



JURISPERITUS
THE LAW JOURNAL



Powered by
Legal Education Awareness Foundation

VOLUME 5 ISSUE V
|| NOVEMBER 2022 ||

Jurisperitus: The Law Journal
ISSN: 2581-6349

Email:

editor@jurisperitus.co.in

Website:

www.jurisperitus.co.in

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of Jurisperitus – The Law Journal. The Editorial Team of Jurisperitus holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of Jurisperitus or Legal Education Awareness Foundation. Though all efforts are made to ensure the accuracy and correctness of the information published, Jurisperitus shall not be responsible for any errors caused due to oversight or otherwise.

Jurisperitus: The Law Journal
ISSN: 2581-6349

EDITORIAL TEAM

Editor-in-Chief

ADV. SIDDHARTH DHAWAN

Core-Team Member || Legal Education Awareness Foundation

Phone Number + 91 9013078358

Email ID – editor@jurisperitus.co.in

Additional Editor -in-Chief

ADV. SOORAJ DEWAN

Founder || Legal Education Awareness Foundation

Phone Number + 91 9868629764

Email ID – soorajdewan@leaftoday.com

Editor

MR. RITABRATA ROY

PhD Research Scholar || University of Sussex, United Kingdom

Phone Number +91 7042689109

Email ID: ritabrata.kls@gmail.com

Mr. NILANJAN CHAKROBORTY

Assistant Professor in Law || School of Law & Justice

Adamas University, Kolkata

Phone Number + 91 8013552943

Email ID: nilchakroborty24@gmail.com

Prof. NANA CHARLES NGUINDIP

Senior Lecturer in Law || University of Dschang, Cameroon

Phone Number +23 7652086893

Email ID: nanalecturer84@gmail.com

MR. TAPAS BHARDWAJ

Member || Raindrops Foundation

Phone + 91 9958313047

Email ID: tapas08bhardwaj@gmail.com

ABOUT US

Jurisperitus: The Law Journal is a non-annual journal incepted with an aim to provide a platform to the masses of our country and re-iterate the importance and multi-disciplinary approach of law.

This journal is an initiative by Legal Education and Awareness Foundation, a registered Non-Governmental Organization, which aims at providing legal education and awareness to all parts of the country beyond any social and economic barriers.

We, at *Jurisperitus* believe in the principles of justice, morality and equity for all.

We hope to re-ignite those smoldering embers of passion that lie buried inside us, waiting for that elusive spark.

With this thought, we hereby present to you

Jurisperitus: The Law Journal.

JUVENILE JUSTICE AND RIGHTS OF CHILDREN: A LEGAL ANALYSIS

- RISHAB JAKHAR¹

Abstract

All of the policy and legislative rules and choices in this article are centered around the child's rights and juvenile justice system, which is prevalent in India. When the Juvenile Justice Board or Child Welfare Committee considers a case involving a minor or a child in need of care and protection, the best interests of the child are always considered to be of paramount importance. The document states that the government has a responsibility to make these kinds of decisions for the benefit of children, as mandated by Article 39 of the Indian Constitution. There are numerous international treaties, one of which has had a significant effect is the Convention on the Rights of Child that has influenced the juvenile justice system in India. The Juvenile Justice (Care and Protection of Children) Act, 2015 is the country's current juvenile justice legislation. A doctrinal approach to research is used in this study. The primary sources are government papers produced by the National Crime Records Bureau (NCRB) and National Plan of Action (NPAC) as well as literary references.

Keywords: *India, Juvenile Justice System, Children's Rights, Law, Constitution*

Introduction:-

Children are the most basic building block of the society. For as long as we can remember, such beings have been exploited in a variety of ways, depriving them of their fundamental rights, which are guaranteed by both nature and the law. They are depicted as the weaker and more vulnerable members of the group who are forced to perform chores that disparage their innocent character. Forced labor, underage marriage, infanticide, sexual assault, foeticide, rape, child molestation, negligence, mental torture and other forms of exploitation became common

¹ Research Scholar, Faculty of Law, Tanta University, Sri Ganganagar, Rajasthan.

in their everyday lives, but they are not the only ones. As a result of such exploitation, it was essential to devise means to deal with the situation before hand; otherwise, the consequences would be disastrous. Herein, the legal system serves as a bulwark, giving the guidelines and standards to guarantee that juvenile rights are not exploited or mistreated.

In terms of children's rights, they are a fundamental part of their well-being and are protected by both law and nature. Even the Indian Constitution suggests and includes safeguards for the rights of children. According to the 2011 Census, there are around 472 million children between the age group of zero to eighteen, accounting for 39% of the total population.² When it comes to child abuse and exploitation, the National Crime Records Bureau reports a 13% increase in 2020; yet there are still unreported cases.³

As a result, some children are left vulnerable to abuse, even if the juvenile court system provides protection. The goal of the juvenile justice system is to help and protect children who have run afoul of the law. As outlined in Article 39 of the Constitution, the State must ensure that its policies promote the healthy development of children in an atmosphere of liberty and dignity.⁴ Children should be protected from exploitation and moral and material desertion during their early years, according to the law. In order to achieve maximum benefits for children, the Government must bear this in mind while drafting its policies.

Children are defined as "Any individual that is under the age of 18 years, save when the applicable legislation to the child states that the age of majority has been achieved earlier." in the United Nations Convention on The Rights of Child, 1989.⁵ To put it another way: under this definition, each country has the authority to set its own age of majority, with the usual rule being that the legal age of majority is 18. In India, on the other hand, different laws specify varied age limits for what constitutes a child.

² Government of India, "Census Report" (Ministry of Home Affairs, 2011).

³ Government of India, "NCRB Report" (Ministry of Home Affairs, 2020).

⁴ The Constitution of India, art. 39.

⁵ United Nations Convention on The Rights of Child, 1989, art. 1.

As a result of these rights, children are able to develop to their fullest potential and are protected from the evils of the society, which is why they are entitled to these rights. Both the state and society have an obligation to safeguard children from harm and to provide them with a nurturing environment in which they can grow to their greatest potential and to inspire them in such a manner as to ensure basic educational, physical, mental, skillful, social and developmental balance in the society.

Children’s Rights in The Constitution & Other Statutes:-

Protecting children's rights is explicitly spelled out in the constitution like:

- **Article 21A** guarantees the “right to free and obligatory primary education for all children ages 6 to 14”.⁶
- **Article 24** of the Constitution grants children under the age of 14 the right to be free from any hazardous occupation.⁷
- As stated in **Article 39(e)**, the protection from being mistreated & coerced by economic necessity into unsuitable jobs is guaranteed.⁸
- Under **Article 39(f)**, every child and adolescent has the right to be protected against exploitation and other forms of abuse, as well as to equal access to resources and opportunity for healthy development.⁹
- **Article 45** guarantees the “right to early childhood care and education for all children under the age of six”.¹⁰
- **Article 14** guarantees the “right to equality”.¹¹
- Under **Article 15**, a person has the right not to be subjected to discrimination.¹²
- Due process and individual liberty are guaranteed by **Article 21** of the Constitution.¹³

⁶ The Constitution of India, art. 21A.

⁷ The Constitution of India, art. 24.

⁸ The Constitution of India, art. 39(e).

⁹ The Constitution of India, art. 39(f).

¹⁰ The Constitution of India, art. 45.

¹¹ The Constitution of India, art. 14.

¹² The Constitution of India, art. 15.

¹³ The Constitution of India, art. 21.

- **Article 23** guarantee the “right to avoid being trafficked and coerced into slavery”.¹⁴
- **Article 29** guarantees the right of minorities to have their rights and interests protected.¹⁵
- **Article 46** guarantees the rights of the underprivileged to be protected from all types of social injustice and exploitation.¹⁶
- **Article 47** guarantees the right to a decent quality of living and better public health.¹⁷

There are certain legislations which aims at safeguarding children; These are as follows–

- i. 1976 Act to Abolish the System of Bonded Labor¹⁸
- ii. In 1956, a law was passed called the Immoral Traffic Prevention Act.¹⁹
- iii. Act of 1971 on Medical Abortion of Pregnancies²⁰
- iv. Mining Law of 1952²¹
- v. Food Safety Act of 2013²²
- vi. 2015 Act of Juvenile Justice (Care and Protection of Children)²³
- vii. Act of 1956 on Harmful Publication to Children and Adolescents²⁴
- viii. Free and Compulsory Education for All Children Act of 2009²⁵
- ix. Act on Probation of the Offenders (1958)²⁶
- x. Act of 2012 on the POCSO²⁷

There are a number of other rules in place to help protect children from being exploited in a variety of ways.

For the benefit of the child, the government must design policies that will help them achieve their full potential. Even the government has a responsibility to release the finances required to maintain these standards and policies at the national and state levels. This National Plan of Action (hereinafter referred to as NPAC) advocates for the protection of children's rights as well as their equitable access to opportunities. Such programmes have their origins in the 1974 National Policy for Children.

The NPAC's 2013 principles form the foundation of the 2016 National Plan of Action. Following are the certain approaches of NPAC, 2013, which serves as a foundation for NPAC, 2016, as well:²⁸

- i. It is essential to ensure that all children are given equal access to high-quality health care from the time they are born until the time they are old enough to be able to make informed decisions about their health.
- ii. Child development is an important part of education and ensuring that all children have equal access to educational opportunities, regardless of their abilities or disabilities. This is accomplished through the provision of and promotion of educational resources and services that meet the needs of children with special needs.
- iii. Safeguarding: Creating a secure, nurturing, protective atmosphere that shields kids from all sorts of danger in every situation
- iv. Participation - allowing children to take an active role in their own growth and development, as well as the issues that directly impact them.

With a strategic perspective, the NPAC, 2016 is a blend of the past running schemes or programmes as well as the new initiatives that have been implemented. Indian children's priorities and challenges are reflected in the design of this programme. Steps toward strengthening national pledges and policies and also “the United Nations Convention on the Rights of the Child” are provided in this document. As a result, the Sustainable Development Goals (SDGs) are expected to be achieved by 2023.

²⁸ Government of India, “National Plan of Action” (Ministry of Women and Child Development, 2016).

Also, child rights have been protected since the implementation of the “United Nations Convention on the Rights of the Child” in 1989 having the following main principles:-

1. Non-Discrimination Rights
2. Survival and growth are guaranteed by the right to life.
3. The right to take into the account, the best interests of a child in all decisions that impact them.
4. The right to openly express one's opinions.

Ratification of the convention is done by India in 1992 primarily for the purpose of ensuring the safety and security of Indian children and safeguarding them from exploitation. Instead of ratifying, India adopted the provisions that were most relevant to its particular situation. For youngsters under the age of 18, this rule applies.

Youth justice is a part of the “Juvenile Justice (Care and Protection for Children) Act” in India, which was enacted on January 1, 2015. Section 2(35) of the Act defines 'Juvenile' as - "a kid under the age of 18 years".²⁹ The Latin word "Juvenis," which means "young," is the source of the term "juvenile" and hence the juvenile justice system provides justice to those under the age of 18 by protecting their rights.

While children are an intrinsic part of society, it can be seen that the legal system is based on a combination of factors such as social, economic, psychological, political and cultural factors in which children are excluded in one or more ways. If a system's foundation is broken, it will have disastrous consequences sooner or later. If children are exploited, on the other hand, the experience of facing or doing such a thing will remain with them for the rest of their lives, reducing their innocence to ashes. As a result of society and the law, youngsters can look forward to a bright future by learning to appreciate all aspects of their lives deliberately and unrestrictedly.

The Development of Juvenile Laws in India:-

²⁹ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 02 of 2016), s. 2(35).

Because of the unusual circumstances that have arisen, there were no provisions in conventional law for the punishment of juveniles or for the protection of juvenile victims in the way that the current situation exists, which is irreversible under criminal law. The most fundamental goal of the juvenile justice system is to provide for the basic needs and safety of children who have been wrongfully accused or who have violated the law in some other way. A new legal approach was adopted under British rule, resulting in the introduction of new sources and procedures of law. For the first time in 1850, the Apprentices Act, 1850, established a distinct position for juveniles in the law. The Reformatory Schools Act, 1876, was another significant measure, providing for the rehabilitation and treatment of juvenile delinquents (a child who below 18 years of age commits an act derogatory to law and society). A section of the Constitution, Article 253, envisioned that the Parliament would be able to implement measures that were ratified by India in “United Nations Standard Minimum Rules for Administration of Foreign Affairs”.³⁰ To ensure that the neglected and delinquent adolescents are taken care of and that their cases are adjudicated, Juvenile Justice, 1985 (Beijing Rules) was enacted. As a result of this, the “Juvenile Justice Act” of 1986 was created.

After “United Nations Conference on Child Rights”, the “Juvenile Justice Act” 1986 was replaced and repealed by “Juvenile Justice (Care and Protection of Children) Act”, 2000, which was therefore repealed by the new “Juvenile Justice (Care and Protection of Children) Act, 2015”. Juvenile justice laws in the nation is now governed by the Act of 2015.

According to the Convention on the Rights of the Child, and in conformity with this Act's stated objectives are-

- i. Treating a child with respect and dignity.
- ii. Instilling in the youngster, a sense of sensitivity and consideration for the rights and liberties of others.
- iii. Consideration should be given to the age of the child, as well as the need of helping the youngster reintegrate and play a positive role in society.

Principles for the implementation of the 2015 Juvenile Justice Act:-

³⁰ The Constitution of India, art. 253.

There are several principles backed behind the implementation of the JJ Act, 2015, which can be enumerated as follows:

- i. Section 3 of the Act lays out the principles to be followed in carrying out its provisions.³¹
- ii. Innocence until age 18: Up to the age of 18, every child is presumed innocent of any mala fide or unlawful purpose.
- iii. All human beings have the right to be treated with equal decency and respect.
- iv. Every child has the right to be heard and to take part in all decisions and processes that have an impact on their interests. The viewpoint of the child must be taken into account while giving due respect to their age and maturity.
- v. All choices involving the children must always be done only with primary objective of assisting the child in realizing his or her full potential while keeping the children's best interests in mind.
- vi. Biological, adoptive, or foster parents bear main responsibility for a child's upbringing, development, and safety, with the assistance of other family members as needed.
- vii. In accordance with the safety and security principle, all steps must be done to guarantee that the child in the care and protection system is protected from any harm, abuse, or mistreatment.
- viii. All means, including those coming from the family and community, should always be utilized in order to promote well-being, assist identity formation, and create a supportive and inclusive environment in order to decrease the number of children who need to receive aid under the Act.
- ix. It is against the non-stigmatizing semantics principle to employ adversarial or accusatory terms while dealing with children.
- x. Non-waiver of rights principle: No waiver of a child's rights, whether requested by the child or someone acting on his or her behalf, or by a board or committee, is acceptable or legitimate, and any non-exercise of a fundamental right does not amount to waiver.
- xi. Non-discrimination: All children shall be treated equally regardless of gender, ethnicity, race or place of birth.

³¹ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 02 of 2016), s. 3.

- xii. Every child has the right to have his or her privacy and confidentiality protected at all times and throughout the legal procedure.
- xiii. When exhausting all other options, a kid should only be institutionalized as a final resort after a thorough investigation has been conducted.
- xiv. In accordance with the idea of restoration and repatriation, every child involved in the juvenile justice system has the right to return to his or her native country and be reunited with his or her family as soon as is practical, unless it falls within child's finest interests.
- xv. If the children are placed in the system of juvenile court, all of their previous records should be wiped, save in exceptional cases.
- xvi. To the extent that it does not harm the kid or society as a whole, measures to deal with law-abiding children without resorting to legal action should be supported.
- xvii. Principle of natural justice – All people or bodies operating in a judicial capacity under the Act must conform to basic procedural principles of fairness, consisting of the right to a fair dealing & hearing, rules against prejudice and rights related to appeal.

Thus, they are considered as the fundamentals, and the administrators of the Act of 2015 should follow them while dealing with any issue.

When it comes to children, the Juvenile Justice Act of 2015 has a clear distinction between the two groups. In the past, the phrase "delinquent juvenile" was used to describe a kid who had committed a crime. However, the term "Child in Conflict with the Law" is increasingly commonly used in today's context. To avoid treating children like criminals and thereby causing them distress, this was done in an approachable manner in an effort to avoid agitating them. A comprehensive systemic approach to India's juvenile justice system is now provided under the Juvenile Justice Act of 2015.

The Indian Juvenile Justice System is built on three major assumptions:

- i. Young criminals should not be prosecuted in court, but rather corrected in all available ways;

- ii. They should not be punished by the courts, but they should be given the opportunity to rehabilitate.
- iii. Trials for children in confrontation with the law should be centered on non-punitive treatment in communities supported by social control agencies, such as and Special Homes and Observation Homes.

Children who are in want of protection and care and are in conflict with the law are protected by the law of the “Juvenile Justice Act”, which offers a clear picture of how these children will be cared for and treated. NCRB data shows that literate youth commit more crimes than uneducated youth, and Delhi is the epicenter of all the areas where the largest number of crimes is recorded.³² Furthermore, it is obvious that both central and state governments have made appropriate efforts to ensure the protection of children and their rights through various policies and legislations, as evidenced by the research. For example, the current trends show that several non-governmental organizations are also working in this area in accordance with the several international treaties to which India is a signatory. Throughout the country, it has been found that children between the ages of 16 and 18 conduct the majority of horrific crimes.

Furthermore, the appalling situation of children being abused and exploited worsens every day. Despite the government's attempts to defend children's rights and to retain their status and dignity, more vigilance is needed to ensure that no such injustice is done to them.

At last, but not the least, every kid, regardless of their differences, ought to be treated with respect, equitably, and with the highest dignity. Children are allowed to all fundamental rights, regardless of race, color, caste, faith, language, ethnicity, or gender. The nation, the government, and the residents of the country must stand united and speak out against any crimes committed against children. It is vital that the hardship of children across the country be halted, and they must be provided with a healthy, joyful, and safe environment that nourishes them physically, psychologically, and emotionally; only then can the nation's future be secure.

³² Supra note 2 at 2.

Conclusion

As a result of this dynamic approach, the best and finest interests of the children are protected regardless of whether they are in dispute with law or want protection from negligence and abuse. Therefore, it's safe to say that in India, legislation and policy decisions affecting children are built around the idea that children are the core of the system. Indian citizens are protected by the country's welfare state and the same holds true for children. In order for children to succeed or be given the opportunity to grow, specific rules are drawn up and enforced in this country.

Children who are being abused and misused or are left in such a way that they need proper care for their good and healthy growth are the primary focus of India's Juvenile Justice system. Even the government has an important role to play in ensuring that children as the fundamental unit are cared for and given the finest opportunity. A social and political awakening of people and government is therefore essential to attain goals for child welfare and hence for a promising future for the country. As a welfare state, India's primary goal is to provide its residents with an environment based on equal rights, which is why children and their best interests are a primary focus of legislative efforts. The best interests of the citizens of the state, including children, are protected at the national level. In today's society, children play an important role in shaping the future of the community. The laws of India are designed to protect children from exploitation and to punish them in a loving and reformatory manner so as not to inflict any harm on their innocent nature. It may thus be said that India's juvenile justice system covers all the necessary procedures and laws to protect children's interests and goodwill by giving a systematic role to them. But still if we take into account the scenario of practical implementation, we are lacking in the proper implementation of these procedures, laws and legislations we have. Proper Counseling should be started from the very beginning of the school level. Since this is the time where new generation crimes are on huge rise like cybercrimes which generally attracts youngsters and involves offenders which are young, so the time has come that Indian Juvenile Justice System must be modified and updated as to ensure the effectiveness in the society.

WHISTLEBLOWING POLICY IN INDIA: NEED FOR STRINGENT LAWS?

- DR. RAM CHARAN MEENA³³

Abstract

“In recent years, corporate industry in India has undergone certain radical changes that require huge amounts of capital investments. The company's uncertainty augmented with the Public Private Partnership model implemented in India, where stakeholders' as well as equity holders' interests need to be addressed. The growing uncertainty has also resulted from the chain of corporate failures such as Satyam, Sahara, King Fisher, Enron, Xerox, etc. that have rattled economies around the world, causing stockholders to lose trust in their funds' managers as well as among overseas investors. India, as an increasing economy, needs enormous foreign investment to finance big projects, as the Indian government looks at MNCs to provide resources and technological know-how. This calls for a Corporate Governance review with specific regard to the whistle blowing process in order to keep a check on such widespread fraudulent activities. It is therefore important that companies should ensure that their policies and procedures on human resources ensure that whistleblowing conduct is viewed in a favorable light and that the whistleblower is considered a savior rather than a traitor. The present study aims to highlight the value of the principles of corporate governance concerning whistle blowing process and other legislation for the company's successful functioning as well as systemic changes in the contemporary law to create conditions conducive to its existence in companies.”

Research Questions

The research questions that researcher formulated before beginning with this study are listed as follows:

- Is there any Indian law that regulates whistleblowing policy?
- What are some landmark cases of corporate frauds in India?

³³ Principal, Government Law College, Dholpur, Rajasthan.

- What is the international legislative framework regarding whistleblowing policy?
- What are the loopholes in the whistleblowing laws of India?

Research Objectives

The research objectives that researcher formulated before beginning with this study are listed as follows:

- To learn about the existing whistleblowing law in India.
- To analyze some landmark cases of corporate frauds in India.
- To compare the existing legislative framework concerning whistleblowing policy of different countries.
- To identify the loopholes in the whistleblowing laws of India.

Literature Review

Shefali Shaluja (2020) in her paper “Whistle Blowing of Corporate Frauds in India” highlights that people should consider whistleblowing an important concept for corporate governance. Whistleblowing acts as an aid to many organizations or individuals in the effort to identify or reduce fraud or abuse. Recommendations of the analysis indicate that the individual's concerns shall be reported very seriously, proper action shall be taken on such cases, protection to the whistleblowers should be provided as that is the key to encourage other people to identify and report fraudulent activity in any organization or individual role. The paper’s major contribution is towards understanding the nature of whistleblowing act, and what it offers for the corporates. Rajasree Varma (2012) in his paper “Whistleblowing: Indian Paradigm and Blemishes” defines whistleblower as someone who divulges wrongdoing, fraud, corruption or mismanagement. Mostly the person could be an employee because he is the person who becomes adept in about the corruption or frauds which takes place inside a company or organization. However, since all organizations restricts publishing institutional information, the whistleblower often faces retaliation like dismissal from employment and even physical harm.

Moreover, he further adds that Satyam scam opened the eyes of authorities and drafted Companies Bill 2009 to prevent further corporate frauds. The murder of Satyendra Dubey, an engineer worked with National Highway Authority of India and the case of Manjunath

Shanmugham induces the necessity of a stringent law which can protect the whistleblower. The introduction of Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010 will make the condition safer but need for an independent competent authority cannot be ignored. Strict criminal prosecution should be instigated in counter to those thwarting whistleblowers from acting against a corporation. SOX Act, 2002 effectively lays down the protection to whistleblowers and that should be followed by our nation a mere amendment to cl.49 will not serve the purpose. Private companies are not coming under the ambit.

Vijay Kumar Singh (2017) in his paper “Whistle Blower Policy Challenges and Solutions for India with Special Reference to Corporate Governance” throws light on issue of 'whistle blowing' as one of the important areas of discussion while discussing corporate governance. He indicates that, in relation to corporate governance, whistle-blower is a person inside the company who blows a whistle (informs the superior management or the person concerned) against any actual or potential violation of law or established code of conduct which may pose a threat to the company or public interest in general. Whistle Blower's Policy is the policy to provide adequate safeguard to the whistleblower against unfair treatment by the alleged violator, which can even lead to death of whistleblower. Whistleblowers are not new to the society. Their role in putting a check on corruption is well recognized. Around the world, there are various legislations, statutes, codes of conduct, and code of best practices to protect the whistleblowers from reprisal and victimization. However, in relation to corporate governance, there are many issues which need to be sorted out. Further, the paper analyzes the nature, definition, and requirements of whistle blower's policy in Indian Corporate Governance. A comparative review of whistleblower policies in key countries have been discussed.

Introduction

“The purpose of whistleblowing is to expose secret and wrongful acts by those in power in order to enable reform.”

- **Glenn Greenwald**³⁴

³⁴Glenn Greenwald, *Edward Snowden's worst fear has not been realized – thankfully*, THE GUARDIAN (Fri 14 June 2013 19:00 BST), <https://www.theguardian.com/commentisfree/2013/jun/14/edward-snowden-worst-fear-not-realized>.

“The term Whistle blowing simply means raising an alarm about the wrongdoing inside or outside the company where other people's interests are at stake. It is a concept of recent origin that has become common in many corporate scandals around the world, such as the Enron, WorldCom, Bear Stearns, Lehman Bros, Countrywide, AIG, Washington Mutual, Fortis, ING, Satyam Computers and more. The word is believed to come from the procedure, where referees raise an alarm by blowing a whistle for their orderly continuation to avoid foul play or wrongdoing in a match.³⁵ Another theory is that it derives from the English policeman's idea of blowing the whistle to warn witnesses and officials of crimes or hazards.³⁶ It basically means revealing the wrong done in an agency or in a society in simple terms. The concept includes four elements "the whistle-blower, the whistle blowing act, the individual against whom the complaint is made and the entity against which the complaint is lodged," according to Janet Near and Marcia Miceli.³⁷ Usually, whistleblowing is undertaken in relation to severe moral faults i.e., matters including those connected to public safety, public money and environment where the whistleblower feels he has a moral and ethical duty to report it.³⁸”

“The rules and regulations on whistleblowing were developed to enable potential whistleblowers to come forward with their suspicion by providing opportunities for workers to raise complaints and identify a way of coping with unethical practice. This involves the duty of a whistle blower to make sure that the information he or she has is pure facts and not any sort of speculation. Otherwise, it may generate needless rigidity among stakeholders and weigh the personal risks faced when choosing to become a whistle blower.³⁹ Sometimes, staff members are the first to learn about any immoral or simply illegal activity that takes place inside an organization. However, they also appear to be the last to speak out, fearing the loss of their job, friends or potential advancement. For this reason, most companies will penalize whistleblowers by firing, suspending, or charging them for violating laws or employment agreements, even if they are acting in good faith. The whistle blowing rules and regulations are

³⁵Jubb & P.B., *Whistleblowing: A Restrictive Definition and Interpretation*, J. BUS. ETHICS 21, 77–94 (1999).

³⁶DANA. L. GOLD, RESEARCH HANDBOOK ON CORPORATE LEGAL RESPONSIBILITY 254 (Stephan Tully ed. 2005).

³⁷Janet Near & Marcia Miceli, *Organisational Dissidence: The case of Whistle Blowing*, J. BUS. ETHICS 1, 2-4 (1985).

³⁸*Id.*

³⁹Ernika Hernik, *Understanding Whistle Blowing: A set theoretic approach*, 68 (2) J. BUS.RES. 442, 450 (2015).

therefore critical for protecting workers who blow the whistle on those engaged in dishonest and illegal actions against retaliation by public corporations.”

“However, in India, there is no proper statute which deals with protection of whistle blowers in public listed companies. The Whistle Blowers Protection Act, passed in 2011, includes general provisions relating to whistle blowing.⁴⁰ However, it does not resolve the plight of private-sector whistle blowers because the law applies only to government companies, non-governmental organizations and public employees and does not apply to the private sector. The Law Commission's proposal to apply the Act to the private sector in its 179th report and the 2nd Administrative Reforms Commission in its 4th Report has been ignored. This being the critical problem, the fear amongst staff members as well as various employees prevails due to which most of the corporate fiascos stay underreported leading to serious economic breakdown.”

“This paper is going to delve into the principles of corporate governance with in respect of whistle blowing mechanism in India. Further, it is going to address the drawbacks of Indian legislations related to the whistleblowing process as well as the need to establish a systematic mechanism to prevent the outbreak of such corporate fiascos highlighting the international legal framework. Subsequently, it provides the recommendations and suggestions regarding changes in the contemporary laws to ensure successful functioning of the companies in India.”

Indian Legal Framework of Whistleblowing Policy

- **“The Indian Companies (Amendment) Act 2017⁴¹”**

Under The Companies (Amendment) Act 2017, there is no such term as whistle blowing but all the provisions laid in it have a concept of whistle blowing policy. There is a separate chapter in the companies act named “Inspection, Inquiry and Investigation” which deals with the concept of the whistle blowing. Sec 210 to 229 of the Act provides for a new system for investigating corporate matters.⁴² Section 211(1) of the Act provides for the creation of an Office for Serious Fraud Investigation (SFIO).⁴³ As per the Companies (Amendment) Act

⁴⁰Whistle Blowing Protection Act, Act No. 17, Acts of Parliament, 2014 (India).

⁴¹The Indian Companies (Amendment) Act, Act No. 1, Acts of Parliament, 2017.

⁴²The Indian Companies (Amendment) Act, Act No. 1, Acts of Parliament, 2017.

⁴³The Indian Companies (Amendment) Act, Act No. 1, Acts of Parliament, 2017.

2017, whistle blowing is not merely a voluntary act of the individual willing to do so, but in fact it is the person's duty, right and obligation to assist in business relations and corporate affairs. This act motivates and encourages to raise voice fearlessly against unethical business acts and promotes through its provisions, investigation and inquiry. Under section 218 of this act protection has been provided to the employees during investigation.⁴⁴ Sec 229 of the Companies (Amendment) Act, 2017 states the provision of penalty in case of providing false statements or damage or destruction of any document.⁴⁵ Under section 177(9) of the Companies (Amendment) Act, 2017⁴⁶ and Rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014, all the listed companies are required to set up a vigil mechanism for the employees and the director of the company so that they can report complaints of any unethical behavior, violation of code of conduct, actual or suspended frauds or any misconducts in the company, complaints are not limited to only the given topics, any genuine complaint affecting the company can be reported. Later there was an amendment in the section according to which the Board has all the rights reserved to amend the mechanism but any change must not be varying with the provision of listing agreement, Companies (Amendment) Act, 2013 and any law for the time being in force.”

- **“SEBI guidelines**

In an amendment to Clause 49 of the listing agreement in August 2003, SEBI incorporated guidelines for companies. According to the agreement, it is mandatory for the companies to have a vigilant system and a whistleblowing policy of its own and it is the duty of the employees to be vigilant and if they believe that there is any malpractice or fraud going on in the company then they have the right to access to the company’s audit committee. The agreement also mentions that it is company’s responsibility towards those employees to provide them protection from any kind of harassment or termination. It also proposed that companies should come up with an annual declaration that they did not refuse or restrict any personal access to audit committees and that they offered immunity to the whistleblowers from unfair dismissal or other prejudicial workplace practices. But unfortunately, this mandatory

⁴⁴The Indian Companies (Amendment) Act, Act No. 1, Acts of Parliament, 2017.

⁴⁵The Indian Companies (Amendment) Act, Act No. 1, Acts of Parliament, 2017.

⁴⁶The Indian Companies (Amendment) Act, Act No. 1, Acts of Parliament, 2017.

recommendation was never implemented and also got diluted in a non- mandatory provision letting companies to get off the hook.”

- **“Whistle Blower Protection Act 2014⁴⁷”**

This act was created to establish a mechanism where the complaints related to any willful use of power against any public servant, allegations of corruption or any complaint related to the disclosure of any document can be addressed. This act also includes inquiry on the organization or the person for such disclosure and also have adequate safeguards to protect the complainant against victimization for whistleblowing.”

“The act deals with the requirement of public interest disclosure. According to it, in spite of the provisions contained in the Official Secrets Act, 1923 (19 of 1923), any public servant or any non-governmental authority can make a public interest disclosure before the competent authority. Any disclosure made under this act will be treated as a public interest disclosure. Also, every disclosure must be made in good faith and the person making it must give a personal declaration stating that he reasonably believes the information disclosed by him and the allegations contained in there are considerably true. The disclosure must be made in accordance with the procedure mentioned with all the supporting documents and if the competent authority feels fit, it can also call the person making the disclosure in case they need any other information. The most important thing is that it is important for the person making the disclosure to reveal his identity, in case the identity is incorrect, no action will be taken. Under section 4 of this act, the competent authority shall ascertain that the complainant himself has made the disclosure or not. The competent authority must upon receiving the receipt of complaint and after ascertaining the identity of the complainant or the public servant shall decide that whether more investigation is required from the complainant within the prescribed time. The authority shall investigate discreetly. And if, after the discreet investigation the competent authority feels that the disclosure needs more investigation, they shall seek comments and explanations from the head of the department of the organization concerned without revealing the identity of the complainant. Provided, if the competent authority believes that it is important to reveal the name of the complainant before the head of the department

⁴⁷Whistle Blowing Protection Act, Act No. 17, Acts of Parliament, 2014. (India).

while seeking comments and explanation, it can reveal the name only if it has prior consent of the complainant to do so, if the complainant agrees to it then the name can be revealed, but, if the complainant denies to reveal his identity, he shall provide the authority all the documentary information and evidences to support his complaint. After investigating all the documents and evidences if the authority believes that the complaint is frivolous, vexatious, or there is no ground for the case, the matter shall be closed. Or, if the discreet inquiry and investigation shows that there was willful misuse of power and complaint is true, it shall recommend the public authority to choose the measures as prescribed in the act. The public authority shall take the decisions within 3 months of the recommendation and also must inform the complainant about the same.”

“Under this act, the competent authority investigating the case must have the powers of the civil court by the reason of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974) and every proceeding before the Competent Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code (45 of 1860).”

“Under section 8 of the whistleblower protection act 2014 there is no obligation on the competent authority to not to disclose the complainant’s name whether it is imposed under Official Secrets Act, 1923 (19 of 1923) or any other law which shall be in force at that time, the competent authority can do what they believe is fit for the time.”

“The act deals with the provisions to safeguard the whistleblower against victimization. If the competent authority believes that there is a need to give protection to the person making the disclosure, or any witness, or any other person giving assistance in the inquiry, through any application sent by the complainant or by any other means, then they give appropriate directions to the government authorities or the police to give the respective people the appropriate protection.”

“Incidents of Corporate Fraud in India”

- **“The Infosys Episode:**

On October 21, a whistle was blown by a group of employees in an Indian multinational corporation Infosys limited where the whistleblowers alleged that the company is using ‘unethical’ steps to increase the profits and the short-term revenues. The whistleblowers also

assured that they have call recordings and copy of the emails as evidence to prove the same. The complaint was sent to the board of directors of Infosys and the US Securities and Exchange Commission (SEC) because Infosys is also classified in the US and the regulator allows for the filing of confidential complaints with it. The whistleblowers did not reveal their identity and referred to themselves as “*ethical employees*” in the complaint letter. This was the third whistleblower complaint in Infosys. The group in the letter alleges that CEO of the company Salil Parekh directed them to manipulate the documents and to make wrong assumptions in order to show margins and that the chief financial officer prevented the Infosys employees from presenting and showing all the large deal issues.⁴⁸”

“Infosys did not make the disclosure earlier under *Regulation 30* of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (*SEBI LODR Regulations*).⁴⁹ Under SEBI, LODR it is mandatory to make disclosure within 24 hours from the occurrence of event or information.⁵⁰”

“The audit committee gave a clean chit to the CEO as they did not find any evidence. “The audit committee determined that the allegations are substantially without merit,” the company said.⁵¹ Later SEC also gave the company a clean chit. A statement was released by the company which said “*The Company received notification from the SEC that the SEC has concluded its investigation and the Company does not anticipate any further action by the SEC on this matter.*”⁵²”

⁴⁸Jochelle Mendonca & Ayan Pramanik, *Whistleblower accuses Infosys of ‘unethical’ practices to boost numbers*, THE ECONOMIC TIMES, (Oct 21, 2019) <https://economictimes.indiatimes.com/tech/ites/whistleblower-accuses-infosys-of-unethical-practices-to-boost-nos/articleshow/71679710.cms>.

⁴⁹Abhyuday Agarwal, *whistleblowing norms in India, Everything you need to know about whistleblowing in India beyond Infosys*, SCC (October 29, 2019), <https://www.sconline.com/blog/post/2019/11/04/sebi-disclosure-of-divergence-in-the-asset-classification-and-provisioning-by-banks/>.

⁵⁰Devika, *SBI- disclosure of divergence in the asset classification and provisioning by banks*, SCC (November 4, 2019), <https://www.sconline.com/blog/post/2019/11/04/sebi-disclosure-of-divergence-in-the-asset-classification-and-provisioning-by-banks/>.

⁵¹Amit Mudgil, *Will clean chit to CEO in whistleblower case reverse Infosys stock's underperformance?* THE ECONOMIC TIMES, (Jan 11, 2020, 02.49 PM IST), <https://economictimes.indiatimes.com/markets/stocks/news/will-clean-chit-to-ceo-in-whistleblower-case-reverse-infosys-stocksunderperformance/articleshow/73201497.cm>.

⁵²Anonymous, *Infosys gets clean chit from SEC on whistleblower complaint; stock rallies 10%*, CNBC TV (18 March 24, 2020, 01:12 PM IST), <https://www.cnbc18.com/market/stocks/infosys-gets-clean-chit-from-sec-on-whistleblower-complaint-stock-rallies-10-5544031.htm>.

- **“The Satyam scam:**

Satyam computers was one of the companies which had their whistleblowing policy since 2005 but still it was never implemented or followed in a correct way which led to such a big scam. It can be said that the metro man E. Sreedharan was the first and the original whistleblower in the scam.⁵³ He suspected a big mischief and being a Delhi Metro Rail Corporation’s (DMRC) chief, he alerted the then Planning Commission deputy Montek Singh Ahluwalia and raised a red flag. After writing the letter to the planning commission that how the Andhra Pradesh government is selling the family silver and this could lead to a very big political scandal. After Sreedharan wrote the letter, he was charged with defamation by the Andhra Pradesh government. Later, after a huge loss, Ramalinga Raju, owner of the company surrendered himself.”

- **“The Ranbaxy company fraud:**

The condition of whistleblowers is pathetic whether it is a corporate company or any government company. A whistleblower Dinesh Thakur blew the whistle in Ranbaxy and also highlighted the issues fraudulent in the company like drug development, manufacturing and testing data. After blowing the whistle in 2005 Dinesh was forced to resign from his post after exposing the fraud internally. After leaving the company Dinesh started working closely with the US Food and Drug Administration and he soon exposed the Ranbaxy Company.⁵⁴ All this happened because he took the protection of the US whistleblowers’ program. But not everyone is so fortunate and privileged.”

- **“The Satyendra Dubey and S. Manjunath Murder case⁵⁵:**

Shanmugan Manjunath, a manager at Indian oil-corporation was murdered after he sealed a corrupt petrol station when he came to know they were selling adulterated petrol. Similarly, Satyendra Dubey, an IES, and the project director in the [National Highways Authority of India](#)

⁵³Narendra Shah, *Metro-man E. Sridharan was original whistle-blower of Satyam Scam*, METRO RAIL NEWS, (12 April, 2015), <https://www.metrorailnews.in/metro-man-e-sridharan-was-original-whistle-blower-of-satyam-scam/>.

⁵⁴Rahul Singh, *A tribute to the whistleblower, risking job and even life*, THE TRIBUNE, Jan 05, 2020 07:28 AM (IST), <https://www.tribuneindia.com/news/comment/a-tribute-to-the-whistleblower-risking-job-and-even-life-21765>.

⁵⁵Rohit Gandhi, *Tough road for whistle-blowers in India*, DNA INDIA (Oct 24, 2016), 08:00 AM IST, <https://www.dnaindia.com/india/column-tough-road-for-whistle-blowers-2266884>.

(NHA) at Koderma was murdered when he blew a whistle and exposed corruption in the Golden Quadrilateral Project.”

“International Legal Framework for Whistleblowing Policy”

“Most of the International mechanisms for combating corruption have accepted whistleblowing as an important weapon.⁵⁶ Legislations such as Whistleblower protection have been implemented in the United Nations Convention Against Corruption,⁵⁷ the 2009 OECD Anti- Bribery recommendation⁵⁸ , the OECD Recommendation which was proposed in 1998 on Improving Ethical Conduct in Public Service, the Council of Europe Civil and Criminal Law Conventions on Corruption⁵⁹, the Inter-American Convention against Corruption⁶⁰ and the African Union Convention on Preventing and Combating Corruption etc.⁶¹ All these legislations work internationally to give whistleblowing protection against the prevalence of corrupt practices all across the world.”

“UNITED STATES: WHISTLEBLOWING LEGISLATIONS”

“Whistleblowers in the United States may request immunity from three sources: federal laws, state laws, and tort of wrongful discharge based on common law exceptions to the doctrine of “Employment at will”.⁶² At present, forty-seven of the fifty States offer workers with general whistleblower protection.⁶³ State statutory protection includes general whistleblower protections and subject-specific legislation.⁶⁴ These subject-specific protections provide protection in the fields of occupational health and safety, elderly care, healthcare, medical aid

Jurisperitus: The Law Journal
ISSN: 2581-6349

⁵⁶OECD, *Recommendation On Improving Ethical Conduct In The Public Service, Principles for Managing Ethics in the Public Service* 4, (Aug.17, 2016) <https://legalinstruments.oecd.org/public/doc/129/129.en.pdf>.

⁵⁷OECD Convention on *Combating Bribery of Foreign Public Officials in International Business Transactions*, Dec. 17, 1997, S. Treaty Doc. No. 105-43.

⁵⁸*Id.*

⁵⁹*Id.*

⁶⁰Inter-American Convention against Corruption, Article III (8), March 29, 1996 O.A.S.T.S, S. Treaty Doc. No. 105-39, 35 I.L.M 724.

⁶¹African Union Convention on Preventing and Combating Corruption, Article 5(6), July 11, 2003, 43 I.L.M. 5.

⁶²Gerard Sinzdak, *An Analysis of Current Whistleblower Laws: Defending a More Flexible Approach to Reporting Requirements*, 96 CAL.L.REV.1633 (2008).

⁶³Elletta Sangrey et al., *The State of State Whistleblower Protection*, 38 AM.BUS L.J. 99,108 (2000).

⁶⁴*Id.*

abuse, minimum wage, employment and the environment.⁶⁵ Most of such laws are sectoral or Industrial specific. For example, the *Occupational Safety and Health Act 1970* safeguards people who report or inform about the issues regarding safety and health at workplace, the *Corporate and Criminal Fraud Accountability Act 2002* (Sarbanes-Oxley), as extended by the *Wall Street Reform and Consumer Protection Act 2010* (Dodd-Frank), safeguards whistleblowers related to securities law and the *Affordable Care Act* safeguards people blowing the whistle on issues regarding healthcare reform. Also, provisions included in *Securities Exchange Commission regulations* promoting full public disclosure, defending investors against deceptive and misleading business practices, and controlling takeover actions by companies. Most of these laws are made in force/directed by the Department of Labor (DOL) or the Occupational Safety and Health Agency (OSHA).”

- **“The Sarbanes Oxley Act, (SOX) 2002⁶⁶:** More than 40 million US publicly traded company workers are protected by this Act.⁶⁷ The SOX Act provides for civil, criminal, anti- retaliation measures, administrative remedies and controls the entire publicly traded jobs market.⁶⁸ However, it also applies through the Securities and Exchange Commission (SEC) to businesses with other reporting provisions, as well as to their vendors, subcontractors, and agents, including employees of privately owned firms who do work for public companies. The Act includes provisions that include specific safeguards in favor of whistleblowing and other employment-based safeguards such as:”

1. “The definition of the word “Employee” is broader, including present and former workers (if the protected activity occurs during their employment), supervisors, managers, officers and independent contractors as well.⁶⁹”

⁶⁵Robert G Vaughn, *State whistleblower Statutes and the future of whistleblower protection*, 51 ADMIN L. REV.581, 582 (1999).

⁶⁶The Sarbanes–Oxley Act, 2002.

⁶⁷Hesch, Joel D, *Whistleblower Rights and Protections: Critiquing Federal whistleblower Laws and Recommending Filling in Missing Pieces to Form a Beautiful Patchwork Quilt*, 6 LIBERTY U.L. Rev 51, 98 (2011).

⁶⁸*Supra* note 26.

⁶⁹Steven Hymowitz et. al., *Managing Employees Who Have Made Complaints of Unlawful Conduct*, 37 AM. BAR ASSOC. 881, 922 (1951).

2. “Section 301 of the Act requires the establishment of internal and independent 'audit committees' by publicly traded companies, requiring the audit committee to create protocols for workers to submit complaints from whistleblowers and protecting the identity of these whistleblowers.⁷⁰”
3. “Another provision urges professionals to become internal whistleblowers against their employers or customers before the stock exchange commission and to carry the wrongdoing to the audit committee's notice.⁷¹ Under the whistleblower rules all these attorneys' or professional workers' actions should be considered as 'safe operation.'⁷²”
4. “The amended clause criminalizes retaliation against every informant who offers truthful information about the commission or potential prosecution of a federal crime to a law enforcement officer and makes it applicable to any employer.⁷³”
5. “Another clause requires an employee to report directly to the Labor Department within 90 days of retaliation on the employer's fair belief in retaliation.⁷⁴ The Labor Department must investigate the complaint and send it to OSHA for review, then OSHA must issue a finding and compliance order.”
6. “There are also statutory provisions for retaliation against a whistleblower who made a complaint to a law enforcement agency about the execution of any federal crime, including a fine or 10 years' imprisonment (or both).⁷⁵”

“With the advent of these laws, various court verdicts of whistleblowing cases also added to the efficiency of such laws. For example, in the case of *Van Asdale v. International Game Technology*, the Ninth Circuit Court overturned the summary judgment and ruled that even if the internal counsel exposed 'privileged details to the ⁷⁶counsel-client' they would be covered

⁷⁰The Sarbanes–Oxley Act, 15 U.S.C. §301(2002).

⁷¹The Sarbanes–Oxley Act, 15 U.S.C. §7245(2002).

⁷²The Sarbanes–Oxley Act, 18 U.S.C. §1514 (a) (1) (2002).

⁷³The Sarbanes–Oxley Act, 18U.S.C. §1513 (e) (2002).

⁷⁴The Sarbanes–Oxley Act, 18 U.S.C. §1513(e) (2002).

⁷⁵The Sarbanes–Oxley Act, 15 U.S.C. §802 (2002).

⁷⁶*Van Asdale v. International Game Technology*, 577 F.3d 989 (9th Cir. 2009).

from retaliation⁷⁷. The amended clause criminalizes retaliation against every informant who offers truthful information about the commission or potential prosecution of a federal crime to a law enforcement officer and makes it applicable to any employer.⁷⁸ Further, regarding the question that whether the said act covers private companies under its ambit or not was addressed in *Kalkunte v. DVI Financial Services, Inc*⁷⁹ where it was held that the public company's subsidiaries are also responsible for retaliation against employees if they are parent company agents and share the same management.⁸⁰ It is important for the employee to prima facie establish that the employer knew of this activity, he suffered an unfavorable personal action and circumstances suggest that the protected activity was a contributing factor to the unfavorable action in order to claim retaliation. In *Collins v. Beazer Homes, USA, Inc*⁸¹ the plaintiff after having complained at their office about the suspected 'corruption' and 'cover-ups', was fired within 14 days. The court held that the complaint revealed wrongdoing that counts as a protected practice, and the employer's immediate firing constituted retaliation.⁸² Whistleblowers will have recourse to both monetary and non-monetary redress if they are subjected to an adverse employment action.”

- **“The Dodd-Frank Wall Street Reform and Customer Protection Act (Dodd-Frank Act) 2010:** The Act expanded the position of whistleblowers by offering incentives to whistleblowers who provided confidential information to the Stock Exchange Commission or the Commodities Future Trade Commission.⁸³ A whistleblower who provided information contributing to an effective compliance action resulting in more than \$1 million is qualified for a reward of not less than 10% and not more than 30%.⁸⁴ Another provision implemented by the Act expanded immunity to the employees of subsidiaries of publicly

⁷⁷*Id.*

⁷⁸The Sarbanes–Oxley Act, 18 U.S.C. §1513 (e) (2002).

⁷⁹*Kalkunte v. DVI Financial Services, Inc.* ARB Nos. 05-139, 05-140.

⁸⁰*Id.*

⁸¹*Collins v. Beazer Homes USA, Inc.*, 334 F. Supp. 2d 1365 (N.D. Ga. 2004).

⁸²*Id.* at 1370-71.

⁸³Dodd-Frank Act, 15 U.S.C. §922 (a) (2010).

⁸⁴Dodd-Frank Act, 15 U.S.C §922 (b) (1) (2010).

traded companies and parent companies.⁸⁵ It also expanded the time period for lodging a retaliation complaint from 90 days to 180 days.”

“Subsequently, several amendments were made which also allowed the new United States legal system to function more effectively. For example, amending the SOX clause to guarantee jury trials and forbid forced arbitration agreements,⁸⁶ new and strengthened protection for whistleblowers reporting to the newly formed consumer protection board,⁸⁷ amending the False Claims Act to extend the time period for filing retaliation claims and unfair discharge claims to three years.⁸⁸ Provisions against retaliation could also be located in Federal Discrimination (Equal Employment Opportunities) laws, protection to Government employees in Whistle Blower Protection Act of 1989, the employees of Defence Contractors under the Department of the Defence Authorization Act of 1987,⁸⁹ Occupational Safety and Health Act of 1970 etc.⁹⁰”

Pitfalls of the Indian Whistleblowing Laws

“*“Whistleblowers protection is a policy that all government leaders support in public but few in power tolerate in private”*”

– *“Thomas M. Devine⁹¹”*

“Laws have been implemented in line with the welfare of the general public but they are inadequate in line with the growth rate. While the Center informed the 2014 Whistle Blowers Protection Act, it subsequently requested some amendments to the Whistleblowers Protection Act that were passed in the Lok Sabha to protect against leaks that may have repercussions for national security.⁹² To that end, Center introduced the Whistle Blowers Protection (Amendment) Bill, 2015, passed in May 2015 by Lok Sabha. But Bill's amendment did not

⁸⁵Dodd-Frank Act, 15 U.S.C. §922 (2010).

⁸⁶Dodd-Frank Act, 15 U.S.C. §922 (c) (2010).

⁸⁷Dodd-Frank Act, 15 U.S.C. §1057 (2010).

⁸⁸Dodd-Frank Act, 15 U.S.C. §1079B (c) (2010).

⁸⁹Department of the Defence Authorization Act, 10 U.S.C § 2409 (a) (1987).

⁹⁰Occupational Safety and Health Act, 29 U.S.C. § 660 (c) (1970).

⁹¹Thomas M Devine, *The Whistleblowers Protection Act, 1989: Foundation for the Modern Law of Employment Dissent*, 51 ADMIN. L. REV. 531, 533 (1999).

⁹² Whistle Blowing Protection Act, 2014.

clear Rajya Sabha and lapsed before the 2019 dissolution of the 16th Lok Sabha.⁹³ Even after the Whistleblowers Protection Act 2014 was passed after the Infosys Whistleblowers reported suspected corporate malpractice of the Indian IT giant, accusing executives of violating norms and falsifying numbers in their top ranks, the act is still to be operationalized.⁹⁴ An amendment introduced to the Act was further criticized on the grounds that it dilutes whistleblowers' protections. The whistle-blower will not be able to disclose protected information under the Official Secrets Act and any information that the government is exempt from disclosure under the Right to Information Act if the amendments come into being.”⁹⁵

“Any disclosure which would have an adverse impact on India's sovereignty and independence, the State's stability, political, scientific or economic interests, friendly ties with foreign states or incitement to an offence would be exempted. It also covered intellectual property and trade secrets. This ensures the whistleblower won't be allowed to complain about corruption, rule breaches, misuse of power, and excessive government spending if the allegation falls foul of these specific categories of exemptions. The original legislation was highly problematic and the new one is also not close to solving the problem. India wants to get stricter punishments. In addition, the Act only included public corporations within its scope and was entirely silent on applying the policy in private corporations. Meanwhile, if we compare India's laws with an international perspective, in the U.S., the laws protect all employees reporting economic abuse or misconduct as well as actions that affect individuals' health and safety and the environment.⁹⁵ Many laws in India cover only the public sector, or are not enforced according to whistle blowers' particular needs. The laws only offer specific security to those listed in the statute, and those not falling under the purview remain outside.”

“The very popular Satyam scam case has opened authorities' eyes and drafted Companies Bill 2009 to prevent further corporate fraud. Satyendra Dubey's murder of an engineer who has served with India's National Highway Authority and Manjunath Shanmugham's case induces the need for a stringent legislation that can protect the whistleblower. Had strong laws existed

⁹³ TNN, *Where the law stands on Whistle blowers in India*, THE ECONOMIC TIMES, 26 Oct 2019, 10:48 AM IST, <https://economictimes.indiatimes.com/news/company/corporate-trends/a-look-back-at-how-the-open-plan-offices-evolved/its-german/slideshow/71463183.cms>.

⁹⁴ *Id.*

⁹⁵ DAVID BANISAR, *CORRUPTION AND TRANSPARENCY: DEBATING THE FRONTIERS BETWEEN STATE, MARKET AND SOCIETY*, 64 (I. Sandoval ed. 2011).

then such murders could have been avoided. The implementation of the 2010 Public Interest Disclosure and Safety for Individuals Making the Disclosure Bill will make the situation healthier, but at the same time, it cannot be overlooked the need for an independent competent authority. Indian laws do not make strict criminal proceedings against those who prevent whistleblowers from working against a corporation. Just like the U.S. SOX Act of 2002 effectively provides for the safety of whistleblowers by enforcing criminal penalties, and this should also be adopted by our country.⁹⁶ A simple modification to SEBI cl.49 won't serve the purpose.”

“On the other hand, pursuant to section 177(9)(10) of the Indian Companies Act 2017⁹⁷, which requires each listed company or class or class of companies to establish a vigilance mechanism for directors and employees to report genuine concerns in the manner prescribed. It nowhere in the act, specifically mentions about “whistleblowing policy”. Also, the vigil mechanism under sub-section (9) is required to provide for adequate safeguards against victimization of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases. There is no proper definition of a “whistleblower”. The provision shows no clarity as well as no proper guidelines regarding any sort of compensation to the employees who encounter retaliation because of disclosing information. Furthermore, there are no confidentiality clauses in the act which makes the Act less credible in securing the rights of Indian whistleblowers.”

“Conclusions and Suggestions”

““A common self-deception is the belief that the injustice that one perceives is the most important one and that fixing it will make a major difference.””

- **“Bill Corcoran⁹⁸”**

“Even after enacting various legislations, whistleblowers in India are not safe or protected because the corrupt systems and companies do not let them raise their voice and if anyhow,

⁹⁶ The Sarbanes–Oxley Act, 15 U.S.C. §802 (2002).

⁹⁷ The Indian Companies (Amendment) Act, Act No. 1, Acts of Parliament, 2017.

⁹⁸ Bill Corcoran, *Some Great Quotes for Whistleblowers or others who care about ethics* WHISTLE BLOWERS SUPPORT BLOG (December 3, 2008), <https://gflorencescott.wordpress.com/2008/12/03/some-great-quotes-for-whistleblowers-or-others-who-care-about-ethics/>.

they manage to blow the whistle they are executed or victimized. It is not easy to be a whistleblower, it takes guts to be one. They risk their job and even their life. They deserve to get protection in return but unfortunately India has become a home to victimization of whistleblowers whether it is a government company or private company. In an affidavit signed by the Supreme Court “The conviction rate of central vigilance office was only 7.3%” and the recommended punishments were also very minor. To create fear in the minds of the corrupt peoples, the punishment must be strict and stringent. Corruption is a very big challenge in India, the second most populous country in the world and stands at the 80th position in the corruption perception index.⁹⁹ Now, there is a need to show a much higher degree of progress, honesty and transparency in India so that it could change the corrupt perception of it and to move towards the path of nationhood. This will help the whistleblowers’ to raise their voice whenever there is a need. For instance, just as the U.S. whistleblowing laws provide effective protection against retaliation, confidentiality clauses as well as heavy penalties in order to safeguard the interests of those who blow the whistle against such unethical practices, it’s high time India should adopt such laws too.”

“Whistle-blower has already been described as one of the very important and primary principles of corporate governance. The non - mandatory provision of the listing company was formed through this policy and if the economic and legal suggestion of providing protection are not followed then ultimately it is the loss of the company because if the director of the company is committing any fraud it will directly affect the company’s market value and goodwill, for which Satyam fraud is a good instance. Secondly, in the absence of a mandatory provision of whistleblower, the company should make their own provision for not just the protection of the whistleblowers’ but also keeping in mind all the dimensions from making a healthy working environment to inculcating a commitment and loyalty in the employee towards their work and fearlessness in their conduct while exposing the employees or officers of higher post. And only making of any policy is of no use until and unless it is not implemented. Hence, some suggestions that can be adopted to prevent such fraudulent activities are as follows:”

⁹⁹ PTI, *India ranked 80th in Corruption Perception Index*, THE ECONOMIC TIMES (Jan 23, 2020, 10.14 PM IST), <https://economictimes.indiatimes.com/news/politics-and-nation/india-ranked-80th-in-corruption-perception-index/articleshow/73560064.cms>.

1. “All the norms of Corporate Governance must be adopted regularly in day-to-day life in the workplace and to attain this goal proper definitions of whistleblowers’, non- retaliation clauses, confidentiality and due process should be made clear.”
2. “Introduction of more welcoming clauses in businesses such as immunity from harassment, victim protection services, a third party's twenty-four hotline service.”
3. “Implementing successful communication strategies to establish awareness of the presence of a hotline system on employees, increasing the desire of employees to use it by building confidence and improving the capacity of employees to recognize possible wrongdoings.”
4. “Increasing employees’ confidence that their identity will remain confidential, communicating how a whistleblower report will lead to an investigation and necessary disciplinary action, and stressing the role of each employee in preventing and detecting fraud and using the hotline for these purposes without any kind of fear.”
5. “Whistleblowing procedures can be enforced successfully in Indian corporations with sufficient help from the organization's government, regulators and senior management. Simply making legislations will not do any good. There is a need for implementation of such laws as well.”
6. “Also, there is a need to keep a check on frivolous complaints and should be taken care of by imposing heavy penalties.”

Jurisperitus: The Law Journal
ISSN: 2581-6349

THE ADVENT OF ARTIFICIAL INTELLIGENCE: AN ANALYSIS WITH REFERENCE TO LEGAL BACKING

- ASHISH VERMA¹⁰⁰

ABSTRACT:

With developing age and times, there is an area of misuse which can be countered by regulation, in the following context, the aspect of the neo-technical concept of Artificial Intelligence would be spoken about, The author here would be emphasizing on giving a brief introduction on Artificial intelligence and how it has traversed through the ages along with its historic perspectives, further what it has in store for its regulation is something that would be shed light on and for the legal perspective and understanding of law makers it would be compared to areas of law and a comparative analytic study on the branches of law would be done, further from a legislative perspective there would be emphasis on how the EU has shaped up the AI draft bill laws and what is India's stance on Artificial intelligence and its laws and regulation.

Keywords: Artificial Intelligence, Torts, Intellectual Property Rights, -Contracts, Robots, Computers

INTRODUCTION:

Our dependence in the present age is largely on programmed devices like computers and Smartphones. It has become imperative to make computers more intelligent. Artificial Intelligence (AI) develops computers that duplicate the intelligence possessed by men such as visual observation, speech detection and various other factors of human intelligence. A.I has revolutionized technology.

In simple terms the intelligence that a machine possesses, due to which they execute tasks with the aid of humans is called Artificial Intelligence. Machines can ascertain the nature of problems solve them and perform the tasks assigned to them. It is the replication of human intelligence by machines. By using this method, machines plan and execute and at the same

¹⁰⁰ (Assistant Prof.) Government Law College, Ajmer (Rajasthan)-305001

time solve problems if any. A.I. is growing day by day and it will drastically change our life. The concepts of A.I. is not new, it has been in use since very long. A.I. models were first put forward in 1943; later in 1950 a research paper related to A.I. was published. A.I. presents tremendous expectations for the future. This technology has more or less become an integral part of our lives. It will change our lives for better.

Many are not familiar with A.I. even today, only a small percentage are aware about A.I. back in the day before the internet took over they understood A.I. could alter the way their business is run but were not clear on how to implement it.. It is a technology that examines data and uses the results to arrive at better decisions.

A.I. is already asking questions based on the data it receives the way the society and the economy function and how can governance be more effective. Unlike traditional machines that respond in a programmed manner. A.I. machines are premeditated to arrive at decisions. With improved storage systems and increase in speed, A.I. can help us take better decisions.

RELIABILITY OF ARTIFICIAL INTELLIGENCE:

Artificial Intelligence is highly reliable in today's world, A.I. is being implemented in the field of finance, national security, healthcare, transportation and many others. Healthcare companies use A.I. extensively. Diagnostic tests are trying to use A.I. methods. Operations can be performed by using A.I. without human supervision. A.I. is being used in manufacturing industries to save time. The use of robotics decreases human effort considerably. Education can be revolutionized to make it more effective. Evolving new and novel methods in explaining difficult concepts to students, helping them learn better A.I. can be used extensively in military, automobile industry. In the future more and more applications can be seen of A.I. Artificial intelligence, not only will be the technology of future; it will be closely knit in our lives. It would change the way we live. Along with the reliability also comes functional and operative aspects that although is complicated but is made in such a way to safeguard vested interests in AI, although we can observe certain tech-giants who have invested heavily in AI in automobile and software sector, they are profiting a large scale through the same, but in the broader perspective, it leads to stunted innovation by humans and the reliance and reliability is placed overtly on the machines which is in the hands of few. This technology comes its own set of

shortcomings and advantages, to understand AI there must be an equal level playing field for all in the field of technology which is not present in the current scenario, it is obviously bundled in intellectual property disputes along with the aspect of profitability, but man and its inventors must also understand the fact that, the technology would be of no use if there would be no subscribers or individuals to serve too. There are several moral and legal aspects that have to be closely regulated, along with the morality the ethical value and use of the technology must be professed, debated, organised and be got into use by way of legislations, rules, directions, charters and agreements along with minimum standards.

CRITICAL ANALYSIS OF ARTIFICIAL INTELLIGENCE:

Artificial intelligence and its implementation is a complex procedure, but once when bought into functionality and used in daily use it tends to be used for easing logistic and labour difficulties and efficiently making sure the processes and industrial requirements are smooth and function properly, however with the advent of AI, there is an issue of its use and how ethical it must be, we can trace the use and note that there are some problems that may crop up due to the advent of AI, certain problems can be seen such as;

- ***Loss of employment and inequality in wealth distribution -***

A.I. poses concerns over people having to lose their jobs. Suppose we incorporate A.I in our society it may lead to individuals and small business losing their jobs and livelihood. Wealth inequality is other major concern. The production systems of modern times require workers to be compensated for their work. The company pays their wages but if all the work is being done by robots, no wage has to be paid to them. Their output will be a 100%. This will encourage the C.E.Os to generate more profits using A.I. workforce. This will lead to inequality in wealth distribution. Those organizations who can afford A.I. will get richer, leading to wealth in the hands of the powerful and human life would be drastically undervalued.

- ***Imperfection in A.I. -***

Using data which is excellent, A.I. can perform well. However, if, the data fed to the A.I. is wrong then it can make errors in internal functioning. A.I's do make mistakes but the point is do they make fewer or more mistakes than humans.

SHOULD AI SYSTEMS BE ALLOWED TO KILL?

A.I.s is prone to data updation by a few, not many know what is done by them. An A.I does not do what we want on the contrary it does what it learns. A robots computerized gun was jammed and it opened fire wildly killing quite a few. Some aircrafts operated by remote can fire missiles and kill people. Drones are having a major role to play in aerial combat; we need to scrutinize their involvement. Humans will have to be in control of killings and use robots for anticipation.

- ***Rogue AIs:***

Smart machines can also make mistakes; there is a possibility that A.I can behave another way and create some untoward consequences, while pursuing some safe goals. A.I can turn out to be a real scoundrel. For example when you assign an A.I. to find a vaccine, instead of a vaccine it turns the virus into deadly one, by making the virus strong, immune to vaccines.

- ***Singularity and Keeping Control over AIs:***

The advancement of A.I. is scary and may lead to human extinction. There is a chance that A.I. becomes smarter than humans and controls us. There is a possibility computers can make humans archaic.

- ***Treatment of A.I.:***

Is it okay to grant human rights to robots? When we develop robots till they have feelings, do they enjoy rights as human beings do? What becomes their social status? This is something that has to be answered in the coming years.

- ***AI Bias:***

A.I. has been extensively used in facial and voice recognition. The humans who design them have programmed some A.I with bias. Some facial recognition software can identify white men better than black men.

LEGAL ASPECTS OF ARTIFICIAL INTELLIGENCE:

Artificial intelligence can be inculcated, deployed used in every field, but in the larger perspective ,the morality, legality and ethical aspects of AI should be addressed to make sure they have been regulated and there is no harmful use attached to the technology, it must be more constructive rather than destructive. The technology must not cause an innovative and ethical bias, as mentioned above, to regulate AI there has to be aspects of law that has to be addressed, and these aspects are not limited to general common law but also specific areas of

law. The general aspects of law must be given equal importance as much as specific concepts of law. AI can be compared to Torts, Contracts, Intellectual property law and other fields of law

ARTIFICIAL INTELLIGENCE AND LAW

Artificial intelligence cannot be completely secure as, every technology is not free of errors. Artificial intelligence can be related to civil law aspects such as torts and contracts, these have a close co –relation and at the same time differ, it is hard to regulate them because on one hand they have their own functionalities, they have constant upgrades and on a large scale since most of the process and product details are confidential and prone to intellectual property rights it is hard to track the same when the safeguards are so layered that, it leaves no loophole or provision to circumvent this to protect human rights. Human rights are more prima facie important than the rights of IP and the aspects of artificial intelligence.

ARTIFICIAL INTELLIGENCE AND TORTS:

There is an intersection of torts, civil laws and contracts, to address artificial intelligence first, it can be compared to torts and the civil aspect of the same, in a torts perspective it can be compared to Negligence and Vicarious Liability.

With the aspect of negligence, it is unclear as to who the onus is on, whether the onus is on the machine for not being completely secure or causing harm or the person or software that developed the artificial intelligence product or software, who is at fault when the algorithm fails is fully dependant on when the algorithms fail is always a matter which has to be decided legally, but this ambiguity has left a lot of people apprehensive about the artificial intelligence use and its policies¹⁰¹. Another question that arises is that whether there is an aspect of vicarious liability, to elaborate more on this, human designs and programs the artificial intelligence unit and loads the same with commands, this is further given to the end user for use and consumer to use and he uses it which is prone to use at large. There are at times when the unit leads to malfunction or at times ends up causing damage or in some cases kill human life, the legal tortious aspect that arises is at such times who is responsible for such negligent situations, is the master or the person or company that manufacturer that designs it is wholly responsible

¹⁰¹ AI and Tort Law in Florian Martin-Bariteau & Teresa Scassa, eds., *Artificial Intelligence and the Law* in Canada (Toronto: LexisNexis Canada, 2021)

because the unit works on pre commands and programs to work in such a way, this gets the question that is the Servant responsible for the master's actions.

On the other hand artificial intelligence is designed in such a way that, it thinks separately as a unit because it is built to think, the moral perspectives are programmed in such a way that it is not able to differentiate between different and emerging morals¹⁰², what is legal in one country would be illegal in another. The unit being equipped to think separately must be treated as a different unit and this leads to confusion in the minds of deciding authorities legislators and gives rise to doubts whether the unit is both the master and the servant, the onus of shifting the blame here is tremendous as there are dubious distinctions between the AI unit and man. Whether the AI is compensatory in negligence or wholly liable for the same must be answered and clarity must be given on the same. The regulatory effects of the machines if not updated from time to time would lead to catastrophes more than the betterment. This has to be nipped in the bud and a clear framework and clarity on this subject must be provided for the same, besides Software vulnerabilities are something that the negligence doctrine has never addressed and AI creates room for algorithmic bias, this leads to unforeseen AI errors.

ARTIFICIAL INTELLIGENCE AND CONTRACTS:

When a AI unit is sold it is sold with a complete and full user agreement, with the same it attracts Product liability, Many at times, there is an intersection of product liability and Artificial intelligence¹⁰³, Product liability is that area that addresses the remedies for injuries that cause property or product damages, when contracting or selling an AI unit there is a Product liability clause, and the answer to certain tort perspectives are answered here, this leads to confusion as to whether public action and sanctions can be ordered or commercial actions in forums must be made. AI from a layman's point of view is more of a mixture of Contracts, public law and torts.

AI AND INTELLECTUAL PROPERTY RIGHTS:

¹⁰²Andrew D. Selbst, Negligence And Ai's Human Users, available at <https://www.bu.edu/bulawreview/files/2020/09/SELBST.pdf> (last visited on February 8, 2022)

¹⁰³ Machine Learning Lab, CS Department and Centre for Cognitive Science, Darmstadt University of Technology, Darmstadt, Germany, available at https://www.brookings.edu/research/products-liability-law-as-a-way-to-address-ai-harms_ (last visited on February 8, 2022)

To understand Artificial intelligence and Machine learning, numerous discoveries coupled into one is described as A.I., machine learning is like the genus around which Artificial intelligence revolves. Complexing and perplexing mathematical and algorithmic combinations tend to cause further confusions with respect to patentability. In India, we have an absolute ban on the patentability of algorithms and computer programs unless it produces a technical effect or technical contribution which will be difficult to establish in an AI related invention.

According to the section 3 (k) of the Indian Patent Act¹⁰⁴, mathematical and business methods, computer programmes per se or algorithms are categorized as non-patentable subject matter. Even if one manages to obtain patent protection, it may be redundant in light of the fact that the algorithms will be constantly revised and updated, and with this new inventions being created and requiring protection.¹⁰⁵

Although one may argue that Algorithms can be interpreted and got under the umbrella of copyrights, but again due to the self-inventive and inventive capacity it is not completely patentable.

Subsequently instead of seeing an AI unit as a natural or legal person, a new term known as an “Electronic person” must be coined¹⁰⁶.

INDIA AND ITS AI DEVELOPMENTS:

The NITI Aayog or the planning commission of India has released a paper on how there must be a responsible use of AI and how there must be framework around this and how it should revolve around the same, it addresses three sectors, the electronic sector, the information sector and the IT sectors, this along with the defence and law and justice departments must periodically chair sessions to judiciously know how to use AI and look at its developments and fallacies and update and make sure we have a safer and user friendly AI¹⁰⁷. The reason AI growth is not skyrocketing in India is for the fact that it requires maximum resources and the people have minimum awareness, its use is mostly commercial and india being a multitude of

¹⁰⁴ The Patents Act, 1970, s. 3(k)

¹⁰⁵ Lynn Lazaro, Artificial Intelligence In The World Of IP, available at <https://www.mondaq.com/india/patent/892134/artificial-intelligence-in-the-world-of-ip>, (last visited on February 8, 2022)

¹⁰⁶ In re Hardee, 223 USPQ 1122, 1123 (Comm'r Pat. 1984)

¹⁰⁷ Niti Aayog, “Responsible AI #AI for All”(February, 2021), available at 9705823411 <https://www.niti.gov.in/sites/default/files/2021-02/Responsible-AI-22022021.pdf> (last visited on 07 February, 2022)

socialistic perspectives also gas the welfare objective in mind when making a technology available and applicable for all. There must be access to all before implementing a technology at a large scale.¹⁰⁸

The information and technology act along with the IP acts form the start and intersections of AI related law in India, although the protections and reliability is limited at present, but the government is taking humongous steps to inculcate proper legislations¹⁰⁹. At present Indian companies using AI must use Self-regulation measures to make sure that there is no misuse of AI.

EUROPEAN UNION’S POLICY TOWARDS AI:

The European Union in April 2021¹¹⁰, had drafted certain rules and standards for artificial intelligence, they have been a yardstick for European legislations pertaining to draft and inculcate Artificial intelligence, the policy is a draft bill that has not come into force and is a one hundred and eight page document. On a transparent and brief understanding, these principle legislations tend to protect and safeguard certain rights and minimum standards, they are that, there should be no deterioration of human workforce and they should not be overlooked, prima facie there must be social security to all the citizens, this goal can be achieved through the aspects of privacy and data governance, to make this process easy for the public there must be transparency while collecting data. By ensuring this there can be societal well-being and reliance can be placed on these data collection centres that must ensure accountability at all times. By ensuring these, the AI is made in such a way that it does not supersede the human interests, but again the EU draft is not free from criticism as there is a risk of social security and inequalities¹¹¹, there is a technological gap between those who are

¹⁰⁸ iPleaders, Artificial intelligence: The Indian legal perspective, *available at* <https://blog.iplayers.in/artificial-intelligence-indian-legal-perspective/>, (last visited on 07 February, 2022)

¹⁰⁹Shanthi S, What are the key AI initiatives of Indian Government?, *available at* <https://analyticsindiamag.com/what-are-the-key-ai-initiatives-of-indian-government/>, (last visited on 07 February, 2022)

¹¹⁰ Misha Benjamin, Kevin Buehler, Rachel Dooley, Peter Zipparo, What the draft European Union AI regulations mean for business August 10, 2021 , *available at* <https://www.mckinsey.com/business-functions/mckinsey-analytics/our-insights/what-the-draft-european-union-ai-regulations-mean-for-business>, (last visited on 07 February, 2022)

¹¹¹ François Candelon, Rodolphe Charme di Carlo, Midas De Bondt, and Theodoros Evgeniou , AI Regulation Is Coming , *available at* <https://hbr.org/2021/09/ai-regulation-is-coming>, (last visited on February 8, 2022)

willing to be governed by AI and those who clearly understand its limitations, to draw a line and make sure every legislation is at a consensus is what the AI legislations, must look at¹¹².

CASE LAWS:

In the case of *Thaler v. Commissioner of Patents*¹¹³, the Court deliberated on the following: *“If the output of an artificial intelligence system is said to be the invention, who is the inventor? And if a human is required, who? The programmer? The owner? The operator? The trainer? The person who provided input data? All of the above? None of the above? In my view, in some cases it may be none of the above. In some cases, the better analysis, which is consistent with the s 2A object, is to say that the system itself is the inventor. That would reflect the reality. And you would avoid otherwise uncertainty. And indeed that may be the case if the unit embodying the artificial intelligence has its own autonomy. What if it is free to trawl the internet to obtain its own input or training data? What about a robot operating independently in a public space, having its own senses, learning from the environment, and making its own decisions? And what about the more exotic, such as a mobile unit on Mars left to its own devices and not seeking instructions from Earth?”*

The Australian court held that the inventor could be non-human, i.e. Artificial Intelligence, but a patent holder cannot be non-human¹¹⁴.

In a case¹¹⁵ in the United States court with regards to Artificial Intelligence being an inventor under Patent Act, the court deliberated on the statutory interpretation and intention of the very Act and held that inventors can only be natural persons and not Artificial Intelligence.¹¹⁶

FINAL REMARKS:

AI like fire can be a good servant, but on the contrary, it is a bad master. There has to be valuable safeguards to ensure there is security to humans financially, sociologically and ethically. The machines that are programmed with AI must at all times be controlled and looked

¹¹² Human rights watch, How the EU’s Flawed Artificial Intelligence Regulation Endangers the Social Safety Net: Questions and Answers, available at <https://www.hrw.org/news/2021/11/10/how-eus-flawed-artificial-intelligence-regulation-endangers-social-safety-net>, (last visited on February 8, 2022)

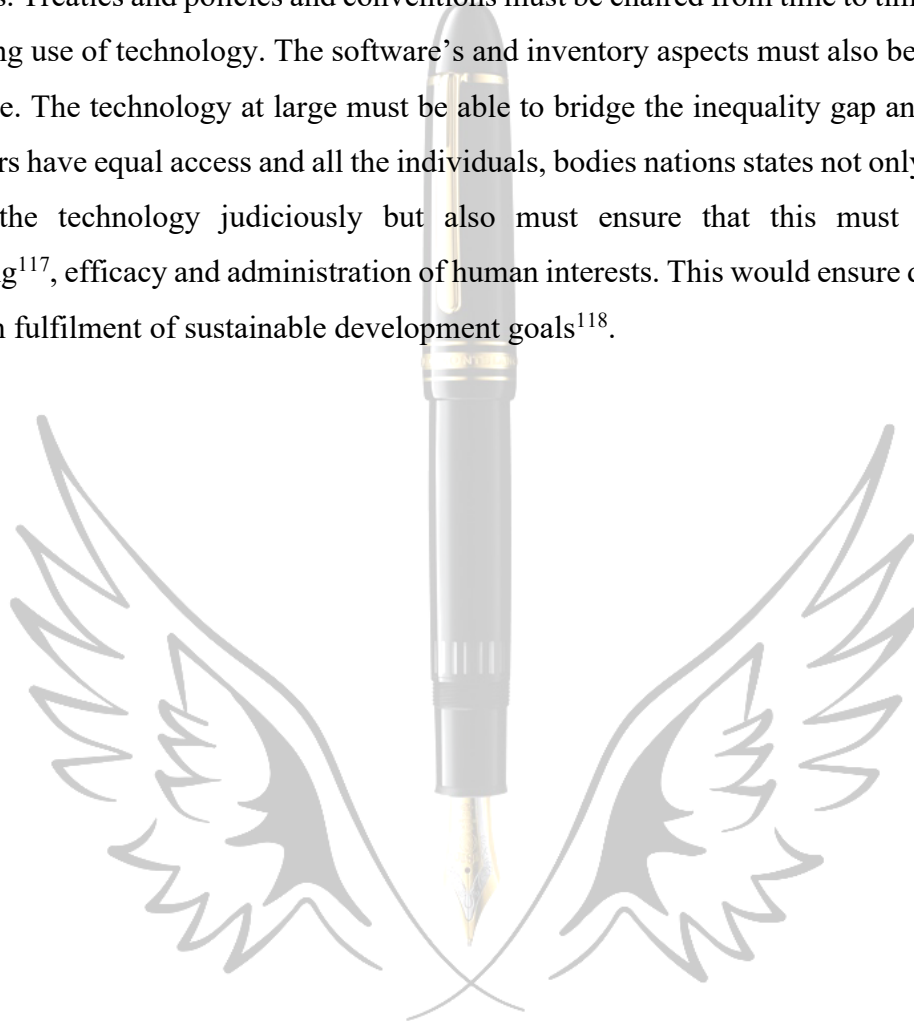
¹¹³ *Thaler v. Commissioner of Patents*, [2021] FCA 879

¹¹⁴ SCCOnline, 2021 Legal stories, available at <https://www.sconline.com/blog/post/tag/artificial-intelligence/>, (last visited on February 8, 2022)

¹¹⁵ *Stephen Thaler v. Andrew Hirshfeld*, 1:20-cv-903(LMB/TCB)

¹¹⁶ *Supra* 14

over by trusted individuals. The people controlling these machines must be able to distinguish safeguards. Treaties and policies and conventions must be chaired from time to time to regulate the growing use of technology. The software's and inventory aspects must also be given equal importance. The technology at large must be able to bridge the inequality gap and made sure all the users have equal access and all the individuals, bodies nations states not only understand and use the technology judiciously but also must ensure that this must aid smooth functioning¹¹⁷, efficacy and administration of human interests. This would ensure development along with fulfilment of sustainable development goals¹¹⁸.



Jurisperitus: The Law Journal
ISSN: 2581-6349

¹¹⁷ Chris Reed, How should we regulate artificial intelligence?, available at <https://royalsocietypublishing.org/doi/10.1098/rsta.2017.0360>, (last visited on February 7, 2022)

¹¹⁸ Draft AI regulations by the European Union (Drafted by EU in April 2021 108 page document), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206>, (last visited on February 7, 2022)