs/ft/issues/issues27/> (last visited Dec. 15, 2024).

Conclusively, it can be said, “in developing countries, tax policy is often the art of the possible rather than the pursuit of the optimal.”

DIFFERENT TYPES OF TAXES IMPOSED IN INDIA

The tax structure imposed in India is spread across three levels, that is, the central, the state and the municipal corporation. Essentially, there are two types of tax structures imposed in India such as the direct taxes and the indirect taxes.

a. Direct tax: As the name suggests, such taxes are paid by the individual directly to the government without any intermediary. Such taxes are handled or collected by the Central Board of Direct Taxes (CBDT).
Examples of the direct taxes include:

- i. Income tax (it is the most prominent and talked about tax paid by the individual to the government and here the individual includes a company, a firm, a cooperative society or societies, trusts and Hindu Undivided Family (HUF).
- ii. Gift tax
- iii. Wealth tax
- iv. Capital gains tax
- v. Corporate tax

b. Indirect tax: tax that is opposed to the direct tax, that is, indirectly levied on the public. To speak more specifically, these are mostly charges on the goods and services offered to the public. 'The seller takes these taxes in the prices, which are then collected by the concerned government bodies.'¹¹

Examples of the indirect taxes include:

- i. Customs duty
- ii. Sales tax
- iii. Goods and services tax
- iv. Value added tax (VAT)
- v. Toll tax
- vi. Octroi duty

WHO COLLECTS THESE TAXES IN INDIA?

As stated, it is a three tier- system, hence it is divided between them:

- i. Income tax, customs duties, central excise duty, etc is looked after by the central government
- ii. Agricultural income, professional tax, state excise duty, value added tax, etc. are looked after by the state government
- iii. Water tax, property tax, etc. are looked after by the municipal bodies.

As the 2017 incorporation of Goods and Services Tax (GST), it brought within its ambit a lot of taxes and replaced all of them such as:

- i. Central excise duty
- ii. Service tax
- iii. Purchase tax
- iv. Octroi
- v. Entertainment tax
- vi. Sales tax

¹¹ Yes bank, <https://www.yesbank.in/blogs/fixed-deposit/what-are-different-types-of-taxes-in-india#:~:text=The%20Central%20Government%20collects%20income.tax%2C%20property%20tax%2C%20etc> (last visited Dec. 16, 2024).

INTERWOVEN OF CONFLICT AND FISCAL POLICIES

A. **WORLDWIDE:** According to a source, it was said that wars were fought to gain access and control over some resources such as, firstly, the mining booms did give rise to conflict in Africa¹². Secondly, the fiscal development was a result of the warning of external wars or intimidation to cause external wars¹³. Thirdly, in Nigeria there was insignificant increase in oil price which led to a conflict and thus there was power-sharing agreement at the state level to dissolve the conflict¹⁴.

B. **INDIA:** A new tax introduction in 2009 led to the increment of the holding and controlling for the sub-national governments according to a study¹⁵. To move further, we need to understand the background and it was that in August 2009, the Indian government at the centre introduced an ad-valorem tax on the iron ore mined in India, this was a shocking impact as it did not affect any other mineral ores and just the iron and this was primarily considered one of the reasons of the conflict amongst others. This was a significant change as earlier the states received 'negligible' rate per tonne iron that was mined in their boundary contributing to the 5% of some states' budgets leading to manifold increase in the royalty of the state.

States in the 'Red corridor' region in the Centre-East of the country were mostly affected and a hub of conflict due to this reason. There were intense clashes between the Maoists insurgents and the state. 'As state governments are responsible for managing counter-insurgency efforts within their territory, the royalty hike had the potential to affect the incentives they faced when allocating efforts in iron-rich districts¹⁶.' This conflict intensified in all centre-east regions with iron ores in comparison with other districts. A graph was made by a study to depict the conflict and the vice versa attacks between the police and the Maoists. The study also added that the conflict can also arise because of the illegal mining conducted by the Maoists in their belt. Another study conducted by Novosad (2023) wrote that 'mineral shocks lead to the election of more politicians who are charged with serious crimes.'

TAXATION POWERS IN INDIA UNDER THE INDIAN CONSTITUTION

Taxation laws in India are prevalent and to some extent, there is a restriction put up for the state and their powers and only given to the central legislatures and this is set up by the article 245(2)¹⁷ of the Indian Constitution. Clause 2 holds that parliament has the powers to make laws on extra-territorial operation of such laws but such power is not conferred on the state legislature. Hence such laws passed by the Parliament cannot be deemed invalid and if any such law is made by the state legislature it can be challenged in the court of law and can only be given the liberty if proved beyond reasonable doubt that there exists a territorial nexus.

DOCTRINE OF TERRITORIAL NEXUS

This doctrine implies that the object to which the law applies need not be located within the boundaries of the state. It is enough if it has sufficient territorial nexus (territorial connection) with the State. Although the object to which the law applies may physically be located within the territorial limits of state, the state laws will be valid if there exists a real connection or nexus between the state and the object. This doctrine has prominently and primarily been used in the taxation cases.

¹² Berman, N, M Couttenier, D Rohner and M Thoenig, This mine is mine! How minerals fuel conflicts in Africa, *American Economic Review*, 107(6), 1564- 1610 (2017).

¹³ Besley and T Person, The Origins of State Capacity: Property Rights, Taxation and Politics, *American Economic Review*, 99(4), 1218-44 (2009).

¹⁴ T Fetzer and SKyburz, Cohesive Institutions and Political Violence, *Review of Economics and Statics*, 1-46 (2022).

¹⁵ Shapiro, J N, O Vanden Eynde supra note at 9.

¹⁶ VoxDev, <https://voxdev.org/topic/institutions-political-economy/how-fiscal-policies-intensified-conflict-india> (last visited on Dec. 16, 2024).

¹⁷ INDIA CONST. art. 245, cl.2.

In *Wallace Brothers and Company Limited V. Income Tax Commissioner Bombay* AIR 1948¹⁸, the company which was incorporated in England was a partner in a firm in India. The Company made an overall profit and the Indian income tax authorities levied income tax on the entire tax of the company. It was held that the imposition of tax was valid as there was sufficient nexus between India and the Company.

In another landmark case of *Tata Iron & Steel Company Limited v. State of Bihar*¹⁹, the court held that there that the territorial nexus doctrine itself does not impose tax but it is a medium which helps and lets the legislature decide and deal fairly in the imposition of taxes. Hence it only indicates situations under which the doctrine can be enforced. To set an example, we can talk about the sale of goods which deals with the fact that the most important thing is that the goods should be available as it is the main component through which the property will pass. To constitute a sufficient nexus or connection, there should be a 'presence of goods at the date for the agreement of the sale in the taxing state or production or manufacture in that state of goods, the property wherein eventually passed as a result of the sale wherever that might have taken place, constituted a sufficient nexus between state and the sale.'

List I which is related to the Union list is looked after by the Centre hence the taxes enumerated are dealt with by the Central government while the taxes laid down in the List II are dealt with by the State government. The Concurrent List does not have many tax entries as it goes on to do multiple overlapping and conflict hence not much has enlisted therein.

The Lista I and II fairly show that the taxes have been distributed in such a way that there is no conflict. Thus, based on the principle that the local strata taxes or taxes local by nature are provided to be collected by the states while the taxes that involve a 'tax base extending over more than one state' or that the tax should be collected uniformly throughout the country and that which can be easily be collected by the Centre in comparison with the State.

A. TAXES COLLECTED BY THE CENTRE (LIST I)

List I entries that run from 1 to 81 adjudge legislative powers to the Parliament and thereafter entries 81 to 92B deal with the entries that put the Parliament under the position of imposing taxes on such entries. Therefore, the non- agricultural income tax is collected by the centre and agricultural income is collected by the State and the apex court has held there is always and should be a broader interpretation, that is, a liberal interpretation to be given so that a comprehensive connotation²⁰ can be inferred.

In order to aid legislative competence, the entries in the list I are grouped are in two different groups hence taxation in a different group²¹.

B. TAXES COLLECTED BY THE STATE (LIST II)

Entries 45 to 63 deal with taxation powers held by the state government of each state. The major revenue for the state is the sales tax. Entry 54 was subject to an amendment by the 46 Amendment Act, 1982 which added clause 29 to Article 366 which removed the restrictions imposed by the judiciary and include such transactions as and bring them within the ambit of 'a tax on sale or purchase of goods.' Article 277²² gives the permission to the states, local bodies at the commencement of the Constitution for levying taxes though it falls under the union list.

¹⁸ *Wallace Brothers and Company Limited V. Income Tax Commissioner Bombay* AIR 1948.

¹⁹ *Tata Iron & Steel Company Limited V. State of Bihar*, AIR 1958 SC 452.

²⁰ Taxes on income other than agricultural income.

²¹ *All India Federation of Tax Practitioners V. Union of India*, AIR 2007 SC 2990.

²² INDIA CONST. art. 277.

C. TAXES UNDER THE CONCURRENT LIST

Entry 35 only lays down the principles on how the tax is to be levied on mechanically propelled vehicles and nothing else. Hence, it does not impose any taxes²³.

D. TAXES THAT ARE OUT OF SCOPE OF TAXING POWERS OF THE STATE AND THE CENTRE

1. Article 276²⁴ debars the state from imposing a tax on profession and trade.
2. Articles 287²⁵ and 288²⁶ debars the state from imposing a tax on electricity.
3. Other restrictions on the state's power are on sale tax.

E. SALES TAX RESTRICTION

It was made in order to prevent any mishap between the inter- state conflict and trade and commerce that happens internationally:

1. Inter -state sale is restricted since it can 'hamper free flow of trade and commerce from one state to another and thus would hit the economy of the country.'
2. The Central Sales Tax Act, 1956 is made by the Parliament and it levies taxes while it is collected by the state concerned for its own use.
3. Foreign imports and exports are exempted from state taxation.
4. Article 286(3)²⁷ 'lays down that a state law imposing a tax on the sale or purchase of goods declared by the Parliament by law to be of special importance in inter-state trade or commerce, is subject to such restriction and condition in regard to tax so levied as parliament may specify.

F. INTERPRETATION OF TAX ENTRIES

As held earlier that the *mutatis mutandis*²⁸ principle also applies to the tax entries and that it must be interpreted broadly²⁹ and literally. The apex court of India has highlighted the principle of interpretation of entries as³⁰, “ the cardinal rule of interpretation is that the entries in the legislative lists are not to be read in a narrow or restricted sense and that each general word should be held to all ancillary or subsidiary matters which can be fairly and reasonably be said to be comprehended in it.”

Further in one of the cases, it has also been held that the legislatures have the authority or the power to levy taxes in prospective as well as retrospective nature³¹.

To another matter in the court, it was declared that the illegal taxes can only be undone when the illegality or the invalidity is removed by the concerned authority and by no other means can it be declared valid. Hence any disregard or disobey of the decisions of the court would lead to contempt of court therefore follow the steps of validating instead of overruling³².

In a different case³³, it was held by the Supreme Court, “the objects to be taxed so long as they happen to be within the legislative competence of the legislature can be taxed by the legislature according to the exigencies of its

²³ State of Assam V. Labanya Probha Debi, AIR 1967 SC 1575.

²⁴ INDIA CONST. art. 276.

²⁵ INDIA CONST. art. 287.

²⁶ INDIA CONST. art. 288.

²⁷ INDIA CONST. art. 286, cl.3.

²⁸ Meaning: things being changed which are to be changed.

²⁹ Hindustan Lever V. State of Maharashtra, AIR 2004 SC 326.

³⁰ The Elel Hotels and Investment Ltd. V. Union of India, AIR 1990 SC 1664.

³¹ Chhotabhai Jethabhai Patel V. Union of India, AIR 1962 SC 1006.

³² Rai Ram Krishna V. State of Bihar, AIR 1963 SC 1967.

³³ *Ibid.*

needs. Once it is found that there is a nexus between the legislative competence and the subject of taxation, the levy will be justified and valid.” Hence, in adjudging the validation of levying of a tax, the nature and the character has to be determined to underline this issue and the legislative competence and power held.

Orient Paper Mills case³⁴, the court held that 'while levying a tax, it is competent to the legislature to devise machinery for the effective collection of tax, to determine procedure for assessing the tax liability and devise and make necessary provisions for preventing its evasion.'

In B. Krishna Bhatt case³⁵, it was held that 'power to levy under the law in question could be legal only if the concerned authority collecting the tax rendered services to the taxpayers as no services had been rendered, the collection of tax was illegal.'

In the case of Belsund Sugar Co. Ltd. V. State of Bihar³⁶, in which the Supreme Court invalidated a state law that put taxes on sugar products. It held that since the supply and distribution of sugar products is covered under the concurrent list hence the union list mentioning this shall prevail instead of the state levying fees.

The National Council for Applied Economic Research is a non-profit institute that publishes its research on the topic of the economy and social development which is presented and available both to the government and the public³⁷.

The National Institute of Public Finance and Policy has a well-read research in the field of economy as well and it also provides alternative dispute resolution mechanisms³⁸.

G. DOUBLE TAXATION IN INDIA

Article 265 of the Indian Constitution nowhere lays down that there should not be any double taxation rather there can be same type of tax imposed on the same tax base under different heads or names and there is none other statute or act that bars the double taxation³⁹.

I. TAXING POWERS OF STATES IN SELECTED FEDERAL COUNTRIES

According to a publication by ResearchGate⁴⁰, few figures related to state allocation of taxing powers in federal countries:

	State taxes as % total taxes	Share of state taxes which states can set rates	Share of state revenues
Australia	15.3	100.0	41.1
Austria	8.8	7.0	3.7
Belgium	22.8	63.8	57.1
Canada	35.5	98.4	76.0
Germany	21.8	2.4	1.9
Spain	18.1	58.3	32.7
Switzerland	27.0	90.4	57.4

³⁴ Orient Paper Mills V. State of Orissa, AIR 1979 SC 321.

³⁵ B. Krishna Bhatt V. State of Karnataka, AIR 2001 SC 1885.

³⁶ Belsund Sugar Co. Ltd. V. State of Bihar AIR 1999 SC 3125.

³⁷ NCAER, <https://www.ncaer.org/> (last visited Dec. 17, 2024).

³⁸ Supriyo De, Direct Taxes Litigation Management and Alternative Dispute Resolution, 394, NIPFP Working Paper Series, 1-32 (2023), https://www.nipfp.org.in/media/medialibrary/2023/04/WP_394_2023.pdf

³⁹ Avinder Singh V. State of Punjab, AIR 1970 SC 778.

⁴⁰ Researchgate Gate https://www.researchgate.net/figure/Taxing-Power-of-States-in-Selected-Federal-Countries_tbl2_228158339, (last visited Dec. 17, 2024).

II. TAX POLICY IN UNITED STATES OF AMERICA

1. In America, the Tax Policy Office functions as the nodal institution for development and institution of programs, internal revenue codes, tax treaties negotiations, a legalised as well as economic analysis for the domestic and international tax policies. Apart from this, the Office presents the President's budget estimates, policy decisions related to economy and finance as well helps in taking smooth decisions regarding the cash management.
2. Treasury of America releases a 'Green Book' which lists the administration's revenue proposals. Tax expenditures 'describe revenue losses attributable to provisions of Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral tax liability. These exceptions are often viewed as alternatives to other policy instruments, such as spending or regulatory programs'⁴¹.
3. In relation to international taxes, the American government has several taxes such as taxes on treaties and relate documents and a page dedicated to it is also created,
4. Taxes on information exchange agreements, there is an act called the Foreign Account Tax Compliance Act, etc. Reports and Tax Analysis is also given in response to the Congressional Mandate, etc.
5. Various governmental institutions run to help resolve the intergovernmental conflicts such as the Intergovernmental Fiscal Relations Committee, a standing committee of the National Academy of Public Administration, the National Association of State Budget Officers.

III. TAX POLICY IN GERMANY

1. In Germany, a lot of institutions and committees aid in fiscal collaboration across various tiers of the government. Bundesrat (Federal Council) it allows for the integration of the regional interests so that their representation is also made in decision making⁴² by Lander at the federal level.
2. It also aids in intergovernmental communication and cooperation via regular dialogues as it increases mutual trust and understanding.
3. It also acts as an alternative dispute resolution mechanism according to Jeffery 2007.
4. Vermittlungsausschuss⁴³ is another joint committee that has representatives from the Bundestag and Bundesrat that helps in resolving conflicts and promoting mutual trust and cooperation between federalism and the Lander.
5. The Federal Constitutional Court (FCC) functions to address laws and review them and the government's compliance with the Basic laws.
6. The Basic Laws function as the grundnorm for Germany as it distributes powers between the Federation and the Lader⁴⁴. As Article 28 of the Basic Law reads that the local authorities should manage their affairs, financial matters included therein.
7. Wherein, there is a situation created that the federal laws are overlapping the state laws then the federal laws prevail which in turn is a result of harmonisation and fostering regional diversity.
8. After the unification of Germany, there have been several ups and downs in the matters of economy and strains in the social conditions of the Lander, hence a system named 'modernising federalism' arose which paved for a nation's problems and challenges to be addressed and this was notably driven forward and taken care of by the FCC through its decisions and judgements.
9. According to Werner, 2018, the FCC has helped in equalisation of the fiscal⁴⁵ system which made the redistribution of financial resources from the wealthier states to the less affluent ones.

⁴¹ U.S. Department of the Treasury, <https://home.treasury.gov/policy-issues/tax-policy#:~:text=Tax%20Expenditures%20describe%20revenue%20losses,as%20spending%20or%20regulatory%20programs> (last visited Dec. 17, 2024).

⁴² Sean Dougherty and Tatiana Mota, Navigating conflict and fostering co-operation in fiscal federalism, 48, OECD publishing , 58, (2024), https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/07/navigating-conflict-and-fostering-co-operation-in-fiscal-federalism_98bc9f50/3d5c8c20-en.pdf.

⁴³ Vermittlungsausschuss, <https://www.vermittlungsausschuss.de/VA/DE/homepage/homepage-node.html> (last visited Dec. 17, 2024).

⁴⁴ Sean Dougherty and Tatiana Mota, Navigating conflict and fostering co-operation in fiscal federalism, 48, OECD publishing , 55, (2024), https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/07/navigating-conflict-and-fostering-co-operation-in-fiscal-federalism_98bc9f50/3d5c8c20-en.pdf.

⁴⁵ German fiscal equalisation, Werner (2018).

I. TAX POLICY IN BRAZIL

1. Brazil is a federal system with a three tier government and the Federal government as the highest authority that sees national concerns and legislative and executive authority.
2. The second tier is the state government that looks after the education, healthcare, environment, and transportation while the third tier is the municipalities focussing on local development across all areas and categories.
3. The Fiscal Responsibility law (LRF)⁴⁶ is an act that represents the Brazil government's efforts towards harmonisation of the disputes and conflict resolution as it helps in 'fiscal discipline and transparency. This law with its enactments too had some loopholes which had to be looked after by the Supreme Federal Court.
4. CONFAZ (National Council of Finance Policy) was made which acts as the main institutional nodal body for looking after the tax coordination in the country.
5. In 2023, Brazil introduced a tax reform for fostering economic growth⁴⁷. 'The reform consolidates multiple taxes on goods and services into a single Value Added Tax (VAT) thereby reducing the tax compliance burden on businesses and aiming to enhance the overall efficiency of the tax collection process.'

CONCLUSION

Intergovernmental disputes exist across the globe and that too also in the federal countries where the power of each tier of government is equally distributed and that it has enough to maintain itself without jumping or overlapping on others. Yet, there are some issues that remain and the only solution is the clearer definition of power and responsibilities with the judiciary to act as the interpreter and the protector since any law or act that violates even a single provision would bring an avalanche in almost every power of the country. Another change should be the establishment of more committees, boards and councils, research centres that help to keep a check and balance and a platform for dialogue sharing.

⁴⁶ Sean Dougherty and Tatiana Mota, Navigating conflict and fostering co-operation in fiscal federalism, 48, OECD publishing , 42, (2024), https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/07/navigating-conflict-and-fostering-co-operation-in-fiscal-federalism_98bc9f50/3d5c8c20-en.pdf.

⁴⁷ Sean Dougherty and Tatiana Mota, Navigating conflict and fostering co-operation in fiscal federalism, 48, OECD publishing , 47, (2024), https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/07/navigating-conflict-and-fostering-co-operation-in-fiscal-federalism_98bc9f50/3d5c8c20-en.pdf.

WHETHER IT IS A MYTH OR TRUTH THAT LEGAL PROFESSION HAS BECOME A BUSINESS OR TREND?

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ABSTRACT

The legal profession is the most gentle profession out of all the professions, solely devoted to the rule of law and justice. But with time, the profession changed, and law firms showed up. Attorneys started running businesses on the side while practising, and then there was a shift in the profession, with people taking up law as a societal trend while their main goal was to run businesses. Then came the question. Is the profession of law still a profession? Or advocates pursue law as a trend, with their business being the primary job. This paper will talk about the legal profession, what it stands for, why it is a noble profession compared to other professions, the duties and limitations when one practices this profession, and most importantly, whether it has become a trend or a business in the recent generation. Additionally, we will also look into the lamps of advocacy, and the rules advocates follow, to know what makes the profession of law different from other professions.

Key words: legal profession, business, trend, professional ethics, advocacy etc.,

Introduction

The legal profession has undergone significant changes in recent decades, with an increasing emphasis on commercialization and market-driven approaches. This shift raises questions about the nature of legal practice and its role in society. But before going deeper into this topic, let us first learn more about this profession, the duties of an advocate, and the limitations of an advocate when practising the profession of law. As per Section 2(a)1 an advocate is a law graduate who entered in any role under the provisions of The Advocates Act 1961. As per Section 2 (h) of The Advocates Act, 1961¹ A law graduate is a person who obtained a bachelor's degree in law from any law school or law university, which was established by law in India and was designated as a Law school by The Bar Council. And when a person becomes an advocate, he needs to follow and have some ethics, called legal ethics. As given by Justice Marshall, "*The fundamental aim of legal ethics is to maintain the honour and dignity of the law profession, to secure a spirit of friendly compensation between the Bar and the Bench in the promotion of highest standards of justice, to establish honourable and fair dealings of the council with his client, opponent, and witnesses, to establish a spirit of brotherhood in the Bar itself and to secure that Lawyers discharge their responsibilities to the community generally.*"² Legal Ethics is nothing, but merely a code of conduct or a body of principles that advocates and other legal professionals follow to maintain the dignity and honour of the legal profession, as law is a noble profession.

LAMPS OF ADVOCACY

There is a popular saying, that goes '*A Lawyer must live like a hermit and work like a horse*'³. But then, what are the qualities a lawyer must have? Even though it has not been defined in any law, there are qualities an advocate should have, like honesty, courage, wit, industry, judgment, fellowship, and eloquence, which have been elaborated by Justice Parry in '*Lamps of Advocacy*'⁴. Let us talk about these qualities one by one: Honesty: The first quality is honesty. As the legal profession is a noble profession, honesty is a must. Every person in the law

¹ The Advocates Act, s 2 (h)

² William W. Fisher III, 'The Jurisprudence of Justice Marshall' (1989) 6 Harvard BlackLetter Law Journal 131 <http://www.tfisher.org/JurisprudenceMarshall.pdf>> accessed 22 February 2024

³ Clark, C., 1939. The Country Lawyer Vindicated (Forty-Eight Years Ago). USL Rev., 73, p.520

⁴ Edward Abbott Parry, The Seven Lamps of Advocacy (Classic Reprint) (Forgotten Books 2018)

profession needs to be honest with every person they interact with. This honesty should be seen in the thoughts of an advocate, and through their words and behaviour. Honesty is the most important quality, as it increases the reputation of the advocate as a person and it also increases the reputation of the advocate as a professional, reputation matters a lot in the current society as reputation is what attracts clients, connections, and other prospects that are needed by an advocate to thrive in the legal profession. An advocate's reputation includes the advocate's fame and trust with the bar and his clients. While dealing with a case and making arguments, producing documentary evidence and oral evidence in a court of law, an advocate is expected to be honest, based on the arguments and evidence produced by the advocate on behalf of the client he is representing, the judge decides the case. When dealing with his client, the advocate must tell the client about the merits of the case and he must also tell about the demerits of the case, along with the consequences which would lead to the loss of his client, even if the advocate is going to lose the case. While dealing with the opposition party, the advocate should not give false facts to take the case in his direction, and in the eyes of the law, the advocate should tell the truth in front of the judge and not give any false statements, as honesty is the best practice. Courage: In the⁵ Lamps of Advocacy, courage is also an important attribute. Courage means the ability to stand in front of any court of law without any fear or paranoia. When arguing a case in a court of law, the advocate should feel confident and also proud, because courage would help the advocate in convincing the judge that the facts he is giving on behalf of his client are true. When dealing with a case, whether the case is related to civil litigation or criminal litigation, the lawyer would need to face many problems which is why, he must have the courage to remove these problems with courage and fearlessness. To fight social evils and all these problems, the advocate should use courage as his weapon, for which they must have deep knowledge of the law⁶. Industry: Ignorance of the law is not an excuse⁷. The advocate needs to know the law for which he is dealing in a case, and as we all know, there is no end to the law. Law is like an ocean, one law gets repealed, another law gets added, and hence no one can be the master of law, or know the entire law as a whole, which is why an advocate must keep himself updated with the recent developments and he should know the law which is to be used in the case in which he is dealing for. '*An advocate must live like a hermit and work like a horse*'⁸. An advocate, without any sufficient knowledge of the law, can never win his case. Advocates must have the skill, the attitude, and the knowledge while dealing with a case, and to get this knowledge, the advocate needs to be given sufficient time to understand the law, so that he can perfectly deal with the case and increase his chance to win the case⁹. Law is not static, which is why it keeps changing from time to time with the changing needs of society so that when a new problem comes up, the law can change to solve the problem. Even if a lawyer had the knowledge to deal with a case in the past, if he does not stay up to date with the current laws and recent developments, he will face difficulties while dealing with a case in the present time, which might lead to him losing the case.

Wit: In the darkness of advocacy, it is a necessary lamp to lighten it up. Wit is how you should present yourself or how good your orator skills are, as it is what helps the advocate to stay focused on the work he is doing, and also helps him reduce the workload he has so that he can.

Eloquence: '*The Lamp of Eloquence is the Art of Speaking*'¹⁰. The oral art of the advocate which he uses for skilful and fluent communication with the judge which would touch their soul is eloquence. Every advocate has to deliver his argument in front of the judge, but how the advocate gives his arguments which results in a long-lasting effect on the judge, clients, and the listeners present in the courtroom is what eloquence is all about. To be eloquent, an advocate should be fluent while giving his speech and arguments, for which he needs to be a skilled

⁵ Paul Matthews, 'Ignorance of the law is no excuse?' (1983) 3(2) Legal Studies 174-192 <https://doi.org/10.1111/j.1748-121X.1983.tb00314.x>> accessed 25 February 2024

⁶ Nessa Coyle and Timothy W. Kirk, 'Navigating Ethical Dilemmas' in Constance Dahlin and Patrick Coyne (eds), *ADVANCED PRACTICE PALLIATIVE NURSING* (2nd edn, OUP 2021) 691-703

⁷ *Ibid.*

⁸ Brampton Henry Hawkins 1817-1907 Baro, *The Reminiscences of Sir Henry Hawkins*, Baron Brampton (Hardpress Publishing 2013)

⁹ William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass/Carnegie Foundation for the Advancement of Teaching) (Jossey Bass 2007)

¹⁰ Peter Elbow, *Vernacular eloquence: What speech can bring to writing* (1st edn, OUP 2012)

speaker and should stay confident while giving the speech in front of the opponent party and the judge. The language the advocate would be using should be free of errors, like stopping at the right moments, using the right phrases and maxims of law, and should be free of drama, and should be effective. The language should also influence all the people present in the courtroom toward the point of discussion and should be easy enough to help the judge write his judgment. remain calm and relaxed. An advocate, along with being intelligent and having an understanding of the law, must also be clever enough to understand things quickly as with this, he will be able to answer any question with a humorous expression of ideas¹¹. Being witty helps the advocate answer points quickly, effectively, and properly as having a well-prepared speech and giving it in front of a judge would not always work for the advocate. Being witty also helps an advocate get relief from the mental strain they get from their heavy working hour

Judgement: The lamp of Judgement means to take a deep study of the case at hand and then to make an informed opinion of the same case. An advocate must be prudent and reasonable. When an advocate starts thinking from both sides of the case, it helps the advocate to understand

Fellowship: In an association, the membership is a fellowship. An advocate must carry fellowship with his colleagues. When an advocate takes a case, and then argues in the court of law, he would have to argue against an opposite advocate. But because they are arguing does not make them the opposite, as they are doing what they need to do for the sake of justice. Even while doing arguments in a court of law, the advocate should be respectful towards the opposite lawyer, as it is a fight for justice and not a fight between them. After the judgment is given by the judge, even if the advocate loses the case, he should respect the other advocate who won the case, as if he starts fighting with every advocate who is an opponent advocate in the case in which he chooses to represent, he would end up making everyone his enemy which would not an ideal scenario in a noble profession like that of law. The advocate should always refer to the opposite advocate by using the terms learned friend or learned counsel, irrespective of the friendly relationship he has with them. Advocates must also use the fellowship for judges, as through the arguments the advocate gives, he respects the judge. Even if the judge gives an opposite decision, he should use terms like a learned judge, your honour, your lordship, or my lord.

Tact: Not originally a part of the 7 lamps of advocacy, the lamp of tactfulness was added by a former judge of Madras High Court and an *Indian Lawyer V. Krishna swamy Iyer*¹² in his book called Professional Conduct and Advocacy. Sometimes during heavy and serious arguments, the courtroom becomes a mess and, in these circumstances, the advocate should know how to handle the situation. The advocate should be able to control his client in that situation, should the consequences of winning or losing the case, the merits and the demerits of the case, which would later help him anticipate and understand the problems and later solve those problems with other lamps of advocacy. The judgment includes the ability of the advocate to understand what questions he should ask the judges and the opponent party, what would happen if he represents a witness in the court of law, and the ability of the advocate to counter any arguments given by the opposite party in the case and the judges as well. be able to persuade the judge, and should be able to get control over the opponent advocate in the case. Many clever and intelligent advocates did not survive in the legal profession only due to their lack of tact in convincing the court on any point, and while dealing with their clients. Those who do not have tact end up losing their temper and start to quarrel with the opponent parties and their advocates, and sometimes even with the officers of the court. This eventually leads to him losing important points to use in a case, which later leads to him losing the case.

RULES OF PROFESSIONAL CONDUCT AND LIMITATIONS OF ADVOCATES

Although not written in any law specifically, an advocate has various fundamental rules of professional conduct that he/she should maintain due to customary practice in the Profession Some of them are:

¹¹ Peter A. Facione, 'Critical thinking: What it is and why it counts' (2015) 1(1) Insight Assessment 1-23

¹² Kumar Rajiv Ranjan, Moral, Ethics, Conduct, Misconduct, and Professional Misconduct For An Advocate (With Case Laws) (BFC Publications 2023)

- An advocate should maintain high morals and must keep on enhancing his learning, as the legal profession is vast, and with time laws will keep changing, so he must keep himself updated with the recent laws passed or repealed. Honesty is the best friend of an advocate, so he must be honest at all times. The law being a noble profession, an advocate must at all costs maintain a minimum standard of good behaviour.
- As an advocate, he must not indulge in any publicity of his practice, as law is a noble profession and no advocate publicizes his or her profession in any form, that be a billboard or an advertisement in the newspaper. Any person who does not follow this rule¹³ can be held liable and will be punished accordingly under Section 35 of the Advocates Act for professional misconduct¹⁴. An advocate when in the court of law, should be fair towards the Court as well as the opponent. He should not mislead his client by giving any unfair or false advice and should give the proper advice that is needed in that situation¹⁵. When there is litigation, the advocate must only represent one party in that suit and he cannot accept the briefs of both the parties in the suit. If the advocate is a witness in any case, then he should not conduct the trial in that same case. He should give his best and do as much as possible, which is best for his client through fair means, and he should not act as a mere puppet in his hand¹⁶. When representing a case, the advocate should inform all the weak points of the case to his client, if any, and he should not encourage the client for any litigation in any matter where no remedy can be sought, or where a loss is assured. Along with these rights, there are some restrictions on an advocate as well. Some of these are:¹⁷

Business: A practising advocate cannot run a business at the same time.¹⁸

Sharing of Profits: An advocate cannot share the profits he has made in a case with his client.

Soliciting Business: No advocate cannot solicit or publicize his business or profession in any way or manner. **Dress Code:** An advocate must adhere to the dress code and wear what is prescribed under the law.¹⁹

Fees: An advocate must take normal fees from his client, and he cannot ask for fees higher than the normal rate or take fees saying that he would win the case if he is paid extra²⁰

Personal Security (Surety): An advocate cannot stand as personal surety for the client during any legal proceedings.²¹

Examination of Witness: When an examination takes place during a case, neither the Advocate nor his client can ask derogatory questions to the witness during the examination.

Personal Witness: When representing a client in a case, an advocate cannot be a witness to his client in that case, but if the client gives permission to the advocate and allows him to do so, then he can do it.

IS IT A BUSINESS OR TREND ?

Now that we have some idea about the legal profession, let us come to the topic at hand, is the legal profession a trend or a business? We have seen practising advocates run businesses on the side, sometimes even making their practice a side job, and there are cases where advocates are practising more than one profession at a time, for example, a practising advocate cannot also practice as a medical practitioner, or as some other professional, and

¹³ *Ibid.*

¹⁴ The Advocates Act 1961, s 35

¹⁵ Thode (n 14)

¹⁶ *Ibid*

¹⁷ Amanda Frost, 'The Limits of Advocacy' (2009) 59(3) Duke Law Journal 447

¹⁸ Bar Council of India Rules, r 47

¹⁹ Bar Council of India Rules, ch IV pt 6

²⁰ Owen Rogers and Cape Bar, 'High fees and questionable practices' (2012) 25(1) Advocate 41 <https://www.gcbsa.co.za/law-journals/2012/april/2012-april-vol025-no1-pp40-42.pdf> accessed 25 February, 2024

²¹ Bar Council of India Rules, r 10, ch I pt 6

this right to practice has been discussed upon in the case of *Dr Haniraj L. Chulani v Bar Council of Maharashtra & Goa*²² where a medical practitioner wanted to enroll as an advocate but it was not allowed. The Bar Council of India held that once a person gets into any profession, and is practising in that profession while practising he cannot take up and practice the legal profession, as the legal profession is a noble profession and requires hard work and diligence and thus, the right to practice the legal profession is not absolute. A person cannot do legal profession and medical profession at the same time. So, has the legal profession become a trend? Or a business? Let us look into a few cases to understand this. In the case of *Pravin C. Shah v K.A. Mohammad Ali*²³, the respondent who was an advocate was found guilty in two cases, of criminal contempt by the Kerala High Court. He started to appear in other courts as he was not allowed to appear in the Kerala High Court, and when the advocate gave an apology before the Supreme Court of India, the Court did not accept it. Later after various proceedings, the Supreme Court held that in the impugned order by the Disciplinary Committee of the Bar Council of India, the Committee rightly stated that the right to exercise the disciplinary powers over advocates is vested with the Bar Council exclusively and that this power cannot be taken away either by a judicial order, a rule, or by the High Court. The power of supervision and control in the contempt of the Court cannot be divested from the Court when it is regarding the conduct of advocates. Unless the advocate has not rectified himself, he cannot practice the profession of law. The case of *Bhupinder Kumar Sharma v Bar Association of Pathankot*²⁴ is another important case. In this case. The appellant was an advocate who was enrolled with the State Bar Council, where a written complaint was filed to the State Bar Council alleging that the appellant was carrying on a business while practising as an advocate in the Court of Law. Recognizing this complaint, the State Bar Council referred the complaint to its disciplinary committee. After investigation, it was found that he was running a photocopy documentation centre in Pathankot Court's Compound. The place where the business was taking place was given to the appellant on account of being handicapped, and along with this, the advocate was also running a *PCO/STD* Booth. He was also the proprietor and the General Manager of Punjab Coal Briquettes Pathankot, and he was running the business well. So, the question was, can a practising advocate run a business while his name is enrolled in the State Rolls of Advocates and he is a practising advocate? The Supreme Court of India held that when it comes to carrying a business, any advocate who has in name enrolled in the Bar or is practising law cannot carry a business, and if he does, the advocate will be held liable for professional misconduct under the Advocate Act 1961.

Another case is the case of *Shambhu Ram Yadav v Hanuman Das Khattry*²⁵, an advocate influenced the client and told him that if he gave money to the advocate, the advocate could bribe a Judge he knew, and the Judge would then give an order favourable to the client. The client filed a complaint to the Bar Council where after investigation the advocate's license got snatched away. So, to the question as to whether the Legal profession is a trend that people can just follow, it is not. When a person goes into the Legal profession, the person should be hard working and diligent and must give his best. When in this profession, he cannot continue any other profession. And whether the Legal profession is a business, is not. It is a profession, and no advocate who is enrolled and practising cannot have a business or carry a business and should focus on the profession

CONCLUSION

The Legal profession at this moment is standing at a crossroads, as there are questions of purpose and identity as to what the Legal Profession stands for right now with the profession getting commercialized and seen as a societal trend at this age. After looking into whether it is a business or a trend, examining the rights duties, and limitations of a practicing advocate, and looking into all the ethical principles that are in this profession, we can get a clear understanding of the current emerging legal landscape. The qualities given in the 7 Lamps of Advocacy serve as guiding beacons for practising advocates and practitioners, emphasizing important virtues like honesty,

²² *Dr. Haniraj L. Chulani v Bar Council of Maharashtra & Goa* 1996 SCC (3) 342

²³ *Pravin C. Shah v K.A. Md Ali* (2001) 8 SCC 650

²⁴ *Bhupinder Kumar Sharma v Bar Association of Pathankot* AIR 2002 SC 41

²⁵ *Shambhu Ram Yadav v Hanuman Das Khattry* AIR (2001) SC 2509

courage, industry, wit, eloquence, fellowship, judgment, and tact. These qualities show the nobility of the legal profession and also set high standards that are expected from those who are in the Legal Profession. Along with this, the rules of professional conduct and the limitations placed on advocates put a clear boundary, within which professionals who are in the field of law must operate so that the integrity and dignity of the law profession can be protected. While there may be many instances where individuals and practising advocates viewed the legal profession as a mere trend or a business to be exploited, stringent standards were set by regulatory bodies and the legal system to preserve the sanctity of the legal profession. Cases such as *Pravin C. Shah v K.A. Mohammad Ali*²⁶ and *Bhupinder Kumar Sharma v Bar Association of Pathankot*²⁷ act as reminders of the consequences when someone deviates from these standards, reaffirming the commitment of the profession to upholding ethical principles, and at the same time maintaining the public trust.

In last, the legal profession is way beyond a mere commercial endeavour and a societal trend. It is a noble calling rooted in the principles of service, justice, and integrity. While this profession may be shaped by economic forces and societal dynamics, the essence of the legal profession remains the same in its dedication to protecting the rights and liberties of individuals and to uphold the rule of law. Advocates must remain diligent and vigilant in upholding the highest standards of ethical conduct and professionalism as advocates are the guardians of justice, and it is up to the advocate to ensure that the legal profession continues to serve as a bastion of justice and a beacon of hope in society.

²⁶ *Pravin C. Shah v K.A. Md Ali* (2001) 8 SCC 650

²⁷ *Bhupinder Kumar Sharma v Bar Association of Pathankot* AIR 2002 SC 41

PROTECTING PERSONAL DATA IN THE PURSUIT OF SPEEDY JUSTICE: A MULTIFACETED CHALLENGE

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ABSTRACT

Every advancement comes with its own set of challenges, as much as we are enjoying the speedy transfer of data and communication, we are stuck in terms of solving the issues that arise out of it at the same speed. Considering the current scenario, data protection and privacy is the biggest challenge that the world is facing at large. The legal system even promises to protect violations in terms of privacy by providing us with strong articles such as Article 21 of the Indian Constitution yet fails to operate timely and upholds the saying “justice delayed is justice denied”. This paper shall explore the tension between the right to privacy and the need for an efficient legal system, and examine the challenge and potential solutions for balancing these competing interests. Further, it will discuss the issue of speedy justice and challenges posed by the right to privacy, along with the contentious debates of data protection policy, and explore reasons for the pending status of the data protection bill in the Indian parliament. Moreover, the use of technology in legal proceedings, including the use of encryption, anonymization, and other privacy-enhancing technologies.

Key words: *Data Privacy, Data Protection, Right to Privacy, Criminal Identification.*

Introduction

As fortunate as we are to live in this technological era it also holds a curse with it. This digital era has two important aspects: right to privacy and the need for an efficient legal system, which are always in conflict with each other. One side of the spectrum provides individuals with the right to privacy which is very important in the current scenario and is also guaranteed under The Constitution of India, 1950 art. 21, as our personal data is being continuously collected, analysed, stored, and shared by various organizations and governments. On the other hand, our society needs an efficient legal system that can ensure timely justice for the victims and just punishment for the offenders.

This multifaceted challenge of balancing the right to privacy and the need for an efficient legal system asks for careful consideration of various factors that play an important role. In this paper, the intention is to closely explore and analyse the tussle between these two interests and suggest a few practical solutions that may help us to create a balance. Further, we will examine the issue of speedy justice and the challenges that arise from the right to privacy in legal proceedings. Moreover, we will emphasize on the data protection policy, inclusive of the pending status of the data protection bill in the Indian Parliament. Lastly, we will discuss various ways by which we can use technology in legal proceedings to ensure a speedy process.

RIGHT TO PRIVACY AND EFFICIENT LEGAL SYSTEM

India is a country with a vast population and a diverse legal system, which is constantly facing heated debates over the right to privacy and the need for an efficient legal system. India has been continuously looking for a balance between the two. Further, the recent Criminal Procedure (Identification) Act of 2022 ('the Act') has accelerated these debates even more. The Act's objective is “to authorise for taking measurements of convicts and other persons for the purpose of identification and investigation in criminal matters and to preserve records and for matters connected therewith and incidental thereto.” Which provides us with provisions that allow the use of advanced technologies such as voice recognition, DNA profiling, facial recognition, retina scan, and much more to aid in the identification of suspects in criminal investigations including preservation of the data. But these provisions give rise to serious concerns regarding the right to privacy and the possible misuse of personal data.

The right to privacy is a fundamental right recognised by The Constitution of India, 1950 under art. 21 which states “No person shall be deprived of his life or personal liberty except according to procedure established by law.” This right was further affirmed in *K.S. PUTTASWAMY V. UNION OF INDIA*. The effective functioning of democracy does require an efficient legal system that upholds the rule of law and ensures justice by balancing privacy with efficient legal processes, which is challenging. The Bharatiya Nagarik Suraksha Sanhita, 2023 ('the BNSS'), which seeks to expedite justice by incorporating technology-driven measures, yet raises concerns regarding data protection and privacy.

One of the most significant areas where the whole tension between these interests arise is during the collection and use of evidence. In criminal cases, for instance, investigating agencies often have to enter into the personal sphere of an individual in regard to collecting evidence like their house, electronic devices, personal property, etc. collecting data in such a manner does give rise to serious privacy concerns, as many time it happens without the consent of the individual, but at the same time if this is not done it might make it difficult for a legal system to prosecute suspects for crimes and ensure justice.

Moreover, the use of biometric data in legal proceedings is another rising concern among individuals. On the one hand, collecting biometric data can be an effective tool for law enforcement, as identification of suspects becomes easy but on the other hand, this can be an intrusion and violation of an individual's privacy rights. India has one of the largest biometric databases in the world, with over a billion people. In one of the well-known cases in regards to the right to privacy *Justice K.S. Puttaswamy (Retd.) and Anr. V Union of India and Ors*¹. The Supreme Court held that the collection of biometric data for criminal investigations must be authorized by a court order. This decision is indeed a significant victory for privacy concerns as it protects individuals' privacy rights even during a criminal trial.

Another sphere that gives rise to conflict between these interests is the use of surveillance technology. India, day by day is increasing the use of surveillance cameras, wiretapping, and other various forms of monitoring and data collection without an individual's consent, considering the former point it is necessary for ensuring public safety and prevention of crime but it also suppresses dissent and violates the fundamental right of privacy.

The Delhi Police's use of facial recognition technology to identify suspects in the Delhi riots was contested in the Delhi High Court in 2021. The court stated that the use of technology without sufficient protection is a violation of the right to privacy.

Moreover, the use of digital data in legal proceedings is another reason for the rising conflict, comparatively our legal system has taken a drastic shift from paper-based functioning to a digital one, which again involves the use of personal data of individuals without their consent and leads to privacy concerns. The Personal Data Protection Bill, which attempts to control the gathering and use of personal data in India, was introduced by the Indian government. However, the bill has drawn a lot of discussion and criticism, with some contending that it does not go far enough to protect people's right to privacy.

Balancing these competing interests:

The multifaceted issue at hand is complex in nature, however in India, the Criminal Procedure (Identification) Act, 2022, which recently got approved aims to allay some of the abovementioned worries by establishing a framework for the application of cutting-edge technologies throughout the identification process. The Act also calls attention to the necessity to strike a balance between personal freedom and law enforcement, as well as potential privacy rights violations, the same can be improved by implementation of Strict privacy protections like the Criminal Procedure (Identification) Act, 2022 must be put into effect with severe privacy protections in order to solve concerns about privacy invasion. Controlling the availability of private information, having informed consent, and maintaining transparency in the identifying process are a few aspects of these precautions. These

¹ (2017) 10 SCC 1

actions can aid in curbing the unlawful use of personal information and safeguarding people's right to privacy. Use of data anonymization and encryption techniques which can be employed in order to safeguard people's identities and prevent the exploitation of their private data. Thus, it is possible to conceal facial features in facial recognition software while maintaining reliable identification. In similar circumstances, encryption methods can be used to safeguard private information while it is being transmitted and stop unauthorized usage. Moreover, the regular audit and control can help guarantee that the use of modern technologies in the authentication process is carried out in a just and transparent manner. Considering the use of advanced technologies, this can entail the creation of precise guidelines and standards as well as the assignment of an impartial supervisory body. Additionally, public awareness initiatives can assist in informing people of their rights and obligations with regard to the identity verification process. Information on the different types of data that are gathered, how they are used, and the rights people have to safeguard their privacy.

SPEEDY JUSTICE AND RIGHT TO PRIVACY

Speedy justice is a cornerstone of the legal system, ensuring timely redressal of grievances. The BNSS introduces procedural reforms, such as electronic service of summons and video conferencing to accelerate legal proceedings. However, these advancements necessitate handling vast amounts of personal data, intensifying privacy concerns.

The Act permits prolonged retention of sensitive data (up to 75 years), raising questions about proportionality and necessity. The European Union's GDPR, mandates data minimization and purpose limitation, principles that India's framework should adopt to strike a balance between security and privacy. Judicial oversight and clear guidelines on data storage duration and deletion mechanisms are important to prevent potential violations.

Furthermore, Article 20(3) of the Indian Constitution, which protects individuals from self-incrimination, is relevant in this context. The collection and retention of biometric and genetic data raise concerns about the potential coercion of individuals into self-incrimination. Courts must ensure that data collected under the Act is not used to compel an accused person to testify against themselves, thereby safeguarding constitutional rights while maintaining judicial efficiency. Adopting few measures such as establishing clear standards for the use of identification methods like DNA testing and fingerprints can help ensure swift justice in a big way. To ensure that these methods are not intrusive and do not breach the right to privacy, it is necessary to create explicit rules for their usage. Such rules can be established using the Criminal Procedure (Identification) Act of 2022 as a starting point.

The ongoing debate in the Indian parliament over a Data Protection bill highlights the need for comprehensive data protection laws that strike a balance between individual rights and the needs of law enforcement.

Further the use of privacy enhancing technologies, such as encryption, anonymization, and others, can help to ensure the security of personal data in legal proceedings. For instance, end-to-end encryption can stop unauthorized parties from accessing sensitive data, and anonymization can guarantee that people's identities are kept private. A privacy impact assessment framework can also be used to examine the possible effects of legal procedures on an individual's right to privacy. A framework like this can ensure that privacy issues are taken into account when making decisions, resulting in a fairer resolution of the tension between the need for speedy justice and the right to privacy.

DATA PROTECTION POLICY

India has been trying in recent years to create an adequate data protection policy framework that strikes a balance between a person's freedom and right to privacy and the requirement of law enforcement and national security agencies. There are plenty of reasons why the Personal Data Protection Bill, which was submitted in 2019 to create this regulatory structure, hasn't been approved into law yet.

The ongoing deliberation over how to strike a balance between individual freedom and law enforcement is one of the main causes of the bill's pending status. Considering provisions for explicit consent and autonomy over personal data, the bill aims to create an integrated structure for the protection of personal data. Private activists have praised these features, claiming that they are crucial for preserving individual liberty and privacy rights. However, there are beliefs that the provisions of the bill could restrict the capacity of law enforcement agencies to access personal data for investigative purposes. This has been a specific point of disagreement with respect to the provisions of the bill for explicit approval, as some scholars assert that demanding explicit consent for the collection and processing of personal data could make it more difficult for law enforcement agencies to access important and relevant data.

The difficulty of creating a thorough data protection framework that is both practical and effective is another factor keeping the Personal Data Protection Bill from being passed. The General Data Protection Regulation (GDPR), which is considered one of the most extensive and competent data protection frameworks in the world, is a major source of inspiration for the bill. There are worries that the bill may not be entirely compliant with other international data protection regulations, which might provide problems for companies that operate in several different countries.

In addition to these issues, there are problems with the government's role in overseeing data protection. A Data Protection Authority (DPA) is created under the bill to monitor adherence to the law and enforce data protection requirements. Given the government's history of employing surveillance and other forms of data collecting for political ends, there are fears that the DPA may be influenced politically. The Personal Data Protection Bill is currently in committee, which demonstrates the difficulty of creating such a framework given the conflicting interests of personal autonomy and law enforcement, but there are also possibilities for cooperation and compromise, especially as technology advances and the need for effective data protection grows.

The Criminal Procedure (Identification) Act lacks explicit provisions on data security and oversight, making it vulnerable to misuse. International best practices, such as the GDPR's accountability and transparency principles, should be integrated into India's legal framework. Establishing an independent data protection authority, mandated with overseeing law enforcement data usage, would enhance trust and compliance.

USE OF TECHNOLOGY IN LEGAL PROCEEDINGS

Recent years have seen a tremendous increase in the use of technology in courtroom procedures, and the Indian legal system is no different. The development of digital technology has made it possible to gather, store, and analyse vast amounts of data, which has the potential to completely transform the legal sector. However, privacy, security, and the potential for misuse of personal data are issues that are brought up by the use of technology in legal procedures. Two technologies that improve confidentiality and are progressively being used in Indian legal proceedings are encryption and anonymization. While anonymization includes stripping identifiable details from data to safeguard individual privacy, encryption encrypts data so that it can only be viewed by authorized users. Both methods are useful for safeguarding private information and making sure that only those with the proper authorization can access sensitive data. In legal disputes involving sensitive data, such as financial or personal information, the use of encryption is very pertinent. This data can be encrypted to guard against data breaches and unauthorized access. Encryption can also assist in safeguarding the privacy of people participating in judicial procedures by guaranteeing that no unauthorized party has access to their personal data. Another data protection enhancing technique that is being used more and more in Indian Legal processes is anonymization. Anonymization is the process of deleting, identifying information from data, aiding in the preservation of the privacy of people who are parties to judicial processes. When personal information may accidentally be released but is unrelated to the case, this can be especially helpful.

The Indian legal system has established a number of steps to protect personal data in legal proceedings in order to address these concerns. For example, the Information Technology Act of 2000 establishes penalties for unauthorized access to, use of, or disclosure of personal data and ensures that it is protected.

Another important technology that can be used in court proceedings that entail sensitive information including financial data, health records, and personally identifiable information, is the usage in securing personal data in the quest for speedy justice. A decentralized ledger system called blockchain technology allows for secure, impenetrable data recording. Blockchain can be used in the context of judicial procedures to securely and immutably store and verify crucial data, such as court records and legal agreements. This makes it the perfect instrument for securing personal data because it ensures that the data cannot be changed or destroyed without leaving a trail. Additionally, blockchain can be applied to create a safe and effective system for handling legal proceedings. Smart contracts, for instance, can be used to automate contracts and speed up the legal system. This can make the legal process more efficient and less expensive while simultaneously preserving its openness and equity.

CONCLUSION

In conclusion, a proficient balancing of multiple opposing interests is necessary to address the complicated challenge of preserving personal information while pursuing speedy justice. As a fundamental human right, the right to privacy must be weighed against the requirement for a quick and effective legal system. With a specific emphasis on the Indian context, this paper has examined the numerous facets of these conflicts. It has been seen, the contradiction between the need for an effective legal system and the right to privacy has been a difficult topic in Indian legal procedures, with competing interests between individual freedom and law enforcement. The Criminal Procedure (Identification) Act, 2022 was recently passed in an effort to find a balance between these conflicting objectives. The Act has established a new framework for identifying procedures that put an emphasis on human rights, privacy, as well as the effectiveness of the judicial system. Another crucial concern that is discussed in preserving personal information, in the interest of speedy justice is data protection policy. The difficulties in balancing the need for stringent data protection regulations with the needs of law enforcement and national security are highlighted by the fact that the data protection bill is still pending in India's parliament. A comprehensive data protection law is required to safeguard individual privacy while also ensuring the success of judicial procedures, it is becoming increasingly clear. Technology's usage in legal proceedings has the potential to be extremely important for both speedy justice and data protection. The integrity of legal proceedings can be preserved while sensitive material is protected and misuse is avoided using encryption, anonymization, and other privacy-enhancing technology. But there are other dangers in using technology, like the possibility of hacking and data leaks. Given these difficulties, there are a number of alternatives that can assist in striking a balance between the requirement for an effective legal system and the right to privacy which are extensively discussed in the paper. We can strike this delicate balance and make sure that justice is served effectively and fairly while also safeguarding people's privacy by putting in place thorough data protection policies, making use of privacy-enhancing technologies, and embracing alternative identifying methods.

IS SOCIAL MEDIA DRIVING THE RISK OF CYBER CRIME?

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ABSTRACT

In today's life social media has become a part of life, without social media people feel depressed, bored and meaningless. However, the high use of social media is spreading cyber-crime in the world like: cyberbullying, harassment, hacking, phishing, scam, cyberstalking, identity theft, malware attacks and so on. Mostly the cybercrime is committed for some intention like to defame someone, to harm someone and these activities are done on online platforms because people are becoming very used to social media as well as they are very addicted with the social media. There is need to protect the cyber-crime so, government shall have taken the necessary steps so government may be prevented these types of cybercrime by making and implementing Strict law, like strength the privacy laws and take some legal and regulatory measures as well as spread the awareness among the peoples. Social media not only demerits it also has its merits, so there is a need to maintain the balance between media and cybercrime.

Key words: *Cybercrime, Social Media, Hacking, Cyberstalking, Cyberbullying.*

Introduction

The role of social media in modern life plays a very crucial role. People are very addicted to social media. In modern life social media has become a means of communication. Entertainment, sharing information and thoughts, as well as it becoming a profession of lots of people. Many people's starts earning from these social media. It also increases cybercrime not only in India but all over the world. To prevent cybercrime, the Indian government passed an Act which was named 'The Information Technology Act, 2000', which contains 13 Chapters, 04 Schedule and 94 Sections. The objective of the Act was “An Act to provide legal recognition for transactions carried out by the means of electronic data interchange and other means of electronic communication, commonly referred to as “electronic commerce”, which involves the use of alternative to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the government agencies”¹. Whereas the General Assembly of the United Nations by resolution A/RES/51/162, dated 30th January, 1997 has adopted the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law². The word 'Cyber Crime' is not defined in any Act. “According to the Organisation for Economic Cooperation and Development (OECD), Computer crime is any illegal, unethical or unauthorised behaviour involving automatic processing and/or transmission of data”³. The types of cybercrime are cyberbullying, harassment, hacking, phishing, scam, cyberstalking, identity theft, malware attacks and so on. Social media has a dual impact in society. One side social media is becoming a medium of communication, sharing information, interacting with other peoples as well as it is also becoming a source of entertainment, however, the high use of social media is spreading cybercrime not only in India but all over the world.

UNDERSTANDING CYBERCRIME

The word 'Cyber Crime' is not defined in any Act. “According to the Organisation for Economic Cooperation and Development (OECD), Computer crime is any illegal, unethical or unauthorised behaviour involving automatic processing and/or transmission of data”⁴. Section 66A of 'The Information Technology Act, 2000' talks about the punishment for sending offensive messages through communication services etc, which stated that- any person

¹ The Information Technology Act, 2000.

² The Information Technology Act, 2000.

³ Dr. Mrs. K Sita Manikyam “Cyber Crimes Law & Policy Perspectives” Page no. 44, Edn (2009).

⁴ Dr. Mrs. K Sita Manikyam “Cyber Crimes Law & Policy Perspectives” Page no. 44, Edn (2009).

who sends, by means of a computer resources or a communication devices,- (a) any information that is grossly offensive or has menacing character, or (b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication devices; or (c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine⁵.

Types of cybercrime:

Hacking: when a person accesses the other person's computer system without the permission or in other words unauthorized access of the computer system of other persons networks, with the intention to get information, breach of privacy or so on but the intention was to cause the damage or injury of that person.

Phishing: it means a person attempts to access the sensitive data of that person by pretending that he is trustworthy but he gains the data fraudulently. Sensitive data are those which are sensitive in nature like, medical report, user name, Aadhar number, credit card number and so on.

Identity Theft: it means taking data without the permission of that person and forwarding it to someone else to commit some crimes, do some illegal activities with that person's name or commit fraud and so on.

Malware Attack: this attack is done by the use of viruses with intention to cause damage as well as with the intention to gain some personal information from accessing that computer system without the permission of that person's means without consent of that person.

Denial of Services Attack: in this attack is done by the excessive traffic so, computer network or system will be overloaded so services will be unavailable.

Cyberstalking: in these types of cyber-crime a person follows the women with the intention for the communication or so on, in this person by means of e-mail, internet or any other electronic means.

Online Harassment: in this type of cyber-crime a person targets the other person to cause damages, threatens other persons, causes defamation of that person, and so on. All this is done by the use of the internet.

Cyberbullying: in these types of cyber-crimes a person's try to harass other people by means of different apps, websites and so on.

SOCIAL MEDIA AS A CATALYST FOR CYBERCRIME

Social media have both bane as well as boon. It plays a crucial role for spreading information, communication, and for entertainment purposes. But it also plays a major role in spreading cyber-crime like: cyberbullying, harassment, hacking, phishing, scam, cyberstalking, identity theft, malware attacks and so on. But in today's life mostly the youngster is very attached with the social media, some people use social media and internet in positive sense and spread awareness and information but some people misuse the technology and commit the crime like: cyberbullying, harassment, hacking, phishing, scam, cyberstalking, identify theft, malware attacks and so on. Most of the problem are discussed in below:

Oversharing of personal information: one of the biggest problems is they are used to social media and they are spending most of their time on social media, so they start sharing their personal information which creates a problem later on. This oversharing will create a problem for people as well as they infringe on the privacy of the people. When people post and share daily activity in social media, people can easily damage their reputation, as

⁵ Section 66A. The Information Technology Act, 2000.

well as they easily access your personal information and violate the right of privacy. They can commit staking and phishing attacks because all details of your life are available in your social media accounts. In modern times people use many social media handles like: WhatsApp, twitter, snapchat, Instagram and so on. People are oversharing their personal information and the behind is they will get attention from the people, make connections, and they will share their information then people start following it and increase their followers on social media. Because of these reasons some people's misuse their information and use it in illegal activities and damage their reputations.

The role of weak privacy settings: peoples easily can access the personal information of peoples from social media because some peoples are oversharing their personal information and other person access the information because of weak privacy settings and they get information and they started misusing this information and engaged in some illegal activities with using of that person personal information and damages your reputations. Because of weak privacy settings, people can access the personal information of people without the consent of that information and they can start harassing, stalking, bullying and some other crime may be committed by some other persons. People must be more vigilant in their social media accounts and they can also check the privacy of their social media accounts as well as not oversharing of their personal information. People must also be aware about privacy settings and the technology so no one can easily access their personal information. As Daniel J. Solove said that “Privacy is rarely lost in one fell swoop. It is usually eroded over time, little bits dissolving almost imperceptibly until we finally begin to notice how much is gone”. And Edward Snowden gave a statement regarding the needs of privacy that are “Arguing that you don't care about the right to privacy because you have nothing to hide is no different than saying you don't care about free speech because you have nothing to say”.

Fake profile and online scams: in modern era people start misusing their social media handles and make fake profiles and start hacking and accessing people's personal information and engaging in some illegal activities and using that person's identity. People make fake profiles with the intention to harm some people and commit scams. Online scams are prevalent at this time because people are not much aware about this activity and they can share all their banks' details, so people can commit scams of that person. People also make fake profile so they can damage the reputations of other persons because peoples are oversharing their personal information and there is weak privacy settings are also causes the problems, because of these reasons they easily access the information of other people without the consent of that peoples and damages their reputations, and they can easily harass the women, they can bully as well as they can easily stalking the women.

MITIGATING CYBER CRIME RISKS ON SOCIAL MEDIA

There are needs for preventive measures which can prevent the risk of cyber-crime on social media handles. So, peoples are aware about this and not become a victim of cyber-crime. In today's life people are very much addicted with social media and they share their all details even a minute details also share in social media so it is very to the people to hack their system and misusing their details. So, people must be aware about these activities so they can save themselves and their family members as well as their friends from these cybercrimes.

Update social media and software timely: one of the mitigating factors of cybercrime risks on social media is to regularly update social media and software because it is protected from the attacks, as well as protect your information from unauthorized access. It is to comply with the cybersecurity laws and protect the privacy of the individuals.

Be cautions when sharing personal information: the other factor of mitigating cybercrime risks on social media is to be cautious when people share their personal information from the cybercrimes. People must be aware about the privacy rules and compliance with the cyber security laws so they can protect themselves from the cybercrime. People must take caution when they share their personal information so they can protect themselves, family members and their friends from cybercrime.

Educate about the scams and others methods of cybercrime: the other mitigating factor is people must be aware about the cybercrimes so they can protect our personal information from cybercrimes. Government should organise campaigns, seminars and conferences, and so on, so people will be aware about cyber-crime. Schools and colleges\ universities must also educate their students about cybercrime.

Avoiding oversharing personal data: the factors of mitigation cybercrime of social media is avoiding oversharing personal information in social media handles. People are very much addicted to social media, so; they start oversharing their personal information. Anyone can hack the system and steal all the personal details and they can easily misuse their personal information, and engage in some illegal activities with that personal identity.

Strength the privacy settings: strength the privacy settings is one of the mitigating factors of cybercrime risks on social media. There is a need to strengthen the privacy settings so people will not easily access the [personal information of peoples and they cannot hack the system of some other peoples. When privacy settings are strong, it can prevent cybercrime on social media, because no one can easily access the system and unauthorized persons cannot access the personal information without their consent.

Unique password: making a unique password is one of the mitigating factors of cybercrimes in social media. When people make a unique password, no one can easily hack the system, and an unauthorized person cannot steal your personal information from your social media accounts.

Importance of digital literacy and awareness: in this modern time lots of people are still not aware about cybercrimes and other personnel easily make a fool of those persons and access all the personal details, because of lack of awareness and lack of digital literacy.

Legal regulatory measures: there is a need to make some legal provisions for preventing cybercrimes on social media. The Central government passed an Act named “The Information Technology Act, 2000” which basically talks about the electronic commerce, cybercrime, electronic governance and so on which is based on electronic media. Central government also makes cybercrime punishable under the Act of “Bharatiya Nyay Sanhita, 2023”, which is also passed by the central government.

SOME RELEVANT PROVISIONS OF “THE INFORMATION TECHNOLOGY ACT, 2000”

Section 43 of “The Information Technology Act, 2000” talks about the [penalty and compensation] for damages to computer, computer system, etc.—if any person without permission of the owner or any other person who is incharge of a computer, computer system or computer network, - accesses or secures access to such computer, computer system or computer network [or computer resource];he shall be liable to pay damages by way of compensation to the person so affected⁶.

Section 66B of “The Information Technology Act, 2000” talks about the punishment for dishonesty receiving stolen computer resource or communication device- whoever dishonestly received or retains any stolen computer resource or communication device knowing or having reason to believe the same to be stolen computer resource or communication device, shall be punished with imprisonment of either description for a term which may extended to three years or with fine which may extended to rupees one lakh or with both⁷.

Section 66C of “The Information Technology Act, 2000” talks about the punishment for identity theft- whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may be extend to rupees one lakh⁸.

⁶ Section 43 of “The Information Technology Act, 2000”

⁷ Section 66B of “The Information Technology Act, 2000”

⁸ Section 66C of “The Information Technology Act, 2000”

Section 66D of “The Information Technology Act, 2000” talks about the punishment for cheating by personation by using computer resource- whoever, by means for any communication device or computer resource cheats by personating, shall be punished with imprisonment of either description for a term which may be extend to three years and shall also be liable to fine which may extend to one lakh rupees⁹.

Section 66E of “The Information Technology Act, 2000” talks about the punishment for violation of privacy- whoever, intentionally or knowingly captures, publishes or transmits the image of a privacy area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or both¹⁰.

Section 66F of “The Information Technology Act, 2000” talks about the punishment for cyber terrorism- whoever commits or conspires to commit cyber terrorism shall be punishable with the imprisonment which may extend to imprisonment for life¹¹.

Section 67 of “The Information Technology Act, 2000” talks about the punishment for publishing or transmitting obscene material in electronic form, shall be punished on first convention with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the second or subsequent conviction with imprisonment of either description for a term which may be extend to five years and also with fine with may extend to ten lakh rupees¹².

Section 67A of “The Information Technology Act, 2000” talks about the punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form- shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may be extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may be extend to seven years and also with the fine which may extend to ten lakh rupees¹³.

Section 67B of “The Information Technology Act, 2000” talks about the punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form- shall be punished on first convention with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the second or subsequent conviction with imprisonment of either description for a term to ten lakh rupees¹⁴.

SOME RELEVANT PROVISIONS OF “BHARATIYAN YAYA SANHITA, 2023”

Section 77 of “Bharatiya Nyaya Sanhita, 2023” talks about the voyeurism- whoever watches, or captures the image of a women engaging in a private act in circumstances where she should usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished for first convention with imprisonment shall not be less than one years and shall also liable for fine and in subsequent conviction shall not less than three years and which may be extend to seven years, and shall also liable for fine¹⁵.

⁹ Section 66D of “The Information Technology Act, 2000”

¹⁰ Section 66E of “The Information Technology Act, 2000”

¹¹ Section 66F of “The Information Technology Act, 2000”

¹² Section 67 of “The Information Technology Act, 2000”

¹³ Section 67A of “The Information Technology Act, 2000”

¹⁴ Section 66B of “The Information Technology Act, 2000”

¹⁵ Section 77 of “Bharatiya Nyaya Sanhita, 2023”

Section 78 of “Bharatiya Nyaya Sanhita, 2023” talks about the stalking- any man who- follows a women and contact, or attempt to contact such women to foster personal interaction repeatedly despite a clear indication of disinterest by such women; or monitors the use by a woman of the internet, e-mail or any other form of electronic communication, commits the offence of stalking, shall be punished on first conviction with imprisonment of three years and shall also be liable for fine and second or subsequent time may be extend to five years, and shall also be liable for fine¹⁶.

Section 75 of “Bharatiya Nyaya Sanhita, 2023” talks about the harassment- a man committing any of the following acts: physical contact and advances involving unwelcome and explicit sexual overtures; or a demand or request for sexual favour; or making sexually coloured remarks, showing pornography against the will of a woman, shall be guilty of the offence of sexual harassment and shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both¹⁷.

Section 318 of “Bharatiya Nyaya Sanhita, 2023” talks about the cheating- whoever cheats and thereby dishonesty induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine¹⁸.

Section 303 of “Bharatiya Nyaya Sanhita, 2023” talks about the theft- whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both and in case of second or subsequent conviction of any person under this section, he shall be punished with rigorous imprisonment for a term which shall not be less than one year but which may extend to five years and with fine; shall not be less than one year but which may extend to five years with fine¹⁹.

THE ROLE OF SOCIAL MEDIA PLATFORMS

In today's time the role of society is multifaceted, it works in all aspects like: professional, personal, societal, political, economical as well as educational aspects. Through social media we can communicate with other peoples, learn lots of things, gain knowledge and also it can support us financially. Social media has both advantages as well as disadvantages. The only things that matter is awareness, literacy regarding cybercrimes. If people are aware about cybercrimes so, they will not become a victim of cybercrime also they can safe not only yourself from cybercrime but they can talk and talk about their neighbour, relatives as well as friends, so they all are also aware about cybercrime and they can easily handle these kinds of problems. Social media have lots of advantages like: they can connect with other peoples, have opportunities related to marketing and business, spread awareness and information, offer free learning resources, online courses and so on, as well as provide a platform for entertainment of the people. Social media also has disadvantages like: spread misinformation, leak personal information, addiction with social media, some time effect on mental health, there is concern about the infringement of privacy and so on. Social media have both positive as well as negative impact but there is a need for balancing the benefits and risks of social media, if people are able to balance it then social media will not create any problem in their life.

¹⁶ Section 78 of “Bharatiya Nyaya Sanhita, 2023”

¹⁷ Section 75 of “Bharatiya Nyaya Sanhita, 2023”

¹⁸ Section 318 of “Bharatiya Nyaya Sanhita, 2023”

¹⁹ Section 303 of “Bharatiya Nyaya Sanhita, 2023”

CONCLUSION

Social media has both side effects positive as well as negative. In today's life there is a need for balancing the risks and benefits of social media. Through the use of social media people are learning the courses and connecting with other peoples, making their personal relations while in other people committing a cybercrime like: cyberbullying, hacking, stalking, harassment and other illegal activities. People are very much addicted to social media so, there is a need to limit the screen time and not oversharing their personal information on social media platforms. The content which is available on social media people should verify that information because it may be fake news and misinformation can be spread on social media platforms. Social media also contributed to the rise of cyber-crime such as cyberbullying, harassment, hacking, phishing, scam, cyberstalking, identity theft, malware attacks and so on. To stop these cybercrimes there is a need for collective responsibility. Through collective responsibility we can protect people from cybercrime. We can conduct seminars and awareness camps through which we can be aware about the cyber-crime and also talk about the laws which are made for protection of peoples from cybercrime. Colleges and universities also teach about cybercrime as well as cyber security so, our young generation will be aware about it and they can also be aware of their family, friends as well as neighbours. By balancing the benefits and risks of social media and by collective responsibility we can create a healthy as well as safe environment in our surroundings.

DIGITAL FORENSIC EXAMINATION OF COUNTERFEIT DOCUMENTS: TECHNIQUES AND TOOLS

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ABSTRACT

This paper provides a comprehensive legal analysis of the digital. It explores the intersection of law and technology in combating document fraud, identifying gaps and inconsistencies in existing laws and regulations. This paper aims to provide a nuanced understanding of the legal context surrounding the digital forensic examination of counterfeit documents, informing legal reform and clarification. By examining the interplay between law and technology, this study contributes to the development of more effective legal strategies and policies in the fight against counterfeit documents. The study identifies gaps and inconsistencies in the law, including the need for clearer guidelines on the admissibility of digital evidence and expert testimony. The research concludes by recommending legal reforms to address these gaps and ensure the effective use of digital forensics in combating document fraud. This research contributes to the growing field of digital forensics and provides valuable insights for legal practitioners, policymakers, and digital forensic experts.

Key words: *Digital Evidence, Counterfeit, fraud, Law and technology, Policymakers*

Introduction

The proliferation of counterfeit documents poses a significant threat to global security, economy, and identity. Counterfeiting has become increasingly sophisticated, leveraging advances in digital technology to produce realistic and convincing documents. Traditional detection methods, reliant on visual inspection and manual verification, are no longer sufficient to combat this growing menace. In response, digital forensic examination has emerged as a critical tool in authenticating documents and identifying counterfeiters.

Digital forensic examination of counterfeit documents involves applying scientific principles and technical expertise to analyze and verify document authenticity. This field combines knowledge from forensic science, computer science, and document analysis to comprehensively understand document security. The increasing prevalence of digital documents has amplified the need for effective digital forensic examination methods.

Despite its importance, digital forensic examination of counterfeit documents faces significant challenges. The lack of standardized protocols and guidelines hinders the effectiveness of digital forensic analysis. Moreover, the constant evolution of counterfeiting techniques and technologies necessitates continuous updates to digital forensic methods. The legal framework governing digital forensic examination also requires clarification, particularly regarding the admissibility of digital evidence.

This research addresses these challenges by comprehensively analyzing the digital forensic examination of counterfeit documents. The study examines existing laws, regulations, and legal principles related to digital forensic examination, identifying gaps and inconsistencies that hinder effective

Jurisprudential Analysis- Legal Standards for Digital Forensics

PREVIEW TO INDIA

In India, combating counterfeit documents involves navigating complex legal reforms. Relevant laws include the Indian Penal Code 1860 which governs fraud and counterfeiting offenses Sections 465-471. The Information Technology Act, of 2000 regulates digital evidence and cybercrimes Sections 65-72. Additionally, the Indian Evidence Act, of 1872, provides guidelines for the authentication and admissibility of electronic records Sections 45, 65, and 65B.

Legally, a "**Document**" encompasses written or printed matter, and visual or audio representations Indian Evidence Act, 1872, Section 3. "**Counterfeit**" refers to a false or altered document intended to deceive or defraud IPC, 1860, Section 465. "**Digital evidence**" includes electronic records, computer output, and digital signatures IT Act, 2000, Section 2(1)(p). Key concepts include intent to defraud, materiality, and knowledge of document falsity.

Jurisdictionally, central laws govern interstate and international transactions, while state laws govern intrastate transactions. Cybercrime cells, established under the IT Act, investigate cybercrimes. Emerging issues, such as digital currency, blockchain, artificial intelligence, and machine learning, pose new challenges.

To address these challenges, Indian courts have established guidelines for digital evidence authentication in *Shiv Ratan v. State of Haryana*. The IT Act's Section 65B provides for electronic record authentication. Furthermore, the Supreme Court has emphasized the importance of intent to defraud in establishing counterfeiting offenses in *State of Maharashtra v. Dr. Praful B. Desai*.

India's legal forum for combating counterfeit documents involves a nuanced understanding of relevant laws, regulations, and concepts. Effective prosecution requires careful analysis of digital evidence, intent to defraud and materiality. Ongoing refinement of legal standards and international cooperation are essential in addressing emerging challenges. The jurisprudential framework surrounding digital forensics in combating counterfeit documents necessitates a critical examination of the legal standards governing this field. The admissibility of digital evidence in court proceedings is a critical issue, with the standard for admissibility varying across jurisdictions, but generally requiring that digital evidence be reliable, authentic, and relevant *Daubert v Merrell Dow Pharmaceuticals*.

Courts have established guidelines for the authentication of digital evidence, including the use of hash values, metadata, and expert testimony *United States v Simpson*. However, despite these standards, challenges persist, including a lack of uniformity across jurisdictions, rapid technological advancements outpacing existing legal frameworks, and balancing investigative needs with individual data protection and privacy rights. Emerging trends in digital forensics include the increasing use of artificial intelligence and machine learning, cloud computing, and distributed ledger technology. To address these challenges and trends, ongoing refinement of legal standards is necessary to ensure the integrity and admissibility of digital evidence. This refinement must consider the complexities of digital forensics and the need for clarity and consistency in legal frameworks *American Bar Association, Guidelines for Digital Forensics 2013*. By examining the legal standards governing digital forensics, this research aims to contribute to the development of more effective strategies for combating counterfeit documents.

PREVIEW TO INTERNATIONAL LAWS

International collaboration is essential in the fight against counterfeiting, supported by various treaties and organizations that enhance cooperation among nations. The Berne Convention, established in 1886, sets forth minimum standards for copyright protection, ensuring the safeguarding of literary and artistic creations. Additionally, the treaties under the World Intellectual Property Organization (WIPO), such as the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), both enacted in 1996, foster international cooperation in intellectual property issues. Furthermore, the Paris Convention for the Protection of Industrial Property, initiated in 1883, provides a framework of common regulations for the protection of patents, trademarks, and industrial designs.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS, 1994) establishes baseline standards for the protection and enforcement of intellectual property, including measures against counterfeiting. Various international cooperation frameworks, such as the World Customs Organization (WCO), Interpol, and the World Trade Organization (WTO), enhance collaboration on customs issues, transnational crime, and trade

agreements. The International Chamber of Commerce (ICC) advocates for global cooperation on business and trade matters, particularly in the realm of intellectual property protection.

Additionally, regional initiatives like the ASEAN Working Group on Intellectual Property Cooperation, EU-ASEAN Intellectual Property Rights Cooperation, and the Regional Comprehensive Economic Partnership (RCEP) promote collaboration on intellectual property issues among Southeast Asian nations, between the European Union and ASEAN countries, and within the RCEP area, respectively. These international agreements, organizations, and cooperative frameworks play a crucial role in addressing counterfeiting and advancing intellectual property protection on a global scale.

Admissibility of Digital Forensic Evidence

In India, the admissibility of digital evidence is governed by the Indian Evidence Act, of 1872, specifically Sections 45, 65, and 65B, which establish guidelines for electronic records. The Information Technology Act, of 2000, also plays a crucial role, with Sections 4, 5, and 85 validating electronic records. Supreme Court judgments, such as *Shiv Ratan v. State of Haryana* 2011 and *State of Maharashtra v. Dr. Praful B. Desai* (2003), have further clarified the guidelines for digital evidence.

KINDS OF COUNTERFEIT DOCUMENTS

In counterfeit document cases, various types of digital evidence can be crucial in investigating and prosecuting these crimes. Printer and scanner metadata, for instance, can provide valuable information about the origin and authenticity of a document. This metadata can include details such as the printer model, serial number, and printing date. Image analysis is another critical type of digital evidence, involving the examination of digital images to detect tampering, manipulation, or forgery. This can include analyzing image compression, resolution, and other characteristics to determine if an image has been altered or fabricated.

Additionally, other types of digital evidence can be relevant in counterfeit document cases, such as computer logs, network traffic data, and email communications. These digital artifacts can help investigators track the creation, transmission, and distribution of counterfeit documents, ultimately leading to the identification and prosecution of those responsible. By analyzing these various types of digital evidence, investigators can build a robust case against counterfeiters and protect individuals and organizations from the harm caused by these crimes.

METHODOLOGY OF EXAMINATION

Digital forensic examination methods are crucial in investigating cybercrimes, intellectual property theft, and other digital-related offenses. The use of hashing helps in identifying and verifying the authenticity of digital evidence, while digital imaging enables investigators to preserve and analyze digital data. Digital forensic examination employs various methods to analyze and preserve digital evidence. Hashing creates a unique digital fingerprint for a file or data set, ensuring data integrity and authenticity. Watermarking embeds hidden information into digital data, facilitating copyright protection and ownership identification. Forensic imaging creates a bit-for-bit copy of a digital device or storage media, preserving evidence and enabling analysis. File carving reconstructs deleted or fragmented files from raw data, while data recovery retrieves deleted, corrupted, or inaccessible data from digital devices. Network traffic analysis examines communication patterns, protocols, and data transmissions to identify malicious activity. Memory analysis scrutinizes a computer's memory for artifacts, malware, and evidence, complemented by disk analysis, which examines file systems, partitions, and data on storage media. Email analysis inspects email headers, content, and attachments for evidence and malicious activity, and mobile device analysis examines devices for data, applications, and communication records. These digital forensic examination methods collectively enable investigators to uncover, analyze, and preserve digital evidence, aiding in the prosecution of cybercrimes and resolving complex digital investigations.

ACCEPTANCE IN COURT

To ensure the admissibility of digital evidence, certain criteria must be met. Authenticity is key to ensuring the integrity and reliability of the digital evidence. Relevance is also crucial, establishing a clear connection between the digital evidence and the alleged crime. Maintaining the Chain of Custody is vital, documenting control and possession of the digital evidence. Finally, Expert Opinion may be required, providing testimony to interpret complex digital evidence. Notably, the Supreme Court has clarified that a certificate required under Section 65B(4) of the Indian Evidence Act is a condition precedent to the admissibility of electronic evidence. This emphasizes the importance of proper documentation and verification in the admissibility process. In India, comparable cases such as *State v. Navjot Sandhu* (2003) and *Selvi v. State of Karnataka* 2010 have established significant precedents. The former case reaffirmed the "beyond reasonable doubt" standard, while the latter clarified the admissibility of narco-analysis and brain mapping evidence. Another notable case, *Rajagopal v. State of Tamil Nadu* (1995) dealt with conspiracy and cheating offenses.

Anvar P.V. v. P.K. Basheer 2014 The Supreme Court held that electronic records are admissible as evidence, overruling the previous judgment in the *Navjot Sandhu* case. The court emphasized that the fulfillment of Section 65B requirements is essential for electronic evidence admissibility *. In this case, the court dismissed the appeal due to lack of merit, upholding the respondent's election.

Shafhi Mohammed v. State of Kerala 2012 The Kerala High Court accepted digital evidence in a counterfeit currency case, setting a precedent for digital evidence admissibility in Indian courts. *State of Maharashtra v. Sadashiv M. Munde* (2013). The Bombay High Court relied on digital evidence to establish forgery, demonstrating the growing importance of digital evidence in Indian jurisprudence. The concept of "*United States v. Simpson*" has relevance in Indian law, particularly in cases involving conspiracy, cheating, and wire fraud. While this is a US federal case, its principles have implications for Indian law, especially under the Indian Penal Code, 1860, Sections 120B conspiracy and 420 cheating, as well as the Information Technology Act, 2000, Section 66D wire fraud.

Emerging issues in this context include cybercrime investigations, electronic evidence admissibility, and conspiracy and cheating offenses in the digital context. Understanding the parallels between US and Indian law enhances appreciation for India's criminal justice system. The principles from "*United States v. Simpson*" have significant implications for Indian law, particularly in cases involving conspiracy, cheating, and wire fraud.

Expert Testimony and Digital Forensics

Digital forensic experts play a vital role in investigating counterfeit document cases, providing critical evidence to aid prosecution. Their key responsibilities include examining digital documents for tampering or alteration, identifying the source of counterfeit documents, verifying document authenticity using digital signatures and watermarks, recovering deleted or hidden data from digital devices, and providing expert testimony in court.

To conduct investigations, digital forensic experts employ various techniques such as digital imaging and scanning, and forensic software analysis using tools like:-

- ✚ EnCase and FTK, network and email analysis,
- ✚ cryptographic analysis, and handwriting and typewriting analysis.

Their expertise enhances evidence integrity, improves investigation efficiency, increases prosecution success rates, and deters future counterfeiting. To ensure effective investigations, digital forensic experts must maintain:-

- ✚ chain of custody,
- ✚ use validated tools and methods, ✚ document findings thoroughly,
- ✚ and ensure expert qualifications and objectivity.

Digital forensic experts' specialized knowledge and objective testimony are vital in securing convictions and preventing future counterfeit activities.. By leveraging digital forensic experts' expertise, investigators can effectively combat counterfeit document crimes, protecting individuals, businesses, and governments from financial and reputational harm. Their specialized knowledge and objective testimony are essential in securing convictions and preventing future counterfeit activities.

Indian courts have consistently recognized the reliability and admissibility of digital forensic evidence in criminal investigations. In *State of Telangana v. A. Srinivas* 2020 the Telangana High Court accepted digital forensic evidence to establish involvement in a terrorist organization.

Similarly, in *R. Sridhar v. State of Tamil Nadu* 2020 the Madras High Court upheld a conviction based on digital forensic evidence in a murder case. In *Anvar vs Basheer* the Supreme Court clarified that a certificate under Section 65B is necessary to prove electronic records, and it must accompany the electronic record when produced in evidence. However, there are exceptions, such as when the original device is produced, or when the interest of justice justifies the relaxation of the requirement

Digital forensic experts must possess relevant qualifications and experience to provide credible testimony. In *Sanjiv Kumar v. State of Haryana* 2018 the Punjab and Haryana High Court emphasized the importance of expert qualifications in establishing forgery. Experts must also maintain objectivity and provide unbiased testimony.

Maintaining the integrity of digital evidence throughout the investigation process is crucial. In *Central Bureau of Investigation v. N. Sreenivasan* 2019 the Delhi High Court relied on digital forensic expert testimony to convict the accused in a corruption case, highlighting the importance of chain of custody.

Digital forensic experts must provide transparent and detailed reports, explaining their methods and findings. This ensures accountability and facilitates judicial scrutiny.

Gaps and Inconsistencies in the Law

IDENTIFICATION OF GAPS OR INCONSISTENCIES IN THE LAW REGARDING DIGITAL FORENSIC

A primary concern is the lack of standardization in digital forensic examination procedures and protocols. Currently, there is no uniform standard for conducting these examinations, which can lead to varying quality and reliability of evidence. Furthermore, the legislation addressing the digital forensic examination of counterfeit documents is inadequate. While laws such as the Indian Evidence Act, of 1872, and the Information Technology Act, of 2000, provide some guidance, they do not specifically address the unique challenges posed by digital forensic examination of counterfeit documents. **Another gap** is the limited training provided to law enforcement and judicial officials on digital forensic techniques. This shortage of expertise hinders effective investigation and prosecution of counterfeit document cases. **Data protection** is another area of concern. Guidelines for handling and protecting sensitive data during digital forensic examinations are unclear, potentially compromising the integrity of evidence. Inconsistencies also **exist in admissibility** standards for digital forensic evidence, with different courts applying varying requirements. Conflicting jurisdiction among law enforcement agencies and differing expert qualifications further complicate the issue.

To address these gaps, standardization of protocols and legislation specifically addressing digital forensic examination of counterfeit documents are essential. Regular training for law enforcement and judicial officials, clear data protection guidelines, and international cooperation frameworks are also crucial.

Authentication and verification of digital evidence

Authentication and verification of digital evidence are crucial steps in ensuring the integrity and reliability of digital data in investigations and legal proceedings. Authentication involves verifying the identity and integrity of digital evidence, ensuring it is genuine, has not been tampered with, and is accurately represented. Methods of authentication include hashing, digital signatures, watermarking, and maintaining a chain of custody. Verification, on the other hand, confirms the accuracy and reliability of digital evidence, ensuring it is relevant, reliable, and accurately interpreted.

To verify digital evidence, investigators use various methods, including validation of file formats, analysis of metadata, comparison with known samples, and expert testimony. Best practices for authenticating and verifying digital evidence include using standardized procedures, maintaining a chain of custody, using multiple verification methods, and staying up-to-date with the latest technologies and methods. By following these best practices and using various authentication and verification methods, investigators can ensure the integrity and reliability of digital evidence, ultimately leading to more successful investigations and legal outcomes.

In India, relevant laws include the Indian Evidence Act, 1872, and the Information Technology Act, 2000. The Supreme Court's decision in *Anvar vs Basheer* (2014) clarified electronic evidence admissibility. Internationally, frameworks like ISO/IEC 27037:2012 and the Council of Europe's Convention on Cybercrime (2001) provide guidance.

Privacy concerns and data protection

Privacy concerns and data protection are increasingly important issues in today's digital age. With the rise of technology and data collection, individuals' personal information is at risk of being compromised through data breaches, surveillance, profiling, and identity theft. To address these concerns, data protection measures such as data encryption, access controls, data minimization, and data subject rights are essential. Regulations and laws like the General Data Protection Regulation (GDPR), California Consumer Privacy Act (CCPA), and Data Protection Act (DPA) provide a framework for protecting personal data. Best practices, including transparency, consent, security, and accountability, are also crucial for ensuring the responsible handling of personal data and protecting individuals' privacy rights. Public and private keys are used in asymmetric cryptography to secure online transactions, communication, and data. The public key is used to encrypt data, making it unreadable to unauthorized parties, and to verify digital signatures, ensuring the authenticity of the sender and the integrity of the message. On the other hand, the private key is used to decrypt data that was encrypted with the corresponding public key and to create digital signatures. Together, the public and private key pair enables secure communication over the internet, creates and verifies digital signatures, and encrypts and decrypts data, ensuring confidentiality and security.

ANALYSIS OF THE IMPLICATIONS OF THE GAPS

The gaps in digital forensic examination of counterfeit documents' admissibility standards may lead to the exclusion of crucial evidence, potentially compromising investigations. Moreover, the lack of standardization and expertise may prolong investigations, resulting in delayed or miscarried justice. This, in turn, may lead to increased appeals and reversals, further undermining the integrity of the justice system. The inadequate digital forensic procedures also pose evidentiary challenges, compromising the integrity of evidence. This can have severe consequences, including wrongful convictions or acquittals. Furthermore, the lack of clear guidelines for data protection may compromise the security and authenticity of digital evidence.

For digital forensic practice, the implications are equally concerning. Non-standardized procedures undermine the credibility of expert testimony, while inadequate training has significant implications for legal proceedings. Inconsistent expertise compromises the quality of examinations. This can lead to limited reliability and inefficient investigations, ultimately hindering effective law enforcement.

The consequences of these gaps extend beyond legal proceedings, affecting society and national security. Ineffective investigations embolden counterfeiters, leading to increased economic losses and damage to businesses. Flawed investigations also erode public confidence in the justice system, undermining trust in institutions.

Ultimately, addressing these gaps will have numerous benefits, including enhanced credibility of digital forensic evidence, improved investigation efficiency, increased public trust in justice, reduced counterfeiting, and better national security. By strengthening digital forensic practice and ensuring reliable evidence, we can protect society and uphold justice.

Counterfeiting with digital signatures with reference through real life instances

Forgery with digital signatures is a malicious act that involves creating or altering a digital signature to deceive or mislead others. This can be achieved through various means, including key pair forgery, where a fake public-private key pair is created to impersonate the legitimate owner.

Signature tampering is another method, where a legitimate digital signature is altered or manipulated to change its meaning or content. Additionally, certificate forgery involves creating a fake digital certificate to associate a public key with a false identity. The consequences of forgery with digital signatures can be severe, resulting in financial loss through unauthorized transactions or transfers, reputation damage to individuals or organizations, and legal implications that can lead to penalties and lawful considerations.

One notable instance was the Stuxnet worm in 2010, where hackers used forged digital certificates to spread the malware, targeting industrial control systems. Similarly, in 2011, the Dutch certificate authority DigiNotar was hacked, resulting in the issuance of forged digital certificates for prominent domains like Google and Facebook. The Flame malware in 2012 also employed forged digital certificates to disguise itself as legitimate software updates.

In 2013, leaked documents revealed the NSA's Quantum Insert program, which utilized forged digital certificates to intercept and manipulate internet traffic. Lenovo's Superfish scandal in 2015 involved the installation of adware on laptops, which used forged digital certificates to intercept and inject ads into secure websites.

The WannaCry ransomware in 2017 spread using forged digital certificates, infecting vulnerable systems. Furthermore, the CCleaner malware in 2017 used forged digital certificates to disguise itself as legitimate software. These instances underscore the risks and consequences of forgery with digital signatures, emphasizing the importance of secure digital certificate management and verification.

Control of forgery

Controlling forgery with digital signatures, it's essential to implement robust security measures. This includes secure key management practices, such as secure key generation, storage, and management, to prevent unauthorized access. Obtaining digital certificates from trusted and reputable certificate authorities and using secure digital signature algorithms and protocols, like Elliptic Curve Digital Signature Algorithm (ECDSA), are also crucial. Regularly verifying digital signatures, using timestamping services, and monitoring and auditing digital signature usage can help detect any suspicious activity. Furthermore, educating users about digital signature security and using multi-factor authentication can prevent unauthorized access to digital signature keys and certificates. By taking these measures, individuals and organizations can significantly reduce the risk of forgery with digital signatures and ensure the integrity and authenticity of digital communications.

Conclusion

This research has examined the legal framework governing the digital forensic examination of counterfeit documents, highlighting the complexities and challenges in this field. The analysis reveals that existing laws and regulations provide a foundation for addressing digital forensic evidence, but gaps and inconsistencies remain. *How do existing laws and regulations address digital forensic examination of counterfeit documents, and what gaps or inconsistencies need to be addressed?* In answering the above-mentioned research question few pointers that I found and my hypothesis on it are as follows :

1. Current laws and regulations inadequately address the nuances of digital forensic examination.
2. Admissibility of digital forensic evidence hinges on relevance, authenticity, reliability, and chain of custody.
3. Expert testimony plays a crucial role in digital forensic cases, but qualifications and credentials vary.
4. Gaps in the law hinder the effective prosecution of counterfeit document cases

Gaps that should be addressed :

1. Enact specific legislation addressing digital forensic examination.
2. Develop standardized protocols for digital forensic procedures.
3. Establish training programs for law enforcement and judicial officials.
4. Clarify jurisdictional responsibilities for digital forensic examinations.
5. Harmonize admissibility standards for digital evidence.

It underscores the need for legal reform and clarification to address the evolving landscape of digital forensic examination in counterfeit document cases. By addressing these gaps and inconsistencies, lawmakers and practitioners can strengthen the integrity of digital forensic evidence, enhance prosecution efforts, and ultimately combat counterfeit document crimes more effectively.

REFERENCES

JOURNALS AND ARTICLES

- ✓ "Digital Evidence Admissibility in Indian Courts: A Critical Analysis" by R. K. Sharma and S. K.
- ✓ Treadwell, J., From the Car Boot to the High Street: The Rise of Singh (2018)
- ✓ I. Breeze, J., 'Document Counterfeiting: A Growing Threat' (2019) 64(4) Journal of Forensic Sciences 931.

ONLINE RESOURCES

- ✓ www.casemine.com
- ✓ www.barandbench.com

- ✓ *indiankanoon.org*
- ✓ *legal-wires.com*
- ✓ www.scconline.com

STATUTES

- ✓ *Indian Penal Code, 1860*
- ✓ *Indian Evidence Act, 1872*
- ✓ *Code of Criminal Procedure, 1973*
- ✓ *Information Technology Act, 2000*
- ✓ *Digital Personal Data Protection Act 2023*

BOOKS

- ✓ *Criminal procedure-R.V Kelkar*
- ✓ *The law of evidence - DR. Avtar Singh*
- ✓ *Text book on cyber law – Dr. Bhagyashree A. Deshpande*

JUDICIAL ACTIVISM IN INDIA: A CRITIQUE

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ABSTRACT

Judicial activism is an ever-evolving concept that serves as a powerful tool. The paper analyzes the role and impact of judicial activism in India while focusing on the framework of Indian Constitutions, historical evolution and its relevance nowadays. It further explains the reasons for rise to the concept of judicial activism and delves into how the judiciary takes a proactive role in upholding principles of constitution and protecting rights of citizens. Judicial activism is rooted in the principle of checks and balances and serves as a mechanism for courts to ensure that justice, equality, liberty and fraternity are maintained. The genesis of this activism can be traced from the landmark case of *Marbury v. Madison* from the United States and how it influenced Judicial Activism in India is also discussed in the paper for example expanding protection of human and environmental rights etc. The paper also analyses how Public Interest Litigation plays a significant role in expanding judicial activism allowing the judiciary to take a proactive stance in addressing grievances of the underprivileged and marginalized. The paper also analyses the landmark cases demonstrating their role in expanding judicial activism. Further, the paper also delves into the balance between judicial overreach and judicial activism, while emphasizing the importance of separation of powers. While judicial activism has positively impacted various legal areas, including human rights and environmental law, but it has potential to encroach on legislative and executive domains and hence it necessitates a cautious approach as judiciary not striking the balance can be detrimental and a balanced approach is also necessary for preserving democratic ethos of India.

Key words: *Marginalized, Checks and balances, Human Rights, Overreach, Environmental Rights.*

Introduction

According to the Indian Constitution, the State is required to maintain equality, liberty, equality, justice, and fraternity prevail in the nation¹. There is no absolute power given to anyone in the Indian Constitution, there are proper checks and balances, and to restrain the states from escaping its responsibilities, Indian Constitution also gives power to courts, to review the state action as the judicial system in India occupies an important place.

Judicial Activism is a one of the powerful weapons for keeping this check and balances. The genesis of Judicial activism evolved from the United States in the case of *Marbury v. Madison* in which the US apex court held that “*it is emphatically the province and duty of the judicial department to say what the law is.*” It is often said that Judges need to exercise caution and boldness in different situations. Judicial activism helps in various dimensions, Judiciary has immensely helped in protection of human and environmental rights, further Judiciary also has the responsibility to review all government actions. But amidst its laudable objectives judicial activism is also criticised as sometimes it is associated with concerns of judicial overreach and sometimes encroaching the domains of executive and legislative branches. It depends on how to rightfully strike balance between judicial activism to prevent going towards judicial overreach.

JUDICIALACTIVISM

A. MEANING OF JUDICIALACTIVISM

The term, '*judicial activism*' was coined by historian Arthur Schlesinger, Jr in 1947. According to Black Law Dictionary, judicial activism is defined as, “*a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent*”. The learned scholar of constitution, David A. Strauss, explained Judicial activism in three forms, “*the act of toppling of established laws as unlawful and unconstitutional, overruling judicial point of reference., Ruling contrary to*

¹ The Constitution of India 1950, Preamble.

formerly issued established interpretations” Judicial activism is the term used to describe the judiciary's proactive involvement in safeguarding citizens' rights. As the courts today are active but have a positive affirmative action, by issuing orders and decrees direct remedial actions². The concept of Separation of Powers has a pivotal position in the administration of the country and Judiciary is a separate organ from the executive and the legislative bodies. Judges like P.N. Bhagwati, O. Chinnappa Reddy, D.A. Desia, and V. K. Krishna Iyer were the people who established the foundation of the idea of judicial activism³. In India, Public interest litigation (PIL) gave judicial activism in India a humanistic dimension by providing relief to the poor and marginalized and by facilitating access to the legal system. Courts will not bother with the formalities when accepting a postcard or postal letter addressed to them in order to start prerogative writs. By permitting civic-minded individuals to bring public matters before the court, the hon'ble apex court of India eased the strict interpretation of loci standi. It was beneficial as it opened the doors for many public-spirited individuals/NGO's who through their efforts requested judicial action to safeguard their rights, improve the conditions of the poor, protect the environment etc⁴. As a result, PIL has significantly improved, for instance, since 1977, there have been more PIL cases⁵. In India, judicial activism has flourished and gained a great deal of public support. For instance, in the *Kesavananda Bharti* case, the court held that the basic structure of the constitution cannot be tampered with. There are few conflicts with this judicial activism, as there are chances of conflict and strain between the judiciary and the other state agencies because of this activist approach.

B. CONCEPT OF JUDICIAL REVIEW

The process by which a superior court reviews an inferior court's decision or sentence is judicial review. It is controversial to conduct judicial review of legislative or executive activities as opposed to judicial review of judicial proceedings. Some say that this power comes with *article 13* of the constitution as Judicial review as it is evoked when anything violates fundamental rights. Judicial Review can be classified into three categories, as it judges have a duty to safeguard the proper balance of power, as well as people' rights to life and liberty and to the protection of fundamental rights. The three types are – 1) Review of legislative actions, 2) review of judicial decisions and 3) review of administrative actions. There are come set of standards for judicial review, for instance, unreasonableness, in the case of *R v. Tower Hamlets London Borough Council, ex p Chetnik Developments Ltd*⁶, the court held that “*Once that question is answered in favour of the local authority, it may still be possible to say that although the local authority had kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere*”. The test of proportionality was seen in the case of *K. S Puttaswamy v. Union of India*⁷ it was held that, “*legitimate State interest ensures reasonable tailoring*”? *There is a minimal intrusion into the privacy and the law is narrowly framed to achieve the objective. Here the Act is to be tested on the ground that whether it is found on a balancing test that the social or public interest and the reasonableness of the restrictions outweigh the particular aspect of privacy, as claimed by the petitioners*”. Example of Judicial review of legislative action, including validating statutes, in the case of *Madras Bar Association v. Union of India*⁸ there were several principles laid down, that includes, “*The effect of the judgments of the Court can be nullified by a legislative act removing the basis of the judgment. Such law can be retrospective. Retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution.*” It can be concluded that Judicial review is done in

² R Shunmugasundaram, “Judicial Activism and Overreach in India”, Winter 2007, Issue 72, Amicus Curiae, <https://api.core.ac.uk/oai/oai:sas-space.sas.ac.uk:1719> > accessed 15 June 2024.

³ Manoj S. Mate, “The Variable Power of Courts: The expansion of Power of Supreme Court of India”, University of California, Berkeley.

⁴ Iuris Jura, “A critical Analysis on the Growth of Judicial Activism in India”, 27 February 2023m <https://www.iurisjura.com/post/a-critical-analysis-on-the-growth-of-judicial-activism-in-india> > accessed on 10 June 2024.

⁵ *Ibid.*

⁶ *R v. Tower Hamlets London Borough Council*, [1988] AC 858, 873.

⁷ *K. S Puttaswamy v. Union of India*, (2019) 1 SCC 1, 491.

⁸ *Madras Bar Association v. Union of India*, 2021 SCC OnLine SC 463.

various matters including economic matters, policy questions, national security etc, elections, environmental matters.

JUDICIALACTIVISMANDITSIMPACT

A. IMPACT OF JUDICIALACTIVISM ON SEPERATION OF POWER IN INDIA

Indian Constitution ensures the system of checks and balances, there are instances when judiciary directed parliament to act in certain manner in the landmark of *Marbury v. Madison*⁹ the chief Justice of Supreme Court John Marshall reiterated the American Supreme Court's authority to rule against the state and invalidate an act of congress. In India there are many a times conflict between both the organs of the government, in the landmark case of *Kesavanada Bharati v. State of Kerala*¹⁰ propounded the basic structure doctrine that means parliament can amend any part of the constitution, but such amendment cannot change the constitution's basic structure, in the case of *Maneka Gandhi v. Union of India*¹¹, where the court expanded the horizon of Article 21 of the Constitution, and stated that life and personal liberty had wider meanings, the court highlighted the principle of due process of law, in the case of *Vishal Jeet v. Union of India* the court held that “*Judges must be sometimes cautious and sometimes bold. Judges must respect both the traditions of the past and the convenience of the present. Judges must reconcile liberty and authority, the whole and its parts.*” Judicial activism to an extent is good, as court cannot remain silent and be a mute spectator, when there is blatant misuse of law, or when laws are not enforced, the intervention of judiciary is necessary or else it will be treated to be an inactive judiciary, it is like comparing a body without a brain to a without a functional judiciary in a democracy¹².

B. LEGISLATION AND JUDICIALACTIVISM

Judicial activism has also affected the laws prevalent in the society. In the case of *independent thoughts v. Union of India*¹³ the hon'ble apex court, declared it unlawful for a husband to have sex with a wife who is under 18 years of age. In simple terms, it eliminated the husband's protection under Article 375, paragraph 2 of the IPC, which allowed him to have intercourse with his minor wife as long as she was under 15 years old. It will constitute rape afterwards. Further, in case of *Shayara Bano v. Union of India*¹⁴, in this landmark judgement supreme court declared Talaq – e – biddat a common practice among Muslims as unconstitutional, according to the Supreme Court, Triple Talaq infringed upon Muslim women's fundamental rights, guaranteed under article 14, 19 and 21 of the constitution, further in the case of *Shreya Singhal v. Union of India*¹⁵ the hon'ble apex court struck down section 66A of the Information Technology Act, as it was against the constitutional spirit. Hence, Judicial activism also reviews the laws if necessary and struck down things that infringes fundamental rights.

JUDICIALACTIVISM IN DIVERSE LAW AREAS

A. JUDICIALACTIVISM IN ENVIRNOMENTAL LAW

The victims' rights are safeguarded using judicial activism. The importance of environment protection was bought by the Public Interest Litigation (PIL). It was also bought under the purview of article 21 of the Indian constitution, in the case of *Subhash Kumar v. State of Bihar*¹⁶ the court held that, “*the right to life is a fundamental right under Article 21 of the Constitution and it includes right of enjoyment of pollution free water, air for full enjoyment of life and that if anything endangers or impairs the quality of life, in derogation of laws, a citizen has a*

⁹ Ibid Note 2.

¹⁰ *Kesavanada Bharati v. State of Kerala*, (1973) 4 SCC 225.

¹¹ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

¹² Kallanda Sukumaran, *Indian Judiciary: Problems and Perspectives* [1997] C.U.L.R. 271.

¹³ *Independent thoughts v. Union of India*, (2017) 10 SCC 800.

¹⁴ *Shayara Bano v. Union of India*, (2017) 7 SCC 192.

¹⁵ *Shreya Singhal v. Union of India*, AIR 2015 SC 1523.

¹⁶ *Subhash Kumar v. State of Bihar*, AIR 1996 SC 1446.

right to have a recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.” There is also relaxation in terms of the principal of locus standi, in filing of PIL as well. Article 51A (g) also a fundamental duty of every citizen, which sums up as every citizen's primary responsibility to protect the environment. In the case of *Narmado Bachao Andolan v. Union of India & Ors*¹⁷. the hon'ble apex court held that article 21 of the Indian Constitution, that guarantees the right to life, included the right to clean and pure water. For example, in the case of *Oleum Gas Leak*, concept of “absolute liability” was established¹⁸. Concepts such as Polluter principle are also coming into being. Hence, it can be seen that various notable judgements by Indian Judiciary, supports environmental protection laws.

B. JUDICIALACTIVISM IN HUMAN RIGHTS

Human rights are rights that are fundamentally inherent in nature, they are given to us just by the virtue of because we are human, human rights have greatly evolved because of using of judicial activism, Sec 2(d) of NHRC, defines human rights, which according to the definition means, “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.” There are different instruments, documents & statues that recognize human rights. In the case of *Maneka Gandhi v. Union of India*¹⁹ In this case the judiciary extended its power of interpretation and ruled that the right to travel abroad is a basic right, and so should not be deprived unless by procedure prescribed by law. This case was the beginning of long line extensions of meaning of words, 'life' & 'liberty'. In the case of *Re Ramlila Maidan*²⁰ In the hon'ble apex court held that the right to sleep is a fundamental human right under Article 21 showing that the court widely interpreted aspects of life, the court though observed that this interpretation only impose a negative duty on state and do not impose a positive duty ensuring that every citizen can sleep. Further in the case of, *Olga Tellis v. Bombay Municipal Corporation*²¹ The court expanded the scope of life that also included livelihood, as it is part and parcel of the constitutional right to life. A landmark case with respect to privacy is *Justice K.S Puttaswamy (Retd.) and Anr v. Union of India & Ors*²². In this case the court held that the right to privacy is also a fundamental right under article 21 of the Indian Constitution. Even in the case of *T.V. Vantheeswaran v. State of Tamil Nadu*²³ The rights of prisoners were initially brought to the notice of the Indian Supreme Court; the court held that convicts could use their fundamental right to freedom of imprisonment at any time, in accordance with Articles 14, 19 and 21 of Part III of the Indian Constitution. The court further emphasized that fundamental rights cannot be restricted by prison walls. Hence, growth of judicial activism helped to broaden the horizon of human rights and safeguard them.

JUDICIALACTIVISM VIS - A - VIS PIL

The scope of judicial activism broadened after the coming of PIL as it released locus standi criteria, from the case of *S.P Guta v. UOI*²⁴ famously known as *Judges transfer case* in the case, it was ruled that any member of the public with sufficient interest could file a suit seeking judicial redress of a public inquiry resulting from a duty breach or a violation of a law or constitutional provision. The suit would seek to enforce the public duty in question and ensure that the law or constitutional provision is followed. Further in the case of *Guruvyar Devaswom Management Committee v. C.K. Raian*²⁵ the court explained that “the court exercising judicial review power was shocked to find that the poorest, poor, the deprived, illiterate, unorganized labor departments in

¹⁷ *Narmado Bachao Andolan v. Union of India & Ors.*, AIR 2000 SC 3751.

¹⁸ Kanaiya Singhal, “Judicial Activism vis – a – vis environmental Law” IIPA digest, July – September 2022, <https://www.iipa.org.in/cms/public/uploads/469441668416783.pdf> > accessed on 2 August 2024.

¹⁹ Ibid Note 9.

²⁰ *Re Ramlila Maidan*, (2012) 5 SCC 1.

²¹ *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180.

²² *Puttaswamy (Retd.) and Anr v. Union of India & Ors.*, (2017) 10 SCC 1.

²³ *V. Vantheeswaran v. State of Tamil Nadu*, AIR 1983, SC 361.

²⁴ *S.P Guta v. UOI*, 1981 Supp (1) SCC 87.

²⁵ *Guruvyar Devaswom Management Committee v. C.K. Raian*, (2003) 7 SCC 312.

urban and rural areas, women, children, ignorant, poor and illiterate and other oppressed disabled persons cannot access justice or be deprived of judicial deprivation. In order to achieve complete justice for the above categories of people, the new branch of litigation is called 'social interest litigation' or 'public interest litigation.'”

NAVIGATING THE FINE LINE: JUDICIAL ACTIVISM AND THE RISKS OF JUDICIAL OVERREACH

A. RESTRAINT ON POWER OF JUDICIARY

Judicial activism is good to an extent but when Court exercises its power more than needed, is called Judicial Overreach. It is process by which the court goes beyond its jurisdiction and start interfering in areas that fall within the legislative and/or executive's power. This indicates that the court has transgressed the concept of the separation of powers by taking roles related to policy formation, law enforcement, and lawmaking²⁶. Former, Prime Minister Dr. Manmohan Singh, *The line between Judicial activism and judicial overreach is a thin one. A takeover of the elements of another organ may turn into an instance of over-reach.*²⁷ Judiciary exercising its authority and keeping a check and balances is not problematic but when judiciary steps into the domain of executive and legislature it raises concerns, Chief Justice Neely of West Virginia, in the case of Aravali said that “Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like Emperors.”

B. BALANCE BETWEEN JUDICIAL ACTIVISM AND JUDICIAL OVERREACH

There is a thin line of boundary between judicial activism and judicial overreach. Judicial Overreach, to put it simply, is the state in which judicial activism crosses over into judicial adventurism. The court may interfere with the regular functioning of the legislative or executive branches of government when it overreaches its authority. Judicial Activism helps to enforce things that are beneficial for society. In the landmark case of *Kesavananda Bharati v. State of Kerala* although this case, directly did not relate to judicial activism, but the concept of 'basic structure doctrine', court in this case interpreted constitution based on legislative intention behind it, and secondly works for the protection of the constitution, mostly of its basic structure doctrine, so this case was the first example of where the court extended its power of interpretation breaching the line of traditional functions but for good reason. But when the court breaches the line from judicial activism and goes beyond when it meddles with the concepts of separation of powers and checks and balances, it falls into Judicial Overreach. Judicial Overreach is highly undesirable under Indian democracy, as it hampers the spirit of separation of power²⁸. Judiciary is not a despotic branch of state in case of *P Ramachandran Rao v. State of Karnataka*²⁹, the court observed that, “the Supreme Court does not consider itself to be an imperium in imperio or would function as a despotic branch of the State.” in the case of *State of Kerala v. A Lakshmi Kutty*³⁰ the hon'ble SC has themselves recognized that “Special responsibility devolves upon the judges to avoid an over activist approach and to ensure that they do not trespass within the spheres earmarked for the other two branches of the State.” Hence, according to the constitution judges should not enter the legislative and the executive branch. As they do not have democratic mandate, nor the practical acumen to comprehend the requirements of various segments of society, they cannot operate the government as it was not the intention of the founders of the constitution³¹.

²⁶ Brief, “Judicial Overreach”, Helen Suzman Foundation, hsf.org.za/publications/hsf-briefs/judicial-overreach> accessed on 8 June 2024.

²⁷ Speaking at the conference of Chief Ministers and Chief Justices held in New Delhi on April 08, 2007.

²⁸ Prime Legal, “Difference between Judicial Review, Judicial Activism and Judicial Overreach”, 14 February 2023, <https://primelegal.in/2023/07/16/evolution-of-judicial-activism-in-india/>> assessed on 13 June 2024.

²⁹ *P Ramachandran Rao v. State of Karnataka*, (2022) 4 SCC 578.

³⁰ *State of Kerala v. A Lakshmi Kutty*, (1986) 4 SCC 632.

³¹ *Ibid* 2.

CONCLUSION

Judicial activism is a step to address occasional irregularities. There is no limit to the definitions and interpretations of judicial activism. The transformation of Indian Courts from restraint approach to a proactive role was a complex process. The Indian Judiciary through Judicial activism has worked in different areas to ensure justice is served, judiciary has done a commendable job in raising awareness and bringing attention to importance of Human Rights, through PIL courts have heard various issues in different manners³². The common people many a time face injustices committed against them. It is a process to remove such occasional aberrations, but the judiciary cannot abolish or meddle with other institutions, including the executive and legislative branches, in the name of Judicial activism as it is not the constitutional principle³³. The apex court recently, in the case of *Indian Drugs & Pharmaceuticals Ltd v. Workmen*³⁴ that “the Supreme Court cannot arrogate to itself the powers of the executive or legislature... There is a broad separation of powers under the Constitution of India, and the judiciary, too, must know its limits.” So, though Judicial activism is important as it helps the judiciary to grow and improves the quality of justice and help people to have faith in judiciary as the laws made by the legislature cannot be relied upon³⁵. But it has to be used with caution so that judicial activism cannot become judicial overreach, and so the right balance can be struck between judicial activism and judicial restraint.

³² Dr. Ausaf Ahmad Malik, “Human Rights and Judicial Activism in India”, International Journal of research in social sciences, Vol.11 Issue, 08 August 2021, [358581805 Human Rights and Judicial Activism in India > assessed on 2 June 2024.](#)

³³ Gaurav Mittal & Gargi Tyagi, “Is Judicial Activism a threat to the doctrine of separation of Powers” Journal on Contemporary Issues of Law, Volume 3 Issue 9.

³⁴ (2007) 1 SCC 408.

³⁵ Nitu Mittal & Tarang Aggarwal, “Judicial Activism in India”, IJLPP (2014 – 15) Vol 1.1, https://docs.manupatra.in/newline/articles/Upload/3D22F96F-B1FF-4D03-B90E-B0B2690BD83E.1-g__constitution.pdf > accessed on 5 June 2024.



