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ABOUT VISHWAKARMA UNIVERSITY LAW JOURNAL

The Vishwakarma University Law Journal (VULJ) is a biennial, blind peer-reviewed academic journal dedicated to fostering high-quality legal scholarship and contributing to contemporary legal discourse. Published by the Department of Law, Vishwakarma University, the journal provides a platform for legal practitioners, academicians, research scholars, and policymakers to engage in rigorous academic inquiry and thought leadership in the field of law.

Since its inception, VULJ has successfully published seven issues, featuring insightful contributions from distinguished legal professionals, eminent academicians, and emerging scholars from across the globe. The journal welcomes interdisciplinary perspectives, addressing crucial legal challenges, emerging jurisprudence, and the evolving interface between law and society.

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By facilitating critical discussions and bridging the gap between academia and practice, VULJ aspires to make a meaningful impact on legal education, policy development, and justice delivery. The journal serves as a vital resource for legal researchers, practitioners, and students, reflecting Vishwakarma University's commitment to academic excellence and the advancement of legal studies.

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FOREWORD

It is with great pride and enthusiasm that we present Volume 4, Issue 2 of the Vishwakarma University Law Journal (VULJ), continuing our commitment to fostering rigorous academic discourse and advancing legal scholarship. This issue brings together a compelling collection of research articles that address some of the most pressing and evolving challenges in the legal landscape today.

As technology continues to reshape our world, the legal domain must evolve in tandem. The opening article, *Emergence of Deep Fakes and Generative Artificial Intelligence: A Techno-Legal Analysis in India* by Dr. Praveen Kumar, critically examines the disruptive potential of AI-generated content, highlighting the regulatory gaps and ethical concerns surrounding deep fakes in the Indian context. This timely study underscores the urgent need for a robust legal framework to mitigate the risks associated with generative AI.

The intersection of law and real estate is explored in *Real Estate Dispute Resolution: A Study of Remedies Available under Real Estate Regulation Act and Consumer Protection Act* by Dr. Gurmanpreet Kaur and Dr. Parineeta Goswami. The article provides an insightful comparative analysis of the dispute resolution mechanisms available to homebuyers and developers, shedding light on their effectiveness in ensuring justice and consumer protection.

Forensic psychiatry plays a crucial role in understanding criminal behavior and shaping judicial outcomes. In *Exploring Behavioral Dynamics through Forensic Psychiatry in the Indian Criminal Justice System*, Dr. Sonia B. Nagarale delves into the psychological underpinnings of crime, offering a unique perspective on how forensic psychiatry aids in the administration of justice.

Insurance law is fundamental to economic stability, yet it is fraught with complexities that can lead to distortions and misrepresentation. Dr. Neeta Ahir, in her article *Insurance Law's Essential Distortion and Misrepresentation*, critically examines these legal anomalies, highlighting the need for greater transparency and consumer awareness in the insurance sector.

Environmental law remains a critical area of legal intervention, especially in a rapidly industrializing country like India. Deepak B.D., in *A Critical Analysis of the Legislative Frameworks in Preventing Environmental Pollution in India*, evaluates the effectiveness of

existing environmental regulations, identifying gaps and suggesting reforms for a more sustainable future.

The articles in this issue reflect a rich diversity of legal scholarship, addressing contemporary issues that resonate with policymakers, academicians, and practitioners alike. It is our hope that this volume serves as a catalyst for informed discussions, future research, and impactful legal reforms.

We extend our gratitude to our contributors for their scholarly efforts, our esteemed peer reviewers for their meticulous evaluation, and our editorial team for their dedication in bringing this edition to fruition. As we continue our journey of academic excellence, we invite readers to engage critically with the ideas presented and contribute to the ever-evolving discourse in the field of law.

Dr. Sarika Sagar

Editor-in-Chief

Vishwakarma University Law Journal

Department of Law, Vishwakarma University, Pune

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**EMERGENCE OF DEEP FAKES AND GENERATIVE ARTIFICIAL
INTELLIGENCE: A TECHNO-LEGAL ANALYSIS IN INDIA**

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ABSTRACT

The concept of deep fakes and generative Artificial Intelligence (AI) have received a significant attention in almost developing society across the globe for its advantages and similarly every legal system is trying to overcome increasing instances its abuse. The paper intends to examine the techno-legal aspects of the upcoming developments in Generative Artificial Intelligence and emergence of Deep Fakes across the globe. The paper also aims to analyse the judicial trends in India while adjudicating the matters pertaining to Deep Fakes with reference to recent decided judgements.

Keywords: Deep Fakes, Generative Artificial Intelligence, Cyber Crimes, Frauds, Defamation

INTRODUCTION

The days of human interaction in the 'real' world are long gone. According to a study, 502.2 million Indians, or about 77% of the population, use cell phones. India has over 196 million active social network members. Thus, when an act is carried out on Social media intended to hurt society, whether it is fake news or information related to someone's personal life, it can spread like wildfire. Approximately 95% of what the share or view is from unknown sources and thus unconfirmed. This unverified news may easily control and corrupt large groups of people.¹ The increasing application of Generative Artificial Intelligence (AI) in the twenty-first century is driving a shift in society and economy toward more automation, data-driven decision-making, and the incorporation of AI systems into a wide range of industries and economic sectors, affecting the labour market, healthcare, government, business, education, propaganda, and disinformation. The author intends to inquire more about the question of Generative Artificial Intelligence that is it a bane or a boon? On one hand, the primary aim and objective of a legal system is to regulate the advantages of the technology and on the other hand to safeguard the economic, social and political interests of general public.

Generative Artificial Intelligence can be used to enhance teaching-learning process by allowing academicians to adapt their teaching to students' needs using AI-powered educational tools. However, the findings also highlight that AI can be misused to overcome moral constraints. Overall, Generative AI has the potential to be an effective research tool, provided the same shall be used with utmost care and caution. Deep fakes are a kind of Generative AI technology that creates synthetic media like photos, videos, and audios using machine learning algorithms, especially Generative Adversarial Networks (GANs). Deep fakes technology aims to produce extremely lifelike synthetic media that mimics actual people, although with some content manipulation. Two methodologies, Generative Adversarial Networks and Deep Learning, are the foundation of Deep Fakes technology.² Deep Learning is defined as:

“A branch of machine learning that processes and analyses vast volumes of data using Artificial Neural Networks—algorithms that are inspired by the composition and operations of the brain”³.

¹ JOUR, Tengku Mahamad, Tengku Elena, Ambran, Nur, Azman, Nur, Luna, Daina, "Insights into social media users' motives for sharing unverified news", Vol.1, Pg. 18, 2021/11/15

² A. Mitra, S. P. Mohanty, P. Corcoran, and E. Kougianos, "A machine learning based approach for deep fake detection in social media through key video frame extraction," SN Computer Science, vol. 2, pp. 1–18, 2021. ³

³M. R. Shoaib, Z. Wang, M. T. Ahvanooy, and J. Zhao, "Deepfakes, misinformation, and disinformation in the era of frontier ai, generative ai, and large ai models," in 2023 International Conference on Computer and Applications (ICCA), 2023, pp. 1–7

Numerous fields, including computer vision, robotics, speech recognition, and natural language processing, have benefited from the use of Deep Learning. A type of Deep Learning architecture known as Generative Adversarial Networks (GANs) trains on a dataset to produce new, synthetic data that is similar to the original data using two Neural Networks, a Discriminator and a Generator. While the Discriminator evaluates the veracity of the created samples and the actual samples from the training dataset, the Generator produces fictitious samples⁴.

DEEP FAKE AND GENERATIVE ARTIFICIAL INTELLIGENCE TECHNOLOGY

Generative Artificial Intelligence is a regenerative phenomenon of Science & Technology in itself, which leads to the birth of other several innovation technologies such as Deep Fake, Chat-GPT and many more. Generative AI technology is the beginning of a new technological era which needs an effective understanding by the public and law enforcement agencies too.

Generative Artificial Intelligence (AI) refers to:

“The intelligence displayed by machines, especially computer systems. This area of computer science study focuses on creating and analysing tools and software that allow machines to sense their surroundings and use intelligence and learning to make decisions that will increase their chances of accomplishing specific objectives. These devices could be referred to as AIs”⁵.

In order to address the fact that the content is phony, the terms “Deep fake” and “Fake” are combined. Deep is derived from AI Deep-Learning technology, which is a kind of machine learning that comprises many levels of processing. When a Reddit administrator started a subreddit named “Deep-fakes” in 2017 and started uploading videos that employed face swapping technology to include celebrities' likenesses into already-existing pornographic videos, the term “Synthetic Media” first appeared.

A new phenomenon known as “Deep-fakes” has surfaced as a result of the development of AI-based tools (like DALLE-3 and Sora) that can produce images and videos at scale. Deep Fakes are defined as:

⁴Beddhu Murali, “Deep Fake Detection: A Systematic Literature Review”, Feb 2022

⁵ E. Strickland, “Content credentials will fight deep fakes in the 2024 elections,” IEEE Spectrum, 2023.

“Deep-fakes are images or recordings that have been expertly altered and manipulated to falsely portray someone as saying or doing something that they have not actually said or done”⁶.

Deep-fakes have opened up new creative possibilities, particularly in marketing and entertainment, but they may also be abused for negative outcomes like fraud, slander, and fraudulent advertising. There are certain obstacles for the current legal frameworks, such as privacy and consumer law, in addressing these threats.⁷ Deep Fake term has been evolved from the concept of Deep Learning and Fake multimedia files. In other words, Deep Fake is the end product of application of Deep Learning to produce fake multimedia files such as images or videos by using Advanced Generative Modelling techniques such as Face2Face technique. This technique is used for re-enacting facial expressions from a facial image by using computer vision and forming a “Avatar”. Researchers from University College of Berkeley had already introduced a similar technology to alter the appearance of images and videos in 2018. A different team of researchers from the University of Washington put up a plan to sync a video's lip movement to a speech from an external source. Ultimately, the term “Deep fakes” first surfaced in November 2017 to refer to the dissemination of pornographic movies in which the faces of celebrities were replaced with the originals.

In addition to these researchers have also developed several algorithms to build Deep-Fakes of an original audio, video clippings where people will listen to the actual voice of the speakers with an edited script. With such technology, researchers of Deep Fakes have produced motion pictures/videos from an original video with a different content, expressions & movements. These Deep Fakes are so identical and similar to the identity of a person that it has become nearly impossible to check the Deep Fakes and Original files.⁸

Generative AI technology has been developed to mimic any individuals voice and images consistent with the original expressions. Deep Fakes videos are frequently created by overdubbing real. It is quite evident that the media sector will face a significant loss of customer trust due to deep fakes. Deep Fakes have become an easy tool to produce fake news which can bring a threat to the public peace & security by hiking an emergent panic in the society. Deep Fakes may result in to a complete chaotic situation which may result in to an actual threat to

⁶ D. P. Kingma, M. Welling et al., “An introduction to variational auto encoders,” *Foundations and Trends® in Machine Learning*, vol. 12, no. 4, pp. 307–392, 2019

⁷ *Regulating Deep Fakes: Legal and Ethical Considerations Journal of Intellectual Property Law & Practice*, Volume 15, Issue 1, January 2020, pp. 24–31.

⁸ *Ibid.*

the National security in any Country of around the globe. Menace of Deep Fakes have just begun and the global society is getting effected in its day to day life.

INSTANCES OF ABUSE OF GENERATIVE AI TECHNOLOGY & DEEP FAKES

Deep Fake technology creates substantial issues in legal proceedings, notably in criminal cases, with possible consequences for people's personal and professional lives. In most legal systems, the lack of means to authenticate evidence places the burden on the defendant or opposing party to contest manipulation, possibly becomes a widespread problem. To counter this, a suggested rule might require evidence authentication before court admission, possibly through bodies such as the Directorate of Forensic Science Services, albeit this would incur economic costs.

Notable instances of abuse of technology are as follows:

- **Pornography:** Deep fakes are most commonly used to create nonconsensual pornographic content. Female celebrities' or ordinary women's faces are transferred onto porn stars' bodies without their knowledge or consent. This is a violation of privacy and harms one's reputation. For instance, an accused was imprisoned in 2019 for creating deep fakes pornography of his lover in India.⁹
- **Politics:** Deep fakes can disseminate misinformation and propaganda during elections. During the Delhi elections in India, a leader's actual footage was edited to depict him as disparaging his opponents. Such forgeries can destabilize campaigns and harm candidates in elections. If left uncontrolled, political deep fakes could jeopardize elections in any democratic Country.¹⁰
- **Defamation:** This includes several deep fakes videos of important persons of a society including leaders, politicians, judges, celebrities etc. Their facial expressions are modulated to depict a funny or satirical content which is sufficient to defame the person in society. Consequently, several people will be left outrageous and their public image will be

⁹ McGlynn, Clare; Rackley, Erika; Houghton, Ruth, Beyond 'Revenge Porn': Image-Based Sexual Abuse and the Continuum of Harms, *Feminist Legal Studies*, 25(1), 25-46 (2017).

¹⁰ Tyagi, Parth and Bhatnagar, Achyutam, Deep fakes and the Indian legal landscape, *Inform Blog* (July 3, 2020),

destroyed as a result the society will be at peril of destruction because of the abuse of technology.¹¹

- **Fraud:** Furthermore, it's easy to commit a fraud by using Generative AI technology to clone anyone's voice which will be sufficient to impersonate the key individuals of any organization such as CEOs or other officials to obtain critical information. For instance, this technique had already cost €200,000 to a leading energy company in UK in 2019. Deep fakes can potentially influence stock prices by displaying fraudulent business announcements. Financial frauds can disrupt markets and entities within a spur of moment.¹²
- **Punishment:** It is almost impossible to establish that a manipulated image or a Deep Fake video content is an actual statement of fact or a false statement. The defendant may argue that there are evidence that the image is phony, such as context, that a reasonable person would not interpret it as a statement of reality.¹³ This is sufficient to stall the judicial process and to evade from punishment in any judicial system.

Fig. 1: Problems faced due to deep fake across the globe



Source: Europol Report Criminal Use of Deep Fake Technology, 2022

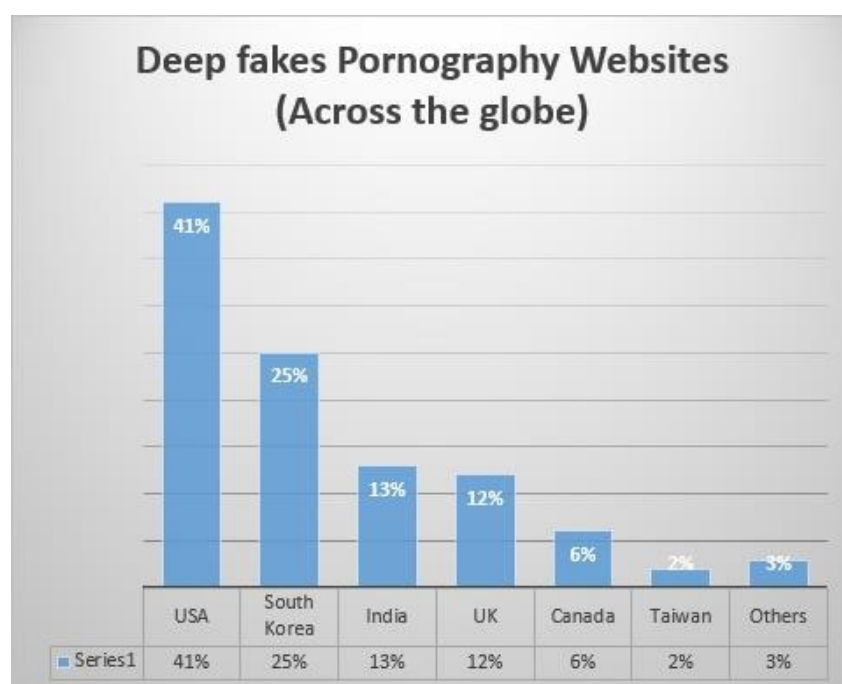
¹¹ Paris, Britt and Donovan, Joan, Deep fakes and Cheap Fakes: The Manipulation of Audio and Visual Evidence, Data and Society Research Institute (2019).

¹² Stupp, Catherine, Fraudsters Used AI to Mimic CEO's Voice in Unusual Cybercrime Case, The Wall Street Journal (Aug 30, 2019)

¹³ Guy Alon, Azmi haider, Hagit helor, "Judicial errors: Fake imaging and the Modern Law of Evidence", UIC Review of Intellectual Property Law, 2022, Pg. 82

The problem of Deep Fake is on the rise across the globe. Countries like China, Indonesia, Turkey, Brazil etc. are at the peril of a complete state of confusion due to this technology. Several other countries which are under developed are at the level of extreme risk in terms of social, economic and political security. Elections in many countries can be easily rigged, Stock market can be easily manipulated by such technology. The author finds an alarming threats to many states in protecting their internal & external security as well.

Chart 1: Deep fakes Pornography Websites Across the Globe¹⁴



Source: Europol Report Criminal Use of Deep Fake Technology, 2022

In reference to the above Chart, United States of America is on the first position in producing Pornographic websites based on Deep Fakes, followed by South Korea and India. Global situation is alarming and several people are being victimised on account of abuse of technological developments. This indicates that there is a dire need to establish a robust mechanism to protect the rights of the citizens across the globe.

¹⁴ Deep Fake Statistics – Current Trends, Growth, and Popularity (December 2023) Justin McGill, May 23, 2024, <https://contentdetector.ai/articles/deepfake-statistics/>

DEEP FAKES & RECENT JUDICIAL TRENDS IN INDIA

A survey by a cyber-security company McAfee has revealed that over 75% of Indians have seen some form of deep fake content every year, with at least 38% having encountered with a deep fake scam. Indian population is moving towards use of Smart Phones, Internet, Computers and Social Media at a very high pace since last two decades. People of all age groups have started working on Internet more often in order to ripe the benefits of the advanced technology by average 06 hours daily (estimated by a report). But due to lack of training and awareness about the challenges, several people circulate the deep fake contents to all of their groups unknowingly, without verifying the source and authenticity. For Instance, In India, the discussion around Deep Fakes gained momentum after a viral clip of actor Rashmika Mandanna went viral in 2023. Eventually, Prime Minister Narendra Modi also warned about the potential harms of technology misuse. Consequently, Central Government has also issued advisories to all the concerned news networks to circulate the credible information only after verification of the facts.

In another incident, Actor Ranveer Singh has filed a complaint over a deep fakes video that allegedly showed him endorsing a political party. The video, which was generated using an AI-enabled tool. He was in an interview with the news agency ANI. In the alleged deep fake, he was seen criticizing the present Govt. about several socio-economic issues in India concluding with a message to the Indian population to elect the Opposition Party in the parliamentary election scheduled in May 2024. Singh's team has registered a First Information Report (FIR) against the handle that promoted the AI-generated video. Aamir Khan, an Indian actor, has never endorsed any political party and has focused on raising awareness through Election Commission public awareness campaigns for past elections.¹⁵

In another incident, a 76-year-old man in India received a video call. He saw the face of a retired senior police officer of UP Police and heard his voice. The police officer was seen asking money from the old man. Consequently, he made payments as per the directions received on his Deep Fake video call, due to fear of the Police atrocities. As a result, the criminals who sent this deep fake, received the money. After knowing the fact that it was a doctored video created by Deep Fake Technology, he approached the Police and an FIR has been registered and a dedicated team was formed to crack the case.

¹⁵ Ranveer Singh Files Police Case After Deep Fake Video Goes Viral, Ranveer Singh Deep Fake Video: “Deep fake se bacho doston (Friends, beware of deep fakes),” he wrote on Instagram after the deep fake went viral. India News Edited by Aditi Gautam Updated: April 22, 2024 5:18 pm IST

In another incident, Mr. Arvind Sharma, a resident of Govind Puram, was contacted by the Fraudsters through a Facebook video call. He saw a nude pic during the call and disconnected the call. Later, he received a video call on WhatsApp from a police officer, threatening him to pay the money else his pic will be made viral on social media. However, instead of paying money, he preferred to file a complaint.¹⁶

Moreover, the Indian Parliamentary election in 2024 was a significant concern due to the potential risks for spreading misinformation online, where a political party already known for violent rhetoric against a specific community, having a stronghold in the country. Whereas, the use of AI-powered video and audio manipulation tools have made it harder to classify certain cases of misinformation. In such situation, dead politicians may be resurrected and famous actors have been pulled into bogus endorsements and the actual malice will be less evident. Such instances of speech which may offend a particular community result in to hateful reaction, leading to riots or internal disturbance in a Country. Generative AI Tools are being used to accelerate the speed of percolation of wrong information in the society within a spur of moment. However, it's the hate speech, which is the primary cause of concern and AI tools are merely adding the fuel to the fire. Another classical example of AI Tools is a Face-Swap video where someone can replace the face of the original speaker and manipulate the words to deceive the audience resulting in to a chaotic situation in the society.¹⁷For instance, a Deep Fake video of Union Home Minister portraying the deceitful statements to abrogate rights of reserved category, made viral and consequently the Maharashtra Youth Congress and 16 others were booked by Mumbai Police under various sections of IPC, 1860 and IT Act 2000 for allegedly creating and sharing that Deep Fake video.¹⁸

In another instance of abuse of technology where Journalist Rana Ayyub was targeted by farright trolls after being morphed into a pornographic clip. This time, Deep Fake technique was used to create fake celebrity pornographic video or revenge porn. Ayyub's face was morphed into the porn actor's images, and the clip was circulated as if she had done the act. She had protested to secure justice to a rape victim in the past. Whereas opposition party leaders were working to save the accused from the judicial grip. They were held responsible for creating deep fake video of the journalist to defame her in the public. Journalist was shocked

¹⁶ Man gets caught in deep fake trap, almost ends life; among first such cases in India, Nov 30, 2023, 11:05:00 AM IST, IST, ECONOMIC TIMES

¹⁷ India's election wasn't the deep fake doomsday many feared, By RUSSELL BRANDOM Russell Brandom is the U.S. Tech Editor at Rest of World. 30 MAY 2024

¹⁸ Amit Shah deep fake video: Case registered against Maharashtra Youth Congress social media handle ,30 April 2024, 14:13 IST, DECCAN HEAD

to see her face in the porn video, which she could tell was not her. She was harassed and had over 100 Twitter notifications sharing the video.¹⁹

INSTANCES OF ABUSE OF DEEP FAKE TECHNOLOGY IN UNITED STATES

Facebook user Mr. Schrems filed a complaint with the Irish data protection authority, claiming that users' data from the European Union had been transferred illegally to the firms of the United States of America. He alleged that this data transfer is a violation of the Data Protection Act of the European Union and a violation of the right to privacy of the users from the European Union. Whereas the authority of Ireland rejected his claim and cited the measures adopted by the European Union to protect the data under the "Safe Harbor Scheme". Aggrieved by the decision of the Irish authority, he preferred an appeal to the Irish High Court. The Irish High Court, after admitting the appeal, referred the matter to the Chief Justice of the European Union for a preliminary examination. His attorney advocated that the "Safe Harbor Agreement" between the European Union and the United States of America must be declared as null and void as it fails to protect the rights of the users. The Chief Justice of the European Union Court seconded his opinion and decided the review of the agreement to protect the data of the users.²⁰

In another case, a 14-year-old girl, Levy, sued her school for violating her First Amendment rights after posting a Snap chat post expressing her displeasure with cheerleading, softball, and school. The school approached the court, calling it "*an important vindication of school's authority to protect students and staff and to fulfill school's educational missions.*" In fact, the student delivered the speech off campus and earlier as a precedent, the US Supreme Court has decided a similar case in favor of the school where the student had acted within the premises of the school and substantially disrupted the school community rights. Moreover, the office of the US president seconded the judgment to protect the students if they commit such acts off campus and in order to protect their first amendment rights of free speech.

Similarly, in another case of a teenager from Pennsylvania, the U.S. Supreme Court has ruled with a majority of 8-1 that in this era of social media and enhanced technology, students must not be punished for their acts of free speech outside the campus. Rights related to free speech available to them under the First Amendment Act must be protected. Eventually, an advisory was

¹⁹ I was vomiting: Journalist Rana Ayyub reveals horrifying account of deep fake porn plot, India Today Web Desk, New Delhi, UPDATED: Nov 21, 2018 19:20 IST (She had to delete her Twitter Account to avoid people thinking this was her. She also experienced harassment on Facebook, with comments like "*I never knew you had such a stunning body.*")

²⁰ Data Protection Commissioner v Facebook and Max Schrems (Standard Contractual Clauses), EPIC.ORG

issued to all students to restrict their enjoyments of their rights to free speech on campus as this would affect the educational institutions to discharge their essential objectives.²¹

In another case where, Jordan Peele and Buzz Feed collaborated to create a PSA using AI techniques to ventriloquize Barack Obama, highlighting his opinions on Black Panther and Donald Trump. The video, created using Adobe After Effects and the AI face-swapping tool Fake App, has become a symbol of the power of AI in generating misinformation and fake news. Researchers have developed tools for real-time face swaps, Adobe's "*Photoshop for audio*" allows dialogue editing, whereas another Canadian origin company offers a service to produce fake voice by feeding fragmented words as a sample. The judge questioned Buzz Feed News about the potential consequences of broadcasting such clips. While scientists are developing tools to spot AI fakes, the best defense against misinformation is instilling media savvy. Provocative videos can be faked by distortion and blurring, and the future of information will be crucial in preventing a dystopia.²²

LEGAL AND REGULATORY FRAMEWORK FOR DEEP FAKES AND GENERATIVE AI IN INDIA

Article 21²³ also safeguards Right to life and personal liberty of people under Indian Constitution. Personal liberty involves the right to move freely, choose one's place of residence, and engage in any authorized vocation. Indian Copyright Act, 1957, especially Section 51,²⁴ prescribes for protection of Intellectual Property Rights in India.

Under section 66E of Information Technology Act, 2000 a suitable legal action may be initiated for protecting the identity of an individual.²⁵ Section 67 of The Information Technology Act, 2000, states that:

²¹ Cheerleader prevails at U.S. Supreme Court in free speech case by Andrew Chung, June 24, 2021

²² A.I. could fabricate fake news Artificial intelligence could make fake news even harder to spot. Posted by The Verge on Tuesday, January 2, 2018

²³ It asserts that: "No one shall be deprived of their personal liberty except in accordance with the procedure prescribed by law".

²⁴ Indian Copyright Act, 1957 Chapter I. Preliminary [June 4, 1957] An Act amending and consolidating copyright laws. Be it passed by Parliament in the eighth year of the Republic of India, as follows: 1. Brief title, scope, and commencement. -(1) This Act may be termed the Copyright Act of 1957. Copyright law protects expressions of ideas rather than the ideas themselves. Section 13 of the Copyright Act of 1957 protects literary, dramatic, musical, and creative works, as well as cinematographic films and sound recordings.

²⁵ Section 66E of Information Technology Act, 2000 states that "Whoever, intentionally or knowingly captures, publishes or transmits the image of a private 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 with both."

“Whoever publishes or transmits, or causes to be published or transmitted in electronic form, any material that is lascivious or appeals to the prurient interest, or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see, or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years”²⁶.

In addition to this, accused may be punished under Sections 499, Section 501, Section 502, Section 354C of Indian Penal Code, 1860 OR under Section 354, Section 355, Section 356 & Section 77 of Bharatiya Nyaya Sanhita (BNS) respectively.

CONCLUSION AND SUGGESTION

Although in absence of any specific Generative AI law in India, there are a number of laws and regulations that address AI discrimination. Digital Person Data Protection Bill (2022), Information Technology Act (2000), Right to Information Act (2005), and the Draft National Strategy on Generative AI in 2020 by the Ministry of Electronics and Information Technology, all aim to address biases in AI systems. However, enforcing these enactments shall be a challenge, due to lack of dedicated laws, scarcity of specialists, and lack of transparency.

Deep Fakes, a rapidly growing field involving artificial intelligence and multimedia, are creating realistic digital content that can be difficult to distinguish from authentic content. They can be used for entertainment, education, and research, but also pose risks like misinformation, political manipulation, propaganda, reputational damage, and fraud. This Research Paper provides an overview of Deep Fakes techniques, various issues, challenges, and future research trends, aiming to advance the standard of social security and mitigation strategies for a safer digital environment across the globe.

The global nature of the internet and the ease of cross-border access to deep fakes content necessitate international collaboration to develop consistent legal frameworks, share detection technologies, and coordinate efforts to combat this evolving threat. Existing legal frameworks often fail to address the complexities of deep fake technology. Specialized legislation, technological advancements, and international cooperation are essential steps in combating deep fakes-related offenses. A proactive approach and adaptable defenses against misuse are

²⁶ Candice R. Gerstner, Hany Farid, “Detecting real-time deep-fake videos using active illumination Proceedings of the IEEE/CVF”, Conference on Computer Vision and Pattern Recognition (2022), pp. 53-60

necessary to mitigate the harmful impacts of Deep Fakes technology and preserve the trustworthiness of the digital world.

Deep Fakes pose several legal challenges, including privacy invasion, slander, fraud, and intellectual property issues. Privacy invasion can cause emotional distress and harm, while defamation and reputation damage can lead to financial and personal losses. Fraud and misrepresentation can occur through financial fraud, identity theft, and impersonation, raising concerns about digital identity authenticity and potential economic losses. Intellectual property rights can be infringed when deep fakes incorporate copyrighted materials or use someone's likeness without consent, leading to complex legal disputes.

The Right to Privacy in India is a contentious issue due to the Constitution's lack of explicit privacy-related feature. The Constitution's authors emphasized the right to life as a fundamental right, and the Supreme Court of India has interpreted Article 21 in different ways. As the country grows, the right to life has expanded to include other rights like speedy trial, shelter, environment & public health, safety & security etc. Every person of India is guaranteed the freedom of opinion, speech, belief, faith, and worship by the Indian Constitution, highlighting the importance of liberty. However, Article 21 of the Constitution, which includes the term "*Personal Liberty*", requires protection for individuals to lead dignified lives, requiring the right to privacy to be recognized.

The most significant problem would be to detect deep fakes in real time and apply detection models across many sectors and platforms. a challenging task because of its complexities, such as the need for these detection models to be efficient and have almost no false positives, and the computational power needed to detect deep fakes in real-time given the enormous amount of data shared on the internet every second. Advanced learning strategies like meta-learning and metric learning, effective structures like transformers, compression methods like quantization, and calculated investments in solid software and hardware infrastructure foundations can all be used to accomplish this goal.

Deep fake's detection methods face challenges such as generalization and robustness, as deep fakes content often circulates on social media platforms after significant changes. To address this, methods such as data augmentation, adversarial learning, attention-guided modules, and feature restoration have been investigated. But Deep Learning models lack interpretability, which is problematic, especially in critical applications like forensics. Privacy issues also arise as private data access is necessary. The quality of Deep Fakes datasets is another challenge; as

large-scale datasets often have visual differences from the actual content. Researchers and technology companies like Google and Facebook continuously improve Deep Fakes detection techniques.

Adversarial perturbations can deceive detection models by exploiting vulnerabilities or weaknesses in the underlying algorithms. Despite these challenges, numerous approaches have emerged to identify and mitigate deep fakes, such as incorporating adversarial perturbations, digital watermarking, and block chain technology. These methods aim to not only detect deep fakes but also hinder their creation and rapid dissemination across platforms.

Deep fakes videos are becoming harder to detect as AI algorithms become more sophisticated. This research provides an overview of deep fakes generation, deep learning architectures, detection techniques, and datasets. It aims to curb false information spread, protect digital content integrity, and prevent social, political, and economic damage caused by deep fakes. The Research Paper emphasizes the need for a continuous research in deep fakes detection techniques. Nevertheless, Deep Fakes have potential significance for artistic communication, entertainment, and visual effects.

Countries worldwide have implemented legislation to combat the misuse of deep fakes. The European Union has established a network of fact-checkers to analyze content creation sources, while tech companies like Google, Meta, and X are required to counter fake accounts. China has labelled doctored content using deep fakes tech, and the United States has introduced the Deep Fake Task Force Act to counter such technology. India has to take a leap forward to control the growing menace of abuse of Generative AI Technology such as Deep Fakes, which is the need of hour.

**REAL ESTATE DISPUTE RESOLUTION: A STUDY OF REMEDIES
AVAILABLE UNDER REAL ESTATE REGULATION ACT AND
CONSUMER PROTECTION ACT**

*Dr. Gurmanpreet Kaur**

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ABSTRACT

Over the past two decades, India's real estate sector has grown significantly, emerging as the third-largest contributor to the economy and a vital employer. With the rising demand for housing, builder-buyer disputes and delays in approvals, sanctioned plans, and project delivery have escalated. Historically, homebuyers relied on developers' discretion for property possession, often facing delays and contractual breaches. However, judicial intervention, consumer redressal forums, and legislative measures, including the Consumer Protection Act and the Real Estate (Regulation and Development) Act, 2016 (RERA), have strengthened consumer rights.

RERA complements the Consumer Protection Act by ensuring transparency and accountability between developers and homebuyers. It addresses issues like delays in possession, changes to project plans, and contractual breaches, empowering consumers to seek redress. The rise of social media and access to information has further fuelled consumer activism, enabling homebuyers to assert their rights effectively. This paper examines the remedies available under RERA and the Consumer Protection Act, analyzing their role in resolving real estate disputes and fostering accountability in the sector. By safeguarding consumer interests and promoting transparency, these mechanisms aim to transform India's real estate landscape.

Keywords: Home- buyers, Consumer, Real Estate Developer, Real Estate Property

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INTRODUCTION

Over the past two decades, India's real estate sector has experienced significant growth and expansion. As the fastest-growing economy, India is positioned at the forefront of becoming the third-largest economy globally. The standard of living has consistently enhanced, as evidenced by the rise in per capita income. The populace has access to fundamental utilities like housing, education, healthcare, and food security, and persistently endeavours to attain an aspirational lifestyle. India's real estate industry encompasses four sub-sectors of the country's expanding economy: the housing sector, the commercial sector, the retail sector, and the hotel sector. Among the sub-sectors, housing continues to be an important sector, and the demand for housing is growing daily. India's real estate sector has produced approximately 40 million workforce, which makes the country the third largest employment generator after manufacturing and agriculture. Real estate is a key and vital component of the construction industry in India.

Real estate disputes, particularly builder-buyer conflicts, result in cascade impacts due to delays in obtaining approvals and non-compliance with sanctioned designs and layouts. There was a time when homebuyers had to rely on developers' whims and fancy to get their flats, but the judiciary played a crucial role, laws were enacted to protect consumers, and social media raised awareness, so now homebuyers can go to consumer redress forums to get their rights protected. Furthermore, access to material information and online networking gave a real-time hands-on knowledge of the rights available to homebuyers and encouraged them by adding a sense of vigour to consumer activism. The failure of timely possession of flats by the Developers, failure to deliver as per the developer-home buyer contract, and change of designs, maps and layout plans of the projects gave rise to consumer activism. Homebuyers who were in a bind sought assistance from defaulting developers through a consumer redressal forum before the "Real Estate Regulation and Development Act of 2016", which was passed that year.

Since the year 2016, the courts have been faced with the burdensome question of whether a statute should take precedence over the other in the event of a real estate dispute that is appropriate for the home purchasers in a particular circumstance. This dilemma has been brought about by the availability of several modes of dispute settlement. Homebuyers have access to a variety of legal options, including different authorities such as the National company law tribunal, consumer courts, competition commission, civil courts, real estate regulatory authority and alternative dispute resolution methods. There is an additional remedy that can be

utilised per the Insolvency and Bankruptcy Code, 2016, which states that the purchasers of homes are regarded to be creditors.

LITERATURE REVIEW

In *Real Estate Laws in India*,¹ N. N. Rathi emphasizes the transformative role of the Real Estate (Regulation and Development) Act (RERA) in standardizing the Indian real estate sector, which was previously marked by inefficiencies and lack of transparency. Rathi highlights how RERA has introduced mandatory project registration, ensuring developers adhere to clear timelines, financial disclosures, and quality standards, thereby protecting consumers from fraud. A key feature of RERA is its provision for faster dispute resolution, through time-bound processes and penalties for non-compliance, significantly reducing delays in resolving grievances related to possession and construction defects. This legal framework has not only restored consumer confidence but also enforced greater accountability among developers, fostering a more transparent and consumer-friendly real estate market.

The implementation of RERA, according to *K. P. Tripathi*,² has introduced a shift towards transparency and accountability, significantly improving consumer protection in the real estate sector. The review also highlights how the Consumer Protection Act extends its applicability to real estate buyers, ensuring faster dispute resolution through the Consumer Forum.

Studies, including *S. Sharma*³ in *Consumer Protection in Indian Real Estate*, illustrate how the Act has enhanced buyers' rights and introduced new remedies for unfair practices by builders and developers. This review focuses on the consumer protection mechanisms available under the Consumer Protection Act, 2019, particularly in real estate disputes.

In *Real Estate and the Consumer Forum: Redressal of Disputes*,⁴ R. S. Verma focuses on the crucial role played by the National Consumer Disputes Redressal Commission (NCDRC) in resolving high-profile real estate disputes. Verma discusses how the NCDRC has become an essential platform for consumers seeking justice in real estate matters, particularly in cases involving delays in possession, defective construction, or non-compliance with contractual terms by developers. By providing an expedited process for addressing such grievances, the NCDRC has significantly reduced the burden on traditional courts, offering consumers quicker

¹ N. N. Rathi, *Real Estate Laws in India*, New Delhi, LexisNexis, 2020.

² K. P. Tripathi, *RERA and its Impact on Real Estate Disputes*, Journal of Property Law, 2019.

³ S. Sharma, *Consumer Protection in Indian Real Estate*, Legal Solutions Journal, 2021.

⁴ R. S. Verma, *Real Estate and the Consumer Forum: Redressal of Disputes*, Indian Journal of Law, 2020.

relief. Verma further emphasizes that the NCDRC's decisions in landmark cases have shaped the legal framework for consumer protection in real estate, influencing subsequent rulings and contributing to a growing sense of accountability within the sector.

In *Role of RERA and Consumer Protection Act in Real Estate Disputes*,⁵ P. Agarwal and S. Singh explore how consumer protection measures under the Consumer Protection Act, 2019, complement the provisions of the Real Estate (Regulation and Development) Act (RERA) to expedite the resolution of consumer grievances. They analyze how both legal frameworks work in tandem to ensure faster dispute resolution and provide more effective remedies for real estate consumers. Agarwal and Singh highlight that while RERA addresses issues related to project registration, builder accountability, and timeline enforcement, the Consumer Protection Act strengthens these measures by offering an accessible platform for grievances related to fraud, misrepresentation, and delays. Their analysis reveals that together, RERA and the Consumer Protection Act create a robust mechanism for consumer rights protection, providing consumers with multiple avenues for redress and encouraging greater compliance from developers.

*M. Gupta and A. Shah*⁶ in their paper *Impact of RERA on Real Estate Disputes* analyze case studies of disputes resolved under RERA's jurisdiction, noting a marked reduction in the delay of resolving disputes related to possession and project registration. They conclude that RERA has become a pivotal mechanism for consumer protection. This literature examines empirical studies assessing the effectiveness of the Real Estate (Regulation and Development) Act (RERA) in resolving disputes in the Indian real estate sector.

*P. K. Kumar*⁷ points out how the establishment of Real Estate Regulatory Authorities (RERAs) has provided a much-needed infrastructure for dispute resolution outside the traditional court system.

*A. K. Mishra*⁸ in *Judicial Role in Real Estate Dispute Resolution* highlights the key judgments that have shaped the enforcement of RERA and Consumer Protection Act provisions. It discusses cases where courts have taken proactive steps to enforce orders from the Real Estate Regulatory Authorities and Consumer Forums. This literature focuses on the judicial

⁵ P. Agarwal & S. Singh, *Role of RERA and Consumer Protection Act in Real Estate Disputes*, Indian Journal of Consumer Law, 2022.

⁶ M. Gupta & A. Shah, *Impact of RERA on Real Estate Disputes*, Journal of Real Estate Management, 2021.

⁷ P. K. Kumar, *RERA and Dispute Resolution Mechanisms*, Real Estate Law Review, 2022.

⁸ A. K. Mishra, *Judicial Role in Real Estate Dispute Resolution*, Indian Judiciary Review, 2020.

interpretation of remedies available under the Real Estate (Regulation and Development) Act and the Consumer Protection Act.

*R. Malhotra*⁹ further emphasizes the interplay between civil and consumer law in the enforcement of remedies, especially in disputes involving possession delays and payment defaults.

Authors like *S. R. Jain*¹⁰ in *Challenges in Real Estate Dispute Resolution* highlight delays, legal loopholes, and the lack of adequate infrastructure as major barriers. This review discusses the challenges faced by consumers and developers in utilizing the available remedies under RERA and the Consumer Protection Act.

*L. V. Prasad*¹¹ notes the limitations in the implementation of RERA, particularly in states where regulatory authorities are still in their nascent stages. The review also points to consumer apathy in engaging with formal dispute resolution mechanisms due to the perceived complexity and costs involved in the process.

REAL ESTATE (REGULATION AND DEVELOPMENT) ACT 2016- AN OVERVIEW

To provide relief to allottees and home buyers from the malpractices committed by builders during the building and delivery of the project, the “Real Estate (Regulation and Development) Act 2016” has been adopted to provide relief. Specifically, it demands that real estate transactions be conducted in an open and accountable manner. Among the provisions of the Act is a provision that allows for the establishment of an Appellate Tribunal and a Real Estate Authority for each state, or for two or more states together, to resolve any complaints that may be lodged by property buyers.

The promoter is not allowed to accept more than 10 per cent of the entire value of a real estate project before entering into a sales agreement with the home buyer¹². Also, the promoter needs to file a declaration along with the affidavit which must be signed by himself or an authorised person. This declaration must state that the promoter will keep a separate bank account, which is referred to as the escrow account, in a scheduled bank. Seventy per cent of the funds for the

⁹ R. Malhotra, *Enforcement of Real Estate Remedies: A Critical Analysis*, Journal of Civil Law, 2021.

¹⁰ S. R. Jain, *Challenges in Real Estate Dispute Resolution*, Real Estate Law Journal, 2022.

¹¹ L. V. Prasad, *Limitations in the Implementation of RERA*, Indian Real Estate Law Review, 2023

¹² Section 13, “Real Estate (Regulation and Development) Act”, 2016

proposed project are to be deposited in the account.¹³ The deposited funds must encompass both the building expenses and the land acquisition costs. Only on certification by an engineer, an architect, and a practising chartered accountant, confirming that the withdrawal corresponds to the project's percentage of completion withdrawals can be made from the separate account by the promoter. If the allottee reports any structural defect or other deficiency in workmanship, quality, or service obligations of the promoter, as mentioned in the agreement within 5 years from the date of possession, the promoter is obligated to remove that discrepancy or defect within 30 days of reporting. For this purpose, no additional cost will be charged by the promoter from the allottee. If the promoter is unable to correct such flaws within the specified time frame, the allottees who have been disappointed are entitled to obtain adequate compensation.¹⁴ Under the Act, all Real Estate Projects must be registered with the “Real Estate Regulatory Authority”.¹⁵ In the absence of the Project’s registration, the promoter is not permitted to book, sell, or invite any individual to acquire the project. The application under the Section must be submitted to the Real Estate Regulatory Authority along with the following:

- A brief project details,
- Authority approvals,
- Commencement certificates provided by competent authorities,
- Development and layout plans,
- Location details such as carpet area of apartment,
- Allotment letter,
- Agreement for sale,
- Conveyance deed,
- Contact details of concerned persons such as real estate agents, architects, structural engineers,
- pro forma of the allotment letter,
- agreement for sale, and
- A declaration along with the affidavit.

Remedies under Real Estate Regulation and Development Act, 2016

On behalf of any promoter allottee or real estate agent, a complaint can be submitted to the “Real Estate Regulatory Authority” if any breach or infraction of the provisions of the Act or

¹³ Section 4, “Real Estate (Regulation and Development) Act”, 2016

¹⁴ Section 14(3), “Real Estate (Regulation and Development) Act”, 2016

¹⁵ Section 3, “Real Estate (Regulation and Development) Act”, 2016

the rules and regulations enacted under can be brought against them.¹⁶ Every complaint that is received by the Authority is to be addressed as quickly as feasible, and the Authority is to dispose of the complaint within sixty days beginning on the date that the application was received.¹⁷ Within sixty days of receiving a copy of the direction or order, the appellate tribunal can hear appeals against the decision that was made by the authority examined.¹⁸ Any appeal from the Appellate tribunal must be filed with the High Court within sixty days of the decision being made. The High Court is the court that hears appealing decisions.

CONSUMER PROTECTION ACT, 2019 (CPA)- AN OVERVIEW

The Consumer Protection Act was passed into law to fulfil the purpose of providing a straightforward and expedient resolution to consumer complaints regarding any deficiencies in service or faults in goods. Complaints can only be submitted by customers by this Act. Within two years from the date on which the cause of action arose, the consumer can register a complaint with the consumer forum if the product or services in question are defective or lacking in some way.¹⁹ The consumer forums have a pecuniary jurisdiction, and the complaint is resolved within three months from the date that the complainant received the notice from the consumer forums²⁰ The Act gives the forums the authority to award punitive damages and compensation for losses that have been sustained in instances that are deemed suitable.

The term 'Consumer' is defined under Section 2(7) of the Act, which says "any person who buys goods for consideration but doesn't include a person who obtains such goods for commercial or resale purposes". It is essential to have a clear understanding of the fact that homebuyers are regarded to be consumers per the Consumer Protection Act of 2019, if they have purchased the property for their personal use. Those homebuyers who are considered to be customers can file a consumer complaint if the builder or developer fails to maintain satisfactory levels of service.²¹ *In the case of Morgan Stanley Mutual Fund v. Kartick Das*²², "A person who consumes is referred to as a consumer, a person who purchases things for personal use or consumption is considered to be a consumer, according to the definition. According to the definition presented above, the term "consumer" refers to anyone who

¹⁶ Section 31(1), "Real Estate (Regulation and Development) Act", 2016

¹⁷ Section 29(4), "Real Estate (Regulation and Development) Act", 2016

¹⁸ Section 44, "Real Estate (Regulation and Development) Act", 2016

¹⁹ Section 69(1), "Consumer Protection Act", 2019

²⁰ 38(7), "Consumer Protection Act", 2019

²¹ *Lilavati Kirtilal Mehta Medical Trust vs M/S Unique Shanti Developers & Ors.*, 2019 SCCOnLine SC 1466

²² (1994 (4) SCC 225)

consumes goods or services at the final stage of the production chain. This definition is broad enough to encompass a wide range of individuals. With this all-encompassing definition, the goal is to encompass every single individual who pays monetary value as the price or cost of goods and services. Consumers have a right to receive what they paid for, which should be of genuine quantity and genuine quality. In every society, the customer continues to be the focal point of all commercial and industrial endeavours. He requires protection from the wholesaler, retailer, wholesaler, and wholesaler, as well as the manufacturer and producer.”.

The Act also defines “product seller” under Section 2(37) to a product means “a person who, during their business, imports, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or otherwise is involved in placing such product for commercial purpose”. This definition also includes a service provider, but it does not include a seller of immovable property unless that person is engaged in the sale of a constructed house or the construction of homes or flats within the premises. As a result, we can assert that the term product seller in the Act encompasses both real estate brokers and builders.

Seeking remedy under Consumer Protection and RERA

If a statute provides more than one judicial forum to enforce a duty obligation or put a right into effect, then this is an example of the remedial possibilities that the state gives to ensure that individuals have effective access to justice. In the process of interpreting legislation that provides a variety of remedies, it is the responsibility of the court to harmonise the provisions constructively. This is a requirement for the courts. Before the passage of the Real Estate (Regulation and Development) Act, 2016, the Consumer Forum was responsible for addressing issues that were associated with allottees. Following the Act’s implementation, the Consumer Forum's authority to deal with the concerns of allottees was not restricted in any way. Additionally, the standing committee made it clear that the establishment of the Real Estate Tribunal did not result in the loss of the jurisdiction that was previously held by the Consumer Forums. In addition, the consumer can withdraw the complaint that is currently being considered by the Consumer Forum, provided that the forum grants permission for the consumer to do so, and additionally apply to the adjudicating officer per RERA for consideration.²³ One of the most important principles of evidentiary law is known as the doctrine of election. This theory is applicable in situations where the party that is being wronged can choose between multiple remedies for the same cause of action, and the party has

²³ Section 71, “Real Estate (Regulation and Development) Act”, 2016

the discretion to select between the available remedies. It is only possible to make use of this situation when remedies are concurrent.

The essence of this idea can be broken down into three components: (i) the presence of two or more remedies; (ii) inconsistencies within the remedies; and (iii) the option to make use of one of the remedies. It has been determined that to implement this theory, it is necessary to satisfy every one of these components. If an individual decides to pursue one of the remedies, they forfeit the ability to pursue the other remedy at the same time. Furthermore, when the two remedies' scope and ambit differ, it is not drawn to the situation because this could lead to more unfairness and inconsistent outcomes. It is grounded in the idea of equitable estoppel, signifying that an individual will be barred from claiming a right if they elect to keep silent by their actions or inaction when it was incumbent upon them to communicate.

The doctrine was first addressed by the Supreme Court in *A.P. State Financial Corporation vs. M/s GAR Re-Rolling Corporation*²⁴, which determined that the doctrine does not apply in circumstances where the scope and nature of the two remedies are fundamentally distinct.

In *L.R. vs. P. Savithramma*²⁵, the Supreme Court expressed a differing perspective, asserting that estoppel cannot be applied against a statute, thereby allowing for the pursuit of concurrent statutory remedies.

Whether Real Estate Regulation Act reduce the scope of the Consumer Protection Act?

The Real Estate Regulatory Act was enacted to regulate real estate transactions that took place before the year 2016, as these transactions were typically favourable to developers. Because of this, homebuyers were frequently taken advantage of; there were instances of one-sided agreements and misuse of dominant position, and numerous complaints were brought before the Competition Commission of India for the same reason. Therefore, a law needed to be enacted to improve accountability and transparency, as well as to lessen the likelihood of builders defaulting on their obligations or engaging in fraudulent activity. Similarly, the Consumer Protection Act offers relief; however, it does not offer consumers any time-bound or inexpensive remedy, and it was deliberately limited to the real estate sector. Moreover, it does not provide any relief at all.

The notion of election is inapplicable where available remedies are cumulative, consistent and concurrent. Subsequently, by examining the inconsistencies of remedies court has determined

²⁴ (1994) 2 SCC 674

²⁵ Appeal (Civil) 5477 of 2004

if it merely seeks further relief or suggests the selection of one which does not constitute a deliberate abandonment of others then it is deemed inconsistent. In *M/S Emar MGF Land Ltd. vs. Aftab Singh*²⁶, the Supreme Court determined “that the remedy under the Consumer Protection Act, 1986 is limited to complaints lodged by consumers regarding flaws and deficiencies attributable to the service provider. The presence of an arbitration agreement did not serve as a basis to prevent the consumer from pursuing the issue”.

In some circumstances law permits recourse to additional remedies and is not limited to the remedy that is available under any particular enactment, the theory does not apply.²⁷ *Ireo Grace Realtech Pvt. Ltd. vs. Abhishek Khanna & Ors.*²⁸ was the case in which the Supreme Court of India ruled that “Section 88 of the Right to Information Act does not prohibit the applicability of other laws and that it must be interpreted in addition to and not in derogation of the provision of any other piece of legislation”. As a result, the remedies that are made available by the RERA and the Consumer Protection Act are complementary to one another and do not contradict one another in any way.

In the case of *Today Homes and Infrastructure Pvt Ltd vs Ajay Nagpal*²⁹ in addition to being a supplementary statute, the Consumer Protection statute does not contradict any other laws. By making a complaint per the Consumer Protection Act of 1986, any consumer who feels that they have been adversely affected by any kind of deficiency in service or fault in goods, as well as by unfair commercial practices, can contact the consumer forum. Moreover, a class action complaint (sometimes known as a lawsuit) is acceptable. Following the Consumer Protection Act, the consumer forum that is established is not the civil courts. Following the provisions of section 14 of the Act, consumer protection legislation can offer remedies.

It is not appropriate for a consumer to pursue two different remedies for the same issue, and simultaneously filing any complaint under two different statutes is not permitted. The mere fact that a complainant has the right to seek redress for the problems they have encountered under any other statute does not prevent someone from accessing a consumer forum by this Act.³⁰

²⁶ 2017 SCC Online NCDRC 1614

²⁷ Election Of Remedies, <<https://www.mondaq.com/india/dodd-frank-consumer-protection-act/1117696/election-of-remedies>> accessed on 23rd May, 2024

²⁸ 2021 SCC OnLine SC 14

²⁹ Special Leave Petition, 23386/2019

³⁰ Parikh H and Vora R, ‘Consumer Court, RERA or NCLT: Can a Home Buyer Approach All These Forums Simultaneously?’ (*Housing.com*, 1 July 2022) <<https://housing.com/news/consumer-court-rera-or-nclt-can-a->

Taking into consideration Sections 14, 15, 18, and 19 of the Real Estate Regulatory Act, as well as several other provisions that have been made to be followed by the builder, and even though the act expressly mentions the rights and duties of a home-buyer, this does not limit the right of an aggrieved home-buyer to only approach the authorities under RERA; the home-buyer can also approach the Consumer forum. The provisions of the Consumer Protection Act are not barred from being invoked by any individual, either explicitly or implicitly, according to Section 71 of the RERA. Additionally, it grants the home buyer the ability to withdraw the complaint from the Consumer Forum and file it with the RERA independently.

In the case of *M3M India Private Limited & Anr v. Dr Dinesh Sharma & Anr*³¹, petitions were grouped to challenge the order that was issued by the National Consumer Redressal Commissioner (National Commission) in the case of *Ajay Nagpal v. Today Homes and Infrastructure Private Limited*³². In that case, the National Commission ruled that “the remedies provided under the Consumer Protection Act and RERA are concurrent and that the jurisdiction of the forums/commissions constituted under the Consumer Protection Act is not displaced by RERA, particularly Section 79 of the RERA”. There were around 62 petitions filed by various Real Estate Developers.

On August 9, 2019, a three-judge bench of the Supreme Court, led by Justice Rohinton F. Nariman, issued a judgement in the case of *Pioneer Urban Land and Infrastructure Limited & Anr v. Union of India & Ors* (Writ Petition)³³. In this case, it was held that “the remedies given to allottees of flats are concurrent and that they can avail themselves of remedies under the CPA, RERA, as well as the Insolvency and Bankruptcy Code, 2016. This decision was made while the petition was still pending before the High Court”.

In the case of *M/s Imperia Structures Ltd. vs. Anil Patni and Others*³⁴, the court ruled that the remedies that are available under the provisions of the Consumer Protection Act are additional remedies that are in addition to the other remedies, including those that are made available under any special statutes; and that the availability of an alternative remedy does not prevent the court from hearing a complaint that is filed under the Consumer Protection Act³⁵.

home-buyer-approach-all-these-forums-simultaneously/> accessed 21 May 2024

³¹ AIR 2020 Del 23

³² *ibid*

³³ 2019 SCC OnLine SC 1005

³⁴ (2020) 10 SCC 783

³⁵ Network LN, ‘Rera Does Not Bar Consumer Fora from Entertaining Complaints by Allottee, Reiterates Supreme Court’ (*Live Law*, 4 December 2020) <https://www.livelaw.in/news-updates/rera-consumer-complaint->

According to the decision made by the court in the case of *Experion Developers Pvt. Ltd. versus Sushma Ashok Shiroor*³⁶, it is abundantly obvious that the Consumer Protection Act and the RERA Act do not exclude or contradict one another. This Court has decided that they are concurrent remedies that independently operate and do not take precedence over one another. Thus, the Supreme Court has reaffirmed that the RERA and the Consumer Protection Act do not contradict or exclude one another in any way. They are concurrent remedies that function independently of one another and do not take precedence over one another. As a result of the Supreme Court's decision in these cases, homebuyers and allottees of real estate projects have been granted a blessing. This is because the Supreme Court acknowledges and offers a supplemental remedy to redress their concerns.

COMPARATIVE STUDY OF THE REAL ESTATE REGULATION ACT AND CONSUMER PROTECTION ACT

Before the implementation of the Real Estate Regulation Act, consumers and homebuyers were required to file complaints with either the National Consumer Dispute Redressed Commission or the Competition Commission of India. However, the RERA Act has provided consumers and homebuyers with protection and welfare against the business practices of builders concerning real estate property. When it comes to satisfying the requirements of dissatisfied homebuyers, there are a few factors that indicate which forum is the most suitable. Listed below are the points in question:

PERIOD FOR FILING APPLICATION:

The RERA does not stipulate a time limit for the filing of any complaint against the government. The Consumer Protection Act, on the other hand, stipulates that the complaint must be submitted within two years after the occurrence of the cause of action. As a result, if the real estate complaint is not filed within two years from the cause of action, then the complainant is unable to register a complaint before the Consumer Forum; the only available remedy is to file the complaint under the RERA.

Complaint filing

[supreme-court-166816](#) accessed 23 May 2024

³⁶ 2022 *LiveLaw* (SC) 352.

Anyone who feels that they have been aggrieved by the Real Estate Developer or the Builder is eligible to file a complaint by RERA. On the other hand, according to the Consumer Protection Act, the only individual who is permitted to make a complaint is themselves a consumer. Therefore, the only option available to a person who does not meet the criteria for the term “consumer” who has purchased a property for business purposes, or who is unsatisfied with the developer, is to approach the Real Estate Regulatory Authority to have the issue resolved according to their standards.

Under the RERA, complaints are submitted through the website of the RERA. The process is streamlined, and there is little to no room for adjustment. This is because several states have different specified methods for reporting complaints under RERA, including the format. On the other hand, according to the Consumer Protection Act, the complaint must be made in writing to the relevant authorities or commissions. This entails a complicated system that includes paperwork and evidence; as a result, it appears to be a process that takes more time.

Pecuniary Jurisdiction

According to the Consumer Protection Act, pecuniary jurisdiction and limitations have been prescribed, and they are dependent on the worth of the property. If, for instance, the value of the complainant's property is greater than one crore, then he is required to file a complaint with the State Commission. Meanwhile, if the value of the property is greater than ten crores, then the complainant is required to file a complaint with the National Commission. In contrast, the Real Estate Regulatory Act does not impose any financial restrictions on immovable property depending on its valuation. The complaint can therefore be submitted to the Regulatory Authority of the state in which the property is located, which is the state in which the property is located.

Penalty

Pecuniary compensation is the only form of compensation that can be granted by the Consumer Protection Act. It does not include any preventative actions, nor does it include any provisions for the performance or imprisonment of the party that is in default. However, the RERA is the only entity that has the authority to issue certain remedies that do not involve compensation. Additionally, it has the authority to inflict imprisonment for a period of up to three years on real estate developers and builders who have defaulted on their payments. If the consumer is just looking for compensatory relief, then the consumer forum is the appropriate place they

should approach. Filing a complaint with RERA is the better choice, however, if the buyer is searching for a solution that may discourage them from purchasing the property.

Commercial Disputes

Unlike the RERA, which does not impose any restrictions on the adjudication of commercial matters, the Consumer Forum does not deal with business issues throughout its proceedings. If an individual does not meet the criteria for the term "Consumer" as outlined in the Consumer Protection Act, the individual has the option of filing a complaint with the Real Estate Regulatory Authority as a means of redress.

PERIOD FOR DISPOSAL OF COMPLAINT

As to the RERA, the time frame for the determination of a complaint is sixty days, beginning from the date when the complaint was received. The Act stipulates that every complaint must be resolved as quickly as feasible and within three months from the day that notice was received from the other party beginning with the date that the complaint was received.

CONCLUSION AND SUGGESTIONS

The Real Estate Disputes Act is a major piece of legislation that imposes time-bound requirements on developers and promoters to regulate disputes that occur within the real estate sector. This Act was a long-awaited piece of legislation that was desperately required to safeguard purchasers from being taken advantage of. Through the implementation of this legislation, consumers and homebuyers are safeguarded against the unethical business practices of developers as well as delays in the handover of possession. Additionally, this legislation offers an efficient process for the resolution of grievances. Consumers and homebuyers are the target audience for the Real Estate Regulatory Act. Since the passage of this new Act, there has been increased accountability and openness in real estate transactions. The property buyers have been able to obtain possession of their properties promptly and submit complaints against the developers if any were necessary. For home buyers, the Act has made it possible for them to seek justice from the Real Estate Authority within three months of the day on which they filed their complaint. These remedies are both prompt and equitable. By addressing the need for openness and responsibility for house buyers and developers, the Real Estate Regulatory Act can be viewed as an extension of the Consumer Protection Act. Home buyers have access to remedies under both Acts and under those remedies, they have the option of selecting either a concurrent remedy or a single forum to address any issues that

may arise. The concurrent remedy has increased the number of remedies that are available to people who are purchasing homes. Both Acts have their advantages and disadvantages when it comes to settling challenges that are faced by homebuyers. The facts of each case and the remedy that the home buyer seeks from the various forums will determine which forum is the most effective for the home buyer to contact to resolve their difficulties. The homebuyers are no longer able to be coerced into choosing a form of resolution based on the suitability of the real estate developers. A method that is balanced has been implemented to identify the interests of the homebuyers and to balance those interests with the interests of the promoter. However, because of a recent amendment to the Consumer Protection Act, the monetary limits that are allowed to approach the consumer forum have been increased from the previous level. This, in a sense, offers a significant relief to builders who were previously restricted in their ability to stop homebuyers from having regular interactions with the consumer forum. Consequently, in a nutshell, the Real Estate Regulatory Act regime continues to be a force that must be reckoned with and, in close cooperation with the Consumer Protection Act and other laws that are now in effect, promises to deliver outstanding services in the real estate market as well as within its domain and jurisdiction.

EXPLORING BEHAVIORAL DYNAMICS THROUGH FORENSIC PSYCHIATRY IN THE INDIAN CRIMINAL JUSTICE SYSTEM

*Dr. Sonia B Nagarale**

ABSTRACT

In criminal jurisprudence, the burden lies with the accused to prove insanity, often with expert testimony from Forensic Psychiatrists, demonstrating their inability to comprehend the nature or wrongfulness of their actions. Forensic Psychiatrists play crucial roles in assessing trial competence, determining detention security levels, and overseeing mental disorder treatment in criminal cases. The United Nations Convention on the Rights of Persons with Disabilities emphasizes equal legal capacity, prompting re-evaluation of the insanity defense globally. The research paper examines Forensic Psychiatry's methodologies and its pivotal role in criminal justice, particularly regarding mental health issues, distinguishing medical from legal insanity. It emphasizes the challenge of proving legal insanity amidst conflicting medical and legal perspectives, highlighting the need for standardized evaluation procedures and comprehensive mental state assessments in legal proceedings.

Keywords: Forensic Psychiatry, Criminal Justice System, UNCRPD, Penal Laws.

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INTRODUCTION

Forensic Psychiatry is a specialized area of psychiatry that applies scientific and clinical expertise to legal matters, including criminal, correctional, and legislative contexts. This practice is still developing in India and other emerging nations. It is crucial for Forensic Psychiatry to adhere strictly to the established guidelines and ethical principles of general psychiatry.

Forensic Psychiatry is essential for understanding and interpreting the behavior of criminal offenders within the justice system. It integrates psychiatry, psychology, and law to address the mental health aspects of criminal behavior, legal responsibilities, court roles, and the treatment of individuals with mental disorders within the legal framework.¹ At various stages, a forensic psychiatrist's role includes judging an individual's competence to stand trial, assessing risk to determine the appropriate level of security for detained individuals, and overseeing the treatment of the accused's mental disorders and other related factors.²

Contemporary Forensic Psychiatry has advanced significantly due to four key developments: improved understanding of the link between mental disorders and criminal behavior, refined legal standards for defining insanity, new treatment approaches offering alternatives to institutional care, and changing societal attitudes towards mental illness.³

The American Academy of Psychiatry and the Law defines Forensic Psychiatry as a subspecialty of psychiatry that deploys scientific and clinical expertise in legal contexts encompassing civil, criminal, correctional, regulatory, and legislative matters, and in specialized clinical consultations, particularly in areas such as risk assessment.

In Europe, psychiatric professionals focus on treating mentally disordered offenders. According to John Gunn and J. Taylor, Forensic Psychiatry is a medical specialty that combines detailed knowledge of legal issues and the criminal and civil justice system. Its purpose is the

¹ Scott Brown, 'United Nations Declaration on the Rights of Disabled Persons', Encyclopaedia Britannica's Available at <https://www.britannica.com/topic/United-Nations-Declaration-on-the-Rights-of-Disabled-Persons> Accessed 23 December 2024

² C.R. Hollin, 'Forensic Psychiatry' Encyclopedia of Forensic Sciences (2013) p. 188-191, <https://www.sciencedirect.com/science/article/abs/pii/B9780123821652000337> accessed 26 December 2024.

³ Henry Manresa, 'Forensic Psychology' https://www.researchgate.net/publication/337149695_Forensic_Psychology Accessed 26 December, 2024

care and treatment of mentally disordered offenders and similar individuals, including risk assessment, management, and prevention of future victimization.⁴

PIONEERING FORENSIC PSYCHIATRY

British colonial rule in India established mental asylums to segregate the mentally ill, supported by legislation like the 1912 Indian Lunacy Act. Alongside legal changes, British influence introduced modern psychiatry to India. Historically, mental illness provoked varied cultural responses, from divine reverence to exorcism. India's first mental health law, dating back to 1858, addressed lunatic detention and management, comprising the Lunacy (Supreme Court) Act, Lunacy (District Courts) Act, and Lunatic Asylum Act.⁵

These English Acts from 1853 were amended several times before being replaced by the Lunacy Act of 1890 and 1891. The 1911 Indian Lunacy Bill became Act IV of 1912 quickly. According to the Indian Lunacy Bill's Objects and Reasons, 1911, this legislation attempted to align Indian mental health regulations with England's and streamline the legal framework controlling mental diseases.

The 1986 Mental Health Bill, passed by the Rajya Sabha and sent to the Lok Sabha, continued the modernization of mental health laws. In 1987, the Lok Sabha enacted the measure after nine years of debate. The President signed it on May 22, 1987, making it the Mental Health Act, 1987.

The Indian Penal Code, 1860, by Thomas Babington Macaulay in the mid-19th century gave rise to forensic psychiatry in India. Section 84 of the IPC incorporates McNaughten's rules, establishing the insanity defense. This core framework hasn't changed much. However, Section 84 of the IPC has been the subject of major legal rulings.

Now the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNS) represents a significant overhaul of India's criminal justice framework, replacing the colonial-era Indian Penal Code, 1860, to better align with contemporary societal needs. The BNS focuses on streamlining criminal procedures, enhancing accountability, and ensuring swift justice through measures such as time-bound trials, victim-centric approaches, and the use of technology. It emphasizes safeguarding the rights of individuals while also addressing emerging challenges like forensic

⁴ John Gunn, Pamela Taylor, 'Forensic Psychiatry Clinical, Legal and Ethical Issues', p. 16, Routledge Publication, ISBN 9780367366476

⁵ Ibid

psychiatry. By modernizing outdated provisions and incorporating restorative justice principles, the BNS aims to create a more efficient, equitable, and transparent legal system for all citizens.

Mental illness holds significance across various aspects of civic responsibility. Recent provisions in the Mental Healthcare Act, 2017⁶ and the Rights of Persons with Disabilities Act, 2016⁷ have brought a transformative shift in the care and treatment of individuals with psychiatric conditions. Forensic psychiatry in India confronts problems, including limited infrastructure and training, despite strong laws.

Forensic psychiatric specialists explain criminal behavior in mentally incompetent people, altering evidence value, but only at the investigating agency's request.

FORENSIC PSYCHIATRY IN THE BACKDROP OF INTERNATIONAL INSTRUMENTS AND OTHER JURISDICTIONS

Internationally, mental disability rights were not recognized until the 1970s. The 1971 UN Declaration on the Rights of Mentally Retarded Persons established mental health standards. The UN established the International Year of Disabled Persons in 1981, followed by the Decade in 1983 and 1992, resulting in international treaties.⁸

The 1991 UN Human Rights Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care allow mentally ill people to select a personal representative. They have a right to legal representation, regardless of income.⁹

Further on December 13, 2006, the UN General Assembly adopted the main International Instrument to protect the rights of people with disabilities i.e the Convention on the Rights of Persons with Disabilities.¹⁰ Article 12 of this Convention declares that “persons with

⁶ The Mental Healthcare Bill, 2016, Bill No. LIV-C of 2013, https://prsindia.org/files/bills_acts/bills_parliament/2013/Bill%20as%20passed%20by%20RS.pdf Accessed 20 December, 2024

⁷ Rights of Persons with Disabilities Act, 2016 <https://vikaspedia.in/social-welfare/differently-abled-welfare/policies-and-standards/rights-of-persons-with-disabilities-act-2016#:~:text=The%20Act%20replaces%20the%20Persons,which%20India%20is%20a%20signatory.> 26 December, 2024

⁸ Scott Brown, ‘United Nations Declaration on the Rights of Disabled Persons’, Encyclopaedia Britannica's Available at <https://www.britannica.com/topic/United-Nations-Declaration-on-the-Rights-of-Disabled-Persons> Accessed 23 December 2024.

⁹Ibid

¹⁰ United Nations, Department of Economic and Social Affairs Social Inclusion, ‘Convention On The Rights Of Persons With Disabilities (CRPD)’ Available at <https://social.desa.un.org/issues/disability/crpd/convention-on->

disabilities have the right to recognition everywhere as persons before the law” and “enjoy legal capacity on an equal basis with others in all aspects of life.” The idea that people with disabilities, particularly psychosocial difficulties, should have equal decision-making power is controversial.

While perusing Article 31(1)(a) of the International Criminal Court¹¹ The statute states that an individual is not criminally responsible if they "suffer from a mental illness or defect that impairs their ability to comprehend the unlawfulness or character of their actions or their ability to control their actions in compliance with legal standards." Rule 145(2) advises the Court to examine mitigating considerations that do not totally free from criminal culpability, such as considerably impaired mental capacity.

In Europe, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)¹², was established in November 1950 in Rome and became effective in 1953. Article 5 of the ECHR, in its first paragraph (e), pertains to the detention of individuals deemed "*persons of unsound mind.*" Governments are obligated to inform these individuals about the reasons for their detention in subsection 2 and ensure a prompt judicial review of the detention in subsection 4.

In England, the M'Naghten Rule, originating in 1843, which revolves around whether the defendant was aware of the nature and consequences of their actions or understood that their actions were legally wrong at the time of the offense. This rule serves as a standard criterion for assessing insanity in both the United States and the United Kingdom.¹³

Forensic Psychiatry balances individual rights with justice and societal needs, influenced by international instruments, legal practices, and expert collaboration within evolving human rights frameworks.

[the-rights-of-persons-with-disabilities-crpd](#) Accessed 19 December 2024

¹¹ ICRC, 'Rome Statute of the International Criminal Court, 17 July 1998' Available at <https://ihl-databases.icrc.org/en/ihl-treaties/icc-statute-1998> Accessed 12 December 2024

¹² Equality and Human Rights Commission, 'What is the European Convention on Human Rights?' Available at [¹³ European Court of Human Rights, 'Guide on Article 5 of the European Convention on Human Rights, Right to liberty and security' Updated on 31 August 2022, \[https://www.echr.coe.int/documents/d/echr/guide_art_5_eng\]\(https://www.echr.coe.int/documents/d/echr/guide_art_5_eng\) 16 December 2024.](https://www.equalityhumanrights.com/en/what-european-convention-human-rights#:~:text=The%20European%20Convention%20on%20Human%20Rights%20(ECHR)%20protects%20the%20human,Human%20Rights%20and%20Fundamental%20Freedoms>'. Accessed 19 December 2024</p></div><div data-bbox=)

NATIONAL LEGISLATION RELATING TO FORENSIC PSYCHIATRY AS A TOOL OF CRIMINAL ADJUDICATION

National legislations like the Bharatiya Nagarik Suraksha Sanhita, 2023, Bharatiya Nyaya Sanhita, 2023, and Bharatiya Sakshya Adhiniyam, 2023, include provisions using Forensic Psychiatry to adjudicate criminal matters. While considering criminal responsibility under Bharatiya Nyaya Sanhita, 2023, the accused must prove that, at the time of committing the act, they lacked the capacity to comprehend the nature of the act or to understand that it was either morally wrong or against the law.

The Supreme Court has emphasized that the critical moment for establishing unsoundness of mind is when the crime is committed.

In the case of *Dahyabhai Chhaganbhai Thakker v. The State of Gujarat*¹⁴, The court ruled that if the accused cannot definitively prove insanity at the time of the offense, but the evidence raises reasonable doubt about elements of the offense, including criminal intent (mens rea), the court may acquit the accused due to the prosecution's failure to meet its burden of proof.

While discussing mental illness in the case of *Gyarsibai v. The State*¹⁵, under Section 471 (i) of the Cr.P.C., 1973 (Now Bharatiya Nagarik Suraksha Sanhita, 2023), Individuals who establish an insanity defense are committed to a hospital for treatment, often receiving reduced sentences due to mental illness.

Additionally, Section 115 of the Mental Healthcare Act, 2017, It decriminalizes suicide, except in cases of severe stress, and mandates the government to provide care, treatment, and rehabilitation to individuals who have attempted suicide to minimize recurrence.

The Bharatiya Nagarik Suraksha Sanhita, 2023, outlines procedures for investigating an accused's mental condition, allowing trial postponement if the accused is suspected and confirmed to be of unsound mind.

If the court finds that the accused was of unsound mind during the offense, it will record this finding and postpone further proceedings. The court may then order the accused to be detained in a mental hospital for treatment, prioritizing appropriate care over punishment.¹⁶

¹⁴ 1964 SCR (7) 361.

¹⁵ AIR 1953 MB 61

¹⁶ Code of Criminal Procedure, 1973, s 329.

If the offense precludes bail, the accused must receive regular psychiatric treatment and not be kept in a mental asylum in violation of the Mental Health Act, 1987.

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), underscores the importance of addressing mental health concerns within the legal framework, particularly for individuals involved in criminal proceedings. Section 367 mandates that when an accused person is suspected to be of unsound mind, the Magistrate or Court must ensure medical evaluation and may postpone proceedings to safeguard their rights and ensure fair treatment. Section 368 further provides for the conditional release of such individuals during investigations or trials, highlighting the importance of care and supervision. These provisions reflect a balanced approach, prioritizing the mental well-being of the accused while upholding the integrity of legal processes.¹⁷

A forensic psychiatrist can testify as a fact or expert. Insanity defense and mental competency testimony from forensic psychiatrists helps courts decide liability. Indian courts value their mental state assessments.

ROLE OF FORENSIC PSYCHIATRY IN CRIMINAL CASES

Criminal cases and the judicial system depend on forensic psychiatry. It provides assessments, expert evidence, and insights to ensure fair and just judicial decisions while protecting mental health and justice.

a. The Insanity Defense

Forensic psychiatrists assist in insanity defense cases by answering questions raised by the accused, often involving the treating physician, and by evaluating the individual and the criminal act.¹⁸

An important divergence exists between medical and legal insanity in India. The famous Daniel M'Naughten case established the principle. Medical insanity is any mental ailment, but legal insanity needs impaired reasoning and a mental disorder. The court considers legal insanity, not medical insanity, when deciding criminal liability. Proving legal insanity under penal laws can lead to complex cases, often requiring treatment or institutionalization, which can extend beyond a standard sentence.

¹⁷ Ministry of home affairs, The Bharatiya Nagarik Suraksha Sanhita, 2023 Available at <https://prsindia.org/billtrack/the-bharatiya-nagarik-suraksha-sanhita-2023> Accessed on 15 Dec. 2024

¹⁸ Vaidehi gupta, 'Insanity Defence: A Loopholes For Criminals' Available at <<https://www.legalserviceindia.com/legal/article-7216-insanity-defence-a-loopholes-for-criminals.html>> 16 December, 2024

b. Competency to Stand Trial

The Hon'ble Supreme Court in *Zaheera Habibullah Sheikh V. State of Gujarat*,¹⁹ 2006 stated that 'Denial of a fair trial is as much injustice to the accused as is to the victim and the society.' The need for such assessment has been recognised by Article 14 of International Covenant on Civil and Political Rights²⁰ which recognises the right to a fair trial. It is also recognised by Article 14, 21, 22, 39A of the Constitution of India.

In the *United States*, the standard developed in *Dusky v. U.S.*²¹, Competency evaluations determine if a defendant can understand the legal proceedings and participate in their defense.

The threshold for establishing competency is low. A defendant can request a competency hearing at any time, involving supporting evidence and a psychological evaluation.²²

Determining competency assesses if a defendant can understand the charges and court processes, with efforts to restore competency if found unfit.

c. Risk assessment

In Forensic Psychiatry, evaluating risk and protective factors is crucial for assessing and preventing repeat offenses. In Europe, risk assessments utilize unstructured clinical assessments, actuarial risk assessments, and structured professional judgments.²³

Actuarial risk assessments use statistically determined factors to provide numerical estimates of future criminal behavior, such as violence. Structured professional judgments incorporate both static and dynamic risk factors, allowing professionals flexibility in risk evaluations.²⁴

In India, the evaluation of risk within criminal trials follows a somewhat different path. The focus is primarily on legal and medical components, examining the mental state and legal culpability of the accused.

d. Investigating Criminal Activities:

¹⁹ Appeal 446-449 of 2004 decided in 2006.

²⁰ All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

²¹ 362 U.S.402(1960).

²² Steven K. Hoge, 'Competence to stand trial: An overview' *Indian Journal Psychiatry*. 2016 Dec; 58(Suppl 2): S187-S190. doi: 10.4103/0019-5545.196830,

Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5282614/> Accessed 16 December 2024

²³ Philipse, M.W. Predicting 'criminal recidivism: empirical studies and clinical practice in Forensic Psychiatry' 2005, Febodruk Enschede.

²⁴ Shiina, 'A.Risk assessment and management of violence in patients with mental disorders: a review'. *J Forensic Legal Investig Sci* 2015;

The role of a Forensic Psychologist in criminal investigations can manifest in various ways. Professor Laurence Alison from the University of Liverpool²⁵ has outlined several roles and functions through which psychologists can support and assist the Police in their work. He emphasizes that psychologists' contributions go beyond offender profiling. They enhance law enforcement by improving police decision-making, leadership skills, interviewing techniques, data management of prior convictions, suspect prioritization based on research, and intelligence-led policing.²⁶

e. Intelligence Analysis:

Crime Analysis, sometimes referred to as intelligence analysis, is a field of work that makes use of methods from forensic psychology.

Employed by law enforcement, Crime Analysts examine data to assist police. A primary function is case linkage, connecting crimes based on similarities in offender behaviors reported by victims or deduced from crime scenes.²⁷

f. Offenders Profiling or Criminal Investigative Analysis:

Media portrayal of forensic psychologists in high-profile cases has raised public awareness of offender profiling but often leads to misunderstandings about its nature, frequency, and practitioners. Profiling lacks a universal definition, even in academia, but generally involves analyzing crime scene information, especially offender behavior, and combining it with other data, like victim statements, to infer characteristics of the perpetrator.²⁸ Profiling aims to determine if the crime was planned or impulsive, the offender's proximity to the crime scene, and the likely age and gender of the offender. These insights assist law enforcement in investigations and resource allocation.

g. Interviewing, Detecting Deception and Eye Witness Research:

²⁵ Sohini Basu, 'Role of Forensic Psychologists' Available at <https://www.legalserviceindia.com/legal/article-7367-role-of-forensic-psychologists.html> 23 November 2024.

²⁶ Crime Analysis and the Profession, Available at https://www.sagepub.com/sites/default/files/upm-binaries/46973_CH_1.pdf Accessed 16 November 2024

²⁷ Ibid

²⁸ Asha Bolton, 'Media Effects and Criminal Profiling: How Fiction Influences Perception and Profile Accuracy' NSUWorks, Available at https://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1205&context=fse_etd Accessed 16 November 2024

A primary responsibility during an investigation is collecting reliable evidence, with eyewitnesses being a significant source. Police officers must conduct detailed interviews to gather accurate information from witnesses and suspects. The interview process critically impacts a case's outcome. Forensic psychiatrists have developed guidelines and provided training for effective witness and suspect interviews. Psychologists also offer expertise on interviewing specific groups, such as vulnerable witnesses including children, the elderly, and those with learning disabilities.

h. Forensic Psychiatrist and Assessment and Treatment of Offenders:

Forensic psychiatrists in Australia, Canada, and the UK assess, rehabilitate, and manage offenders, both in the community and in custody. They work to reduce reoffending, address psychological needs, and assist with reintegration. These needs may include PTSD from their crimes or increased awareness of their impact on victims. The incarceration environment, including separation from family and inmate bullying, can also cause mental health issues like depression and anxiety.²⁹ Forensic psychiatrists conduct assessments, evaluate risks, and provide support for offenders, including monitoring and assistance in community settings.

The standardized instrument employed for Psychiatric assessments intended for court submissions is the 'Forensic Psychiatry Assessment Proforma.' The National Institute of Mental Health and Neurosciences,³⁰ provides a 'Detailed Workup Proforma for Forensic Psychiatry Patients-II,' a tool utilized by the institute for many years in conducting semi-structured assessments of Forensic Psychiatric cases, as evidenced in the case of *State of Rajasthan v. Shera Ram @ Vishnu Dutta*.³¹ This proforma is periodically updated to align with changing legal prerequisites.

TECHNIQUES OF FORENSIC PSYCHIATRY

Forensic Psychiatry employs various techniques, including psychiatric evaluations, structured interviews, psychological testing, and risk assessments, to provide expert insights in legal matters. These methods encompass competency and insanity evaluations, violence and sex offender risk assessments, substance abuse evaluations, expert witness testimony, forensic reports, child custody evaluations, legal consultations, and mental health care in correctional

²⁹ Ibid

³⁰ National Institute of Mental Health and Neurosciences, Available at <https://nimhans.ac.in/wp-content/uploads/2022/04/NIMHANS-Prospectus-2022-23-Session-1-1.pdf>. Accessed 13 November 2024

³¹ 2012, 1 SCC 602

settings.³² These techniques collectively aid in elucidating the intricate interplay between mental health and the legal arena, influencing just outcomes and interventions.

During forensic assessments, psychiatrists generate and test hypotheses based on legal standards through interviews and examinations. This iterative process continues until all relevant psychiatric, medical, and legal diagnoses are confirmed or rejected.

CONCLUSION

The criminal justice system aims to seek justice for society and victims, with forensics and evidence playing a crucial role in this pursuit. There is an intricate connection between crime and psychiatry, as some individuals with severe psychiatric disorders may engage in criminal activities. The underlying factors contributing to both crime and Psychiatric disorders can overlap and intertwine.

In the medical field, mental health assessments vary along a continuum, from severe illness to complete health, whereas legal language often simplifies this to classifying individuals as criminally responsible or not. Psychiatrists prioritize individual medical treatment, whereas courts prioritize safeguarding society from potential harm posed by offenders.

In India, establishing the insanity defense necessitates thorough consideration due to limited forensic evidence use, requiring proof of the individual's mental illness and incapacity to understand their actions or wrongdoing.

Forensic science, including disciplines like forensic psychology and forensic psychiatry, plays a vital role in uncovering the truth behind criminal activities within the Criminal Justice System. This relationship between crime and psychiatric disorders reveals intertwined factors such as substance abuse, trauma, and social determinants of mental health.

Forensic Psychiatry has emerged as a crucial branch of forensic science, bridging medical and legal systems to assess individuals' mental states in legal cases. Balancing justice and addressing complexities of mental illness highlights the need for collaboration between legal and mental health professionals within the criminal justice system.

³² Simran, 'Forensic Psychiatrists : Role, Responsibilities and Controversies' Mantra Care Available at <https://mantracare.org/therapy/psychiatry/forensic-psychiatrists/> Accessed 21 November 2024

INSURANCE LAW'S ESSENTIAL DISTORTION AND MISREPRESENTATION

*Dr. Neeta Ahir**

ABSTRACT

The complex world of insurance regulations is a cornerstone of risk management in contemporary society, yet it is rife with uncertainties that can result in fundamental misrepresentations and distortions. Although the intention of these legal frameworks is to protect both insurers and policyholders, the intricacy of policy language and the possibility of dishonest behavior may compromise this protection. Important information about coverage, exclusions, and each party's responsibilities is frequently hidden by the spread of false information, whether via brokers or agents. By examining the mechanisms of distortion and deception in insurance legislation, this paper seeks to clarify their effects on consumer confidence, the efficacy of regulations, and the integrity of the market as a whole. Through analyzing these problems, the conversation will advance a better comprehension of main causes of litigation and disputes pertaining to insurance contracts. The paper discusses how convoluted policy language and deceptive practices by brokers and agents can obscure critical information regarding coverage and responsibilities, ultimately eroding consumer trust and the effectiveness of regulations. By focusing on these issues, the research aims to shed light on the root causes of litigation and disputes in insurance contracts, especially in India, where enforcement mechanisms are inadequate. The paper concludes with suggestions for potential reforms to address these challenges.

Keywords: Insurance, Distortion, Misrepresentation, Risk Management

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INTRODUCTION

The intricate realm of insurance laws serves as a foundational element for risk management in modern society, yet it is fraught with ambiguities that can lead to essential distortions and misrepresentation. The relationship between insurers and insured parties is greatly impacted by misrepresentation in insurance contracts, as it distorts risk assessments. It may result in serious repercussions like policy revocation or claim denial. The fundamental duty of good faith is compromised when one party gives misleading information. These legal frameworks are designed to provide protection for both insurers and policyholders; however, the complexity of policy language and the potential for deceptive practices can undermine this intended protection. The proliferation of misleading information, whether from agents or brokers, often obscures critical details regarding coverage, exclusions, and the obligations of each party. This paper aims to explore the mechanisms of distortion and misrepresentation within insurance laws, shedding light on their implications for consumer trust, regulatory effectiveness, and overall market integrity. By dissecting these issues, the discussion will contribute to a deeper understanding of how misleading practices not only affect individual policyholders but also impact the broader insurance landscape.

UNDERSTANDING DISTORTION IN INSURANCE PRACTICES

The distortion in insurance practices often arises from the intricate interplay between regulatory frameworks, market behavior, and consumer perceptions. Insurers, motivated by the desire to maintain profitability, may engage in misrepresentation of policy terms or coverage limits, ultimately leading to significant customer dissatisfaction and financial repercussions for the insured. **ICICI Prudential Life Insurance Co. Ltd. vs. Lakhwinder Singh**¹, in this instance, the insured gave false information on the proposal form about their occupation and income. The court affirmed the insurer's choice to reject the claim, highlighting how the contract is void when important facts are suppressed. (Furthermore, regulatory oversight is frequently challenged by the complexities inherent in insurance language, which can obscure critical details from consumers. This obscurity not only enables misrepresentation but also complicates the disclosure of essential information, creating a gap in public understanding of insurance products. In instances where misrepresentation becomes egregious, affected parties may seek remedial action; Considering the implications of such practices, it becomes vital to explore the

¹ May 31, 2024. District Consumer Disputes Redressal Commission, Chandigarh.

legal standards governing insurance laws, which seek to mitigate the risks associated with these distortions and protect consumers in an often opaque market.

DISTORTION AND THEIR IMPACT ON POLICYHOLDERS

Understanding the various types of distortion in insurance practices is crucial for evaluating their impact on policyholders. Distortions can manifest as misrepresentations of coverage, exaggerated claims of benefits, or misinformation about policy conditions. Such practices not only undermine the trust between insurers and consumers but also lead to significant financial repercussions for policyholders. For instance, when potential buyers are misled about the necessity or value of a product like life insurance², it creates a barrier to informed decisions. Additionally, the emergence of interest groups opposing reform initiatives, such as those presented in the Restatement of the Law of Liability Insurance, highlights a trend where entity biases can further distort the legal landscape, disadvantaging the very individuals these policies aim the protection.³ A material fact is a critical fact that is highly relevant for insurance purposes. If a policyholder withholds a material fact and the insurer issues a policy without knowledge of this fact, then it might constitute insurance fraud. Withholding certain material facts can also void policies entirely⁴. “There are a number of different material facts whose withholding could void an insurance policy. For example, if a person with terminal cancer applies for life insurance and does not disclose the cancer diagnosis, or lies about it, this could void the policy. This is because the material fact that the person had cancer is deemed so important to the insurance coverage that withholding it could violate policy terms and conditions⁵.” A non-disclosure agreement (NDA) is a legal contract between two or more parties that signifies a confidential relationship exists between them. The confidential relationship exists because the parties share information among themselves that should not be made available to any other parties outside of those involved, such as competitors or the general public or an NDA may also be referred to as a confidentiality agreement.⁶ “The policyholder

² Hanson, Jon S., Kimball, Spencer L.. "The Regulation of Specialty Policies in Life Insurance". University of Michigan Law School Scholarship Repository, 1963, <https://core.ac.uk/download/346441289.pdf> visited on 1st November, 2024, last visited at 4.00am.

³ Stempel, Jeffrey W. "Hard Battles Over Soft Law: The Troubling Implications of Insurance Industry Attacks on the American Law Institute Restatement of the Law of Liability Insurance". Scholarly Commons @ UNLV Boyd Law, 2021, <https://core.ac.uk/download/423485837.pdf> last visited on 1st November 2024 at 4.10am

⁴ Sophia Harrison, What Is a Material Fact in Insurance?, Sapling, 11-May 2013, <https://www.sapling.com/8008841/material-fact-insurance>; last visited on 1st November;2024 at 4.18am.

⁵ Ms. Nargis Yeasmeen, Consequences of Non-Disclosure in the Contract of Insurance, IOSR Journal of Business and Management (IOSR-JBM), Vol 17, 2015.

⁶ WILL KENTON, Non-Disclosure Agreement – NDA, Investopedia, Jun 29, 2018,

must act in good faith by fully disclosing all information that affects the insurance company's level of risk, even if the insurance company agrees to share the risk of loss with the policyholder." By charging the policyholder a premium that fairly represents the amount of risk it is taking on or even by declining to issue a policy if the risk is too great, full transparency enables the insurer to safeguard itself.

MISREPRESENTATION IN INSURANCE CONTRACTS

Misrepresentation in insurance contracts poses significant challenges, as it undermines the principle of good faith integral to the insurer-insured relationship. When parties to a contract provide false information, they distort the risk assessment, which can lead to severe financial repercussions for both sides. In life insurance, for example, an insured's failure to disclose critical health history can result in claims being denied, impacting beneficiaries relying on these policies for financial security⁷. This ethical dilemma intensifies with aggressive sales techniques, where insurers may inadvertently create pressures that lead to misrepresentation by consumers who feel rushed or inadequately informed about their policies. Furthermore, legal mechanisms designed to address consumer protection, such as cooling-off rules, are often insufficient in the context of these contracts, as they do not inherently consider the unique aspects of insurance transactions⁸. Hence, addressing these issues necessitates comprehensive reforms to enhance transparency and accountability in the industry. In the case of **Okonkwo v Midland & Mansfield Insurance Co. Ltd**,⁹ the court held that "Insurance contract is described as where a person is called insurer/insurance Company in return for an agreed consideration in money or money's worth called premium paid to them by another person called an insured/assured agrees or undertakes to pay money or indemnify the latter on the occurrence or happening of a certain specified hazardous event. In the context of insurance, making a false statement in an application for a policy or during an interview is considered misrepresentation. It could be so trivial that the insurance just needs to amend the policy, or it could be so serious that it gives the insurer good reason to terminate the agreement."¹⁰ **Oriental**

<https://www.investopedia.com/terms/n/nda.asp#ixzz5TGLOSkUB>

⁷ Supra footnote-2

⁸ Fabian Maramarosy, Sarah. "Caveat Vendor: A Call to Reform the Scope of Rights of Withdrawal for Off-Premises Contracts Under U.S. Consumer Protection Laws with Respect to the Auction of Art". FLASH: The Fordham Law Archive of Scholarship and History, 2020, <https://core.ac.uk/download/289198357.pdf>

⁹ Okonkwo v Midland & Mansfield Insurance Co. Ltd (1980) FHCLR 149

¹⁰ ShareLawyerson, The Difference between Fraudulent and Innocent Misrepresentation in Insurance Claims, Share Lawyers, Mar 10, 2014, <https://www.sharelawyers.com/blog/2014/03/the-difference-between-fraudulent-and-innocent-misrepresentation-in-insurance-claims.html> ; last visited on 1st November, 2024 at 4.21am

Insurance Company Ltd. vs. Mahendra Construction ¹¹ held that the insured failed to disclose previous insurance claims, which was deemed a suppression of material facts. The Supreme Court ruled in favour of the insurer, stating that non-disclosure of information influencing the insurer's decision constitutes a valid ground for repudiation. In an insurance policy, the insurance company has the authority to cancel the policy if the insured makes false representations.

IMPORTANCE OF PROPER REPRESENTATION AND GENUINE DISCLOSURE

“In insurance applications, lying or omitting information could have serious consequences. False, inaccurate, or even incomplete responses in the application or failure to disclose important facts could undermine the contract's foundation and endanger its ongoing existence.¹²” Mutual obligations of good faith and trust establish the connection between the insured and the insurer. The relevant details are typically well understood by the applicant at the time of application, but it can be challenging for the insurer to ascertain them. When deciding whether to issue a policy and what particular exclusions to require, the insurer is vulnerable and needs the relevant information in order to calculate the premium.¹³ The requirements that an insured disclose all facts, transaction with the surety not to misrepresent material facts in an insurance contract are universal requirements. **New India Assurance Co. Ltd. vs. Yallavva and Another** ¹⁴ court held, the burden of proof lies on the insurer to establish non-disclosure or misrepresentation. Without evidence of suppression or misrepresentation, the insurer cannot avoid the policy. The Disclosure in the insurance context is distinct from the approach in commercial contracts, and in others between persons dealing at arm's length. the requirement to affirmatively volunteer information in relation to insurance transactions reflects, first, the potentially mortal impact inadequate information poses to the insurance industry's vitality, and second, the practical reality that certain critical information may be peculiarly within the insured's knowledge and difficult to elicit.¹⁵ However, in cases, such as

¹¹ SC 317, (2019) 137 ALL LR 232

¹² Ms. Nargis Yeasmeen, Consequences of Non-Disclosure in the Contract of Insurance, IOSR Journal of Business and Management (IOSR-JBM), 1-05-2011, <http://iosrjournals.org/iosr-jbm/papers/Vol17-issue6/Version-3/D017632936.pdf>, last visited on 1st November, 2024 at 4.45am.

¹³ Misrepresentation and Non-Disclosure in Insurance Law. Identical Twins or Separate Issues?, John Birds and Norma J. Hird, The Modern Law Review, Vol. 59, No. 2 (Mar., 1996), Pg 4.

¹⁴ 2020 KAR 986

¹⁵ M. A. Clarke, The Law of Insurance Contracts (3rd edition, 1997), Chaps 22-23.

the **House of Lords in Banque Financiere de la cite S.A. v. Westgate Insurance Co Ltd**¹⁶ have affirmed that the duty of utmost good faith and the duty of disclosure are mutual and fall upon both insurer and insured and again affirmed in the **Bank of Nova Scotia v. Hellenic Mutual War Risk Association**, the English Court of Appeal "did not think it necessary" to question the view that the duty of utmost good faith continues during the currency of the insurance contract, Secondly, that the insured and insurer act in the utmost good faith towards each other is not confined to the duty of disclosure and a duty not to misrepresent material facts. As the Australian Law Reform Commission" points out, "it should apply equally to other aspects of the insurance relationship", for example, to an insurer's breach of the duty of good faith in relation to the settlement of a claim.

LEGAL CONSEQUENCES OF MISREPRESENTATION FOR INSURERS AND INSURED

The legal consequences of misrepresentation in insurance contracts pose significant implications for both insurers and insured parties, fundamentally shaping the dynamics of their relationship. Misrepresentation occurs when one party provides false or misleading information, which can result in the insured facing denial of claims or the insurer being compelled to honor contracts under dubious terms. This paradigm raises essential questions about the duty of good faith, particularly given the information asymmetry that often exists between insurers and insured individuals¹⁷. Instances of misrepresentation can lead to severe repercussions, including rescission of the policy, where insurers may void the contract altogether, thus leaving the insured without coverage at critical moments¹⁸ Therefore, a thorough understanding of these legal consequences is vital in fostering ethical practices within the insurance industry and ensuring that both insurers and insured are protected from the adverse outcomes of misinformation. In the case of **Rakesh Patel vs LIC Of India &Anr.**, the court held that, "The term "material fact" is not defined and, therefore, it has been explained by the Courts in terms generally understandable which mean as any fact which would influence the judgment of a prudent insurer in fixing the premium or formative whether he would like to accept the risk. Any fact which goes to the root of the Contract of Insurance and has a bearing

¹⁶Banque Financiere de la cite S.A. v. Westgate Insurance Co Ltd, [1991] 2 A.C. 249.

¹⁷ Julie-Anne Tarr, Janet Mack. "Auditor obligations in an evolving legal landscape". Accounting Auditing & Accountability Journal, 2013, <https://doi.org/10.1108/aaaj-03-2013-1262> p-1009-1026. Last visited on 2nd November, 2024 at 8.00pm.

¹⁸ Gero Verheyen, Edith Quintrell. "Old Risks-New Solutions, or Is It the Other Way Around?". The World Bank eBooks, 2013, <https://doi.org/10.1596/978-0-8213-9877-7>

on the risk involved would be "material"¹⁹. False and improper answers or non-disclosure of material facts may lead to the contract becoming voidable on part of the insurer and put its continued existence in jeopardy. in the case of **Pan Atlantic Co Ltd and Another v Pine Top Insurance Co Ltd**, the court established that, "Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk or not". And also mentioned that - The insurer is vulnerable and requires the material facts in order to determine whether to issue a policy or not, what specific exclusions it may or may not require, and what premium it will or will not charge²⁰, The affiliation amongst the insurer and the insured can be recognized by the mutual obligations of trust and good faith which are dominant. When the application is being made, the essential facts are definitely known by the applicant but it may be challenging for the insurer to ascertain the same. The insurer is at risk and requires knowing all the material facts in order to determine whether or not it can issue a policy and with the doubt what premium it shall charge²¹. In the case of **Satwant Kaur Sandhu vs. New India Assurance Co. Ltd.**, the court said that, "It needs little emphasis that when an information on a specific aspect is asked for in the proposal form, an assured is under a solemn obligation to make a true and full disclosure of the information on the subject which is within his knowledge. It is not for the proposer to determine whether the information sought for is material for the purpose of the policy or not"²². This case acknowledges that the proposer must decide what information must be sought, but it doesn't specify why or how one determines the level of risk. There are two distinctive duties on the applicant during the process. Typically, the applicant converses with the agent or broker in order to complete the application. Subject to the nature and type of insurance coverage sought, the application contains a series of questions regarding the history, business activities, health etc. of the applicant²³. And the application contains a declaration executed by the applicant that the answers given are bonafide and true. "When an insurer takes the position that a policy is void by reason of misrepresentation or non-disclosure, the insurer is not required to establish the motives of the insured. The insured's motives are not relevant as long as the misrepresentations are of a fact known to the insured which could be regarded by a reasonable

¹⁹Rakesh Patel vs Lic Of India & Anr, Revision Petition No. 408 of 2013, Decided On, 16 January 2015.

²⁰ Pan Atlantic Co Ltd and Another v Pine Top Insurance Co Ltd, [1995] 1 AC 501, [1994] 3 All ER 581, [1994] 2 Lloyd's Rep 427, [1994] 3 WLR 677

²¹Insurance Law. Under the Influence, Malcolm Clarke Malcolm Clarke, The Cambridge Law Journal, Vol. 53, No. 3 (Nov., 1994), pp. 438-440.

²²SatwantKaurSandhu Vs.New India Assurance Co.Ltd. (2009) 8 SCC 316

²³ Non-Disclosure: Hair shirt or Halo?, David Allen, The Modern Law Review, Vol. 55, No. 1 (Jan., 1992), pp. 96-101

insurer as material to the risk”²⁴. “As a general rule, just because questions relating to the risk are put to the applicant does not release him or her from the independent obligation to disclose all material facts. In situations where the application form is completed with the assistance of an agent or broker, the factual circumstances surrounding the completion of the application are relevant to a determination as to whether there was misrepresentation or non-disclosure”²⁵. “Where the agent or broker misinterprets the question or provides misleading or incorrect advice to the insured, the insured may not be held responsible for inaccurate answers. Further, if there is any uncertainty in the scope and purview of the answers sought, the issue will be resolved in favor of the insured. And the duty of disclosure imposed on the insured does not stop at the application stage. It continues up to the moment when a binding insurance contract is concluded”²⁶. In the case of **LIC of India vs. Shobha Rani Shah and Anr**, where “the court accepted the claim of the appellants saying that, the agents act on behalf of proposer at the time of filling up the form. Therefore, insurance company is not responsible for the act done by the agent. Looking all this circumstances, the insurance company has rightly rejected the insurance claim”²⁶. This judgment realized the fact that the insured will only answer the questions asked by the agent or the insurance company and apply the mind of its own, therefore there is a law needed in order to regulate these contracts and the roles of insurance company and the agents. In the case of **L.I.C vs. Shakunthalabai**, the court put additional burden on the L.I.C. agents while procuring new business. The Honourable Court did not approve of the repudiation because the insurer could not establish by clean and cogent evidence that the question was properly explained to her and she was not told that illness included such casual disturbance of health.” Thus, it was held that the insurer must act “fairly and honorably to the insured explaining properly the implications of the declaration to be signed by the insured and the range and the amplitude of the questions required to be answered.”²⁷ In **Black King Shipping Corporation v Massie**, ‘Litsion Pride’s case’, the courts had introduced a novel concept in the law when he “extended the duty of disclosure to circumstances beyond the conclusion of the contract. Litsion Pride has made it patently clear that the duty of utmost good faith is not only overriding, going beyond the obligations set out in the following sections, but that it is also continuing. Hirst J also referred to the duty not to make fraudulent claims as a facet of the duty

²⁴Contracts: Misunderstanding: Misrepresentation of the Contents of a Written Offer, D. L. Q., Michigan Law Review, Vol. 34, No. 5 (Mar., 1936), pp. 705-716.

²⁵ Ibid.

²⁶LIC of India vs. Shobha Rani Shah and Anr, (2011) CPJ 166 (NC

²⁷ Life Insurance Corporation of India vs ShakuntalaBai, AIR 1975 AP 68

to observe utmost good faith”²⁸. The insured is under a duty to disclose only facts of his knowledge. According to Fletcher Moulton LJ in **Joel v Law Union and Crown Insurance**²⁹ “you cannot disclose what you do not know”. Formerly, “the test for materiality was whether a prudent insurer would consider it relevant in deciding whether or not to accept the risk or in fixing the premium. There was no need for the particular insurer in question to regard it as material. The insurer could avoid it if it was a fact that would have influenced a prudent insurer”³⁰. In the case of **Container Transport International Inc v Oceanus Mutual Underwriting Association (Bermuda) Ltd**,³¹ the Court of Appeal held that an insurer was entitled to avoid a contract under Section 18 of the Marine Insurance Act where there was undisclosed before the contract was concluded, any circumstance which a prudent insurer would have taken into account when reaching his decision whether or not to accept that risk or what premium to charge”³¹. The court had rejected the decisive influence test as, “the test for materiality and instead stated the non-disclosed information should have been of such a nature that a prudent insurer would have wished to know the facts. The consideration here is the prudent insurer and not the particular insurer.”

In **Carter v Boehm**, The court said: “Insurance is a contract based upon speculation. The special facts, upon which the contingent chance is to be computed, lie most commonly in the knowledge of the insured only; the underwriter trusts to his representation and proceeds upon the confidence that he does not keep back any circumstance in his knowledge, to mislead the underwriter into a belief that the circumstance does not exist, and to induce him to estimate the risk as if it did not exist.”³²

CONCLUSION

Amid the growing complexities of the insurance landscape, the imperative for reform in insurance laws becomes increasingly evident, particularly in addressing the pervasive issues of distortion and misrepresentation. These practices not only undermine consumer trust but also skew the competitive balance within the industry, resulting in detrimental outcomes for both policyholders and insurers. Distortion often occurs when insurers engage in misleading

²⁸ Black King Shipping Corporation v Massie, ‘Litsion Pride’ [1985] 1 Lloyd’s Rep 437

²⁹ Joel v Law Union and Crown Insurance [1908] 2KB 863

³⁰ John Lowry & Phillip Rawlings, Insurance Law Cases and Materials 2004.

³¹ Container Transport International Inc v Oceanus Mutual Underwriting Association (Bermuda) Ltd [1984] 1 Lloyd's Rep 476.

³² (1766) 3 Burr 1905

advertising or fail to provide transparent information about policy terms, while misrepresentation arises when either party provides inaccurate information during the application process. Such behaviors can lead to claims disputes, coverage gaps, and financial losses for consumers who rely on insurance for protection. In order to reduce the issue or relieve the complexities resulting from misrepresentation and non-disclosure, the researchers in this work have made a few recommendations.

- To enable the insurer to read and comprehend the terms and conditions of the policies, the first step should be the creation of the "standard notice." All potential material facts pertaining to the policies should be specifically mentioned in the notice. Although each company has different terms and conditions, the central authority should standardize this notification.
- Secondly, insurance providers can offer a hotline service that gives the insured a different means of understanding all legal requirements and the complexities of insurance contracts before they sign. The insured can utilize these helpline lines to discover the material data required by the insurer and to comprehend all the terms and conditions of the insurance contracts.
- A regulation that explicitly outlines the responsibilities and rights of insurers, agents, and insured is unquestionably necessary. The act will include all the clauses required to keep the contracts in effect, as well as the standard templates for Standard Notices, confidentiality agreements, acknowledgements, and dispute resolution clauses. The act will specify how the supervisory committee will be established, along with its responsibilities and authority.
- The act would impose duties not only on the insured but also on the insurers, allowing for the observance of any violations of the act's regulations. In order for the business and the insured to be afraid of legal action for the duty violation. The legislation will also specify the procedure that will be used when the court finds a violation.

Therefore, revising existing regulations to enhance transparency, enforce stricter penalties for deceptive practices, and promote informed decision-making is essential. Ultimately, reforming insurance laws is crucial to ensure fair dealings, restore public confidence, and maintain the integrity of the insurance market.

**A CRITICAL ANALYSIS OF THE LEGISLATIVE FRAMEWORKS IN
PREVENTING ENVIRONMENTAL POLLUTION IN INDIA**

*Prof. Deepak B.D.**

ABSTRACT

“Man is the most insane species. He worships an invisible God and destroys a visible Nature, unaware that this Nature he's destroying is this God he's worshipping”.

- Hubert Reeves

This Article aims to provide an insight significance and the need for the global as well as the Indian intervention for the present concern over the air pollution. What is the need for the intervention, whether it severs any change in the global temperature and climate change, or it make reduces the environmental pollution. Has the present generation forgotten their duties in protecting the environment and simply claiming their rights instead. There is no point in shouting by holding a slogans and sign boards for clean environment and claiming that too by way of constitutional guarantee, at least stopping the pollution today and by adopting renewable and sustainable means may actually serve the purpose. The life of the future generation will be miserable if we do not stop polluting and start protecting the environment. This Article will ultimately serve the purpose at clearing the doubts and by filling the gaps. This article speak about right to clean environment which is absolute right or is a limited one, whether to enjoy such right any inter-related duty has to be performed. As Mahatma Gandhi has said “Earth provides enough to satisfy every man’s needs, but not every man’s greed”.

Keywords: Constitutional guarantee, Climate change, Environmental Pollution, Right to clean environment, Sustainable means.

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INTRODUCTION

Law may be defined a set of rules and regulations framed by the sovereign authority and its breach results in a punitive sanction. In some sense, the law is the command of the sovereign and followed by the subjects. Environmental law acts as a tool for developing and safeguarding the environment, as well as regulating and preventing any act that pollutes or attempts to contaminate the surroundings.¹ To protect the environment and to regulate and implement the laws strictly the Government of India had constituted a committee headed by Mr. Tiwari. The Tiwari Committee reported that there were almost 500 environmental laws in force in India in the past and that no systematic research had been conducted to review and improve these laws.² When it comes to building environmental laws in India, the Tiwari Committee Report is crucial. In 1980, the group spearheaded by N.D. Tiwari—then the Deputy Chairman of the Planning Commission—was established with the official designation of the group for Recommending Legislative Measures and Administrative Machinery for Ensuring Environmental Protection. The Tiwari Committee's recommendations established the groundwork for contemporary environmental governance in India. They underscored a holistic approach to environmental concerns, resulting in the development of policies and legislation that persist in influencing India's environmental protection system today.

When the topic of environmental law is discussed each of us would discuss only the era of the British Raj and the Stockholm declaration, but it all started in ancient India. Protecting the nature and environment is one's dharma and duty is highlighted in several smriti and dharma sastras. Causing injury to the plants and trees useful to man is a punishable offense as described in the Manu smriti.³ During the period of Kautilya, he had prescribed the offense and its penalties are based on the significance of a certain tree.⁴ Manu states that the protection of the forest is the duty of mankind.⁵ The most vital point regarding air pollution is it which caused by the polluted particles and smoke which is present in the air.

The air is an essential component for breathing and surviving life on earth. It can also be stated as “*Sine qua non*” means without which the existence of life on earth is impossible. Like food and water, the air is also mandatory for the survival of life. The absence of air may lead to suffocation and ultimately results in death. Several landmark rulings and celebrated decisions

¹ P. Leelakrishnan, *Law and Environment*, EBC Publishers, 1992 Ch-1, P-1.

² *ibid.* P-2.

³ *Manu*, vol-VIII, P-282.

⁴ *Kau*, III, XIX, P-197.

⁵ *Max Muller*, the second Book of the east, 1965 vol. XIV, part II, P-389.

of the Honourable Apex Court and the High Courts pointed out that unpolluted air for breathing is the basic human right of each individual and which is also a fundamental human right to live.⁶

a. MANU SMRITI AND ENVIRONMENTAL PROTECTION

The Manu Smriti, an ancient Indian scripture ascribed to the sage Manu, encompasses fundamental concepts of ethics, jurisprudence, and administration. While largely concentrating on social and religious order, it also examines the link between humanity and environment. Its concepts possess indirect significance for contemporary environmental legislation by underscoring environmental harmony, sustainable practices, and the ethical stewardship of natural resources.

Fundamental Environmental Concepts in Manu Smriti

- i. *Reverence for Nature:* The Manu Smriti emphasizes the interdependence of all living forms and advocates for a profound respect for nature as a holy obligation. It considers elements such as land, water, air, and biodiversity as vital components of life and underscores their conservation.
- ii. *Conservation of Natural Resources:* The text cautions against the over exploitation of natural resources, stressing the necessity for equilibrium. It cautions against deforestation and advocates for sustainable agriculture techniques.
- iii. *Pollution Control:* Manu Smriti delineates stringent regulations to avert the contamination of aquatic ecosystems and maintain their holiness.
For example:
 - a) Individuals are forbidden from cleansing contaminated things in rivers.
 - b) Penalties and atonements are mandated for the pollution of natural resources.
- iv. *Animal Protection:* The book promotes non-violence (Ahimsa) towards animals and recognizes their significance in sustaining ecological equilibrium. Cruelty towards animals is regarded as a sinful act, which corresponds with contemporary notions of animal rights and biodiversity preservation.
- v. *Trash Management:* The Manusmriti offers directives for trash disposal to preserve cleanliness and hygiene in communal areas.
- vi. *Sacred Groves and Forests:* This highlights the importance of sacred groves (protected places) and forests, which must be conserved for their ecological and spiritual value.

⁶ Art. 21 of the Constitution of India, 1950.

The Manu Smriti functions as a conceptual foundation for environmental ethics and sustainable living concepts. Although it does not expressly establish rules in the contemporary context, its doctrines advocate for the judicious use of resources and the harmonious cohabitation with environment. These ancient principles persist in influencing the ethical framework of India's environmental legislation.

b. KAUTILYA AND ENVIRONMENT PROTECTION

Kautilya, or Chanakya, was an ancient Indian philosopher, economist, and political strategist who wrote the influential book Arthashastra. While largely centred on government, economics, and administration, the Arthashastra has valuable stipulations for environmental protection, resource management, and sustainable practices. These concepts acknowledge the importance of environmental resources for the state's economy and security.

Kautilya's Perspectives on Environmental Conservation:

- i. *Conservation of Natural Resources:* Kautilya underscored the necessity of safeguarding and sustainably managing forests, water bodies, animals, and minerals for the economic and strategic stability of the kingdom.
- ii. *Forest and Wildlife Conservation:* Forests are regarded as essential resources for timber, pharmaceuticals, and fauna. The Arthashastra mandates the designation of a Superintendent of Forests (Vanadhyaksha) to supervise forest management, safeguard wildlife, and guarantee the sustainable extraction of forest resources. Wildlife sanctuaries were created to preserve particular animals, notably elephants, which were deemed important for military purposes.
- iii. *Water Resource Management:* Water is considered an essential resource for agriculture, potable use, and transportation. Kautilya promoted the development and upkeep of irrigation systems, reservoirs, and canals. He mandated sanctions for contaminating water bodies or impeding their flow, guaranteeing pure and accessible water for the populace.
- iv. *Urban Planning and Pollution Control:* The Arthashastra provides directives for urban planning to promote sanitation and mitigate pollution. It required the establishment of appropriate waste disposal systems and the allocation of specific locations for hazardous activity, far from residential zones.
- v. *Sustainable Agriculture:* Kautilya advocated for crop rotation and sustainable agricultural methods to preserve soil fertility and avert resource depletion. The language underscores the safeguarding of agricultural land from floods and droughts.

- vi. *Mining and Mineral Resources*: Mining was controlled to avoid over-extraction and guarantee resource sustainability. A Superintendent of Mines was accountable for the effective exploitation and administration of mineral resources.
- vii. *Climate and Disaster Management*: Kautilya acknowledged the significance of preparedness and mitigation strategies for natural catastrophes, including floods, droughts, and famines. He recommended that the state sustain food stocks and use humanitarian measures during environmental catastrophes.
- viii. *Fines for Environmental Offences*: The Arthashastra mandated stringent fines for infractions like as deforestation, unlawful hunting, and pollution, so establishing accountability for environmental destruction.

The prosperity of a state is directly proportional to the health of its natural environment, according to Kautilya's Arthashastra. By advocating for conservation, responsible use of resources, and strict enforcement of environmental laws, Kautilya laid the groundwork for governance approaches relevant to contemporary environmental management.

AIR POLLUTION

The Atmosphere of the earth is made up of a combination of gases, particulate matter, and moisture. Such gases contain O₂ (oxygen), N₂ (nitrogen), CO₂ (carbon dioxide), H₂ (hydrogen), and so on. It also contains some percentage of ozone & inert gases such as Helium, Neon, Xenon, Krypton, Radon, and Argon. If the quality of any of the gases and other things exceeds permissible limits, the atmosphere is adversely affected. Breathing issues, blood ailments, vision problems, and a variety of skin and lung diseases are all caused by it.⁷ Any gaseous, liquid, or solid material, like noise or smell, in such a ratio or quantity that it tends to be harmful to humans, other living things, plants, or property is considered polluted air. Polluted air has not defined under *the Act*.⁸ It defines air pollution u/s. 2(a) of the Act.⁹ The most significant contributor to air pollution is a high concentration of suspended particle matter, often known as SPM. Industrialization and the rapid growth of population are also other factors for air pollution.¹⁰

The air which is stated above and discussed in the upcoming paras is meant as oxygen (O₂) which is suitable for breathing. There are a greater number of gases present in the air, but the

⁷ S.C. Shastri, *Environmental Law*, 3rd Edition, 2008, EBC Publications, P-19.

⁸ *The Air (Prevention and Control of Pollution) Act of 1981*.

⁹ Dr. H.N. Tiwari, *Environmental Law*, Allahabad Law Agency, 1997, P-122.

¹⁰ Indrajit Dube, *Environmental Jurisprudence, Polluter's Liability*, LexisNexis Butterworths, 2007 P-9.

gas which is most needed for humans and includes animals and birds is the precious unpolluted oxygen. The oxygen levels on Earth are critically low, both in the atmosphere and on the land. Understanding this fundamental concept of life would enhance our comprehension of environmental preservation, so ensuring the continued presence of life on Earth in the future. The future generation will endure the consequences of the transgressions of the current generation. Uncompromising environmental conservation and sustainable growth is important today.

a. PERCENTAGE OF OXYGEN ON EARTH'S SURFACE

The presence of oxygen is very low in the atmosphere as and when compared to the other gases. In a study conducted by NASA almost 78% of Nitrogen, 21% of oxygen, and 1% of other stuff such as CO₂, Neon, and Hydrogen are present in the atmosphere. While we breathe, we inhale the oxygen present in the air combined with Nitrogen, which is 3.5 times more than oxygen. Our body is a cable separating oxygen from other gases.

b. FUNDAMENTAL DUTIES OF EACH CITIZEN

Our duty as a citizen of this Nation and also an existing generation is to safeguard the environment for the upcoming generation as per the sustainable development goals. "Art. 51A(g) of the Indian Constitution enshrined a provision that each individual should strive towards excellence so that the country will be developed. So both as a citizen of the country and as well as the present generation we are duty-bound to protect the environment"

c. DR. A.P.J. ABDUL KALAM'S VISION ABOUT ENVIRONMENT

We all know that plants are the source of natural oxygen concentrators, they not only produce pure oxygen but also, they consume the unwanted carbon-di-oxide and purify the surface and thereby preventing the greenhouses to escape into the atmosphere. Planting trees and safeguarding the environment not only helps in the production of oxygen but also increases the higher chances of rain, which is the main aim of our former Indian President Dr. A.P.J. Abdul Kalam. He not only had a vision but also encouraged and inspired several young minds to take forward his vision about planting trees and reducing global warming. He is a great visionary personality, had predicted the future of the environment and sustainable development. He had really valued the trees as it gives shelter, purify CO₂ and generates purest oxygen and reduce the global temperature and prevents acid rain. So each and every people of this country should contribute a small step in protecting the nature and causing harm.

HISTORY OF ENVIRONMENTAL LEGISLATION

The Environmental Legislations slowly started to develop, due to the impacts of pollution caused by human activity and people started realizing its importance. In England, the laws related to pollution were enacted only during the earlier 19th century after the Industrial Revolution. England has prohibitive regulations against polluting water by dumping garbage, dung, and filth as early as 1888. The Lighting and Watching Act of 1833, on the other hand, seems to be the first piece of law in England to regulate pollution from factories. According to Section 50 of the Act, it is prohibited to contaminate water sources with effluents from washing machines and other waste products resulting from gas operations.¹¹ Several Committees and Commissions have been founded to investigate the issue of environmental contamination and give recommendations and ideas for passing environmental laws.¹² Based on the same River Pollution Prevention Act, 1876 was enacted.¹³

Subsequently, other more Acts and Administrative Bodies were established to regulate pollution. Pollution control commissions also existed in the United States. The American Environmental Protection Agency (EPA) is exerting its utmost efforts to regulate industrial pollution through stringent enforcement authority. In India, the duty for sanitation has consistently rested with local councils. Pollution control technologies became prominent only with the advent of production systems. The Factories Act of 1948 was enacted, encompassing provisions for pollution control in industrial facilities.¹⁴ In 1974, India enacted legislation specifically addressing pollution control following its involvement in the 1972 Stockholm Conference on the Human Environment.¹⁵

In 1981, the Indian Parliament enacted legislation to prevent and manage air pollution, and that law went into effect on March 30, 1981. The Preamble of the Act provides that to control air pollution and maintain the air quality it is being enacted.¹⁶ Carbon dioxide, nitrogen oxides, Sulphur oxides, and other polluting gases are released into the atmosphere by many chemical plants, and even the dispersion of radioactive radiation in the atmosphere is tolerated. Sections 19 to 31A of the Act are related to air pollution prevention and control. The Air Act contains,

¹¹ *Sec.50 of the lighting and watching Act, 1833, enacted by the England Parliament.*

¹² *The Royal Commission set up in 1868, made two reports (1870 and 1874) containing observations on various types of trade pollution.*

¹³ *P. Leelakrishnan, Law and environment, EBC Publishers, 1992 ch-7, pg-92.*

¹⁴ *S.12, The Factories Act, 1948, Ch. IV-A, related to hazardous processes, is introduced by way of an amendment in 1987.*

¹⁵ *The Water (Prevention and Control of Pollution) Act, 1974.*

¹⁶ *Dr. H.N. Tiwari, Environmental Law, Allahabad Law Agency, 1997, P-123*

conditions restraining industries from causing harm to environment.¹⁷ The state government may designate any region as an air pollution control area.¹⁸ Air pollution emissions that exceed the state Board's guidelines are punishable.¹⁹ When it comes to the problem of pollution, the most comprehensive piece of law that is currently in effect is the Environment Protection Act of 1986.

Many circumstances led to the Indian Parliament passing different environmental legislation. These causes prepared the path for legislation on a variety of environmental issues, notably the 1986 Environment Protection Act, which served as umbrella legislation. These occurrences raised awareness that development can't be achieved at the expense of the environment and that it does not provide the right to damage the ecosystem, degrade the environment, or engage in health-risking activities.²⁰

The environmental law enacted by state legislatures and Parliament defines the objective of a clean environment as a fundamental human right.²¹ A clean environment is an essential requirement for human existence, attainable only via ecological balance; hence, this right is universal, as humanity's survival depends on a clean, healthy, and pollution-free environment. Any action that contaminates or damages the natural environment infringes upon the right to a healthy human environment.²²

a. RECOMMENDATIONS OF THE TIWARI COMMITTEE

Principal Recommendations of the Tiwari Committee:

i. Convergence of Environmental Conservation with Development:

The committee underscored the necessity of integrating environmental preservation with the growth process. It is advised that environmental factors be included into every phase of policy development and project design.

ii. Comprehensive Environmental Legislation:

It proposed the creation of a comprehensive environmental statute to tackle diverse environmental concerns in an integrated fashion. This led to the enactment of

¹⁷ Sec.21 of the Air Act.

¹⁸ Sec.19 *ibid*.

¹⁹ Sec.22 *ibid*.

²⁰ S.C. Shastri, *Environmental Law, 3rd Edition, 2008, EBC Publications, P-26.*

²¹ *ibid*, P-41.

²² Mishra R.P. *Ecological Balance as a Human Right, in Environmental Law in India, 1996, P-20.*

- environmental safeguard legislation,²³ which functions as a foundational statute for environmental protection in India.
- iii. The committee recommended establishing a Department of Environment under the Central Government to enhance coordination and execution of environmental policy. This suggestion resulted in the formation of the (MoEF) Ministry²⁴ in 1985.
 - iv. The proposal advocates for the augmentation of the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs) to effectively address pollution-related challenges.
 - v. The paper emphasised the necessity of obligatory environmental impact evaluations for all significant developmental projects to mitigate detrimental environmental effects.
 - vi. *Public Awareness and Participation:* The committee emphasised the necessity of enhancing public consciousness on environmental concerns. It also advocated for measures to engage local populations in environmental decision-making processes.
 - vii. The proposal outlined strategies to ensure stricter enforcement of environmental standards and regular monitoring of pollutant concentrations. The organisation promoted the creation of targeted laws to address issues like air and water pollution, waste management, and biodiversity conservation. This led to the implementation of legislation, particularly the Air and Water Pollution Prevention Laws.

b. DEVELOPMENT OF ENVIRONMENTAL LEGISLATION IN INDIA

One among the India's most comprehensive environmental laws is the Environment Protection Act, 1986 (EPA). This had created a turning point in India's environmental governance. It is important to know about the major events such as the constitutional changes and judicial actions for better understanding of the Act's history and its creation.

1. Before Independence

- i. Traditional and Cultural Practices such as Vedas, Upanishads and Manu Smriti promoted harmony with the nature and its resource for sustainability.
- ii. Colonial Legislation consisting of “The Indian Forest Act, 1927” emphasised about environmental conservation is above the extraction of resource.

²³ *Environment (Protection) Act, 1986.*

²⁴ *Ministry of Environment and Forests.*

2. *Post-Independence*

- *Earlier Legislation:* India enacted laws addressing the environment issues after independence consisting Factories law²⁵ which made provision for waste disposal and pollution control in the industrial regions. Mining related issues²⁶ are addressed and balanced for the environmental impacts caused out of mining.
- *Rising Environmental consciousness:* The conference organised at Stockholm²⁷ on the topic Human Environment created a significant shift in worldwide environmental awareness. India participated and made the necessary environmental laws. Responding, the government created the NCEPC²⁸ to address environmental issues.

3. *Pre-EPA Legislation, 1986*

In 1974 the Water Pollution prevention Act was enacted and its main focus was to preventing and regulating water contamination and as a result which created the CPCB²⁹ and SPCBs.³⁰ The Air pollution control Act aims to reduce air pollution and regulate emissions from industry and automobiles. Later in 1976 the constitution was amended by way of 42nd amendment and included the environmental protection provisions by inserting Article 48-A, which directs the state to safeguard and promote the environment. The article 51-A(g) would require citizens to safeguard the environment as a basic obligation.

4. *JUDICIAL INTERVENTIONS:*

Bhopal Gas Tragedy (1984) resulted in the industrial accident, which highlighted the absence of an environmental protection system and that incident prompted the creation of the EPA.

5. *ENVIRONMENT PROTECTION ACT OF 1986*

The Tragedy created by the Bhopal Gas revealed the legal inadequacies which are required in regulating hazardous industries. So, the EPA, passed invoking Article 253 of the Constitution, which allows the Parliament to implement international obligations like the Stockholm Declaration. The aim was to implement pollution control techniques and address environmental concerns fully. The Central Government is empowered in protecting the environment and making improvement by regulating industrial activities and penalising the violators.

²⁵ *The Factories Act, 1948.*

²⁶ *The Mines Act, 1952.*

²⁷ *Stockholm Conference, 1972.*

²⁸ *National Committee on Environmental Planning and Coordination, 1972.*

²⁹ *Central Pollution Control Board.*

³⁰ *State Pollution Control Board.*

6. POST-EPA CHANGES

After the EPA, it had established laws and notifications, related to environment conservation including waste management laws,³¹ Electronic waste rules (2011),³² Plastic Waste Rules,³³ and CRZ Notification.³⁴

ROLE OF NATIONAL AND INTERNATIONAL AGENCIES

National and international entities, such as United Nations organisations and their affiliated agencies like the United Nations Environment Programme (UNEP), are diligently advocating for environmental protection. Deforestation not only contributes to the rise in global temperatures but also accelerates the melting of polar ice caps, resulting in a continuous increase in sea levels and a subsequent depletion of oxygen essential for survival. This also leads to land subsidence and the global increase in sea levels. Global warming has caused exceptional heavy rains in winter, intense heat waves in summer, and harsh cold in spring.

a. EUROPEAN CHARTER AND THE CONVENTION ON SOCIO-ECONOMIC AND CULTURAL RIGHTS

Parties should implement necessary measures to prevent air and water pollution, protect against radioactive materials, reduce noise, regulate food safety, and ensure environmental hygiene, in accordance with Part 1 of the European Social Charter, enacted in 1961. Article 11 of the ICESCR addresses the right to an adequate standard of living and the measures taken to prevent the degradation of natural resources. Article 11 (1) of the ICESCR addresses the right to an adequate standard of living. This may require a state to implement pollution mitigation strategies. State Parties shall acknowledge the right of all individuals to enhance their psychological and physical well-being, as outlined in Article 12 of the ICESCR concerning the right to health. Effective pollution mitigation necessitates the thorough management of all facets of industrial and environmental hygiene.

b. THE STOCKHOLM DECLARATION AND AFRICAN CHARTER OF RIGHTS

The connection between human rights and environmental conservation was established in the 1972 Stockholm Convention on the Human Environment, which stated that "man has the

³¹ *Hazardous Waste Management laws, 1989.*

³² *E-Waste (Management and Handling) Rules, 2011.*

³³ *Plastic Waste Management Rules, 2016.*

³⁴ *Coastal Regulation Zone (CRZ) Notification, 1991.*

fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being." The African Charter on Human and Peoples' Rights, signed in 1981, is the first human rights treaty to explicitly acknowledge the rights of "all peoples" to a "satisfactory environment conducive to their development."³⁵ Article 16 of the African Charter ensures the right to optimal mental and physical well-being for all individuals, whereas Article 24 affirms the entitlement to a conducive environment that promotes personal development.³⁶

c. THE ROLE OF OECD AND UNECE

A "decent" living condition must be acknowledged as part of essential rights of human in Europe, according to the OECD³⁷. Furthermore, the UNECE³⁸ instituted the Chartered on Environmental Rights and Obligations, emphasising the fundamental principle that every citizen is entitled to a healthy and clean environment.³⁹

The OECD is an essential body in protecting and promoting the environment by way of international collaboration, by offering policy recommendations, and supporting sustainable development. The role of OECD in environmental protection is outlined as follows:

- i. Policy Development and Guidance
- ii. Data Collection and Analysis
- iii. Environmental Performance Reviews
- iv. Economic and Environmental Interconnections
- v. Climate Action
- vi. Green Finance and Investment goals.
- vii. Global Standards and Agreements
- viii. Promoting Innovation
- ix. OECD Green Growth Strategy
- x. Environmental Outlook to 2050

The United Nations Economic Commission for Europe (UNECE) significantly contributes to environmental protection through regional cooperation, the development of environmental standards, and support for the implementation of international agreements. UNECE initiatives

³⁵ *African Charter on Human & People's Right, adopted in 1981.*

³⁶ *Article 16 of ibid.*

³⁷ *Organization of Economic and Development, 1961.*

³⁸ *United Nations Economic Commission for Europe, 1947.*

³⁹ *Charter on Environmental Rights and Obligations.*

tackle various environmental challenges, especially in Europe, North America, and Central Asia.

- i. Environmental Agreements and Protocols
- ii. The Convention on Long-Range Transboundary Air Pollution (CLRTAP)
- iii. Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)
- iv. The Aarhus Convention
- v. Sustainable Development and Resource Management
- vi. Environmental Monitoring and Data Sharing
- vii. Water and Transboundary Cooperation
- viii. Air Quality and Pollution Control
- ix. Environmental Impact Assessments (EIA)
- x. Public Participation and Governance
- xi. Climate Change Mitigation and Adaptation
- xii. Sustainable Transport

d. AMERICAN PROTOCOL AND WCED

Article 10 of the Convention on Human Rights says that everyone has the right to health.⁴⁰ Article 24 of the Convention says that every child has the right to the best possible standard of living.⁴¹ Human rights laws now make it clear that there is a link between health and the environment. The World Commission on Environment and Development (WCED) released a report in 1987 called "Our Common Future (Report of the Brundtland)" that explained what sustainable development is and how it works. It said that sustainable development is "development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs." The term "sustainable development" was first used in this study. People around the world agreed that the idea of sustainable development was an important part of the way forward for both protecting the environment and growing the business. At the Earth Summit in 1992, both the Climate Change Convention and the Biodiversity Convention were signed. This set a new standard for environmental protection around the world. It was also agreed upon that Agenda 21 should be used.

THE CONSTITUTIONAL PROVISION OF VARIOUS COUNTRIES

⁴⁰ Article 10 of the American Protocol to the Inter-American Convention on Human Rights, 1988

⁴¹ Art. 24 of the Convention on the Rights of the Child, 1989.

The right to safety environment is currently one of the fundamental human rights that is expressly recognised and contained in a number of countries constitution and pieces of legislation. Article 31 of the Constitution of Argentina ensures that the environment is both healthy and harmonious among its inhabitants. In Article 46 of the Constitution of the Congo, it is stated that "every citizen shall have the right to a healthy, satisfactory, and enduring environment." It is stated in Article 35 of Chapter 11 of the Constitution of Korea that "every individual should be guaranteed with the right to a pleasant and balanced living condition." It should be brought to your attention that the constitutions of over sixty countries, including a few states and sub-national states in the United States, have been allowed to include identical phrases or provisions.

a. SOURCES OF AIR POLLUTION AND ITS IMPACTS ON HUMANS

The Main reason for polluted air is connected with the burning of fossils, firewood, charcoal, and wastes such as shaded leaves, agricultural wastes, and other waste. While burning such things, the toxic smoke released into the atmosphere will pollute the clean oxygen present in the air and makes it unfit for breathing. Industries, particularly those engaged in manufacturing, are the primary sources of pollution in the environment. However, throughout the industrialization era, environmental contamination could not be controlled due to the utilization of fossil fuels and other combustion products for manufacturing which release huge smoke into the environment. It had been possible to control and reduce air pollution only after the advancement in the industries and technology.⁴²

While we intake the polluted gases which mixed with the oxygen it affects our lungs, and breathing organs and sometimes damages the blood vessels which need pure oxygen. There are several reasons for burning the fire woods and fossil fuels. Among them, the notable is which used for cooking and mostly used in the brick line industry, where a huge amount of fire woods burned every day for making bricks and sand, and so on. Several numbers of industries are still polluting the environment with their manufacturing process with the old tools and technology without any updating in technology. The quality of the regional and global ecological systems is greatly impacted by air pollution. It is now widely known that the changes and impacts of large pollution sources on the regional environmental system are caused by the widespread concentration of air pollutants.⁴³

⁴² P. Leelakrishnan, *Law and Environment*, EBC Publishers, 1992 ch-7, P-92.

⁴³ Kailash Thakur, *Environmental Protection Law and Policy In India*, 1997, Deep & Deep Publishers, P-50.

b. OTHER SOURCES OF AIR POLLUTANTS

The other sources which contribute to air pollution are the toxic gases that are released from the automobile exhaust such as motorcycles, cars, commercial vehicles, and public transport systems. How a small drop of poison fell in milk makes it unfit for consumption, like the same way, the mixing of hazardous and harmful gases will make the oxygen unfit for breathing. The best example is the Bhopal gas and helium gas tragedy Methyl-Iso-Cynade. A few years back the television manufacturing unit in Andhra Pradesh met a fire accident and several people died out of the harmful poisonous gas released from that factory mixed with oxygen.

c. LIVING IN CLEAN ENVIRONMENT IS A RIGHT

The present position of law related to environment is a combination of common law as well as legislative doctrines.⁴⁴ Even before formal laws were in existence, there were some common law solution existed to prevent pollutants. Public law is the organ of conventional law of England founded upon the court judgments and is reflected in the reports of resolved cases.⁴⁵ Since the medieval ages, England's common-law courts have been enforcing the law.⁴⁶ The phrase "common law" comes from the Latin word "lex communis." In common law, pollution lawsuits usually fall into four subcategories. Negligence and strict liability are two of the four types of law that fall under this category. Section 268 of the IPC, 1860, defines a public nuisance.⁴⁷ The remedy for nuisance can be availed in court by invoking the provisions of S.91 of CPC, 1908 and s. 133 to 143 of the Cr. P.C, 1973.

ROLE OF JUDICIARY AND QUASI-JUDICIAL AUTHORITIES IN AIR POLLUTION

We first became aware of the significance of oxygen during the COVID-19 situation, which was characterised by a lack of oxygen. The right to live, as envisioned in the Indian constitution, encompasses the provision of clean and unpolluted air, clean drinking water, and a healthy and hygienic environment in which to live and work. By devoting their valuable time to hearing environmental matters in the name of the wider public interest, the Apex Court in the country and the highest court in each state are dedicating their time to hear the cases of

⁴⁴ William H. Rodgers, Jr. *Handbook on Environmental law* (1977) P-100.

⁴⁵ P. Leelakrishnan, *Law and environment*, EBC Publishers, 1992 ch-8, pg-103.

⁴⁶ *Encyclopaedia Britannica* (1964), Vol.6, p.160.

⁴⁷ Section 268 of the Indian Penal Code, 1860.

environmental importance for the betterment of upcoming generations. Additionally, a number of Senior Advocates had made contributions to the protection of environmental concerns and had completed a number of cases without even being paid for their services. In particular, the Pollution management Boards and the National Green Tribunals are taking the initiative to play a role in the execution of the laws that govern pollution management.

SMOKING CIGARETTES IN PUBLIC PLACES AND ITS IMPACT

The other evil prevailing the society is smoking cigarettes in public places, the harmful gas mixed with oxygen, and when it is inhaled by the person who does not have the habit of smoking and is affected by the disease of cancer. It is otherwise called a person affected by cancer because of passive smoking. Here that individual is not involved in smoking but the polluted/hazardous gases mixed with the oxygen inhaled affect his health. The harmful gases released during smoking are carbon monoxide, hydrogen cyanide, formaldehyde, benzene, etc., and they affect the lungs and respiratory tract of the individual. Additionally, red blood cells' ability to carry oxygen to the heart and other essential organs is hampered by carbon monoxide. The lungs are destroyed by hydrogen cyanide.

HISTORICAL EVOLUTION OF THE ENVIRONMENTAL PROTECTION LAW

A declaration was adopted by the UN, on 16th of June 1972, in which several member countries have participated the conference held in Stockholm and its theme, “The Human Environment” which India is also a party to it. India was represented at the Stockholm Conference by Srimati Indira Gandhi, who was serving as Prime Minister at the time. She signed a declaration regarding the preservation of the environment and the management of pollution after attending the conference. Based on this, the 42nd Amendment to the Constitution was also enacted, which included the addition of Articles 48-A, 51-A, and 51-A(g). As a consequence of the Stockholm Declaration, the Wildlife Act,⁴⁸ the Water Act,⁴⁹ the Air Act,⁵⁰ and the Forest Act⁵¹ were passed. It was very difficult both for the government as well as the judiciary is concerned on dealing with the different sets of Acts in environmental cases, so there is a need for the formulation of umbrella legislation by combining all the above said Acts, including the

⁴⁸ *The Wildlife Protection Act, 1972.*

⁴⁹ *The Water (Prevention and Control of Pollution) Act, 1974.*

⁵⁰ *The Air (Prevention and Control of Pollution) Act of 1981.*

⁵¹ *The Forest Conservation Act of 1980.*

Environment Protection Act.⁵² This very Act is another masterpiece of enactment of its kind. These Acts have been enacted by the efforts of various Governments ruling at that time with the aid and support of guidelines issued by the judiciary and several environmentalists.

After the Stockholm Conference in 1972,⁵³ some nations have passed legislation to tackle pollution. The seriousness of the issue was first recognized following the start of the UN Conference in Rio de Janeiro, Brazil.⁵⁴ The International World community, which included both members and non-members of the state parties and was represented by over 121 countries, decided to create more comprehensive legislation to preserve the environment as a whole.

a. INDIAN CONSTITUTION AND ENVIRONMENT

The 42nd constitutional amendment included additional provisions such as Art 48A and 51A (g), which are the state's directive major policy and each citizen's vital basic obligation. The state should attempt to preserve and develop the environment, and the country's wildlife and forest, as per Article 48. According to Article 51A(g), this article places the responsibility of protecting and preserving the natural environment on each and every citizen in India. Additionally, it grants the right to petition the court for appropriate remedies.

b. LAND MARK VERDICTS OF THE HON'BLE APEX COURT & HIGH COURTS

When a matter involving environmental issues is filed in the Supreme Court, it is obligated to have into consideration the above-mentioned Art 48A and 51A (g) is to be followed.⁵⁵ It is necessary to consider the environmental damage and degradation that is progressively contaminating and destroying the atmosphere as a breach to Article 21.⁵⁶ The Supreme Court, in a number of judgements involving M.C. Mehta, came up with the phrase "public liability and public nuisance." In the case of M.C. Mehta and Others v. UOI and Others, it was decided⁵⁷ – the concept of Public Liability. This case reminds us of the tragic incident of victims of the Oleum Gas Leakage. The SC first established the absolute liability doctrine in this case. The industry is hazardous and is not allowed to function in the residential area or huge human habitation. This landmark judgment earmarked the various guidelines and as a result, the enactment of the Act named as "The Public Liability Insurance Act, 1991".

⁵² *The Environment Protection Act, 1986*

⁵³ *The Stockholm Declaration on Human Environment, 1972*

⁵⁴ *UN Conference on Environment and Development (the Earth Summit) in Rio de Janeiro, Brazil, 1992.*

⁵⁵ *Sachindananda Pandey v. State of West Bengal, AIR 1987 SC 1190.*

⁵⁶ *Damodar Rao vs. S.O. Municipal Corporation, AIR 1987 AP 171.*

⁵⁷ *1986 SCR (1) 312.*

Another Doctrine formulated by the Hon'ble Apex Judiciary is the Environmental Impact Assessment. The Supreme court through Justice Jeevan Reedy held that the one who pollutes and cause harm to the environment or damage or attempting to cause should be held liable for the costs of preventing or remedy towards the environment and formulation of ***Doctrine of Polluter Pays Principle***.⁵⁸

The Taj Mahal is also affected by the pollution, the harmful acid and chemical gases in and around the city, caused the damage to it. The Apex court⁵⁹ directed all the industries including the ban on using coal and coke instead using Compressed Natural Gas. The Supreme Court of India has highlighted the importance of a pollution-free living condition as a basic right to live.⁶⁰ The basic human rights including a pollution-free environment to live in and clean drinkable water to drink are part of the Right to Life. the Hon'ble Supreme Court remarked that the Smoking of Cigarettes in public places should be prohibited.⁶¹ The Right to clean air is part of right to live.⁶²

The High Court of Karnataka through the Chief Justice held in "*Obayya Pujary and Others vs The Member Secretary, Karnataka*"⁶³ held that "Pollutants in the form of dust, smoke, industrial and automobile exhaust, gaseous and particulate matters, though not normally expected to be present, yet are found in the air. Nature and amount of such pollutants vary from place to place depending upon population, vehicular density, location of industrial units, etc. Lungs are the major organs affected by air pollution. The spectrum of functional and pathological reactions of the lungs to various exposures is wide. Chronic bronchitis and airway obstruction is the result of long-term exposure to air pollution. Organic matters including dust can cause allergic reactions producing allergic alveolitis. Inorganic dust may get deposited in the lungs and produce fibrosis. Exposure to dust may lower the lung defenses and clearing mechanism, resulting in infections, particularly tuberculosis. Such occupational exposures may also lead to causing lung cancer as well. Such hazardous effects on health are likely to be caused on account of the air pollution which is caused due to stone crushing. By stone crushing a lot of thick dust is generated polluting the environment, visible dust contains particles more than 500 (sic) in diameter which settles down in the nose and pharynx".

⁵⁸ *Indian counsel for Enviro-Legal Action vs UOI AIR 1999 SC 1502.*

⁵⁹ *M.C. Mehta vs UOI (Taj Trapezium AIR 1987 SC 1086.*

⁶⁰ *Subhash Kumar vs State of Bihar and Ors AIR 1991 SC 420.*

⁶¹ *Murli S. Deora v. UOI, AIR 2001 SC 4505.*

⁶² *Art. 21 of the Indian Constitution.*

⁶³ *1999 (3) Kar LJ 651.*

The Madras High Court correctly stated that natural rights, which include a wide range of rights, are now known as three-generational rights in the law world. People have political rights, which are called "first-generation rights," and social and economic rights, which are called "second-generation rights." Third-generation rights include the right to an atmosphere that is clean and free of pollution.⁶⁴ The right to live in the clean place had been violated by the chronic exposure to polluted air. The Supreme Court taking serious note of the carcinogenic effect of diesel exhaust decided that fundamental right to life such as good health with care citing the Constitution of India Art.21. in Para.1 M.C. Mehta vs UOI 1999 6 SCC 9.⁶⁵

Stone-crushing activities in Delhi have caused environmental degradation. Every individual have the right to clean air and to inhabit an unpolluted environment. Environmental and Air pollution in Delhi is very severe and the public is suffering because of it. Prohibiting mechanical stone crushing operations in and surrounding areas of Delhi, Ballabhgrah, and Faridabad developments has been ordered. The Court also granted orders for awarding of sites in a new crusher zone built up in the village of Pali in Haryana, which has been ordered to stop operating in Delhi. Reported at M.C. Mehta V. UOI 1992 3 SCC 265.⁶⁶

c. AIR POLLUTION CAUSED BY FIRE CRACKERS AND THE ROLE OF JUDICIARY

The most important concern or the need of the hour is the pollution caused by the bursting of crackers. The quality of the air gets worsen day by day due to the lack of environmental awareness, education and sometimes knowingly we make some act that ultimately affects the air quality. The firecrackers pollution not only affects the quality of air and also releases toxic and harmful gases/particles in the atmospheric air and its impact on the human health such as breathing problems, eye irritation, skin problems, and so on. The government is taking excellent measures for preserving the environment and avoid pollution. But we the citizen are duty bonded to protect the environment for healthy wellbeing.

The Hon'ble High Court of Rajasthan had ruled that "it is contended that the experts have given a report that use of firecrackers may affect the lungs and the pollution from the firecrackers would have an effect on Asthma, COPD and would also effect on patients who have infected by Covid-19". *Ram Babu Dusad S/o Shri Bhanwar Ji vs State of Rajasthan*.⁶⁷ Various

⁶⁴ *Shobana Ramasubramanyam v. Member Secretary, Chennai Metropolitan Development Authority, AIR 1002 Mad 125.*

⁶⁵ *Supreme Court on Environment Law, Surendra Malik & Sudeep malik, EBC Publications, 2015, P-420.*

⁶⁶ *ibid, P-422.*

⁶⁷ *W.P. No. 13327 of 2020.*

guidelines had been issued by the Hon'ble Indian Supreme Court in the *Arjun Gopal vs UOI*.⁶⁸ The Supreme Court examined several reports and noted that the air quality of Delhi Post-Diwali had got more worsen. The Central Pollution Control Authority after its inspection and made a statement that the National Air quality index in 2015, and now in 2021 is a great spike in air pollution and deterioration of the air quality on the night of Diwali. The report submitted by Doctors of the AIIMS Delhi submitted a report that the severe health ailments such as chest ailments, cough, and breathlessness were the result of sudden exposure to the toxic gases released during the burst of crackers. The Court ordered in this case the government to prohibit the selling of firecrackers in the NCR zone and Delhi. Further, storing the Firecrackers in factories, retail outlets or residential premises should also be stopped and new licenses should not be provided for the manufacturing and sale of firecrackers.

In the *Arjun Gopal V. UOI*⁶⁹, the Supreme Court of India finally settled all the issues and made a detailed judgment, and issued various guidelines for the same by ordering the

- Ban selling the firecrackers on the E-Commerce websites.
- Designated time and place to burst firecrackers from 08.00 PM to 10.00 PM. in Diwali
- Composition of Firecrackers, no chemical and hazardous substances should be used in the manufacturing.
- Directed the CPSB and SPCB to conduct preliminary monitoring of the air quality in Delhi 7 days before and 7 days after Diwali and submit a report.

The Court permitted to make and sell the less polluting green crackers.

CONCLUSION

The purpose of this article is to make awareness about air pollution and not to pollute the environment. The impact of the greenhouse gases and the rise of global temperature is out of control and it is unknown whether can be controlled. The ice cubes and glacis are kept melting and nowadays melting very high. The cities are in fear that they will be submerged in the sea. One of the consequences of Global Warming is a recent announcement made by the Indonesian Government that they are changing the National capital due to the rise in sea level and the present National capital is sinking.

⁶⁸ 2016 1 SCC 412.

⁶⁹ 2019 13 SCC 523.

Research shows that a single tree produces oxygen for 3 people, but at the same time 3 people joined, and planting a single tree is a million-dollar question, which has to be considered seriously. The only remedy is for each individual to start to be environmentally friendly by not polluting the environment will make a better chance in the society so the quality of air pollution will be controlled for a better existence of life. The government should make a policy decision that every house should mandatorily consist of at least one tree. During approval of the building plan, the municipal administration, which is the local government should verify the building plan and sketch, that there is some space left for planting trees. Some may think that planting trees will produce oxygen then why do we have to worry about the environmental issues. But the truth as discussed earlier is that only 21% of the mixture of air contains oxygen. Planting trees can only reduce the carbon content in the air and control the greenhouse gases to escape into the environment but the other vital issues such as the emission of harmful gases from all sources should also be prevented especially from the vehicles and industries.

ANALYSIS & FINDINGS

- a. “A go green initiative” has been started by the Government of India regarding providing subsidies for the Electric vehicles under the Fame-II subsidy. The government is planning that the electrification will make reduces the emission of smoke into the atmosphere and also reduces global warming. India has also made its transition change from petrol, and diesel to alternative renewable energy such as solar, wind, tidal, and others, etc. as a result, India had also made a promise to the international community that by 2030 India will achieve the alternate transitional energy goal.
- b. For which we all should cooperate by opting the alternative means of transport and reducing the pollution by following the emission control norms. The Petroleum Ministry has also made a policy regarding the use of blended petrol and ethanol fuel for the lower carbon emission and also invited the vehicle manufacturers to make an engine suitable for the alternative and hybrid fuel. Automobile manufacturers are engaged in the research and development of Flex-Fuel Vehicle Engines to facilitate the blending of ethanol with petrol. To some extent, the ethanol can be mixed at 83% and 17% of petrol. These engines emit less carbon and so the environment is protected. Recently Honda Two-Wheeler Company has announced that by 2024 they are going to launch their Honda Two-Wheeler with Flex-Engine Technology. By adopting this kind of advanced technology not only the

- environment is protected but also the agriculturist and the farmers are ultimately get benefitted out of it. Ethanol can be produced from sugarcane, corn, and some other crops.
- c. The quality of air in some of the places in India is severely affected as a result of burning agricultural waste. The neighborhood cities are also affected extremely. The best alternative is that simply bury the leaves in the ground so they may be used as organic manure, sometimes after hundreds of years later may be used as fossil fuels. The Chennai corporation had taken a step by collecting the bio-degradable waste separately and making it vermicompost for plants and trees, which is sold to the consumers at low cost and thereby generating some revenue. A golden saying is best quoted “Making money out of Waste”.
 - d. The firewood and charcoal used for cooking in the households are serious issues concerning the pollution concerning the environment as well as the health of the women involved in cooking. Shri Narendra Modi Ji, the Hon'ble Prime Minister, launched the Pradhan Mantri Ujjwala Yojana to tackle these concerns by providing free LPG connections to impoverished homes and safeguarding women's health. A number of ladies perished due to breathing the toxic smoke emitted during firewood combustion. Thus, it will fulfil the objective of the project.
 - e. The Prime Minister has also taken another effective step to promote and use of electrification in the Indian Railways so by reducing the manufacturing and use of Diesel Locomotive Engines instead of manufacturing the electric Locomotive for the reduction of air pollution, carbon emission, and sustainable development. Recently the Ministry of Road Transport and Development headed by Shri. Nitin Gadkari Ji had participated in the event of launching India's first Hydrogen powered Fuel Cell car. He had stated that these kinds of green energy and technology will develop the nation and reduce carbon emissions. He also invited all the car manufacturing companies to come forward to invest in Hydrogen Technology and start manufacturing these kinds of cars.
 - f. The only means to reduce air pollution is that more and more consumer literacy education programs should be conducted at the rural level and with the participation of the villagers, we can bring the pollution of air by controlling it to some extent. In cities, to some extent, these fossil burnings have been prevented by the Pollution Control Boards and Judiciary, but the actual pity is that the vehicular emission is uncontrollable. For which the solution had also been provided by the government by giving subsidies and incentives to those who buy an electric vehicle, including both two-wheelers and four-wheelers, as of the latest initiatives the government decided to provide subsidies for all kinds of battery/electric

vehicles such as auto-rickshaw, load-auto, and others. The government will bear a certain amount of the cost of the vehicle by way of subsidy, which reduces the costs of the buyers.

- g. The best way to avoid vehicular pollution is that the reduced use of automobiles and alternatively use electric vehicles, public transportation such as electric trains, and in some cities metros (trains) are there and some cities, tram-trains are there. The tram train-like technology should also be extended to the rest of the cities like Chennai, Delhi, Bombay, and others, or the alternative trains which can run on tracks on public roads can be implemented. So that operation of the public buses run with the petrol and diesel will be less and the release of pollutants will also be less. The government should appoint a committee consisting of environmentalists and invest much in the project which benefits the public transportation in electrical and other alternative means. The implementation of the recommendations made by that committees should also be in a priority manner.
- h. The environmental impact assessment is another essential feature of the sustainability and inter-generational equity goals of the governments. By this assessment what are all the impacts that will cause as the results of the developmental projects are in process and are undertaken in the future. If the land acquisition is carried out, and the land earmarked for the acquisition is the agricultural land or greenery or a land filled with trees, then acquiring that land will impact damage to the environment and so whether the alternative land or a suitable substitute for that environment recreating the same greenery or the planting trees is possible. It is the survey or the study conducted, to be conducted and should be conducted for the sustainability and inter-generational equity goals.
- i. The Corporate Social Responsibility Fund (CSR Fund) is a mandate provision in the relevant statutes such as the company law and the environmental law. The fund allocated by the corporate entities and other companies should be used to spend in an environmentally friendly manner. The best example is the CSR fund allocated by the MNC is spent on the purchase of the electric garbage collecting vehicle in the Chennai corporation and also in several other corporations. The researcher is also suggesting another best suitable need of the hour, solar energy. The electric trains operated by the railways and the public transport buses operated by the State Governments may be installed and fixed a rooftop solar panel so that the electric energy will be generated and used in an environmentally friendly means. By fixing so the sun's heat and the ultra-violet radiation impacts will be less and the heat and temperature of these public transport during the summer season will be convenient for traveling. Several universities have installed solar panels on their campuses and the generated electricity is used for their day-to-day uses. By

doing this all-other educational institutions and schools, hospitals, and Government offices the consumption of electricity produced by coal and other non-renewable means can be reduced and green energy is used.

- j. Every aspect of the law, particularly the environmental law is concerned has to deal with a pragmatic approach. The laws should be made simple and clear so that the distinction between the civil wrong of tortious liability and the criminal offense can be differentiated and punished easily. In the law of tort, the punishment is by way of compensation depending upon the nature of the harm caused to the environment and it is imposed upon the tortfeasor or to the person committing it, but in contra, the criminal law is something which describes the nature of the offense and the punishment to the maximum. Which causes fear in the person who causes harm to the environment.
- k. Whatever Acts, enactments, penalties, fines, and punishments are in existence nothing will be changed unless the individual mindset changes. The transition of the renewable energy and non-polluting energy source to be adopted such as solar, wind and tidal, and recently electric energy. The steps taken by the government will give good results in the upcoming future regarding air quality improvement and its clean availability. This miserable situation will come to control only when the proper guidelines/SOPs have been followed. The national capital is out of control by means of pollution, it may also be spread to the nearby states. The pollution is not stopped now, then even if it stopped the environment will not come to its normalcy in the future.

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