ONLINE ISSN 2582-6476

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VOLUME 4 ISSUE 2

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REPRODUCTIVE RIGHTS OF WOMEN

By Mahi Dhakad, Student of law at Bharati Vidyapeeth New Law College, Pune

Abstract

Human rights are an important portion of women's lives, which integrate the liberty to take unrestricted and informed selections about their sexual and procreative health. The research report delves into the history and contemporary status of women's procreative rights in India under the frame of public rulings and transnational agreements. This assessment will give attention to the applicable legislative movements, like the 'Medical Termination of Pregnancy Act 1971' and the associated updates, along with vital court proceedings, including the 'Suchita Shrivastava v. Chandigarh Administration' and the 'Justice K.S. Puttaswamy & Anr. V. Union of India & Ors.' suits, which have moulded the country's woman-like procreative freedom.

Also, the paper reviews India's ratification of CEDAW, ICESCR, and ICCPR from a transnational natural rights perspective. These covenants form the background for India's authorization and commitment to cover and guarantee reproductive rights. The covenants impact public programs and policy perpetration. The paper also reviews public schemes similar as 'Beti Bachao Beti Padhao' in terms of furnishing support for women's reproductive health. The broader legal and policy review in this paper helps to understand that further requirements to be done to ensure reproductive rights in India are honoured and defended, which would further advance gender equivalency and women's health.

This exploration contributes to the broader converse on reproductive justice and calls for enhanced legislative and policy measures to address gaps and ensure indifferent access to reproductive health services for all women.

Keywords: Reproductive Rights, Women's Health, Medical Termination of Pregnancy Act, Reproductive Autonomy, Reproductive Justice

Introduction

Reproductive rights are a key part of women's rights. These rights are comprised of the right to choose when to have a child, access to birth control, family planning, and numerous further.

There has been a hustle regarding these rights from the genesis due to moral and social conflicts. But these conflicts are now resolved to an extent as to give proper rights to women regarding their reproductive rights.

This right was first recognised in the case of Roe v. Wade[1], US Supreme Court, in 1973 till that date revocation was a felonious offence; it was the first case where the woman was allowed to abort. latterly, numerous countries encouraged and allowed women with reproductive rights. India first recognised this right in the case of Suchita Srivastava v Chandigarh Administration[2] in the time 2009. In this case, it was said that the reproductive rights of women include the right to carry a gestation to term, give birth, raise children, privacy, dignity and bodily integrity.

Along with this numerous transnational enterprises have been taken to promote and cover the reproductive rights of women. The Preamble to the Constitution of WHO talks about " well-being " which includes reproductive well- being of women. The 'CEDAW(Convention on the Elimination of All Forms of Discrimination against Women)' provides countries to enjoin all forms of demarcation against women, but it doesn't explicitly use the term" reproductive rights," its provisions on non-discrimination, gender- grounded violence, healthcare, and education have been extensively interpreted to include the protection of women's reproductive rights by the CEDAW Committee and colourful transnational mortal rights bodies.

Constitutional perspective

The Indian constitution comprises several rights for citizens along with the state. It doesn't directly give reproductive rights but can be interpreted from several papers.

'Article 14 of the Indian Constitution' addresses about equivalency before the law or equal protection of law, we can connect it with reproductive rights while reading it along with Article 21[3]. Article 21 addresses the 'right to life and personal liberty' which consists of a wide view, it contains the right to reproductive choice, the right to sexual choices, the right to acceptable medical facilities, the right to emergency medical aid, the right to timely treatment and the right to proper healthcare.

[1] Roe v. Wade, 410 US 113(1973
[2] Suchita Srivastava v Chandigarh Administration, (2009) 9 SCC 1
[3] Art. 14 and 21, the Constitution of India

In the notorious judgement of Puttaswamy, it was said that the reproductive rights of woman is a part of Article 21 of the Indian Constitution[4]. It was also said that the right to make particular choices is a part of human's right to sequestration and any kind of demarcation grounded on sexual exposure is obnoxious.

Framework

Medical Termination of Pregnancy Act, 1971[5]

It's one of the major Act that deals with the problem and results in reproductive rights relating to the choice of women whether they want to terminate a gestation or carry on with that. At first, the act was veritably narrow and didn't allow an unmarried woman to terminate her gestation, but by the correction of 2021, this was latterly changed and handed a wide view. At present, the act covers the termination of gestation of a married woman, an unmarried woman, a rape victim, and indeed a girl lower than 18 times but with the concurrence of her legal guardian.

But for termination of similar gestation, there's a time limit also known as the gravid limit. Different gravid limit suggests termination of gestation on the opinion in the following base

	Opinion of
Below 20 weeks	1 Registered Medical Practitioner
20-24 weeks	2 Registered Medical Practitioners
Above 24 weeks	Medical Board[6]

The medical board consists of the following

- Gynaecologist
- Paediatrician
- Radiologist
- Sonologist
- Any other member suggested by the state government

[4] Singh A, "Privacy Rights in Digital Age - The Amikus Qriae" (The Amikus Qriae, August 24, 2023) <https://theamikusqriae.com/privacy-rights-in-digital-age/>
[5] Medical Termination of Pregnancy Act, 1971
[6] Medical Termination of Pregnancy Act, 1971

The pregnancy can be terminated in the ensuing conditions

- threat to the physical or mental health of the women
- Substantial threat to the child of physical or mental abnormalities
- Rape victims
- Failure of contraceptive devices of married women or their husband

In the act, there's nowhere directly mentioned that an unmarried woman can terminate her gestation but we can decide it from the judgements of the court.

In the judgement of X v. Principal Secretary Health and Family Welfare Department[7], the High Court ruled that the amendment of the MTP Act was made to widen the view of the Act and not to circumscribe the rights. It was also said that Section 3 and Rule 3B also include unmarried women and they can also seek termination of gestation under the act.

Pre-Conception and Pre-Natal Diagnostic Technology Act, 1994[8]

The primary idea of the act is to help sex-selective revocation and to maintain the sex rate in India. The act regulated pre-conception and pre-natal individual ways. This act has been questioned numerous times, that it infringes the reproductive rights of women by confining them from opting for the sex of the child they're going to bear.

The act says that only registered inheritable Counselling Centres, Genetic Laboratories and inheritable Conventions can conduct these ways. The Act allows opinion for discovery of the following

- Chromosomal abnormalities
- Congenital anomalies
- Sex- linked genetic diseases
- Genetic metabolic diseases
- Haemoglobinopathies
- Any other abnormalities specified by the Central Supervisory Board

[7] X Vs. Principal Secretary Health and Family Welfare Department, 2022(10) JT 470
[8] Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994

The act also lays down the conditions when a woman can go through the opinion ways, these conditions are

- Women further than 35 times of age
- Women have gone through 2 or further posterior revocations or fetal loss
- Woman is exposed to dangerous substances(medicines, radiation, infection or chemical)
- A woman or her partner has a family history of internal deceleration or physical abnormalities.
- Any other condition laid down by the Central Supervisory Board.

The act says that no similar opinion shall be done for the discovery of the coitus of the child and that it can be done only with the written concurrence of the woman. The announcement for the creation of coitus selection is also punishable under the act.

In the case of Vinod Soni v. Union of India[9], the validity of the act was questioned. It was argued that the act is against Article 21 as it provides us the right to particular liberty and it includes the right to choose the sex of the offspring. To this, the Supreme Court said that every right has its reasonable restriction and the act was passed to maintain the sex rate. By allowing the right to choose the sex of the offspring, the sex rate might be hampered immensely.

National schemes on reproductive rights of women in India

‘Beti Bachao, Beti Padhao’(BBBP)

Launched in 2015, this scheme aims to address the declining child sex rate and promote the education and commission of girls. It focuses on upgrading welfare services for women and creating mindfulness about the significance of educating girls.

‘Pradhan Mantri Matru Vandana Yojana’(PMMVY)

This maternity benefit program provides fiscal aid to pregnant and lactating mothers to help with their nutritive requirements. The scheme aims to reduce motherly mortality and morbidity by securing better health and nutrition.

[9] Vinod Soni v. Union of India, 2005 Cri. LJ 3408, 2005 (3) MhLj 1131

‘Janani Suraksha Yojana’(JSY)

Under the National Health Mission, JSY promotes institutional deliveries to reduce motherly and neonatal mortality. It provides cash impulses for pregnant women who conclude for institutional deliveries, particularly targeting low-income and underprivileged groups.

‘Pradhan Mantri Surakshit Matritva Abhiyan’(PMSMA)

This action offers comprehensive and quality prenatal care to all pregnant women on the 9th of every month. The end is to ensure safe gravidity and reduce motherly and neonatal deaths through regular check-ups and medical advice.

‘Sukanya Samriddhi Yojana’(SSY)

Aimed at encouraging savings for the unborn education and marriage of girl children, this scheme offers attractive interest rates and duty benefits. It's part of the BBBP crusade to secure the future of girls.

‘One Stop Centre Scheme’

Also known as Sakhi, these centres give intertwined support and backing to women affected by violence. Services include medical aid, police backing, legal aid, psycho-social counselling, and temporary sanctum[10].

‘National Family Planning Program’

This program offers a range of contraceptive options and family planning services to help manage and plan families. It aims to give access to safe and dependable contraceptive styles, thereby reducing the prevalence of unintended gravidity and unsafe revocations.

‘Rashtriya Kishor Swasthya Karyakram’(RKSK)

Targeting adolescents, this program focuses on their sexual and reproductive health, internal health, nutrition, and substance abuse. It provides comprehensive healthcare services to ensure the holistic development of adolescents.

[10] “Domestic Abuse Help in India” (DomesticShelters.org, April 1, 2020) <https://www.domesticshelters.org/en-in/domestic-abuse-help-in-india>

Case Laws

Suchita Srivastava vs Chandigarh administration[11]

The Court held that the concurrence of a mentally retarded woman is essential for terminating her pregnancy, indeed if she has mild or moderate internal deceleration. Forcing termination without her concurrence violates her reproductive rights. The Court honoured that reproductive rights include the right to carry a gestation to term and give birth, not just the right to revocation. It stated that women with internal deceleration can be good parents and shouldn't be forcefully castrated or their gravidity terminated grounded on prejudices about their parenthood capacities. The judgment rejected the stereotypical view that internal deceleration automatically makes someone unable to make reproductive choices or being a parent. It held that the statutory vittles denying reproductive choice to mentally ill persons shouldn't apply to mentally retarded persons, as the two conditions are distinct. The Court directed that full medical facilities and supervision be handed to the mentally retarded pregnant woman to ensure her and the child's well- being during gestation and after parturition.

Justice K.S. Puttaswamy & Anr. vs. Union of India & Ors.[12]

The judgment affirmed that the right to privacy is a fundamental right under Article 21 of the Indian Constitution. Privacy includes reproductive rights and autonomy over one's body and particular opinions. It held that privacy isn't an absolute right and can be confined by the State if it satisfies the tests of legitimacy, legitimate end, and proportionality. still, this restriction has to be precisely scanned when it comes to reproductive rights. The judgment overruled before opinions in M.P. Sharma and Kharak Singh cases which had observed that the right to privacy wasn't a guaranteed right under the Constitution. It laid down that sexual exposure is an essential element of privacy, paving the way for the decriminalization of homosexuality in the Navtej Johar case. The Court emphasized that privacy includes both negative and positive obligations- the State cannot intrude upon fleshly/ reproductive autonomy, and it's also obliged to take measures to cover one's privacy and particular opinions. Though the case arose from the Aadhaar biometric ID program, the Court's expansive interpretation of the right to privacy fortified reproductive autonomy and fleshly integrity for women against arbitrary state hindrance.

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[11] Suchita Srivastava v Chandigarh Administration, (2009) 9 SCC 1
[12] Justice K.S. Puttaswamy (Retd.) and Anr v. Union of Indiaand Ors,(2017) 10 SCC 1

Devika Biswas v. Union of India & Others[13]

The Court held that the right to health and reproductive rights are integral factors of the constitutive right to life under Article 21 of the Indian Constitution. It affirmed that the freedom to exercise reproductive rights includes the right to make a choice regarding sterilization grounded on informed consent and free from any form of compulsion[14]. The Court ordered the termination of sterilization camps within 3 times, citing enterprises over lack of informed consent and poor medical norms leading to complications and deaths in similar camps, which overwhelmingly targeted poor, pastoral women. It directed state governments to ensure there are no fixed sterilization targets, as these lead to coercive practices by health workers to achieve the targets. The Court emphasized the need for counselling women about the consequences of sterilization in a language they understand and allowing sufficient time for consideration before concurrence. It called for making sterilization programs gender-neutral and discontinuing the" gratuitous focus" on female sterilization over other contraceptive choices. The judgment substantiated transnational mortal rights norms like CEDAW's guidance against forced sterilizations and the right to informed concurrence.

X v. Principal Secretary Health and Family Welfare Department[15]

The Supreme Court took up an inclusive and intentional explication of Section 3(2)(b) of the Medical Termination of Pregnancy Act, 2021 and Rule 3B of the MTP Rules[16]. According to their pronouncement, the provisions shouldn't count unattached or singular women from pursuing revocation between 20- 24 weeks of gestation due to a revision in connubial condition. The Court noted that exempting unattached women from the shade of these clauses would engender a breach of Article 14(Right to Equality) of the Constitution, as it would parade prejudice against them predicated on their marital condition. The verdict buttressed the reproductive boons and autonomy of unattached women regarding their figures and reproductive preferences.

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[13] Devika Biswas v. Union of India (2016) 10 SCC 726
[14] "Introduction: Constitutional and Human Rights Framework for Reproductive Justice in India" <https://reproductiverights.org/wp-content/uploads/2020/12/SecuringReproductiveJusticeIndia-Chpt01.pdf> accessed May 22, 2024
[15] X Vs. Principal Secretary Health and Family Welfare Department, 2022(10) JT 470
[16] "X Vs. The Principal Secretary, Health and Family Welfare Department" (latestlaws.com) <https://latestlaws.com/latest-caselaw/2022/july/2022-latest-caselaw-578-sc/>

International Conventions

1. **'CEDAW(Convention on the Elimination of All Forms of Discrimination Against Women)'**

   It was espoused in 1979 by the United Nations General Assembly, CEDAW is frequently described as a transnational bill of rights for women[17]. It defines what constitutes demarcation against women and sets up an agenda for public action to end similar demarcation.

   Reproductive Rights Connection:

   Article 12 States Parties are needed to exclude demarcation in healthcare, including access to reproductive health services. Women must admit applicable services in connection with gestation, parturition, and the postnatal period, granting equal access to family planning.

   Article 16 Ensures women's equal rights in matters related to marriage and family relations, including the right to decide freely and responsibly on the number and distance of their children.

   CEDAW highlights the significance of access to reproductive health services as an abecedarian aspect of women's rights and gender equivalency.

2. **'ICESCR(International Covenant on Economic, Social and Cultural Rights)'**

   It was espoused in 1966 and in force since 1976, the ICESCR commits its parties to work toward granting profitable, social, and artistic rights(ESCR) to individualities, including labour rights, the right to health, and the right to education.

   Reproductive Rights Connection:

   Article 12 Recognizes the right to the upmost attainable standard of physical and internal health. General Comment No. 14 explicitly interprets this as including the right to motherly, child, and reproductive health.

   The ICESCR frames reproductive rights within the broader right to health, emphasizing the availability, vacuity, and quality of reproductive health services.

[17] Nwufo CC and Otor EI, "Rethinking Some Cultural Practices That Affect the Rights of Women and Children in Nigeria" (2017) <https://www.ajol.info/index.php/lwati/article/view/162930>

3. **‘ICCPR(International Covenant on Civil and Political Rights)’**

   It was also espoused in 1966 and effective from 1976, the ICCPR aims to ensure the protection of civil and political rights. It includes rights similar as the right to life, freedom from torture, and freedom of speech.

   Reproductive Rights Connection:

   Article 6 The right to life is a foundation, and General Comment No. 36 clarifies that this includes women’s right to safe gestation and childbirth and access to revocation where the life and health of the pregnant woman are at threat.

   Article 7 Prohibits torture and cruel, inhuman, or demeaning treatment. Forced sterilization, forced revocation, and denial of access to reproductive health services can be interpreted as violations of this provision.

   The ICCPR’s protection of the right to life and prohibition of torture support women’s access to safe and regardful reproductive health services.

4. **‘CRC(Convention on the Rights of the Child)’**

   It was espoused in 1989, the CRC protects the rights of children and includes vittles for their health, education, and protection from detriment.

   Reproductive Rights Connection:

   Article 24 States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health[18]. This includes the significance of family planning education and services to help with health risks.

   The CRC emphasizes the significance of reproductive health education and services in securing the health and development of adolescents, particularly youthful girls.

Conclusion

In conclusion, the investigation of women's reproductive rights in India uncovers noteworthy progressions and progressing challenges. The authoritative system, including the Medical End of Pregnancy Act and the Pre-Conception and Pre-Natal Symptomatic Methods Act, has advanced to superior ensure women's independence and well-being. Key court decisions, such as within the cases of Suchita Srivastava and Equity K.S. Puttaswamy, have certified the sacred

[18] “Assessing the Situation of Women with Disabilities in Australia: A Human Rights Approach ” (WWDAPolicyPaper, June 2011) <https://wwda.org.au/wp-content/uploads/2013/12/WWDAPolicyPaper2011.pdf> accessed May 22, 2024

acknowledgement of regenerative rights as necessary for individual freedom and protection. Additionally, India's commitment to worldwide traditions like CEDAW, ICESCR, and ICCPR underscores its commitment to maintaining these rights.

National plans such as Beti Bachao Beti Padhao and Pradhan Mantri Matru Vandana Yojana illustrate endeavours to make strides in women's regenerative well-being and rights. Be that as it may, crevices stay in guaranteeing even-handed get to regenerative wellbeing administrations over distinctive socio-economic bunches. This ponder highlights the requirement for improved administrative and approach measures to completely realize regenerative equity in India. By tending to these holes, India can advance the development of sexual orientation balance and defend the regenerative well-being and rights of all women.

AN ANALYSIS OF SECTION 6(a) OF TRANSFER PROPERTY ACT, 1882[1]

ABSTRACT

Section 6 of the Transfer of Property Act's clause (a) exempts the mere possibility of an heir apparent inheriting an estate from the definition of transferable property. "Spes Successionis" is the technical term for such a possibility. A person's lifetime "Spes Successionis" is the possibility of his heir apparent inheriting the estate or the possibility of a relative inheriting under his will (chance of succession). Such an expectation cannot be the subject of a transfer because it does not constitute an interest in real property. In order to understand why this is an exception to the general rule and how it came to be, the paper analyses the same position while looking at a case study. Property of any kind may be transferred, with the exception of what is stated in a number of clauses of Section 6 of the Act. As a result, the general rule is that any type of property may be transferred in accordance with Section 6 of the law, and the person asserting non-transferability must establish the existence of any usage or custom that limits the right to transfer. The likelihood that the heir apparent will inherit the property is discussed in clause (a) of section 6 of the transfer of property act. A person who has an interest that is Spes Successionis, or the simple expectation that they will inherit the property in the future, is not endowed with a right and cannot transfer that interest. Such a person is ineligible to file a lawsuit based on such a chance of succession. A gift of Spes Successionis is also ineffective and does not grant the done any title. It cannot be argued that a transfer of a mere chance to succeed is occurring when the transfer is of the actual property rather than the tight of expectancy of an heir apparent. As a result, an agreement to transfer the property entered into by the person's brother, who is currently enjoying and in possession of the subject property, when they have not been heard from for a long time and are presumed to be deceased, is not a transfer of the right of expectancy but rather of the subject property itself and is not covered by clause (a) of section 6.

Keywords: *Spes succession, property, transfer, chance, possession.*

[1] Devshree Rajendra Somvanshi, Law Student.

INTRODUCTION

The Transfer of Property Act of 1882 was created in Britain. Before the Act, property disputes were resolved in accordance with the principles of justice, equity, and morality. The courts could not refer to any particular rule or law. Property rights in India became institutionalized with the introduction of the aforementioned Act. This law only applies to transfers between two parties and has no bearing on transfers made in compliance with the law. The Transfer of Property Act, 1882 and the Indian Contract Law are very similar. It addresses the rights of the individual. The approach to contract law, however, differs from that of property law. The standardization of contracts has become absolutely necessary in light of recent developments in contracts. This sparks a whole new set of debates and discussions. Sections 6 (a) and 43 of the Property Act are frequently read together, but they contain distinct elements. The former is subject to transfer, while the latter is subject to fraudulence. In this regard, the Act addresses several issues that may arise in the context of inter vivos transfer.

In the Indian context, property law is far more technical in nature. The laws that govern India, particularly the Transfer of Property Act of 1882, are said to be technical yet dynamic in nature. This can be deduced from the statute's preliminary rule of interpretation. It adheres to the golden rule of interpretation. Nonetheless, its design should advance remedy while minimizing harm. The Act was enacted with the intention of conducting inter vivos transfers. Section 6 of the Transfer of Property Act's clause (a) exempts the mere possibility of an heir apparent inheriting an estate from the definition of transferable property. "Spes Successionis" is the technical term for such a possibility. A person's lifetime "Spes Successionis" is the possibility of his heir apparent inheriting the estate or the possibility of a relative inheriting under his will (chance of succession). Such an expectation cannot be the subject of a transfer because it does not constitute an interest in real property. In order to understand why this is an exception to the general rule and how it came to be, the paper analyses the same position while looking at a case study. Property of any kind may be transferred, with the exception of what is stated in a number of clauses of Section 6 of the Act. As a result, the general rule is that any type of property may be transferred in accordance with Section 6 of the law, and the person asserting non-transferability must establish the existence of any usage or custom that limits the right to transfer. The likelihood that the heir apparent will inherit the property is discussed in clause (a) of section 6 of the transfer of property act.

A person who has an interest that is spes successionis, or the simple expectation that they will inherit the property in the future, is not endowed with a right and cannot transfer that interest. Such a person is ineligible to file a lawsuit based on such a chance of succession. A gift of spes successionis is also ineffective and does not grant the done any title. It cannot be argued that a transfer of a mere chance to succeed is occurring when the transfer is of the actual property rather than the right of expectancy of an heir apparent.

As a result, an agreement to transfer the property entered into by the person's brother, who is currently enjoying and in possession of the subject property, when they have not been heard from for a long time and are presumed to be deceased, is not a transfer of the right of expectancy but rather of the subject property itself and is not covered by clause (a) of section 6. Property transferability is always a general rule, while non-transferability is an exception. It is commonly based on the maxim "*alienation rei prae fertur jurisdiction accrescendi"*, which states that the law favors transferability over accumulation. Before delving into Spes Successionis, it's important to understand what non-transferable property is.

LITERATURE REVIEW

All the relevant information relied on this research paper is advanced from suitable books and articles the authors being both Indian and foreigners. This research paper has its major sources from the works many jurists and legal thinkers.

1) [2]**Doctrine of Spes Succession** by **Nikhil Punishi**. The Spes Succession is covered in this article. discusses the key components of the same, along with its scope, objective, and supporting case law. To make the differences and similarities easier to understand, this article also specifically discusses Muslim law with regard to spec succession. The article's illustrations make the concept easier to comprehend. The author concluded by saying that, barring any legal restrictions, all property is transferable. Eight exceptions to the clause are covered in Section 6, which also specifies succession.

2) [3]**Dr Poonam Pradhan Saxena's Property Law** is a thorough book on laws for law students, covering the subjects of property and its transfers, inheritance, and the duties of the parties involved. The book includes fundamental ideas and numerous significant legal aspects

[2] https://bnblegal.com/article/doctrine-of-spes-successionis/

[3] https://www.scribd.com/document/556752995/Poonam-Pradhan-Saxena-Property-Law-KUMAR-MANGALAM

that are related to various religions and contexts. This book presents the subject simply, despite the fact that it is thought to be quite technical as well as intricate.

3) [4]**Mulla's The Transfer of Property Act**, property act is explained section-by-section. While making substantive changes, additions, and deletions where necessary, it keeps its original tone and authenticity. It contains appendices that list a few related Acts, including the Dispositions of Property (Bombay) Validation Act of 1947, the Government Grants Act of 1895, and the Hindu Disposition of Property Act of 1916. For the reader's convenience, case citations are included in the table of cases. For any academician, editing an acclaimed, well-known treatise is an honor in and of itself, but doing so is still a difficult task that is often fraught with awe and ends up being difficult. In the current situation, it is unnecessary to elaborate on the practical significance of property transfer and the rules and regulations that go along with it. The Transfer of Property Act, 1882, is explained section-by-section in the Property Act. While making substantive changes, additions, and deletions where necessary, it keeps its original tone and authenticity. It contains appendices that list a few related Acts, including the Dispositions of Property (Bombay) Validation Act of 1947, the Government Grants Act of 1895, and the Hindu Disposition of Property Act of 1916. For the reader's convenience, case citations are included in the table of cases. For any academician, editing an acclaimed, well-known treatise is an honor in and of itself, but doing so is still a difficult task that is often fraught with awe and ends up being difficult. An explanation of the practical significance of property transfer and the rules and regulations that go along with it is no longer necessary in the current environment.

4) [5] **Rule for feeding grant by estoppel and its relation with Spes Succession** by **Jahnavi Mehta,** by analyzing and outlining the key components of Section 43, the author begins the essay with an introduction. The English legal context for the rule of estoppel and exceptions to the rule for grants of food by estoppel are discussed in detail. The author did not neglect to discuss the distinction between section 43 and section 6 of the Property Act, and the analysis between sections 43 and 6 justifies the title of the article and clarifies the concept by stating the exceptions under section 6. The information provided is supported by case laws that relate to this section.

[4] https://archive.org/details/mulla-transfer-of-property-act-13th-ed-2018/page/n1/mode/2up
[5] https://blog.ipleaders.in/rule-of-feeding-grant-by-estoppel-and-its-relation-with-Spes-successions/

5) [6]**Spes Succession as an exception to transferability** by **Prashanti Upadhyay,** author discusses how the mere prospect of an apparent heir inheriting an estate is not considered to be transferable property under clause (a) of section 6 of the Transfer of Property Act. In Latin, this possibility is referred to as Spes Successionis. English and England are distinguished in the article as well. In various positions, Spes Successionis. Transfer by revisionist Hindu and Muslim groups as well as transfer of the Spec Succession. In the article, case studies are covered and explained in detail. This article has helped me better understand the Spes Succession.

STATEMENT OF PROBLEM

The Transfer Property Act's Section 6 discusses a valid transfer of property before listing 8 exceptions. One of them is Section 6(a), which disqualifies the mere possibility of an heir apparent inheriting an estate from the definition of transferable property. "Spes Successionis" is the technical term for such a possibility. A person who has an interest that is spes successionis, or the simple expectation that they will inherit the property in the future, is not endowed with a right and cannot transfer that interest. This research project asks whether the mere possibility of inheriting the property in the future constitutes a right is transferable, and whether the expectation of succession qualifies as grounds for litigation and whether the word "chance" in section 6 (a)needs to be changed or replaced. In this paper, all of the questions will be fully addressed along with relevant case laws.

SCOPE AND OBJECTIVE:

- To elaborate the concept of Spes succession.
- To analyse the rights of the owner of the property.
- To analyse the section 6 (a) under transfer of property act.
- To examine application of section 6(a) under transfer of property act with the help of case laws.

RESEARCH QUESTIONS

[6] https://www.legalservicesindia.com/article/2163/SPES-Successionis-As-An-Exception-To-Transferability.html

- Whether mere possibility to succeed to the property in future is not a right and is not capable of being transferred?
- Whether in section 6(a) the word “Chance” needs the clarification?

HYPOTHESIS

In Section 6(a) of Property Act,1882; the word “Chance” needs clarification because the expectation of a future interest, or rather, of a future event which may give an interest, is not a thing which would justify a court of equity in "entertaining a suit at the instance of a party having that and nothing more."

METHODOLOGY

The study will utilize the doctrinal methodology because it consists mostly of data collected from multiple sources. The majority of sources are secondary. We consulted as many books, journals, articles, and speeches by eminent Indian and international legal scholars as feasible. The most important sources are original articles and books produced by notable philosophers on their respective philosophies. To meet the study's objectives and collect the required data, the following methods will be implemented.

RESEARCH QUESTION

- **The mere possibility to succeed to the property in future is not a right and is not capable of being transferred.**

“*Alienatio rei prae fertur juri accrescendi*”, this proverb encapsulates the overarching principle that governs the transfer of property. In practice, this means that the sale or transfer of property is given higher priority than its acquisition. In this context, the idea of agglomeration should be avoided in favor of the free circulation of property as the overarching principle of policy. One can see Smith's theory of private property in action here, which is fascinating to observe. The argument is taken into consideration in Section 6 of the Transfer of Property Act of 1882. The principle of transferability underlies the concept of property. The current rule is the exception that applies when any of the property is not transferable. The latter is considered when organizing Section 6. A valid transfer of property meets the following criteria: the property is of a transferable nature; the transfer has a lawful purpose; the transferee and transferor are both competent; the transfer does not conflict with the nature of the interest; and

the transfer is made in the prescribed manner or form. The restrictions on property transfers are discussed in clauses (a). This includes everything from the doctrine of tenancy rights to the Spec Successionis transfer. The stated disclaimers will be addressed in a subsequent section. The transfer of property can only be 'forbidden' by law, and this fact must be kept in mind. Judiciary involvement in the prohibition of property transfer is negligible at best. In this regard, Section 6 forbids any kind of property exchange. Section 6(a) is about the transfer of property when a succession is expected. 12 This means that if someone owns a piece of property, he has the right to give it to someone else. But the property cannot be moved if it doesn't exist and is already in the hands of someone. This, in turn, deals with the right to change your mind, getting a legacy, and any other similar possibility. The term "heir apparent" means that a person seems to be an heir. If the propositus dies unexpectedly or if he dies before the propositus, he would be the heir. Under Indian law, revisionary rights also fall into this area. Under Hindu law, it has been decided that the revisioner has no right to the praesenti in the property that the woman owns for life. Under Muhammadan law, the chances of having a child are about the same. When kin die, his or her legacy and the relationship that comes with it cannot be passed on to someone else. Legacy is about what people can expect. If a person makes more than one will, the last one is the one that counts. Only the person who is the last will's legatee will get the legacy. This depends on how likely it is that the testator will live and that the legatee will get the help property. So, according to the Act, it cannot be moved. The "any other possibility of a like nature" question is about the possibility of something else happening. It was used to talk about a property of a future event that was uncertain.

In the case *Sheshammal v. Hasan Khani Rawther*[7], the Supreme Court ruled that you cannot give away a future right to property, so the heir apparent could not do it. In this way, the right to get future offerings is also just a hope, and it cannot be given to someone else.

- **In section 6(a) the word "Chance" needs the clarification.**

What exactly "chances" or "possibilities" means is explained in *Davis v. Angel (1862),* Lord Westbury distinguished between an interest that has arisen and is represented and an interest that has not arisen and will never arise, but with regard to which there is a remote possibility that the event that has not occurred and is made to hand may hereafter occur. The latter is neither an interest nor a right; it is simply the expectation of a future right. The expectation of

[7] https://www.legalserviceindia.com/legal/article-6156-case-comment-shehammal-v-s-hassan-khani-rawther.html

a future interest, or rather, of a future event that may give an interest, is not enough for a court of equity to "entertain a suit at the instance of a party having that and nothing more.". As a result, a simple expectation of a future right is contrasted with an interest. It would be interesting to compare the language of the corresponding provision1 in Section (60)m of the Code of Civil Procedure. The Code exempts from attachment liability "an expectancy of succession by survivorship or other merely contingent or possible right or interest." Section 6(a) of the Transfer of Property Act is better expressed than the first half of this clause in the Code. The latter half is wider than section 6(a), which we will discuss later. There is need for clarification regarding "chance." In addition to this clarification regarding contingent interests, it would be desirable to change section 6(a) so that it addresses "chance" as a matter of drafting. Section 6(a)'s wording is not very appropriate. the first half "of Code of Civil Procedure, Section 60(m), is better expressed as stated. 1 "Heir of apparent" "2-is restricted and gives the false impression that an heir presumptive can transfer his Spes successions, which is not the intended outcome and is not very happy in the Indian context.

The general prohibition against "mere possibility" does, in fact, imply that an heir presumptive interest cannot be transferred. However, the heir apparent's interest is also covered by this. It is possible to take advantage of the earlier section of section 60(1)(m), Code of Civil Procedure, 1908, that uses more suitable language to improve this portion of section 6(a). Therefore, that section 6(a) should be revised as under:(a) an expectancy of succession by survivorship or any other mere possibility of a like nature, Explanation. -A contingent interest in property is not a mere possibility within the meaning of this clause."

CONCLUSION

The Act was created to automate and rationalize the transferability of property. The word rationalize alludes to the Act's technical nature. It lays out the do's and don'ts for the law to follow. The question of 'what may be transferred?' has been articulated in Section 6 of the act in the sense of what cannot possibly be transferred. The issue of beneficial interest has also been raised. There is a line between the right of the person arising from property and the mere right to property. This has been systematized and is covered by Section 6 of the Act. Section 6 essentially addresses Smith's point of view. It encourages the alienation of private property rather than its accumulation. It promotes the free flow of private property by defining what can and cannot be transferred. As a result, it introduces the concept of full-fledged property rights. A mere Spes Successionis has also been held in the case of a Muhammadan heir succeeding to

an estate. It could not possibly be the subject of transfer. In the case of Hameed v. Jameela AIR 2014, a lady heir apparent had taken the full value of a share in the succession from the transferee, and the court held that she was barred from claiming a share in her father's property upon his death intestate. Furthermore, the court stated that the doctrine of estoppel could be used to prevent and heir Apparent from succeeding to the estate due to misconduct. It is necessary for an individual to dissect this section in order to comprehend the implications of what may or may not be transferred. Thus, by the virtue of Section 6, the intricacies of property law can be understood in a rationalized manner. Therefore, recommend that section 6(a) should be revised as under:"(a) an expectancy of succession by survivorship or any other mere possibility of a like nature. Explanation - A contingent interest in property is not a mere possibility within the meaning of this clause." Therefore, the mere possibility to succeed to the property in future is not a right and is not capable of being transferred.

REFERENCES

- https://www.advocatekhoj.com/library/lawreports/transferofpropertyact/21.php?Title=The%20Transfer%20of%20Property%20Act,%201882&STitle=Section%206-Introductory
- https://www.legalservicesindia.com/article/2471/Properties-and-Rights-which-cannot-be-transferable-under-the-Transfer-of-Property-Act,-1882.html
- https://www.legalservicesindia.com/article/2163/SPES-Successionis-As-An-Exception-To-Transferability.html
- https://bnblegal.com/article/doctrine-of-spes-successionis/
- https://www.lawcolumn.in/doctrine-of-spes-successionis-transfer-of-property-act-1882/

- https://lawcolumn.in/doctrine-of-spes-successionis-transfer-of-property-act-1882/#google_vignette
- https://bcajonline.org/journal/doctrine-of-spes-successionis-muslim-law-relinquishment-of-future-share-in-property-transfer-of-property-act-1882-section-6/

Exception to Right: The Evolving Landscape of Abortion Rights in India[1]

{Legal Analysis of the Medical Termination of Pregnancy Act and Recent Developments}

Abstract:

This paper examines the evolving legal landscape surrounding abortion rights in India, focusing on the Medical Termination of Pregnancy Act and recent developments. The MTP Act marked a significant shift by legalising abortion under specific circumstances to safeguard women's health and reduce unsafe abortions. However, the Act's effectiveness is contingent on various factors beyond legal provisions. The analysis explores the Act's historical context, key provisions, and limitations. It examines the requirement for qualified practitioners, approved facilities, and multiple doctors' opinions for terminations beyond 12 weeks. While the Act expanded permissible grounds for abortion, including mental health concerns, fetal abnormalities, rape, and contraceptive failure, ongoing debates highlight the tension between women's reproductive autonomy and concerns about fetal viability. The paper delves into the landmark 2022 Supreme Court judgement in *X v Principal Secretary*, which recognized the right to reproductive decisional autonomy for all pregnant individuals and emphasized access to comprehensive reproductive healthcare. However, a subsequent case (*X v Union of India*, October 2023) exposes ongoing challenges. This case involved a woman denied an abortion beyond 24 weeks despite mental health concerns, revealing a potential shift towards prioritizing fetal rights. The analysis concludes by emphasizing the need for ongoing efforts to address the MTP Act's limitations and ensure its effective implementation. A more progressive legal framework, coupled with public education and improved healthcare infrastructure, is crucial for fully realising the Act's potential in protecting women's reproductive rights and health in India.

(Keywords: Abortion Rights, Medical Termination of Pregnancy Act, Reproductive Autonomy, India, Women's Health)

The practice of abortion likely has ancient roots in India, mirroring its universality across cultures. However, attempts to regulate or control it through moral codes, religious beliefs, and legal frameworks have also been prevalent. Early Western and Southern Asian civilizations grappled with this issue through taboos and ethical guidelines. The core debate hinges on the definition of "life" and its beginning and end. While philosophical arguments abound, science

[1] By Pearl Shah, Law Student.

reveals a high rate of spontaneous abortions, with nearly a third of fertilised embryos failing to implant or terminating before the fifth week. This natural phenomenon raises questions about whether such occurrences, often attributed to fate or divine intervention, constitute the taking of a life. This highlights the complex interplay between biological facts, philosophical perspectives, and religious beliefs surrounding abortion in India.[1]

Throughout history, the practice of induced abortion, the deliberate termination of pregnancy, has been a subject of both medical practice and legal regulation. While ancient cultures employed various methods, societal views on abortion fluctuated significantly, often rooted in religious and moral beliefs. Many considered it a sin or crime, with varying punishments.

The 20th century saw a turning point. The Soviet Union became the first modern nation to legalise abortion in 1920, igniting a debate that continues today. Abortion-rights movements strive for increased access, while anti-abortion groups advocate for stricter regulations or bans. Western nations witnessed challenges to abortion bans, culminating in landmark cases like *Roe v. Wade* [2] in the US, which established a woman's limited right to abortion. However, the legality remains contested with ongoing efforts to restrict or expand access. China offers another unique example. Their 20th-century "one-child policy" controversially promoted induced abortion as a population control measure. This historical overview highlights the complex interplay between medical practice, societal views, and legal frameworks surrounding abortion.

The ineffectiveness of the Indian Penal Code's provisions on abortion, which primarily encouraged illegal practices, necessitated a legislative overhaul. *The Medical Termination of Pregnancy Act (MTP) of 2021*[3] marked a significant shift in the legal landscape surrounding abortion in India. This paper will assess the operation of the MTP Act, examining its historical context, key provisions, and limitations.

[1] Mohan, Raj 0Pal, and Raj Pa Mohan. "Abortion in India." Soc. Sci., vol. 50, no. 3, pp. 141–43 (1975).

[2]Roe v. Wade, 410 U.S. 113, Reporter U.S. 1 (1973).

[3]The Medical Termination of Pregnancy (Amendment) Act, 2021, Act No. 8 of 2021, Acts of Parliament, 2021 (India).

In 1964, the Ministry of Health established a committee to investigate the legalisation of abortion in India. Recognising the restrictive nature of Section 312[4] of the Indian Penal Code, the committee advocated for a more liberalised approach. They recommended allowing qualified medical practitioners to terminate pregnancies not only to save the woman's life but also for other compelling reasons. This recommendation formed the basis for the MTP Act.

The MTP[5] Act permits a qualified medical practitioner, acting in good faith, to terminate a pregnancy under specific circumstances:

1. Risk to Woman's Life or Health (Section 3(2)(a)): This provision allows abortion when continuing the pregnancy poses a risk to the woman's life or a serious threat to her physical or mental health. The woman's actual or reasonably foreseeable environment may be considered in this assessment.
2. Fetal Abnormality (Section 3(2)(b)): If there is a substantial risk of the child being born with significant physical or mental abnormalities, abortion becomes permissible.
3. Rape (Section 3(2)(c)): The emotional distress caused by a pregnancy resulting from rape is presumed to constitute a grave injury to the woman's mental health, justifying abortion.
4. Contraceptive Failure (Section 3(2)(d)): The anguish caused by an unwanted pregnancy due to contraceptive failure is also presumed to pose a serious threat to the woman's mental health, allowing for abortion.

While expanding permissible grounds for abortion, the MTP Act establishes several conditions for termination to be met:

a) Qualified Practitioner (Section 5(1)): Only registered medical practitioners with qualifications specified under the Indian Medical Council Act, 1956, and registered in a State Medical Register, can perform abortions. Additionally, they must possess the necessary training in gynaecology and obstetrics as per MTP Act regulations.

[4] Whoever voluntarily causes a woman with child to miscarry, shall if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
[5] Ibid.

b) Approved Facility (Section 5(1)): The abortion must be performed in a hospital or nursing home approved for this purpose by the central or state government.

c) Number of Opinions Required (Section 5(2)): For pregnancies under twelve weeks, only one registered medical practitioner's opinion on the existence of a permissible ground is necessary. However, when the pregnancy is between twelve and twenty weeks, opinions from at least two such practitioners are required.

d) Woman's Consent (Section 5(1)): The pregnant woman's consent is mandatory before any termination procedure. Exceptions exist for women under eighteen or those declared lunatic, where the written consent of their guardian is required.

Conditions (b) and (c) can be waived if the practitioner, acting in good faith, believes the termination is immediately necessary to save the pregnant woman's life. In such cases, the practitioner must certify this opinion in writing, either before or after performing the procedure. (Section 5(3))

The MTP Act[6] represents a significant step towards legalising safe abortion under specific circumstances. By recognising various grounds for termination and requiring qualified practitioners to perform the procedure in approved facilities, the Act aims to safeguard women's health and reduce the prevalence of unsafe abortions. However, limitations like the requirement for multiple doctors' opinions and restrictions on gestational age remain areas for potential future legislative review and reform.[7]

While the question of abortion solely based on a woman's will remains unanswered, recent developments have significantly expanded abortion rights in India. Notably, the Supreme Court's landmark judgement in *X v Principal Secretary*[8] (2022) and the 2021 Amendment to the Medical Termination of Pregnancy Act (MTP Act) have played a crucial role.

Justice Chandrachud, delivering the judgement, recognized the need for legal frameworks to adapt to evolving social contexts. He emphasized, "A changed social context demands a readjustment of our laws. Law must not remain static, and its interpretation should keep in

[6] Ibid.
[7] Bose, Asit K. "ABORTION IN INDIA: A LEGAL STUDY." J. Indian Law Inst., vol. 16, no. 4, pp. 535–48 (1974).
[8] X v. Principal Secretary, (2022) 7 SCC 1321, para. 1 (India).

mind the changing social context and advance the cause of social justice." This sentiment, coupled with the 2021 Amendment Act, has led to a broader understanding of abortion rights.

Key aspects of this expansion include:

- Reproductive Decisional Autonomy: The Court recognized the right to reproductive decisional autonomy for all pregnant individuals, including transgender and gender-variant persons.
- Right to Reproductive Health: Everyone is entitled to comprehensive reproductive healthcare, encompassing access to safe and affordable family planning methods, contraception, and sex education.
- Shifting Focus: The Court acknowledged the MTP Act's provider-centric approach, where approval from a Registered Medical Practitioner (RMP) is crucial. This, coupled with the fear of prosecution under the Indian Penal Code (IPC), often discouraged RMPs from providing abortion services. As a result, the Court emphasized that the decision to terminate a pregnancy ultimately lies with the pregnant person.

These developments represent a significant step towards prioritizing the rights and autonomy of pregnant individuals in India's legal framework surrounding abortion.[9]

Following promising advancements in 2021 and 2022 regarding abortion access in India, however a Supreme Court case (*X v Union of India*[10], October 2023) highlights ongoing struggles for reproductive autonomy. This paper examines the case and its implications for legal frameworks surrounding abortion in India.

The case involved a 27-year-old married woman seeking permission for an abortion beyond the 24-week gestational limit allowed under the Medical Termination of Pregnancy Act (MTP Act). Due to lactational amenorrhea, she discovered her pregnancy at 24 weeks. Facing initial denial at a healthcare facility, she petitioned the Supreme Court.

The case revealed a concerning shift from prioritizing a woman's reproductive autonomy, as seen in the 2022 *X v Principal Secretary* judgement, to prioritizing fetal viability and the rights

[9] Jain, Dipika. "Supreme Court of India judgement on abortion as a fundamental right: breaking new ground," NATIONAL LIBRARY OF MEDICINE (21st May, 2024) https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10321178/.
[10] X v. Union of India, (2021) 2021 AIR (Delhi) 527 (India).

of the unborn child. Despite fulfilling the MTP Act's requirement of mental health concerns (postpartum depression, suicidal tendencies), her right to abortion was denied. The Court narrowly interpreted "mental health" as a ground for termination and disregarded the potential threat of suicide. This suggests that women seeking abortion beyond 24 weeks may face a high burden of proof regarding the dangers of their situation and the absolute necessity of abortion. This approach contradicts the 2022 judgement, which recognized the woman as the "ultimate decision-maker" on reproductive choices.

While the 2021 amendment to the MTP Act and the 2022 judgement were positive steps, they did not dismantle the provider-centric approach of the Act. Decision-making power remains with service providers, and abortion access is not guaranteed upon request. This pits the pregnant person against the pregnancy itself, as evidenced by the October 2023 case. Here, the Court's interpretation of the MTP Act limited woman's autonomy by strictly applying eligibility criteria. This system fragments the woman's bodily autonomy, placing the ultimate decision in the hands of doctors and judges instead of the woman herself. To truly empower women, guaranteed rights need to translate into guaranteed access, with less power vested in legal and medical professionals.

The case also highlighted the issue of procedural delays and conflicting medical opinions. The initial medical board at AIIMS initially approved the abortion, considering the impact on her mental health. However, a subsequent letter from one doctor questioning the termination due to fetal viability led to a re-examination of the case. This procedural ping-pong caused significant distress for her and underscores the need for clear guidelines and a more streamlined process for abortion requests, especially when dealing with complex cases.

The *X v Union of India*[11] case exposes the ongoing challenges to reproductive rights in India. Despite progress in recent years, women seeking abortions beyond 24 weeks face a high bar and a system that prioritizes fetal viability over their autonomy. The case also highlights the need for a more woman-centered approach, streamlining procedures, and ensuring clear guidelines for medical professionals to avoid unnecessary delays and anxieties for women seeking abortion services.[12]

[11] Ibid, p. 05

[12] Fatima, Adsa, and Sarojini Nadimpally. "Abortion law in India: A step backward after going forward," SUPREME COURT OBSERVER (21st May, 2024), https://www.scobserver.in/journal/abortion-law-in-india-a-step-backward-after-going-forward/.

The Medical Termination of Pregnancy Act, 2021[13] marked a significant shift in India's legal approach to abortion. By legalising abortion under specific circumstances, the Act aimed to reduce the prevalence of unsafe abortions and protect women's health. However, the Act's effectiveness hinges on various factors beyond legal provisions.

Successful implementation requires addressing psychological, sociological, financial, technical, and administrative hurdles. Public acceptance, along with proactive efforts from government officials, medical professionals, social workers, educators, and religious leaders, are crucial for promoting awareness and utilisation of the MTP Act.[14]

Despite progress, the MTP Act continues to be debated. While some argue for complete liberalisation based on a woman's absolute right to bodily autonomy and privacy, others advocate for stricter regulations or highlight moral and ethical concerns. A critical consideration is the impact of abortion legalisation on maternal mortality rates. Studies suggest a potential decrease in unsafe abortions, leading to improved maternal health outcomes. However, ensuring proper infrastructure and trained medical professionals to deliver safe abortion services across the country remains a challenge.

Furthermore, the MTP Act's limitations restrict women's reproductive freedom. The requirement for multiple doctors' opinions and gestational age limits can create unnecessary hurdles. Additionally, the Act's language primarily addresses "women," neglecting the needs of transgender and gender-diverse individuals seeking abortion services.

In conclusion, the MTP Act represents a necessary step towards safer abortion practices in India. However, ongoing efforts are needed to address its limitations and ensure its effective implementation. A more progressive legal framework, coupled with comprehensive public education and improved healthcare infrastructure, is essential to fully realise the Act's potential in protecting women's reproductive rights and health.

[13] Ibid, p. 02
[14] Gaur, K. D. "ABORTION AND THE LAW IN INDIA." J. Indian Law Inst., vol. 28, no. 3, pp. 348–63 (1986).

Bibliography:

- Mohan, Raj Pal, and Raj Pa Mohan. “Abortion in India.” Social Science, vol. 50, no. 3, 1975, pp. 141–43. JSTOR, http://www.jstor.org/stable/41885953. Accessed 20 May 2024.
- Bose, Asit K. “ABORTION IN INDIA : A LEGAL STUDY.” Journal of the Indian Law Institute, vol. 16, no. 4, 1974, pp. 535–48. JSTOR, http://www.jstor.org/stable/43950391. Accessed 20 May 2024.
- https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10321178/
- https://www.scobserver.in/journal/abortion-law-in-india-a-step-backward-after-going-forward/
- Gaur, K. D. “ABORTION AND THE LAW IN INDIA.” Journal of the Indian Law Institute, vol. 28, no. 3, 1986, pp. 348–63. JSTOR, http://www.jstor.org/stable/43951024. Accessed 20 May 2024.
- 410 U.S. 113 (1973)
- THE MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2021 No. 8 OF 2021
- 2022 SCC OnLine SC 1321
- AIRONLINE 2021 DEL 527
- Visaria, L., Ramachandran, V., Ganatra, B., & Shveta Kalyanwala. (2004). Abortion in India: Emerging Issues from Qualitative Studies. *Economic and Political Weekly*, *39*(46/47), 5044–5052. http://www.jstor.org/stable/4415809
- Saseendran Pallikadavath, & R. William Stones. (2006). Maternal and Social Factors Associated with Abortion in India: A Population-Based Study. *International Family Planning Perspectives*, *32*(3), 120–125. http://www.jstor.org/stable/4147621

Codification of Trade Secret Law in India

Shray Kumar Sharma

Department of Law, University of Calcutta

Trade Secret may be defined as a form of intellectual property (IP) that encompasses confidential and proprietary information used in business that provides a competitive advantage. In India and many countries, unlike patents, trademarks, or copyrights, trade secrets rely on keeping information confidential rather than obtaining legal protection through registration.

Therefore, in India, unlike some of the major economies, there is an absence of any subject-specific statute on trade secret. Trade Secrets are granted protection under *section 27* of the **Indian Contract Act, 1872**[1] as *non-disclosure agreements* (NDAs) and *sections 43* and *72* of the **Information Technology Act, 2000**[2] as provisions for *unauthorised access to computer material* and *breach of confidentiality and privacy* respectively. But with growing popularity of Intellectual Property Rights as the economy becomes more decentralised the need for the protection of trade secrets is increasing more than ever.

There are several laws governing laws regarding trade secret in the US, UK, Canada and France. Some of these laws are for registration of trade secret agreements and protection while others are merely for the protection of trade secret rights. The World Intellectual Property Organisation recognises trade secrets trade secret as one of the eight major intellectual property classifications. The **Defend Trade Secrets Act, 2016**[3] of the United States of America is one such law that aims at protecting trade secret agreements and provide punitive measures for violation of such agreements.

Moreover, in the European Union, **the EU Trade Secrets Directive (2016/943/EU)**[4] harmonises the protection of trade secrets across EU member states. While the United Kingdom implemented the **Trade Secrets (Enforcement, etc.) Regulations 2018**[5], which transposed *the EU Trade Secrets Directive* into UK law.

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[1]Indian Contract Act, 1872, § 27.

[2]Information Technology Act, 2000, § 43 & § 72.

[3]Defend Trade Secrets Act of 2016, Pub. L. No. 114-153, 130 Stat. 376 (2016).

Furthermore, in China, there is the **Anti-Unfair Competition Law**[6] includes provisions for the protection of trade secrets. Similarly, in Japan there are provisions in the **Unfair Competition Prevention Act**[7] that protect trade secrets as an intellectual property. Therefore, these are some of major economic powers that have either specific provisions or dedicated statutes catering to issues of trade secrets as an intellectual property.

Some of the provisions in several treaties and conventions related to trade secrets as an intellectual property, include:

TRIPS Agreement[8] (Agreement on Trade-Related Aspects of Intellectual Property Rights): The *TRIPS Agreement*, administered by the World Trade Organization (WTO), includes provisions related to the protection of undisclosed information, which encompasses trade secrets.

Berne Convention for the Protection of Literary and Artistic Works[9]: While primarily focused on copyrights, the *Berne Convention* recognizes the importance of protecting undisclosed information, which may include trade secrets.

Paris Convention for the Protection of Industrial Property: While mainly focused on industrial designs, the agreement recognizes the need for protection against unfair competition, including trade secret protection.

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4 Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, [2016] OJ L157/1.

5 Trade Secrets (Enforcement, etc.) Regulations 2018, SI 2018/597.

6 Anti-Unfair Competition Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., Sept. 2, 1993, effective Dec. 1, 1993).

7 Unfair Competition Prevention Act (Japan), Act No. 47 of 1993, as amended.

8 Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 (entered into force Jan. 1, 1995).

9 Berne Convention for the Protection of Literary and Artistic Works, July 24, 1971, as amended Sept. 28, 1979, S. Treaty Doc. No. 99-27, 828 U.N.T.S. 221 (entered into force Mar. 1, 1989).

EU Trade Secrets Directive (2016/943/EU):

The *Paris Convention* addresses the protection of industrial property, including patents, trademarks, and trade secrets. It provides a framework for the protection of undisclosed information against unfair competition.

The Hague Agreement Concerning the International Registration of Industrial Designs[10]**:**

While specific to the European Union, the EU Trade Secrets Directive harmonizes trade secret protection within EU member states.

United States of America

In the United States, the law regarding trade secrets are governed under **the Defend Trade Secrets Act, 2017**, prescribes provisions for trade secret protection in civil matters. The provisions include protection against violation of trade secret agreements including non-disclosure agreements (NDAs), ex-parte seizure, whistleblower immunity etc. The Act of 2017 states provisions for civil suits specifically pertaining to trade secret. *Section 1832* prescribes jurisdiction of federal courts in matters of trade secret violations. It outlines the circumstances under which federal courts have jurisdiction over trade secret cases.

Furthermore, *section 1833* provides immunity to individuals who disclose a trade secret to the government for the purpose of reporting or investigating a suspected violation of law. The immunity is granted to people who meet the definition of a "whistleblower" beneath the DTSA. A whistleblower, on this context, is a person who discloses a change mystery in self assurance to a central authority reliable or an attorney.

Section 1834 describes provision for remedies available to a plaintiff. These remedies includes injunctive relief damages, unjust enrichment, reasonable royalty, attorney's fees.

These are some of the protections provided to a whistleblower under the Defend Trade Secrets Act, 2017.

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10 Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, [2016] OJ L157/1.

Status of Trade Secrets in India

In contrast to other TRIPS agreement member nations, there is no specific statute governing trade secrets as they are protected under Section 27 (Non-disclosure agreements) of **the Indian Contract Act, 1872**[11], Section 72 (Breach of Confidentiality and Privacy) of **the Information Technology Act, 2000**[12] and 405-409 (Criminal Breach of Trust) of **the Indian Penal Code, 1860**[13].

The protection under common law has also proved inadequate as there is a sheer absence of a concrete framework defining, classifying and categorising a trade secret. Attempts have been made in the past to define a trade secret or undisclosed information by the court of law. In **Indian Farmers Fertilizer v. Commissioner of Central Excise, (2007)7VST6(CESTAT-NEW DELHI)**[14], the Customs, Excise and Gold Tribunal, Delhi defined trade secret as *"such sort of information, which is not generally known to the relevant portion of the public, that confers some sort of economic benefit on its holder and which is the subject of reasonable efforts to maintain its secrecy."* Moreover, in **Dow Chemical Company v. Hindustan Lever Limited**[15]**,** the Delhi High Court held that a trade secret must fulfil the following criteria:

- It must be information that is not generally known to the public or to the relevant persons who can obtain economic value from its disclosure or use.
- It must have commercial value because it is secret.
- The owner of the information must have taken reasonable steps to maintain its secrecy.

Even though, these definitions seem to include many of the necessary features that define a trade secret yet many of these seemingly coincide with the definition of patent. Moreover, the ambiguity in the definitions is ultimately risking exploitation of potential undisclosed information and raising the floodgates to unhealthy competition in the market, thereby, disrupting free-trade.

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[11] Indian Contract Act, 1872, § 27.

[12] Information Technology Act, 2000, § 43 & § 72.

[13] The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).

[14] Indian Farmers Fertilizer v. Commissioner of Central Excise, (2007)7VST6(CESTAT-NEW DELHI).

[15] Dow Chemical Company v. Hindustan Lever Limited.

The Securities Exchange Board of India (Protection of Insider Trading) Regulations, 2015[16] prescribes provisions for the prosecution of use or disclosure of *undisclosed information* under the SEBI Act, 1992. Moreover, **the Digital Personal Data Protection Act, 2023 (**hereinafter referred "DPDP"**)**[17] defines "Trade Secret" as information that *is confidential, has commercial value because it is not generally known and not readily ascertainable through legitimate means, and has been subject to reasonable efforts to maintain its secrecy.* Under Sections 17(1)(i), 22(1)(d), and 27(1)(d) of the DPDP Act, 2023 the provisions for the protection of trade secrets have been prescribed. **Section 17(1)(i)**[18] provides exemptions to data fiduciaries from providing access to the collected data if doing so reveals their trade secrets. Similarly, **Section 22(1)(d)**[19] allows data fiduciaries to deny porting of collected data on the ground of *protecting protecting trade secrets.* Moreover, **Section 27(1)(d)** allows data fiduciaries to deny the erasure of collected data on the ground of protecting trade secrets.

The Need for a Codified Trade Secret Law in India

In the post-globalisation era, the Indian business climate has seen several radical shifts in the methods, conventions and IP Policy. With economic liberalisation and increased Foreign Direct Investments it has become pertinent to have stringent laws protecting the business interests as well as consumer rights. With the implementation of the New Industrial Policy, 1991 the need for codified trade secret laws has been gaining prominence. There have been multiple occasions where the need for a codified statutory law on the subject of trade secret has been highlighted in common law.

In **John Richard Brady & Ors v Chemical Process Equipment P Ltd & Anr (AIR 1987 Delhi 372**[20], the court quoting Patrick Hearn's book, *"The Business of Industrial Licensing"*, reiterated the need for a statutory law on trade secrets as merely relying on the common law may not be adequate for the protection of trade secrets in India. The judgment of the John Brady case was heavily reliant on the principles set out in the UK court judgmennt, Saltman Engineering Co. v. Campbell Engineering Co. (1948) 65 R.P.C. 203[21]

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[16] The Securities Exchange Board of India (Protection of Insider Trading) Regulations, 2015, No. 15, Acts of Parliament, 1992 (India).

[17] Digital Personal Data Protection Act, 2023, § 43, No. 22, Acts of Parliament, 2023 (India).

[18] Digital Personal Data Protection Act, 2023, § 17, No. 22, Acts of Parliament, 2023 (India).

[19] Digital Personal Data Protection Act, 2023, § 22, No. 22, Acts of Parliament, 2023 (India).

[20] John Richard Brady & Ors v Chemical Process Equipment P Ltd & Anr (AIR 1987 Delhi 372).

[21] Saltman Engineering Co. v. Campbell Engineering Co. (1948) 65 R.P.C. 203.

The Business of Industrial Licensing, page 110:

> *"The maintenance of secrecy which plays such an important part in securing to the owner of an invention the-uninterrupted proprietorship of marketable know-how, which thus remains at least a form of property, is enforceable at law. That statement may now be examined in the light of established. rules making up the law of trade secrets. These rules may, according to the circumstances in any given case, either rest on the principles of equity, that is to say the application by the Court of the need for conscientiousness in the course of conduct, or by the common-law action for breach of: confidence which is in effect a breach of contract."*

Moreover, the importance of protection of confidential information was highlighted in the 2003 Delhi High Court judgment, **Pepsi Co., Inc. And Ors. v. Hindustan Coca Cola Ltd. And Anr., 2003(27)PTC305(DEL)**[22] where the Delhi High Court made an observation that confidential or undisclosed information (trade secrets) as intellectual property are equally qualified to protection and the absence of stringent rules on the aspect is highly concerning.

Furthermore, in **Navigator Logistics Ltd v. Kashif Qureshi & Ors**, **AIRONLINE 2018 DEL 1483**[23]**,** the Delhi High Court highlighted the fact that the existing legal framework for the protection, redressal, specificity and robustness that it is needed to effectively safeguard confidential business information.The court reiterated that there needs to be a comprehensive legislative framework that clearly specifies:

- what constitutes a trade secret;
- the obligations of parties to protect such information; and
- the remedies available in case of breach.

In **Saltman Engineering Co. v. Campbell Engineering Co. (1948) 65 R.P.C. 203**[24] the court explicitly described the distinction between the trade secrets and other forms of Intellectual Property. This is seen in the wording used by the bench in realising the concrete definition of a trade

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[22] Pepsi Co., Inc. And Ors. vs Hindustan Coca Cola Ltd. And Anr., 2003(27)PTC305(DEL).

[23] Navigator Logistics Ltd v. Kashif Qureshi & Ors, AIRONLINE 2018 DEL 1483.

[24] Saltman Engineering Co. v. Campbell Engineering Co. (1948) 65 R.P.C. 203.

secret. The author is of the opinion that with the rapid economic growth of India and government's efforts to privatise sectors such as space, defence and many more, which were previously restricted and heavily regulated, it is only obvious to ensure trade secret protection with a set of codified laws governing the same. To ensure quick resolution and speedy disposal of trade secret disputes, provisions integrating alternative dispute resolution methods such as arbitration and mediation may help create a robust IP Policy.

Mere reliance on old, outdated and, in many cases, irrelevant doctrines may end up creating a gaping hole in the trade secret protection mechanism. Integration of "confidential" and "undisclosed" information into the definition of trade secret under the National IP Rights Policy could be a good start and later may be expanded to statutory law. The current trade secret dispute resolution mechanism relies heavily upon the doctrine of justice, equity and good conscience which is highly subjective and circumstantial.

The author is of the opinion that the absence of a scalar criteria to measure the degree of infringement in a trade secret dispute and subsequently providing relief for any injury occurred based on the said criteria. Therefore, it becomes pertinent to have a set of codified laws, rules or guidelines governing trade secrets in India.

Responsibilities of Juvenile Justice system towards rights of a Juvenile[1]

Abstract

India is dealing with a major issue: juvenile offenders, particularly serious offences such as murder and rape committed by adolescents under the age of 18. To solve this, India implemented juvenile justice system. This system prioritizes providing care, ensuring public safety, and, most importantly, rehabilitating, and reforming juvenile offenders. However, an important challenge stays how to balance safety with the rehabilitation of vulnerable children. The United Nations Convention on the Rights of the Child (UNCRC) provides an important framework. This international agreement focuses on the "best interests of the child" premise, which leads India's juvenile justice system in prioritizing the rights of these at-risk children. The UNCRC goes much farther, recognizing children as individuals with changing rights and obligations based on their age and developmental stage. This approach ensures the whole child's well-being in the context of their family and community.

The criminal behaviour which we see in a child raises the question of whether significant acts, such as murder or rape, should result in legal punishment or sentencing to rehabilitative schools. This research paper seeks to determine the Juvenile Justice system's responsibilities to children's rights, whether juveniles are guaranteed with all of their legal rights which are mention under the constitution, whether they are treated fairly, whether they are looking out for their best interests, and, most importantly, whether in serious cases they are tried as adults or focuses on rehabilitation within the juvenile system and justice is served, and whether they are happy with the decision or, enrolling them in a rehabilitation school would have resulted in more happiness. Paper also aims to find out how they are being treated by family members after being recognized as a criminal, what are the legal solutions are available which can be provided for rehabilitation and reintegration into the society and finding out whether mostly best interest of child is taken into consideration by Juvenile Justice System or not.

The end goal is to find out why children under-age of 18 years commits crimes, who are responsible for it, what are the responsibilities of Juvenile Justice system towards rights a child and what are the solutions to this. And how system or acts bring justice and maximum happiness and well-being between with child offender, and society as a whole.

[1] Aayushi Singla, Law student.

Introduction

Children are regarded as God's gifts and the most valuable resources for both individuals and the country. It is the responsibility of all of us—individuals, parents, guardians, and society at large—to ensure that children have the chance to develop in a positive sociocultural atmosphere and become law-abiding adults who are morally upright, physically strong, and mentally aware. In India, juvenile crime is a grim reality. Juveniles have recently been discovered to be complicit in some of the most horrific crimes, including gang rape and murder. It's a worrying trend, because juvenile crimes cause pain for society as a whole. Many experts think that the current legal system is insufficient to address the situation and that modifications are necessary so that minors who commit serious crimes can also be prosecuted as adults and punished accordingly.

Objective

The objective of this paper is to:

- To find out what are the rights of a child.
- Difference between a juvenile and a child
- Determine possible reasons why juveniles are committing crime.
- What are the aims and responsibilities of Juvenile Justice System.
- To find possible legal solutions.
- Determine circumstances under which child can be tried as an adult.
- General solutions which can help in reducing children committing crime and youth violence.

Who is a Juvenile and Rights of a Child

A "juvenile" is an individual who has not reached the age of eighteen, and "juvenile delinquency" is the breaking of a US law by an individual under the age of eighteen that would have been illegal if done by an adult. And a right is defined as an arrangement or contract made between the individuals who possess it and the individuals or organisations that bear responsibility and obligations with regard to the exercise of that right. The Indian government states that a child's life officially begins twenty weeks after conception. Therefore, the right to survive includes the right of a child to be born, the right to a minimal standard of clothing, food, and shelter, and the right to a dignified existence. and these rights are considered fundamental under the United Nations Convention on the Rights of the Child. (United Nation

Convention on the rights of the child, n.d.)[2]. Now the question which raises is what the difference between a child and a juvenile is, because both of them are recognized below the age of 18 years.

Difference between a child and a Juvenile

According to Indian Legal system, A person is considered a minor if they are younger than the legal age of eighteen or if they are not yet of full legal obligation and responsibility. A juvenile is a person between the ages of 16 and 18, while a kid accused of a crime is sent to a childcare centre and is not tried as an adult. As discussed different scholars also, he terms "child" and "juvenile" have nearly identical meanings, they are employed differently in two different situations. In layman's terms, a person is considered a minor if they are under the legal age of eighteen or if they are under the age of full obligation and responsibility. A kid accused of a crime is considered a juvenile offender and is prosecuted as an adult in court. Juvenile denotes either youthful criminals or immature people.

Both "minor" and "juvenile" are defined under a number of Indian and international legal frameworks. For example, The Indian Contract Act of 1872 defines a minor as someone who is under 18 years old and, therefore, cannot enter into a contract. The Indian Majority Act, 1875, defines the age of majority as 18 years, meaning that a minor is someone under the age of 18 years[3]. In modern times, most nations' penal codes have adopted the concept of "doli incapax," which indicates that individuals are fully aware that their actions are illegal.

Reasons Juvenile Committing Crimes

The offences perpetrated by juveniles in high-profile criminal cases over the past few years are readily identifiable to us. There are several moving parts involved in this crime. It consists of social and psychological conditions that interact to produce specific behaviours. According to a 2016 analysis published by the Australian Institute of Criminology (AIC), there are numerous elements that contribute to teenage criminality rather than a single reason. These elements fall into three groups: community, family, and individual.[4]

[2] https://www.unicef.org/child-rights-convention/convention-text-childrens-version
[3] Section 3 of Indian majority Act, 1875
https://www.indiacode.nic.in/bitstream/123456789/15299/1/majorityact.pdf
[4] https://shaheergharay.medium.com/what-makes-young-people-commit-crimes-1a36a031bea2

Poverty, drug addiction, antisocial peer groups, abusive parents, single-parent children, nuclear families, family violence, child sexual abuse, and media role are some of the most frequent causes linked to juvenile crimes. However, when it comes to India, the causes of youth criminal behaviour include poverty and the media, particularly social media. A child's involvement in criminal activity is often compelled by poverty. In addition, the way a Section of social media is operating now a days, it's becoming more dangerous than helpful when it comes to influencing the young minds. Another factor in today's time is that social media and technology have given criminals new avenues to operate, and young people are more vulnerable to becoming victims because of a lack of education and proper guidance.

Responsibilities of Juvenile Justice system towards Rights of a Juvenile

The Juvenile Justice system is a legislative framework that specifically address the issues pertaining to juvenile rights, care, and protection. The method concentrates mainly on the reformation and rehabilitation of children. The Juvenile Justice Act of 2015 is a significant piece of legislation for this system. The legislation promotes proper care, protection, development, treatment, and social reintegration of children in difficult circumstances by considering a child-friendly approach which is in the child's best interests.

Children who come in touch with the criminal justice system, such as those in need of protection, in danger, on trial, in prison, or as witnesses, are typically in a vulnerable situation since they are uninformed of their legal rights. So, in order to preserve their rights in the criminal justice system, the system is designed in such a way that it strengthens and improves the skills of persons who work with children involved in the judicial system, as well as being beneficial to a wide variety of professionals and policymakers. Therefore, to protect the children, juvenile justice board (JJB) was made to carry out the responsibilities of towards rights of a child which are mentioned under Juvenile justice act[5]:

- When it comes to children who are in trouble with the law, the JJB is in charge of carrying out investigations and choosing the best course of action.
- In its decision-making process, the JJB gives the child's long-term interests, growth, and general well-being top priority.
- When deciding on the best course of action, the JJB uses an individualised approach that considers the unique circumstances, background, and requirements of each child.

[5] Juvenile Justice Act 2015: https://indiacode.nic.in/handle/123456789/2148?view_type=browse

- The JJB offers access to educational, career, and skill development programmes with an emphasis on the rehabilitation and social reintegration of youth in fight with the law.
- Ensuring that all actions pertaining to minors in legal conflict are handled in a way that is child-friendly is the procedure's main goal.
- It tries to establish a secure and encouraging atmosphere in which the kid is free to express themselves and take part in the process.
- It guarantees that the child will get equal treatment, due process, and non-discrimination.
- It ensures the right to the assumption of innocence, the right to legal representation, and the right to a hearing.

Restorative Justice

The juvenile justice system acknowledges that juveniles and adults are not the same and that a different approach to justice is necessary. One of the approaches is through Restorative Justice. A key component of sentencing contracts is the application of rehabilitative justice which is also known as restorative justice. The goals of restorative justice are to cease conflict and make amends for the harm that offenders have caused. It gives people who have harmed others a chance to express their sentiments and encourages individuals who have caused harm to acknowledge the consequences of their actions. Its goal is to assist both the victim and the juvenile offender. It can also be applied to rectify the victim's injuries. However, in case of a minor restorative justice should only be applied when it is judged suitable and in the best interests of the child in cases involving a victim.

Children involved in the criminal justice system can benefit much from restorative justice. Restorative justice methods are likely to have a greater impact on a kid who has committed an offence due to their ongoing psychological development, in addition to offering a beneficial educational response.

Legal Solutions

The main legislative framework for juvenile justice in India is the Juvenile Justice (Care and Protection of Children) Act, 2000. The act offers a framework for child protection, treatment, and rehabilitation as well as for the prevention and management of juvenile delinquency. But in 2015 The Indian Parliament enacted the Juvenile Justice (Care and Protection of Children) Act, 2015 after much controversy, debate, and protest over many of its provisions from the

child rights community. The Juvenile Justice (Care and Protection of Children) Act, 2000, which was in force before it was replaced, gave juvenile offenders between the ages of 16 and 18 who had committed heinous offences the opportunity to face adult trials.

The old Juvenile Justice got replaced after when the famous Delhi gang rape took place in December 2012 where one of the accused was a few months younger to turn eighteen and he was tried in juvenile court. After many verdicts being turned down, criticization and Maneka Gandhi's arguments, the Lok Sabha on 7th May 2015 passed a new bill where if minor between the ages of 16 and 18 commit serious crimes, they will be tried as adults. The Juvenile Justice Board will review the case to determine if the offence was committed by a "child" or "adult." The new bill also introduced a new concept of inter-country adoption which the law adopted from the 1993 Hague Convention on Protection of Children and Cooperation in Respect.

There are some fundamental rights and directive principle of state policy which have special provision with respect to children and are mentioned in the constitution under:[6]

- Article 15(3): Permits the State to provide for women and children in particular
- Article 23: Prohibits the trafficking of human beings and forced labour.
- Article 24: Outlaws the employment of minors under the age of fourteen in mines, factories, and other dangerous jobs.
- Article 39(e): Directs the State to protect minors from being forced to work at ages and strengths that are inappropriate for them due to financial necessity.
- Article 39(f): Gives the State instructions to provide conditions that promote children's healthy growth and to safeguard children and young people from exploitation and material and moral desertion.
- Article 45: Demands that all children up to the age of fourteen receive free, mandatory education from the State.
- Article 47: It is the state's responsibility to improve living standards and nutrition levels. In 2002, the 86th Amendment to the Constitution was passed by Parliament, making the right to education a basic freedom.

Juvenile tried as adult

[6] Article 15(3), 23, 24, 39(e), 39(f), 45, 47 of the Indian Constitution
https://legislative.gov.in/constitution-of-india/

The next question which arises is under what circumstances a child who has attained 16-18 years be tried as an adult? To solve this problem, the Juvenile Justice Board (JJB) may perform an initial assessment in accordance with Section 15 of the Juvenile Justice Act, 2015 (JJ Act, 2015) by following guidelines recently released by the National Commission for Protection of Children (NCPCR). The purpose of this preliminary evaluation is to determine if a minor may be tried in adult court. Three categories—petty, serious, and heinous—have been established by the Act to describe the acts committed by minors. According to Section 15 of the JJ Act, if a child who has completed or is older than sixteen years old is accused of committing a heinous crime, the Board is required to perform an initial evaluation of the child's mental and physical capacity to commit the crime, as well as his comprehension of the consequences of the crime and the circumstances surrounding the alleged offence.

Now here comes the responsibility of Juvenile Justice board to take care of the child and look if the process is going smoothly. Under this act, it is the responsibility of the board that it shall examine the child's mental and physical ability to have committed the alleged offence, as well as their comprehension of the offense's repercussions and the circumstances surrounding it and seek the advice of qualified psychologists, psychosocial workers, or other specialists. Thus this evaluation should not be viewed as a trial by Juvenile Justice board; rather, it is intended solely to determine the child's competence to commit the claimed act and comprehend its implications.

But the issue which arises with this implication is the integration of these ideas into the system, with a focus on the JJB and the Children's Court in particular. Many of the ideas incorporated into the Act have not received the attention they deserve from the Board or the Children's Court.

Solutions

To decrease the crimes committed by children and prevent youth violence, there are some ways which can be considered to prevent children from committing crimes. These ways will help in creating protective variables in the lives of youth and resolving the underlying issues that might guide them in that direction. Teaching kids how to have good relationships and handle disagreement with their parents is one method to do this. Here are some of the solutions:

- Education- Giving young people access to quality education and employment possibilities makes a better future more attainable for them and lessens the attraction of criminal conduct.

- Good parenting and programs- Encouragement of good parenting, which includes educating kids to stay away from gangs, drugs, and alcohol, and programs on parenting where programmes teach parents effective communication and discipline strategies can improve the stability and nurturing of the family environment is another method.
- Communities- community bases initiatives where youth can live in a safer and more supportive environment when neighbourhood issues like poverty, a lack of resources, or gang activity are addressed and collaborating with health departments and other partners which will help in promoting safe neighbourhood.
- Schools- schools are one of the important factors which will help in reducing the crimes, by adopting policies and practices that create safe and supportive environment, teaching teens skill to navigate their social and emotional challenges and counselling will help a lot.
- Social and emotional learning- Young people can overcome obstacles calmly if they are given tools like problem-solving, anger control, and conflict resolution.

Involvement of parents in children's life can also help a juvenile not committing a crime. Involvement means parents should be aware about who are their child's friends, both their destination and their actions. It also entails being a listening ear when they need someone to trust in and leading by example by acting appropriately. Additionally, parents need to make sure that their kids have lots of opportunity for productive hobbies or extracurricular activities. Ultimately, even if you disagree with everything your kids say, it's critical to have open lines of communication and show that you are willing to listen to them. This will help a lot in understanding what is going on in a child's mind and life.

Conclusion

At the end we can say that an essential component of the criminal justice system is juvenile justice. It acknowledges that juveniles demand a unique approach to justice due to their differences from adults. Rehabilitating juvenile offenders and deterring future criminal activity are the two main objectives of juvenile justice. Young offenders can be assisted by the system in becoming contributing members of society through education, counselling, and assistance Addressing juvenile crime in India necessitates a multifaceted approach that involves legal reform, robust juvenile justice systems, and community-based solutions. By distinguishing between children and juveniles and understanding the underlying causes of juvenile delinquency, society can better address and mitigate these issues.

Strengthening the roles of parents, schools, and communities, along with ensuring the protection and rehabilitation of juveniles through a child-friendly legal framework, is crucial. With concerted efforts from all stakeholders, including government, society, and families, we can create a supportive environment that deters juvenile crime and fosters the holistic development of young individuals. . Lastly, While rehabilitation and deterrence must be balanced, the key to preventing crime and promoting positive youth development lies in tackling the root causes of juvenile criminality by means of Social Programmes and parents' participation.

Reference

1. https://www.legalserviceindia.com/legal/article-7163-rights-of-juvenile-in-juvenile-justice-system-in-india.html
2. https://shaheergharay.medium.com/what-makes-young-people-commit-crimes-1a36a031bea2

A STUDY ON THE DOCTRINE OF LIFTING OF CORPORATE VEIL[1]

ABSTRACT

When a business is established, it is legally recognized as a distinct entity separate from its founders, directors, shareholders, and employees. This concept gives rise to the "corporate veil," which serves as a legal barrier separating these individuals from the corporate entity itself.

The doctrine of lifting the corporate veil in India holds significant importance in corporate law, providing a mechanism to pierce the protective shield of corporate personality and hold individuals accountable for corporate actions.

Over the years, the concept of "lifting the corporate veil" has been a topic of considerable debate among courts and legal scholars. One of the primary challenges in addressing this topic is the absence of a defined set of standards or criteria, making it difficult to predict when courts might disregard the principle of separate legal entity and pierce the corporate veil. This lack of clarity creates uncertainty for businesses and individuals involved in corporate transactions or legal disputes, highlighting the need for a more comprehensive framework or guidelines to govern the application of this doctrine in practice.

This paper explores the legal framework and judicial interpretations surrounding this doctrine in the Indian context. Through an analysis of statutory provisions, landmark cases, and scholarly discourse, the paper elucidates the circumstances under which courts may lift the corporate veil, such as instances of fraud, sham transactions, or abuse of corporate form.

By examining key judgments and their implications for corporate governance, the paper highlights the delicate balance between limited liability and accountability.

[1] Nirmit Singh Chaudhry, Law Student.

INTRODUCTION

The term **"company"** lacks a precise technical definition. According to the Companies Act 2013, a company is defined as any entity formed and officially registered under the provisions outlined in the Companies Act 2013.[1] This definition signifies that for legal purposes, a company is an organization that has undergone the formal process of incorporation as stipulated by the Companies Act 2013.

Once a company has been fully incorporated, it is recognized as **a separate legal entity** distinct from its shareholders, directors, and other stakeholders. This characteristic of independent existence is among the most notable features of a company. As a separate legal entity, the company stands apart from its promoters, shareholders, directors, and members.

The separation is encapsulated by the concept of the corporate veil, which acts as a legal barrier, delineating the company from its founders and other constituents, thereby safeguarding their personal assets and liabilities from those of the company. The concept of lifting the corporate veil can be traced back to the year 1844 with the introduction of the idea of incorporating a company through registration.[2]

The foundation for the concept of incorporation of a company and limited liability was solidified by the landmark case of ***Salomon v. Salomon & Co. Ltd.,***[3] decided by the House of Lords. This case laid the groundwork for the doctrine of lifting the corporate veil, marking a significant milestone in the evolution of corporate law. In this case it was held that "company is a separate legal entity, having an identity of its own, which is independent and distinct form its members and shareholders." The case also states that once a company is incorporated, it becomes an 'artificial person' and must be treated separately from its members. The company enjoys certain rights and obligations of its own, and has the power to sue or be sued.

The principle of corporate personality not only grants companies legal recognition but also confers upon them the advantage of **perpetual succession**. According to this principle, a company is deemed to have an existence independent of its members, thereby outlasting any changes in its membership i.e. "members may come and members may go, but the company

[1] The Companies Act, 2013, s. 2(20).
[2] Thomas K. Cheng, "The Corporate Veil Doctrine Revisited: A Comparative Study of the English and the U.S.".
[3] [1896] UKHL 1.

stays on until it's wound up by due process of law." This notion illustrates the existence of a metaphorical "veil" that separates the company from its members.

Although the first case to formally recognize and endorse the concept elucidated in Solomon's case was the case of ***Kondoli Tea Co. Ltd., Re.***[4] In this case, it was established that there exists a veil of incorporation separating the company from its shareholders, who are essentially the individuals behind the company. Indeed, the principle of separate legal personality, as established earlier, was reaffirmed, and extended in the case of ***Lee v. Lee's Air Farming Ltd.***[5] In this case, the court emphasized that a company must be treated as distinct from the individuals involved in the company.

Furthermore, In the case of ***Macaura v. Northern Insurance Co. Ltd*** [6] the court emphasized that a company is capable of owning property in its own right, and any disputes regarding such property should be addressed in the company's name rather than the names of individual members.

Similarly, in ***Chinranjilal Chaudhary v. Union of India***[7], the Supreme Court held that a company possesses fundamental rights, which can be enforced in a court of law by the company itself, rather than by its shareholders. This decision further solidified the recognition of the separate legal entity principle in company law, highlighting the distinction between the company and its members

In the recent case of ***Chamundeswari v. CTO, Vellore Rural*** [8], the court made a strong statement regarding the liability of directors in relation to the debts of a company. The court held that debts owed by a company are solely recoverable from the company itself and not from any of its directors. This decision underscores the principle of limited liability for directors, reaffirming that they are not personally responsible for the debts incurred by the company.

Unfortunately, some members of a company may abuse this corporate veil to engage in fraudulent activities or shield themselves from legal accountability. In such instances, courts may disregard the corporate entity's separate legal personality and pierce through the veil to identify the actual wrongdoers. This allows for legal actions to be initiated against those

[4] (1886) ILR 13CAL43
[5] [1960] 3 All. ER 420 (PC)
[6] [1925] AC 619
[7] 1951 AIR 41
[8] [2007] 78 SCL 151 (Mad.)

responsible, holding them personally liable for their actions despite their association with the company.

Hence, In the case of ***Cotton Corporation of India Ltd. v. G.C. Odusumathd***,[9] the court emphasized that lifting the corporate veil is not acceptable in law unless expressly provided for by statute or when compelling reasons exist, such as preventing fraud or engaging in trading activities with an enemy company. This ruling underscore the importance of adhering to statutory provisions and ensuring that there are strong and justifiable reasons for disregarding the separate legal personality of a company.

When can be veil lifted?

The circumstances under which a tribunal can remove the corporate veil are commonly categorized into two main categories: **Statutory Provisions** and **Judicial Interpretations.**

1) Statutory Provisions: These are situations where specific laws or statutes expressly provide for the lifting of the corporate veil under certain circumstances.
2) Judicial Interpretations: These are instances where courts, through their interpretations of the law and application of legal principles, decide to lift the corporate veil based on case-specific circumstances.

Statutory Provisions

The Companies Act, 2013, provides instances where the benefit of limited liability cannot be availed and members of the company may be held personally liable for their actions. In such cases, the concept of the company as a distinct legal entity may not be recognized, and the corporate veil may be lifted to hold individuals accountable. These instances are as follows:

1) **Mis-statement in prospectus: Sections 34 and 35 of the Companies Act, 2013** stipulate that in cases of misrepresentation on a company's prospectus, the individuals responsible for preparing the prospectus will bear liability, rather than the company itself. They will be held accountable to anyone who has purchased or intends to purchase shares in good faith, relying on the accuracy of the information provided in the prospectus. If the company includes information in the prospectus that later proves to be inaccurate, those responsible may be liable for any resulting misrepresentation.

[9] [1992] 22 SCL 228 (Kar.).

2) **Failure to return application money:** In failure to return application money, the funds must be repaid within a specified timeframe i.e. within 15 days from the closure of the issue, as outlined in Rule 11 of the Companies (Prospectus and Allotment of Securities) Rules, 2014. If no shares have been allotted due to oversubscription, the entire amount must be refunded. However, if some shares have been allotted, the remaining balance must be refunded. Failure to repay the money may result in liability being imposed on the directors and other officers of the company.[10]

3) **Misdescription of name:** As per Section 12, if there is a misdescription of the name of the company, the directors, officers, or any other member of the company involved in such misdescription shall be held personally liable.[11]

4) **Non- failure of inspection:** Chapter XIV of the Companies Act, 2013 addresses inspection, inquiry, and investigation procedures. It mandates that every officer and director of the company must facilitate inspections and investigations into the company's affairs and any offenses committed. Failure to comply with these obligations may result in personal liability for the officers and directors involved.

5) **Fraudulent conduct:** Section 339 provides that if the company is incorporated with fraudulent intent, then the directors and promoters shall be liable to the people.

6) **Under any other statutory provision:** If under any statutory provision something needs to done the omission to fulfil certain requirements can lead to the imposition of personal liability. For instance, under the Negotiable Instruments Act, 1881, if a cheque issued in the company's name is bounced, the directors of the company may be held personally liable.

Judicial Precedents

There are circumstances where lifting the corporate veil becomes necessary to hold wrongdoers accountable for their actions. In such cases, individuals may hide behind the shield of the corporate veil to evade personal liability and exploit the benefits of limited liability and separate legal entity status. Such circumstances can be:

[10] The Companies Act, 2013, s. 39.
[11] *Hendon v. Adelman*, (1973) New Delhi LR.

1) **Protection of revenue:** There are times when individuals use company to protect their revenue. In such circumstance's liability is imposed on those individuals. In the case of ***Sir Dinshaw Maneckjee Petit, Re*** [12], Sir Dinshaw, a millionaire, sought to avoid taxes by incorporating four companies and investing his funds into these entities. He then utilized this money by treating it as a loan, thereby benefiting from tax advantages due to the investment being made in the companies.

   The court held that it was essential to look beyond the company to uncover the true nature of the transactions and identify the individual responsible for the wrongdoing. Consequently, the court justified the lifting of the corporate veil as necessary to reveal the actual parties involved and discern the true nature of the transactions.

2) **Prevention of fraud or improper conduct:** In ***Gilford Motor Company v. Horne***[13], Horne attempted to circumvent a contractual restriction by incorporating a company in his wife's name to solicit business from Gilford Motors, with whom he had a contract that prohibited him from engaging in similar business activities. Despite not holding any shares in the company, the court found that Horne was effectively behind the company, using his wife's name to conduct business that he was otherwise prohibited from. Consequently, the court deemed it necessary to lift the corporate veil to expose the true individual behind the company's actions.

   This case exemplifies how the courts may lift the corporate veil to uncover the actual parties involved and prevent individuals from evading legal obligations or contractual restrictions.

3) **Determination of enemy character:** In the case of ***Daimler Company Ltd. v. Continental Tyre and Rubber Co. (Great Britain) Ltd.,***[14] Daimler, a company incorporated in the UK, had directors who were German nationals. Continental Tyre Co., a British company, sought to avoid a contract with Daimler. The central issue revolved around whether a company could be deemed an enemy.

   The court held that to ascertain the character of the company, it was necessary to lift the corporate veil and examine the individuals behind the company. Upon lifting the veil and discovering that the directors of Daimler were German nationals, the court determined that Continental Tyre Co. could indeed avoid the contract.

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[12] AIR 1927, Bom. 371.
[13] [1933] 1 CH 935.
[14] [1916] 2 AC 307.

This case illustrates how the lifting of the corporate veil can be essential in determining the identity and intentions of a company, particularly in contractual disputes or matters involving national interests.

4) **Formation of subsidiary acts as agents:** In the case of ***Merchandise Transport limited VS. British Transport commission*** [15] the principal company, Merchandise Transport Limited applied for licence for its vehicles to British Transport Commissionbut due to some reason British Transport Commission rejected its application and hence the company named Merchandise Transport Limited could not applied in its name.

   So Merchandise Transport Limited formed a subsidiary company and applied for licence for its (Merchandise Transport Limited) vehicle. Here British Transport Commission rejected its application for licence.

   It was held that holding company is directly liable for the act of that subsidiary company which is created just to act as an agent of its parent company. In this case, Merchandise Transport Limited has formed its subsidiary company just to act as an agent.

Similarly, numerous scenarios exist where the court may consider lifting the corporate veil. These include cases involving economic offenses, instances where a company is utilized to circumvent welfare legislation, incorporation for illegal purposes, contempt of court, and the presence of sham companies. In each case, the court conducts a thorough examination to determine whether lifting the veil is warranted or not.

[15] (1962) 2 QB 173

CONCLUSION

Upon examination of the statutes and case law discussed in the paper, it becomes apparent that there is no exhaustive list of circumstances that warrant the lifting of the corporate veil. In India, the concept of lifting the corporate veil lacks a well-defined statutory framework, leaving the decision to the discretion of the courts. The scope of the rule regarding lifting the veil is broad, and courts have considerable discretion in deciding whether to apply it.

Striking the right balance is crucial, as being too lenient or too stringent can have adverse consequences for the public. While the principle of lifting the corporate veil serves as a vital safeguard against corporate misconduct, it should only be applied in exceptional cases. Furthermore, companies also enjoy rights such as the right to life and freedom under Article 21 of the Constitution. Therefore, courts must exercise caution and resist the urge to readily lift the veil.

In essence, the principle of lifting the corporate veil in India is a dynamic aspect of corporate law that requires careful and judicious application. As the legal landscape continues to evolve, courts must remain vigilant, ensuring that the corporate veil is pierced only in cases where it is absolutely essential to unveil fraudulent activities or protect the interests of justice.

BIBLIOGRAPHY

1) BARE ACTS, BOOKS & ARTICLES:

1. The Constitution of India
2. The Companies Act, 2013
3. The Companies (Prospectus and Allotment of Securities) Rules, 2014
4. Thomas K. Cheng, The Corporate Veil Doctrine Revisited: A Comparative Study of the English and the U.S. Corporate Veil Doctrines.
5. P.M Bakshi, Lifting the Corporate Veil , Journal of the Indian Law Institute.

2) WEBSITES AND E-RESOURCES:

1. www.manupatrafast.com
2. https://www.scconline.com/blog/post/2021/01/08/the-company-its-veil-and-the-arbitration-of-disputes/
3. http://essayandreportwriting.com/academics/report-writing-samples/solomon-v-solomonco-ltd-case-study-analysis/
4. http://www.legalserviceindia.com/articles/corporate.htm
5. http://www.penacclaims.com/wp-content/uploads/2021/07/Paarth-Chanchlani.pdf
6. https://www.ijarnd.com/manuscripts/v3i3/V3I3-1142.pdf 7. https://acadpubl.eu/hub/2018-120-5/1/12.pdf
8. https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/injlolw9&section=117

Quasi Contracts in Indian Law: A Comprehensive Analysis

By Sushrutha Mashaboina, 4th Year BBA LLB Student

Abstract

Quasi contracts play significant roles as efficiency tools for enacting justice when there is no contracted agreement to prevent unfair gains. Quasi contracts on the other hand are contracts which are forced by law, unlike the usual contracts that are entered voluntarily by the parties, when one party has been put in a position where they have gained at the loss of the other party without contractual consent. This paper aims at defining quasi contracts, analyzing its main components, and discussing its main uses with an emphasis on usefulness of this law governing approach in ensuring equity.

Quasi contracts are used in various situations which include emergencies where services are provided without making prior agreement, where one has paid for a product or service but made the wrong payment, or where one has been provided with some form of benefit but without intending to do so. They make sure that people who render services or who allowed the provision of benefits are fairly remunerated, thus the component of justice.

The Indian Contract Act of 1872 enshrines quasi-contractual relations into Sections 68-72 that deal with different cases starting from necessaries furnished to an incapable person up to a mistaken payment. Judgments of the courts such as State of West Bengal v. B. K. Mondal & Sons and Mahabir Kishore v. State of Madhya Pradesh show how this principle have been implemented legally to ensure that where benefits have been conferred it should be paid back even if the contract signed was not formal in nature.

In the international level, quasi contracts are recognized in both the common law and the civil law country's legal systems while modifying it to deter unfair gain. These categories of contracts advance justice where expectations under perfect contract law are lacking; gaps that quasi-contracts cover include incomplete contracts, non-legal relationships, and incidental agreements. They promote legal compliance in various fields by ensuring that compensation for conferred benefits is reasonable and that reputation and integrity are maintained in many transactions. Thus,

through handling inequitable situations when conventional, conventional contracts do not exist, quasi contracts contribute significantly to strengthening the ethical frameworks for legal systems while guaranteeing the triumph of justice.

Key words*: Quasi contracts, Unjust enrichment, Indian Contract Act, 1872, Restitution.*

Introduction

Imagine a situation where you are unfairly reaping the (unintentional) rewards of someone else's efforts, when you never asked them to help you in the first place. This might be a neighbor fortunately benefits garden, or maybe you find a considerable amount of money in your bank account by mistake. Do you have the right to these nice things even though you had no written agreement? So, what happens at this point is, the concept of quasi contracts gets triggered.

A quasi contract is not one that is true contract made by agreement. No, they are creatures of law, created by the courts to prevent unjust enrichment and fairness. In this essay we will discuss the nature, constituents, and implementation of quasi contracts, and demonstrate that despite being the overstuffed step-cousin of contractual obligations, a proper understanding of them is key to serving justice in life and law.

Understanding Quasi Contracts

A quasi contract, sometimes called an implied-in-law contract, is a legal concept used in some jurisdictions to prevent one party from being unjustly enriched at the other party's expense -even when no formal contract existed. The purpose having been to effect a restitution of equality, or to prevent an unfair advantage to exist over the other. A quasi contract, in contrast to traditional contracts does not form the explicit agreement of the parties involved. Instead, they exist by law to guarantee fairness in the absence of formal agreements.

In order to understand the significance of quasi contracts, it is important to first understand what kinds of day-to-day situations involve this type of agreement. So, let's say you are walking down the street and you see your neighbor's house is on fire. Immediately, you hire a firefighter to douse the inferno and you save your neighbor's house and possessions. There was no time to draw up a formal contract, yet you incurred expenses and provided a significant benefit. In such cases, a quasi-contract ensures you are reimbursed for the costs, reflecting the law's commitment to fairness.

Key Elements of Quasi Contracts

For a quasi-contract to be recognized, certain conditions must be met:

1. **Benefit Received**: There must have been consideration given by one party which can in the form of receipt of one or more benefits. This could be in form of excess of money or there could be services that have valuable returns.

2. **Loss Suffered**: For another party to be put at loss or gain lesser, another party has to have gained an advantage of equal proportion.

3. **Direct Connection**: The company must be able to prove that there is causality between the benefit gained and the loss suffered, that is, it should be established that the gain could not have been something that was received in the normal course of business, but results from the party that suffered the loss.

4. **Lack of Justification**: The benefit should have been given with no legal authority or contract needing to be signed. This means that the enforcement of the provisions of the legislation deprives the enriched party of any legal justification as to why it should continue holding the benefit.

5. **No Existing Contract**: In the case, there should be no contract that has been in force that can provide coverage to the given situation. If the contract is in place, that would control the circumstances, limited or no need for quasi contractual remedies.

These elements guarantee that where quasi contracts are called for, they are applied and the intended situations are those of fairness and justice. They present the concept of legal redress as the last line of defense so that a party cannot be made worse off because at the time of the transaction there was no written contract.

Legal Foundations: Sections 68-72 of the Indian Contract Act, 1872

Indian contact act deals with legal aspect of the quasi-contract under Sections 68-72 of the act. These sections are intended to cover various situations where quasi-contractual legal relations might occur to prevent injustice and maintain equity where the parties' agreement is not expressed.

Section 68: Their Lordships claimed for necessaries supplied to a person who was incapable of contracting.

This section deals with cases where necessaries are provided to people who lack the capacity to make a contract, whether it is because they are minors or suffer from mental illness. It would be possible for the supplier to claim for any amount that represents for value of the necessaries that were delivered to the buyer.

Example: A, which is a child, gets admitted in the hospital because of an accident. A, a minor, receives imperative medical care from B who is a physician in this case, and as a result of their incapability of entering into a contract because of the minor status, B may charge the expenses of the medical treatment from the parent or guardian of A under Section 68. This guarantees that B is paid for his services while on the other end, A is entitled to the care he needs since he lacks the capability to contract.

Section 69: Payment by the Person on Whose Behalf Money Has Been Paid
This section involves cases where a person makes a payment where another is legally entitled to make the payment instead. It makes it possible to recover the amount stated in the desired payment from the recipient of the amount paid.

Example: A and B are friends with each other and live in the same household, literally like next-door neighbors. Though B is the owner of the house, he receives a notice of the due property tax only to discover that he is out of town at that time. Due to the threat of a penalty, A makes a payment of B's property tax. Thus, while B is away on a business trip, A can recover the amount she incurred on behalf of B under the provision of Section 69. Because it was A who was relieved of his legal responsibility by paying, B is legally required to return the amount paid to him.

Section 70: **Principal and Agent Relationship; Obligation Resting on the Person for Whom the Non-Gratuitous Act is Done**

This section provides that where a person lawfully does any act for another or supplies anything to another without such act or supply being intended as a gift the person to whom the act is done or the thing is supplied must pay for it.

Example: Conclusively, in response to the question, A, a gardener, inadvertently begins tending to B's Garden thinking that it belongs to C, his actual employer. C, understanding that A has made a mistake, enables him to go on and helps benefit from the changed garden. As per the requirements

of Section 70 of the law, he has to pay for the gardening services that A provided to him because he benefited from A's non-gratuitous action.

Section 71: Liability OF Finders of goods

In this section, who the finder of goods is, what he or she is obliged to do and also the things that he or she is allowed to do are highlighted. If a person comes across other people's property and picks it up, they are obliged to exercise reasonable amount of care to ensure the property does not get lost or damaged. They are legally allowed to keep the goods until the owner makes a payment towards the costs of retrieving it.

Example: A come across an expensive watch in the park and picks it and keeps it in his custody. He posts the notices and attempts to locate the owner. They begin arguing, and then, after sometime B stands up and says that the watch is his. A can claim from B reasonable expenses that he incurred to protect the watch and to search Section 71 before returning it to him.

Section 72: A person becomes liable to the payee of money or to the recipient of the thing delivered by him by mistake or under coercion

Because the case is rooted in money and goods, this section covers scenarios where a customer pays for something and/or receives a product involuntarily. It provides that the recipient is under a duty to repay or in some cases to return the money/ goods to avoid the consequence of inequitable enrichment.

Example: A accidentally transfers ₹10,000 to B's bank account instead of her friend C. Upon realizing the mistake, A requests B to return the money. Under Section 72, B is obligated to return the ₹10,000 to A because he received it by mistake and retaining it would constitute unjust enrichment.

These sections collectively ensure that fairness and equity are maintained in situations where explicit agreements are absent, preventing unjust enrichment and ensuring that parties are compensated appropriately for the benefits conferred or losses incurred.

Practical Applications of Quasi Contracts

Quasi contracts come into play in various everyday situations where formal agreements might be absent:

Services Without Agreement

Assume that a contractor by a misunderstanding arrives at your house with the intention of beginning work on your house thinking that you hired him. If you fail to protest in such a case, the court may declare that there was an assumption, quasi contract that requires you to pay for the service given to you. It can also keep you from gaining the said advantage without necessarily paying the contractor.

Mistaken Payments

The general legal rule pertaining to the situation whereby you received money in your account by mistake of the bank is that, you cannot keep the money by law. There is, however, another method that in effect guarantees the restitution of the mistaken payment through a quasi-contract which aims at preventing unjust enrichment of one party at the cost of the other.

Emergency Expenses

If for example a person spends his hard-earned money when there is an urgent need to protect a property by calling a plumber to repair a leaking pipe in another's house when the owner is not at home, a quasi-contract can then make the recipient pay back the money spent. This makes sure that the person who acted in good faith is not thereby placed in a position where he loses funds as a result of his good deeds.

Case Studies

Quasi contracts in Indian law are explained under sections 68 to 72 of Indian Contract Act, 1872. These provisions set up responsibilities that stem from the fact that one party gains a benefit that the other party did not agree to and often against their will. These sections of unjust enrichment, which are the core of the jurisprudence, seek to prevent one from recovering, whether it be money or anything else, which another ought not to have. Within this legal framework, remedies are

offered in cases like supply of necessaries to minors, payments made by interested persons, benefits obtained from non-contractual actions, and money paid mistakenly or under duress.

I. State of West Bengal v. B.K. Mondal & Sons (1962)[1]

Facts: The construction works such as construction of a hospital and other structures were carried out by the petitioner B. K. Mondal & Sons through orders from the Deputy Commissioner of Nadia, West Bengal. Nonetheless, the construction firm and the state government never signed a contractual agreement in the process.

Issue: The case concerned whether a privity of contract existed between the State of West Bengal and B. K. Mondal & Sons to require the State to pay for works undertaken by the latter even though there was no executed contractual document.

Judgment: Thereafter, the Supreme Court of India also passed a judgment that the State of West Bengal has to compensate B. K. Mondal & Sons. To overturn the amounts claimed for by Müller, the court relied on the provisions of Section 70 of the Indian Contract Act, 1872 in order to hold that if a person legally does something for others or delivers something for them without intending to do so without charge, then the recipient of anything is legally bound to make adequate repayment

Thus, this case laid down the rule that one must pay for such goods and services in the absence of a contract even where the giver did not expect to be paid, should the recipient enjoy such benefits. They restated the proposition that no person should gain at the expense of another by acts of the contested kind.

II. Mahabir Kishore v. State of Madhya Pradesh (1990)[2]

[1] **State of West Bengal v. B.K. Mondal & Sons** (1962), *Indian Kanoon*, available at: https://indiankanoon.org/doc/197048/
[2] **Mahabir Kishore v. State of Madhya Pradesh (1990),** *Indian Kanoon*, available at: https://indiankanoon.org/doc/364995/

Facts: Mahabir Kishore was a distributor of tendu leaves to the State of Madhya Pradesh, in part. However, the contract under which the supply was made was held to be nugatory because of want of compliance with the requisites of the law.

Issue: The question arisen in the current case was if Mahabir Kishore was still capable of receiving payment for the tendu leaves transacted for and delivered to the state, and if the contract in question was void.

Judgment: The Supreme Court agreeing to the claim of Mahabir Kishore on the basis that he should be paid for supplied tendu leaves. The court used the principle of unjust enrichment in line with Section 70 of the Indian Contract Act of 1872. Due to receiving the benefits of the supplied goods and using them in providing public service, it became somehow reasonable and substantiated for the supplier to be paid.

This case also showed that even if a contract is wanted and declared void, fairness demands that the supplier be paid for his goods and services. It demonstrates the existence of judicial reaction to professionalism in the delivery of justice, that emphasizes fairness and equity.

III. Kedar Nath v. Gorie Mohammad (1886)[3]

Facts: The subject of the case was Kedar Nath, a contractor, who undertook some construction works with the Municipality of Howrah relying on the so called 'parol evidence'. Although, there was an inform of agreement made and sealed between the parties but no written contract was drawn by the parties.

Issue: The contention was on whether Kedar Nath could sue for payment for the construction works done for the municipality which was done without an express contract.

Judgment: The court held this decision that has favored Kedar Nath and has found that the municipality/respondent was liable for payment for the benefits received. Among those the court used several principles which are reminiscent to the principles stated in Section 70 of the Indian

[3] **Kedar Nath v. Gorie Mohammad (1886),** *Indian Kanoon*, available at: https://indiankanoon.org/doc/1428496/

Contract Act, 1872. Indeed the municipality which had accepted and benefited from the construction work was contracts bound to compensate the contractor.

In this case quasi-contractual principles were used in the interpretation of Indian law for the first time. It continued to sustain the principle that gains obtained without the shed entering an agreement must be remunerated to eradicate unjust enrichment.

Broader Implications and Comparative Analysis

Quasi Contracts in International Context

Again, the quasi contracts are not alien to Indian law; they are recognized in the legal systems of developed countries. Studying their use in various legal systems enables one to catch general tendencies of their utility and suitability in the world today.

Quasi Contracts in Common Law Countries

It is also called restitution or unjust enrichment in some of the countries following the common law system, for instance, the United States of America and the United Kingdom. The legal rules are akin to them, a quest to avoid one party receiving a gain at the expense of another party.

United States: As it has been seen the origin of the Quasi contracts in the U.S is based on equity and fairness. Although contractual duties are primarily legal, it is not uncommon for the courts to allow limited legal relations that resemble quasi-contractual roles in a bid to prevent the injustice of one party being enriched at the expense of the other.

United Kingdom: As for the unjust enrichment, the UK law regulates the cases where the quasi-contract causes remedies. Decided in the *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd (1943)*[4] the leading case stated that a party could recover any amount of money given under a contract that has become illegal failing which the party will be unjustly enriched.

Quasi Contracts in Civil Law Countries

[4] **Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd.** (2024, June 9). *Wikipedia*. https://en.wikipedia.org/wiki/Fibrosa_Spolka_Akcyjna_v_Fairbairn_Lawson_Combe_Barbour_Ltd

It should be also mentioned that in civil law countries the above-mentioned conception is included in the system of obligations. For instance, in German law, it is covered under the Civil Code that there are special sections dealing with unjust enrichment implying that whoever receives certain benefits without any legal basis must compensate the provider.

Comparative Analysis: India vs. United States

Comparing the application of quasi contracts in India and the United States reveals both similarities and differences:

Similarities:

1. Prevention of Unjust Enrichment: Cognate with this, both jurisdictions uphold the antimerchanism of unjust enrichment and seeking to do justice, where no contractual interests are at play.

2. Legal Remedies: Mandatory orders in two-country legal systems for the payment for conferred benefits corroborates the implication of justice and fairness in both the domains.

Differences:

1. Legal Terminology: Even though Indian law identifies such obligatory relationships as quasi contracts, U. S. law may designate them as restitution or equally unjust enrichment.

2. Statutory Framework: In India, where quasi contracts fall under the ambit of law, they are stated outright in the Indian Contract Act, 1872. In contrast, in the United States the concept is based on cases and rules of common law and equitable maxims.

The Importance of Quasi Contracts

The duties imposed by quasi contracts are very useful in the legal structure because they exist where the common law of contracts is insufficient. Unlike normal contracts that are drawn based on the agreement of the involved parties, they are created by the law and are meant to prevent unfair gain. For this reason, quasi contracts could not be considered anything but necessary where

ethicality and fairness have to be ensured in certain circumstances. Here's a more detailed exploration of their importance:

Bridging Gaps in Traditional Contract Law

Specifically, conventional contracts mean that the parties agreed in one way or another: this means that many actualities do not fall into any contract legal system. Quasi contracts fill this void through allowing a legal solution to problems that typically would fall under a contractual framework except that a formal contract does not exist. For instance, an unconscious patient who is admitted to the Emergency Ward operated on by a passing doctor cannot agree to do this and yet the law has to compensate the doctor for his services. This eliminates a situation whereby the doctor is placed at a disadvantage for being charitable in his work.

Upholding Principles of Justice and Equity

Quasi contracts ensure that the parties do not gain at the expense of the other which exemplifies equity. It is indispensable in cases when there is no written and signed contract between the parties yet justice requires that the injured party should be compensated. For instance, an individual withdraws a large amount of money in their account because of a banking mistake, and the money the individual did not rightfully earn belongs to someone else; therefore, they must return it. This avoids cases of persons becoming unjustly enriched and allows the rightful owner to recover the money.

Ethical Considerations

The ethical aspect of quasi contracts defines legal remedies in concordance with ethics by noting that all beneficial relations are not necessarily contractually formulated. Hence, through equalization, quasi contracts establish justice as the foundation for legal policies' ethical undertakings. Further imagine the case where a neighbor corrects another's house, thinking that it belongs to them. In case the property owner realizes the problem, the latter gets the advantage of the improvement. In an ethical standpoint, the property owner ought to pay the neighbor for his endeavors and costs, and quasi contracts ensure this ethically mandatory payment is legal.

Enhancing Legal Fairness

Quasi contracts help provide justice to the legal system because people who have been benefited or benefited a business lose in the shift. They reduce the chances whereby one party is left to enjoy the benefits of a particular interaction from a business transaction without responsibilities towards the other party due to lack of a contract. In business scenario, which involves a situation when a company mistakenly supplies products to another client, and the receiving client, does not inform the supplying company that he mistakenly received these products, but uses them, then a quasi-contract will demand payment from the receiving client. This avoids taking undue advantage for the firm's mistake and upholds fairness in commerce.

Promoting Trust and Good Faith

Through quasi contracts, the legal system puts pressure on the parties towards protecting their bargain and behaving in a way to uphold the notion of pacta sunt servanda. People should be willing to conduct business with high degrees of ethical standards as the law will protect the payments for services and other benefits that may have been tendered, despite lack of a legal contract. For example, a person who finds an object and has a legal obligation to return the object to its owner in case he/ she makes reasonable efforts to do so falls under quasi contract. Still, the owner is obliged to pay back the finder a reasonable amount for the costs they have made and the efforts they invested. Selective incentive promotes candor and ethical behaviors as people are motivated to act in the best interest of the undertaking.

Adaptability to Various Scenarios

In quasi contracts, there are general expressions that can be applied to a myriad of situations and this makes the remedy highly relevant in the legal system. In whatever circumstances, whether it be in the area of relationships, emergencies, or business contracts, quasi contracts present one of the most useful and flexible methods which are capable of being administered in the relevant areas of fairness as well as equity. Sometimes, in a hurricane, for example, a man may have to pick another man's property and repair it even if the two have not come to an agreement on who is a stranger. Quasi contracts guarantee that the individual who undertook such preparatory measures is rewarded for the action accomplished and associated cost, as justice prevails.

Conclusion

In conclusion, it is obvious that quasi contracts are firmly rooted in the principles of justice and equity in our legal framework, so no individual can derive advantage from the other through unlawful enrichment in situations where actual legal contracts do not exist. In contract law these legal constructs are very important because they fill the gap where usual contract law cannot reach Before the Uniform Commercial Code was adopted in most American states, the historical legal doctrines at work in the case were ‘avoiding unjust enrichment’, ensuring ‘basic bilateral dealings of trust and good faith’.

Understood at their elemental and composite levels, the roles of quasi contracts are becoming clear in the pursuit of justice to legal transactions. Their role is also to offer a form of protection to the parties where one cannot be worse off due to lack of a contract even when engaging in a transaction. Regardless of whether the payment is being made to compensate for necessaries given to minors or to compensate for benefits from non-gratuitous performances, the quasi contract establishes justice in legal decisions and guarantees that ethical standards apply.

Additionally, the emergence of quasi contracts in the day-to-day affairs and legal issues contributes to its practicality and importance in legal systems. They rise up where contract law may not be sufficient in providing remedies, guaranteeing that the parties will receive what they bargained for and pay commensurate to such value.

Thus, they occupy a place of some importance not only under Indian law but under the laws of almost every country in the world. One can put such function as the prevention of unjust enrichment typical for the common law states, such as the United States, beside with the function of integrating the given quasi contract into the body of obligations all together with the civil law states, such as Germany.

Ultimately, quasi contracts contribute effectively to improving the legal system by making it fair, unethical practices by members of the society do not prevail, and justice is served as per the law, despite lack of contractual agreements. Their generic applicability and potential to balance disequilibria are important and retain consistent availability as a staple of legal redress to underscore the moral principles of the legal provision.

ARTICLE 20 – RIGHTS OF AN ACCUSED [1]

ABSTRACT

Article 20[2] of the Indian Constitution being the crux of criminal and procedural law in India protects citizens from unnecessary practices of the legislature, executive and the judiciary as well. It imposes certain constitutional limitations upon the power of the state, which it otherwise possesses. The legislature is prohibited from passing laws for offences committed retrospectively, the judiciary is not allowed to charge a person twice for the same offence, executive is kept in check so that they don't harass the accused and force him to give information against himself. This paper discusses the scope of Ex-Post facto laws in India and also includes the current scenario of the Article and its clauses in India. Further in this research there is discussion on the fifth-amendment of the American constitution which contains double jeopardy. By mentioning the fifth amendment of the American constitution the main idea is to compare the provisions between the Indian and the American constitutions in regard to rights of an accused i.e., Article 20[3] of the Indian constitution. It also highlights the relevance of self-incrimination clause and is wavering of the same possible; it also includes the nexus between Article 20(3)[4] and Right to Remain Silent.

Introduction

India being a population of 1.4 billion consists of innumerable criminally accused persons. There had to be some fundamental rights to protect the accused which are enshrined in Article 20[5] of The Indian Constitution. "While in Government of India act 1935[6], there was no prohibition in this act or in any law prior to the commencement of this constitution against ex post facto laws, so the legislature was competent enough to pass such laws. The courts, however, used to lean against a retrospective interpretation."[7] These are few of the basic principles of the criminal law.

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[1] Kunal Sattavan, Law Student, Gujarat National Law University
[2] The Constitution of India, 1950.
[3] The Constitution of India, 1950.
[4] The Constitution of India, art 20 (3).
[5] The Constitution of India, 1950.
[6] Government of India Act, 1935.
[7] Basu DD, Subramani SS and Ambwani S, Commentary on the Constitution of India (LexisNexis 2017) 4498.

"*Protection in respect of conviction for offences.—*

(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself."[8]

According to Article 20 (1)[9], no one may be tried or convicted under laws that were not in effect when the accused committed the crime. This clause eliminates the possibility of retroactive application of criminal law. By forbidding the retroactive application of a law with a criminal element, this clause, to put it simply, restricts the legislative power of the legislation. Yet, only the process of convicting and sentencing is outlawed by this article; the trial itself is not. Hence, a person accused according to a particular method can't be questioned under this article and doctrine of Ex post facto law.

"*Nemo debet bis vexari pro eadem causa*" which translates to "no person should be twice vexed for the same offence". For the application of Article 20(2)[10], certain conditions are to be met:-

1. It is exclusively concerned with judicial prosecution and proceedings, and the accused or person in question must have previously been tried by the court.
2. The case should only be tried by a competent court that has the jurisdiction over it.
3. The accused should either be convicted or acquitted, any other situation like inquiry is not covered under the ambit of Section 300(1)[11]of CrPC.
4. The previous conviction or acquittal must be in force, should not be under re-trial or appeal.
5. In the subsequent trial, the defendant must be prosecuted for the same offence and based on the same facts for any additional offences that fall under Sectiom221(1)[12] or (2)[13] of the CPC.

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[8] The Constitution of India, art 20.
[9] The Constitution of India, art 20 (2).
[10] The Constitution of India, art 20 (2).
[11] The Code of Criminal Procedure, sec 300 (1).
[12] Code of Civil Procedure, sec 221 (1).

"The 'Prohibition against Self-incrimination' describes that no one could be forced to utter and provide such information or evidence orally or by documentary means which could be used against himself during the further trial procedure."[14]

The Supreme Court in the Case of *M.P. Sharma v. Satish Chandra*[15] broadened the scope of Article 20(3), enumerating the following essentials:

1. The right pertains only to the 'accused' of an offence.
2. Provides immunity from compulsion to be a witness.
3. Such compulsion also provides protection from giving evidence against himself.

This right was also given the umbrella of Right to Life.[16] When it was held that, *"Article 21 of the Constitution of India requires a fair, just and equitable procedure to be followed in criminal cases".*[17]

The Constitution (44th Amendment) Act, 1978[18], accorded a shield, i.e. not even in the case of emergencies this provision can be suspended.

Findings and Discussions

- ### Article 20(1) Ex-Post Facto Law

  It is one that strengthens the penalty for such behaviour or applies penalties retroactively, that is, to offences that have already been committed. The introduction of such a law is prohibited by Article 20's first clause.

  ### Scope of Article 20(1)

  The legislature may enact laws that are both prospective and retroactive, however retroactive legislation cannot be used to criminal proceedings. Because of this, only criminal laws are covered by this restriction; neither civil nor tax laws are. In other words, there may have been a tax or civil liability in the past.

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[13] Code of Civil Procedure, sec 221 (2).
[14] https://blog.ipleaders.in/article-20/
[15] M.P. Sharma v. Satish Chandra, AIR 1954 SC 300.
[16] The Constitution of India, art 20.
[17] Maneka Gandhi v. Union of India, 1978 (1) SCC 248.
[18] The Constitution (Forty-fourth Amendment) Act, 1978, No. 88, Bills of Parliament, 1978.

This section only forbids conviction or punishment under an ex-post facto criminal law; it does not forbid the trial itself.

Preventative Detention: Preventive detention or requesting security from a person does not qualify for the immunity provided by this clause.

Relevant Supreme Court ruling: In the 1964 case of *Ratanlal v. State of Punjab*[19], the Supreme Court ruled that retroactive law is applicable if it benefits the accused.

After the horrifying gang-rape occurrence in Delhi, the public supported heavier penalties for all six defendants in the Nirbhaya gang-rape case. But, because one of them was a kid, any change to the juvenile age would not improve the situation because such an adjustment cannot be made retroactively.

In the case of *M.P. Sharma v. Satish Chandra*[20], it was determined that regardless of whether the individual in question is an accused or simply a suspect, the protection provided by Article 20(3)[21] of the Indian Constitution will be implemented. In the aforementioned situation, it has been stated that Article 20(3)[22] will not be applicable if the individual in question chooses to voluntarily divulge information. This clause does not provide witnesses with the protection they are entitled to under Article 20(3)[23] of the Indian Constitution, which is found in Section 132 of the Indian Evidence Act of 1872[24].

Current Scenario

Under Extraordinary Conditions, Ex Post Facto Environmental Clearance May Be Granted: Supreme Court

The Supreme Court reaffirmed that it is not illegal to provide ex post facto environmental clearance in special circumstances. The bench of Justices Indira Banerjee and JK

[19] Rattan Lal vs State Of Punjab, [1965] AIR 444.
[20] M.P. Sharma v. Satish Chandra, AIR [1954] SC 300.
[21] The Constitution of India, art 20 (3).
[22] The Constitution of India, art 20 (3).
[23] The Constitution of India, art 20 (3).
[24] Indian Evidence Act, sec 132.

Maheshwari stated that ex post facto clearances and/or approvals cannot be denied with petty rigidity, regardless of the effects of ceasing activities.

In this instance, the National Green Tribunal Act of 2010 had rejected the request to close a facility that treats common biomedical waste on the grounds that it had not complied with the Environmental Impact Assessment Notification of 2006. It was noted that the Bio-Medical Waste Treatment Facility could not be shut down due to a lack of prior environmental clearance when it was operating with the necessary consent to operate.

- **Double Jeopardy**

The doctrine of double jeopardy states that "no individual may be prosecuted and punished twice for the same offence in future procedures," and it has its roots in American jurisprudence of punishment.

Deals only with Judicial Punishments

In *Venkataraman v. Union of India*[25], the Supreme Court of India determined that this Article only addresses judicial sanctions and ensures that no one is brought before the courts twice.

Departmental Proceedings

The case of *Maqbool Hussain v. State of Bombay*[26], in which the defendant was accused of owning some gold in violation of the lex loci at the time and having the gold seized by the customs department, resulted in the most significant landmark decision. Additionally, the issue of whether this constitutes double jeopardy was raised when the defendant was later charged in a criminal court. But the Supreme Court noted that the departmental processes, or the Customs Authority in this case, did not constitute a trial by a judicial body, therefore the criminal court proceedings are not blocked in this case and can continue. Briefly put, departmental proceedings are apart from any court or tribunal trial.

Distinct Facts

[25] S.A. Venkataraman vs The Union Of India And Another, [1954] AIR 375.
[26] Maqbool Hussain vs The State Of Bombay. Jagjit, [1953] AIR 325.

Nonetheless, if the facts are distinguishable in later procedures, the prosecution might take place. The same was determined by the Supreme Court of India in the case *of A.A. Mulla v. State of Maharashtra*[27], where it was noted that Article 20 (2)[28] would not be attracted in situations where the facts are different in a future offence or penalty. The protection from prosecution a second time is also embodied in Section 300 (1)[29] of the Criminal Procedure Code, which states that a person who has been found guilty or prosecuted by a competent court for a crime is not subject to prosecution until the original conviction or acquittal is still in effect. Thus, it is prohibited to be convicted of the same offence and set of facts a second time. This clause establishes guidelines for when a second trial is acceptable and when it is not.

Issue Estoppel - Exception

The Principle of Issue Estoppel constitutes an exception to this rule. If the fact-finding turns out to be in the accused's favour, the aforementioned exemption allows for estoppel against the present prosecution, but it does not prevent later proceedings from being brought for a different offence. But, in order to use this defence, both the parties and the relevant facts must be the same. The leading instance in this regard is *Ravinder Singh v. Sukhbir Singh.*[30]

Double Jeopardy in the USA (Fifth Amendment)

The Fifth Amendment of the United States Constitution states that:
No one may be tried for a capital offence or other infamous crime without a grand jury's presentment or indictment, with the exception of cases involving members of the armed forces, the navy, or the militia who are serving in actual combat or other times of public danger; no one may be twice put in danger of losing their life or limb for the same offence; no one may be forced to testify against themselves in a criminal case; and no one may be deprived of their life, liberty, or property

A similar ban on double jeopardy has been incorporated into the constitutions of other states. The Fifth Amendment's Equal Protection Clause, which the Supreme Court has

[27] A.A. Mulla And Others vs State Of Maharashtra And Anr, [1996].
[28] The Constitution of India, art 20 (2).
[29] The Code of Criminal Procedure, sec 300 (1).
[30] Ravinder Singh vs Sukhbir Singh & Ors, [2013].

held also extends to the states, still binds all people, even those who have not done so. "The double jeopardy restriction of the Fifth Amendment, a fundamental concept in our constitutional heritage, is enforceable against the States through the Fourteenth Amendment," the Supreme Court ruled in *Benton v. Maryland(1969)*.[31]
For those of us who are not heavily involved in the legal profession, the concept is somewhat more limited in the legal sense than this straightforward explanation alone might suggest.

For instance, even if you are found guilty of auto theft, you may still face charges for stealing a different vehicle in the future. This does not preclude you from facing legal action if you steal the same vehicle again in the future. The fact that you broke the law against car theft doesn't exclude you from being charged with breaking other laws concurrently as a result of the same acts.

But, once you have been cleared or found guilty of breaking the law against car theft in a particular incident, the same government will not bring charges against you again (or penalise you if found guilty). One of the restrictions that courts have set that restricts our Constitutional protection from "twice being put in risk of life or limb" is the concept of attachment.

The initial point in a legal action at which courts formally recognise the accused has been placed in danger of losing his or her life or limb, as required by the Fifth Amendment
When a police officer assaults us and violently presses us to the ground with a boot on our back, tases us, aims a gun at us or shoots us, handcuffs us and locks us up, etc., we might think that our lives and safety are in danger. But none of those factors are seen by the American legal system as putting us in danger in terms of the Fifth Amendment's ban on double jeopardy.

The courts say that neither being charged nor indicted puts us in such danger. Being kept in pre-trial jail without bond does not help either. Both being called to pre-trial proceedings and even choosing a jury do not, so to speak, "start the clock" on jeopardy.

[31] Benton v. Maryland,[1969] 395 U.S. 784.

Depending on the path a matter takes through the legal system—a jury trial, a bench trial, a plea agreement, or a juvenile proceeding—jeopardy attaches at different points. The rule in a jury trial is that when the trial jury is sworn in, jeopardy attaches.

The United States Supreme Court rejected a second prosecution of a defendant whose initial trial terminated just after the jury was sworn in Downum v. United States (1963).[32] Even though both parties said that they were prepared to move on at the beginning of the trial, the prosecutor revealed that a crucial witness was absent after the jury was chosen and sworn in. The defendant claimed that this constituted double jeopardy when the matter was reopened two days after the court released the jury. The High Court concurred, in addition, the Court determined in *Crist v. Bretz (1978*)[33] that "the federal rule that jeopardy attaches when the jury is empanelled and sworn is a fundamental aspect of the constitutional safeguard against double jeopardy."

A jury trial begins and jeopardy attaches when the jury is sworn, the court stated in *Martinez v. Illinois* (2014)[34], adding that "The Illinois Supreme Court's error was important, for it inserted complexity into what we have repeatedly recognised as a bright-line rule."

This rule is applicable to jury trials in all U.S. courts, not just federal courts. There are certain murky issues in jurisprudence about the attachment of peril as legal theory and practise develop. For instance, some courts have ruled that even though a jury was sworn, jeopardy did not attach if a person was tried in a court that did not have jurisdiction over them. Jeopardy never existed, so the defendant would not necessarily be precluded from being tried again in a court with the appropriate jurisdiction. Some courts may also rule that jeopardy did not exist in a case when an acquittal was obtained by deception or cooperation. These kinds of circumstances are a rare exception to the rule.

- **The Importance of the Self Incrimination Clause and What if it was never there:**

[32] Downum v. United States, [1963] 372 U.S. 734.
[33] Crist v. Bretz, [1978]437 U.S. 28.
[34] Martinez v. Illinois, 134 S. Ct. 2070 [2014]."

The case *of Saunders v. United Kingdom*[35] is where the basic justification for this rule was most persuasively made. In this case, it was held that in order to prevent a miscarriage of justice, the accused must be protected against the inappropriate coercion of the relevant authorities. One aspect that might serve as the foundation for this privilege is ethics. Due to the need to prevent the accused from being subjected to torture and brutality by the investigators, it would be easier for the investigating agency to simply arrest anyone on the word of the victim and subject them to coercion, threats, inducement, or deception in order to obtain enough evidence to prove their case. Even if these techniques are effective, it is important to remember that they violate the fundamental human rights to life, integrity, and limb. In order to establish checks and balances on the actions of the police authority when questioning the accused, this right is required. On the other hand, it's also important to defend an innocent individual who might lie. The second purpose of this capability can be reliability. A person's mental state may be impacted if they are repeatedly pressured to testify against themselves. Thereby influencing the validity of the testimony, assertions, and evidence obtained in this manner based on such information, therefore deceives the legal system. These techniques could lead to mistakes in judgement and delays. "The absence of the privilege against self-incrimination would encourage those in charge of law enforcement to sit comfortably in the shade rubbing red pepper into the devil's eye rather than go about in the sun looking for evidence", as it was rightly observed in the case of *State of Bombay v. Kathi Kalu Ohgad.*[36]

- **Section 161 and Right to Remain Silent:**

The process that must be followed by a police officer while examining a person is laid forth in Section 161 clause 2 – "*Examination of witnesses by police – (2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture*"[37]. Although the judiciary has restricted the definition of "person" as used in the abovementioned section, this provision initially appears to be applicable to everyone who may be questioned by the police authorities. In

[35] Saunders v. United Kingdom, 23 EHRR 313 [1997].
[36] State of Bombay v. Kathi Kalu Ohgad, AIR [1961] SC 1808.
[37] The Code of Criminal Procedure, sec 161 (2).

Pakala Narayan Swami v. Emperor[38], the Privy Council determined that "persons" included anyone who might later become a suspect when reading Section 161[39] of the Code. It is now settled that the immunity against self-incrimination under art.20(3) is available only to a person who is 'accused' of an offence in the proceedings where he is called upon to testify and not to a mere witness in the proceeding.[40] Protection under s. 161(2) of CRPC is wider than that under art.21(3). Whereas under s.161(2) read with s.161(1) CRPC suspects and witnesses are also protected, witnesses are subject to obligation under s.132 CRPC to answer question in suit or proceeding. But protection afforded to a witness is narrower compared to protection afforded to accused during trial under s.313(3) and s.315(1) proviso (b) of CRPC.[41]

The Right to Silence is included in the scope of Clause 161(2)[42]. The person answering questions must be truthful in accordance with this clause, but they also have the option of not responding at all and being silent. The law in no way permits using coercion to coerce someone into making a statement. Consequently, Section 161's protection of the right to self-incrimination when read in conjunction with Article 20(3)[43] includes both witnesses and suspects.

"....throughout the web of English Criminal Law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt." [44]

Common law holds that a person has the right to remain silent. It implies that a court of law should not be persuaded to find a suspect or person suspected of committing an offence guilty of it solely because they declined to answer the questions posed by the court or police. In accordance with the "beyond reasonable doubt" principle, no accused person may be harassed or have their rights taken away unless and until their guilt has been established beyond a reasonable doubt in a court of law. The Hon'ble Supreme Court ruled in *D. K. Basu v. State of West Bengal*[45] that a person should be explicitly told

[38] Pakala Narayan Swami v. Emperor, AIR [1939] PC 47.
[39] The Code Of Criminal Procedure, sec 161.
[40] Basu DD, Subramani SS and Ambwani S, Commentary on the Constitution of India (LexisNexis 2017) 4572.
[41] Basu DD, Subramani SS and Ambwani S, Commentary on the Constitution of India (LexisNexis 2017) 4572.
[42] The Code Of Criminal Procedure, sec 161 (2).
[43] The Constitution of India, art 20 (3).
[44] Woolmington v. DPP, [1935] AC 462.
[45] D. K. Basu v. State of West Bengal, [1997] (1) SCC 416.

of his right to keep silent under Article 20(3)[46] as soon as they are arrested since they have a legal right to be aware of such rights. Hence, if someone chooses to keep silent after being arrested, for example, they cannot be held responsible because it is not an offence but rather their legal right. He has the option to talk or not thanks to this right. In accordance with Article 19(1)[47] of the Constitution, the right to silence may also be protected by the right to free speech and expression.

- **Wavering of Article 20(3):**

  As stated in Article 20(3)[48], the right against self-incrimination is a fundamental right, and it is generally accepted that no one can surrender the fundamental rights. The facts and circumstances of each case determine whether or not the clause is applicable. The prerequisites or requirements for invoking this protection include "compulsion" or "external force," however if an accused deliberately refuses to exercise an accessible right and freely makes a statement contradicting himself, it might be said that the right under Article 20(3)[49] is renounced. For the right to be waived of the accused must know that a right like this exists in his favour like afore mentioned. Additionally, it was determined in the case of Kartar Singh v. State of Punjab[50] that the responsible police officer must inform the accused of his rights. So, a person accused of a crime can only be judged to have waived their right to self-incrimination if they do so knowingly and voluntarily, free from any kind of coercion.

- **Exploitation of common/unaware man through article 20:**

  In India, an ordinary, mildly educated man is unaware of most of his constitutional rights, including the right against self-incrimination. This ignorance of rights is due to the lack of foundational legal education, which should be provided by the government and private schools. In turn, citizens are deprived of their fundamental rights without them knowing. Article 20(3)[51] clearly states that no one shall be compelled to be a witness against themselves or utter or give information that might cause them to be convicted. Still, in evidence and testimony collection in criminal procedures, the accused

[46] The Constitution of India, art 20 (3).
[47] The Constitution of India, art 19 (1).
[48] The Constitution of India, art 20 (3).
[49] The Constitution of India, art 20 (3).
[50] Kartar Singh vs State Of Punjab, [1994] SCC (3) 569.
[51] The Constitution of India, art 20 (3).

and sometimes the witnesses are unduly influenced by the officers in charge to provide statements against themselves. The supreme court states it in the case of *D. K. Basu v. State of West Bengal*[52].

When the person is arrested or brought in for investigation, he should be informed that he has the right to remain silent, which is in his favour, and he can refuse to answer any questions that might harm his case. Still, the police or investigating officers rarely inform the accused about this right, which is provided by the sovereign, and in turn, by the show of force and authority, collect non-consensual statements against the accused in writing and get their signatures on it, which is then portrayed in front of the judge in the trial. These kinds of instances happen with people unaware of their rights because they want to speedily finish their task as an investigating officer, not caring about the gross miscarriage of justice The Right, as it is stated in Article 20(3)[53], purports to protect the interests of the individual who is charged with a crime, but as a matter of fundamental principle, it also protects the interests of the State in order to uphold law and order in society.

Conclusions and Suggestions

Overall, it can be said that Article 20[54] was created purely for the purpose of protecting people from the excess of the legislative, executive, and judicial branches, highlighting the significance of the theory known as the division of powers. Such safeguards are available to both Indians and foreigners, and are therefore regarded as the foundation of the Indian Constitution since they guarantee fundamental human rights to those who are accused and found guilty.

Finally, it is the responsibility of the State to guarantee that the rights of its inhabitants are upheld and that no one will be subjected to an unjust trial. Nonetheless, there have been other cases where the State has completely failed as a result of conflicts between the interests of society at various levels. A system of accountability must be established in order to prevent such conflicts. The “Right to Know” of the public is one strategy for protecting fundamental

[52] Shri D.K. Basu,Ashok K. Johri vs State Of West Bengal,State Of U.P, [1996].
[53] The Constitution of India, art 20 (3).
[54] The Constitution of India, art 20.

rights. One can only make a claim if they are aware of it. Maintaining standards for quality and security is necessary.

If we bothered to analyse every clause in Article 20[55] of the Indian Constitution, we would draw the intriguing conclusion that Articles 20(1)[56], 20(2)[57], and 20(3)[58] safeguard guilty individuals from excessive legislative, judicial, and executive measures, respectively.
Also, these safeguards are available to everyone, including Indians and foreigners, and they serve as the cornerstone of the Indian Constitution by guaranteeing fundamental human rights to those who have been found guilty or suspected of a crime.

It is special and crucial for upholding democratic norms because it is accessible even when an emergency is declared pursuant to Article 352[59] of the Indian Constitution.

Procedural norms should be strict and the executive should keep a tap on the officers who violate these rights of the citizens, it should be made a common practice to inform the accused about the rights when taken in custody. Awareness about the lesser known fundamental rights like the aforementioned should be promoted by the state, so that the violation of the same can be minimalized.

[55] The Constitution of India, art 20.
[56] The Constitution of India, art 20 (1).
[57] The Constitution of India, art 20 (2).
[58] The Constitution of India, art 20 (3).
[59] The Constitution of India, art 352.

Settlement of International Dispute: Pacific Means[1]

Abstract

The world society that is at present is knitted together with the strings of economic, political and cultural relationships leading mostly to conflicts; if unchecked may undermine world peace. Resolution of international conflicts by pacific ways, inscribed in the UN Charter, is indispensable for keeping the peace between states In this paper, we will take a look at the world of different peaceful dispute resolution methods that exist – which includes negotiation, mediation, arbitration and judicial settlement. Those are the channels that go through diplomatic relations, respect for states' sovereignty and compliance with international Law. Both illustrative historical and contemporary examples support the effectiveness of these methods in promoting endemic global earth unity. It is a climate in which the express investment of institutions such as the International Court of Justice raises hope that conflicts can ultimately be resolved without violence. Understanding these mechanisms underscores the importance of diplomacy and law in quelling inter-state rivalries, which in turn advances a new global order conducive to peace.

Introduction

The contemporary global society consists of countries which are braided together through various economic, political, and cultural relations, and, consequently, conflicts are unavoidable. These could be attributed to territorial disputes, trade disputes, which if not well addressed, could lead to serious conflicts that would destabilize world peace. Therefore, maintaining international peace is of utmost essence in the pursuit of the settlement of any given dispute. This refers to a number of procedures that the different countries and nations use to ensure that they settle their misunderstandings without having to stoop to the level of using force.

Pacific settlement have a number of processes, including negotiation, mediation, arbitration, and judicial settlement, which all entail some strengths and are appropriate to varying circumstances. These methods are based on the system of diplomatic relations, respect for sovereign states, and the commitment to the principles of international law. In the UN Charter, specifically in Chapter VI, there is an emphasis on the emphasis of these peaceful methods and recourse to the use of dialogue and legal processes over the use of force or threats.

[1] Mahi Dhakad, Law Student, Bharati Vidyapeeth New Law College, Pune

Evidence of pacific means coalition is evident through historical and present day incidences thus proving effective means of solving disputes. From early twentieth century boundary dispute arbitration processes to contemporary worldwide mediator involvement in hotspots, these approaches are crucial in promoting worldwide unity . Also, the increasing mystery of the institutions like the International Court of Justice as well as the different regional organizations are also a way of affirming the resolve to solve conflicts through non-violence.

In an endeavour to understand the various pacific means that exist for the settlement of international disputes, this introduction is going to focus at the processes, success rates, and the function that these means play in the ability to foster world order[2]. This finally brings us to the central point of this paper – the basic understanding of how these mechanisms work helps us appreciate the role of diplomacy and law in managing rivalry, which is always an inherent feature of interstate relations.

Types of Settlement of International Disputes

Amicable means: It is also known as Pacific means or peaceful means. Article 2(3) of the Union Nations Charter says that all members shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered. Article 33 of the same provides means for peaceful settlement of dispute[3].

Compulsive means: These are the non-peaceful means of settling a dispute. This method can also involve force and pressure to resolve issues raised. Charter VII of the UN charter says that the state shall maintain peace and can take any actions if there is a threat to peace, breach of peace or act of aggression[4].

Negotiation

A method of resolving a dispute by which the parties submit their differences to be resolved through direct negotiation and compromise, without recourse to any third-party adjudication. In fact, this informal dispute resolution method is one of the most used for amicable (voluntarily) settlement of disputes.

In the year 1974, an issue arised with respect to Katchatheevu island which is located between India and Sri Lanka. The issue was regarding the territorial claim of the island it was one of the crucial islands as fishermen used the island to segregate fish and dry out fishing nets. The then-prime minister

[2] Ltu, Di Giurisprudenza D and Giuridiche AMin 12-S, "International and EU Perspectives on Mediation: Mediation as a Tool for the Pacific Settlement of International Disputes" (2016) <https://iris.unige.it/handle/11567/956007>
[3] "UN Charter | United Nations" (United Nations) <https://www.un.org/en/about-us/un-charter>
[4] Sunday PN, "Settlements of International Disputes - GRIN" <https://www.grin.com/document/233214?lang=fr>

of India (Indira Gandhi) and the President of Sri Lanka (Srimavo Bandaranaike) came to a maritime agreement via negotiation and the island became part of Sri Lanka.

Another instance was in the year 1976 when India and Pakistan signed the Simla agreement and agreed to settle their differences by peaceful means of bilateral negotiation.

Enquiry

The process of ascertaining the facts of a dispute between (often) states by an impartial commission. Any reasonable method that helps in delivering an impartial assessment of the disputed facts and limits misunderstanding, while also lay a ground for further negotiation or any other kind of dispute resolution would lead to a peaceful settlement through mediation.

In 1904, a Russian Baltic fleet encountered British fishing trawlers operating in the area. The Russians opened fire at the fishing boat mistaking it to be a Japanese torpedo boat (at the time of the Russian-Japanese war) resulting in the death of British fishermen and the sinking of several vessels, thus an enquiry was done for the same.

Mediation

The process consists of mediation, in which a neutral third party, i.e. mediator, assists the discordant parties in communicating and negotiating with ultimate goal of reaching an agreeable resolution that is voluntary on all ends.

In 1966, the Tashkent agreement was signed between India and Pakistan on January 10 in Tashkent, the capital of Uzbekistan. In this, Soviet Premier Aleksey Kosygin was the mediator. This agreement included topics like ceasefire, return of territories, peaceful resolution, restoration of diplomatic relations, etc.

Good Office

It is simply the council of a third person which mediates and intervenes to bring disputing sections or parties towards an amicable settlement. In contrast to mediation, whereby the third party is much more involved in helping navigate the process of negotiation, good offices emphasize creating a channel for communication and interlocution without wading directly into procedural talks related to an identified dispute.

In 1906, the US president was the good office in resolving the Russian-Japanese War.

In 1965, the USSR was the good office in resolving the India-Pakistan Dispute.

In the 1970s, France was the good office in the US-North Vietnamese negotiation.

Conciliation

Conciliation is a form of pacific settlement in IDR, whereby an unbiased third party helps disputing parties arrive at terms and principles upon which their conduct would be or can be performed. On the other hand, they not only work towards reconciling two parties but also suggest possible solutions. Conciliation: A combination of mediation and arbitration, conciliation provides a more formal yet flexible method for resolving disputes.

The Iceland and Norway dispute is one of the best examples of Conciliation. The dispute was about maritime boundaries being overlapped which impacted the fishermen of the countries. Both countries established a commission which then created a joint development zone.

Arbitration

It involves settling disputes through a binding decision from an independent 3rd party or panel of arbitrators. Arbitration is frequently utilized since it delivers a final and enforceable outcome that may also be completely confidential whilst offering the parties more input into who will be arbitrating their dispute by virtue of their experience.

In the year 1871, the US and Great Britain solved differences between them during the time of the American Civil War. It was related to maritime grievances. Both parties signed the Treaty of Washington that sought to establish 4 different arbitrations to deal with the issues. This instance is popularly known as the Alabama Case.

In 1996, the Red Sea Island case came into the picture, the dispute was between Eritrea and Yemen over the sovereignty of the island in the Red Sea and the location of their maritime boundary.

Judicial Settlement

This is a process where international disputes are resolved via one of the various dispute resolution bodies known as courts, tribunals or adjudicative committees by giving their legal judgement on the matter. This method relates to the decision-making of a court or tribunal, resulting in a binding decision based on international law. Not at all, a judicial settlement is very structured and based on the law.

In 1949, the Corfu Channel case came into the picture at the International Court of Justice. The ICJ ruled that Albania, on one hand, is liable for mine-laying in international waters and at the same time the UK, on the other hand, has committed violations of the sovereignty of Albania as it was involving

unauthorized mine sweeping operation. Precedents in state responsibility and maritime law were established by the case.

Conclusion

In conclusion, the pacific settlement of international disputes is an indispensable approach towards maintaining global peace and stability. In short, negotiation, mediation as through the UN general assembly or Security Council, arbitration and judicial settlement also remains important means to settle the conflicts instead of use of warfare. Therefore, the efficacy of these techniques can be evidenced through historical and contemporary case studies which show their ability to promote diplomatic relationships as well as respect for international law. The necessity of these pacific means is further confirmed by their inclusion in the UN Charter as prioritising dialogue and due process instead of resorting to force. International Court of Justice and regional organizations provide the much-needed impetus to these endeavours, highlighting that the international community is committed to resolving conflicts without resorting to violence. Appreciation of these mechanisms of peaceful settlement shows how diplomacy and law help to manage the inevitable rivalries in interstate relations, thus leading to a more orderly and peaceful world order.

THE ROLE OF INTERNATIONAL HUMANITARIAN LAW IN PROTECTING CIVILIANSDURING ARMED CONFLICT

ABSTRACT

International humanitarian law (IHL), often referred to as the "rules of war," these are essential for guaranteeing civilian protection in the event of hostilities. The control of war weaponry and tactics, as well as the protection of non-combatants, are its main goals. The Geneva Conventions and its Additional Protocols, which set essential guidelines and criteria for the behaviour of parties engaged in armed conflicts, are among the treaties mentioning international humanitarian law (IHL).

The separation of combatants from civilians is a fundamental tenet of international humanitarian law. It forbids targeted and indiscriminate assaults that fail to discern between military and civilian objectives, as well as intentional attacks against civilians and civilian property. Parties to a conflict are also required under IHL to take preventative actions to minimize injury to civilians and damage to civilian infrastructure.

Moreover, some groups of civilians are given extra protection under IHL, including women, children, the elderly, and the ill and injured. Additionally, it protects infrastructure, vehicles, and medical and humanitarian staff, enabling people in need to get critical care and assistance.

Even with these rules, there are still a lot of violations in various armed conflicts across the world, making it very difficult to adhere to IHL. To enhance civilian protection during armed conflicts, strong implementation and enforcement of International Humanitarian Law (IHL) are important. National laws and organizations like international criminal courts can be used for this.

Eventually, preserving basic humanitarian values, advancing human dignity, and lessening the disastrous effects that armed conflicts have on civilian populations are all made possible by the framework that international humanitarian law (IHL) provides.

KEYWORDS: *Civilians, armed conflicts, Additional protocols, Geneva Conventions and properties.*

INTRODUCTION

Reducing the detrimental impacts that armed conflict has on civilians is the aim of international humanitarian law, or IHL. It restricts the use of weapons and military strategies and safeguards those who are not, or are no longer, directly or actively engaged in hostilities. “The law of armed conflict” or “the law of war” are other names for IHL. IHL is a subset of public international law, which is mostly composed of fundamental legal principles, treaties, and customary international law. As stated in the UN Charter, IHL must be distinguished from public international law, which governs the question of whether a state may legitimately employ armed force against another state (jus ad bellum) and governs the behaviour of parties engaged in armed conflict (jus in bello). With two exceptions—self-defence against an armed assault and when the UN Security Council approves its use—the Charter forbids the use of force. IHL aims to control party behaviour once hostilities have begun, not to decide whether or not a conflict was legitimately launched.

Only in times of armed conflict is international humanitarian law relevant. It excludes internal conflicts and disturbances, including sporadic violent acts. Once hostilities have begun, the laws go into force and apply to all parties equally, regardless of who initiated the hostilities.

International humanitarian law distinguishes between International Armed Conflicts and Non-International Armed Conflicts.

- International Armed Conflicts: include two or more nations merely regularly. They are governed by several laws, including those included in Additional Protocol I of 1977 and the four Geneva Conventions of 1949

- Non- International Armed Conflicts: occur usually inside the borders of a single nation, either as conflicts between armed groups and the government or as conflicts between armed groups. These non-international armed circumstances are governed by a more restricted set of regulations included in Common Article 3 of the four Geneva Conventions of 1949 and Additional Protocol II of 1977 (where applicable).

FUNDAMENTAL PRINCIPLES

1. Principle of Distinction: This concept must be followed by all parties involved in an armed conflict in order to distinguish between non-combatants and military objectives, as well as between non-combatant property. Civilians and their belongings must be protected; only military objectives may be attacked.

2. Principle of Proportionality: According to this principle, attacks that would be out of proportion to the expected immediate and actual military benefit are prohibited. These

attacks have the potential to destroy civilian property and inadvertently injure or kill people.

3. Principle of Humane Treatment: According to this principle, attacks that would be out of proportion to the real and anticipated military gain are forbidden. These attacks include the risk of unintentionally injuring or killing persons in addition to damaging property owned by civilians.

4. Principle of Precaution: The principle holds that everyone who has ceased hostilities or is not presently engaged in them ought to be treated fairly and with compassion. It prohibits actions like killing, torturing, mistreating, and compromising one's dignity.

5. Principle of Necessity: According to this principle, force may only be used in proportion to what is required to accomplish a legal military goal. It forbids the use of force that results in needless pain or injury.

IMPLEMENTATION AND ENFORCEMENT

The implementation and enforcement of international humanitarian law (IHL) are among the most significant concerns confronting the global community. Ensuring that international humanitarian law (IHL) is adhered to during armed conflicts is a challenging task, despite the existence of legal frameworks. A few essential components for implementing and maintaining IHL are as follows:

1. State Responsibility: Within their borders, states are primarily responsible for implementing and upholding IHL. They owe it to their armed forces to teach them the fundamentals of international humanitarian law and to enshrine those rules in domestic legislation. States differ in their adoption and enforcement rates, nevertheless.

2. International Criminal Prosecution: International humanitarian law (IHL) is now more strictly enforced because of the creation of both permanent and ad hoc international criminal courts, such as the International Criminal Court (ICC) and the International Criminal Tribunal for Rwanda (ICTR). These organizations have the power to bring legal action against anybody who commits crimes against humanity, war crimes, or genocide during an armed conflict.

3. Fact-Finding Missions and Investigations: Organizations such as the United Nations and the International Committee of the Red Cross (ICRC) need to keep a close eye on and investigate allegations of violations of international humanitarian law. They are able to organize fact-finding expeditions, conduct fieldwork, and deliver their findings to audiences throughout the world.

4. Accountability Mechanisms: Many accountability mechanisms, like national courts, international tribunals, and truth and reconciliation commissions, have been established to address IHL transgressions. These systems are intended to bring victims' rights to justice and compensation while also holding criminals accountable.

5. Compliance Promotion: Campaigns are launched for training, capacity-building, and distribution to encourage conformity with IHL. International humanitarian law (IHL) is promoted and brought to the attention of armed forces, governments, and civil society by organizations like the International Committee of the Red Cross (ICRC), non-governmental organizations (NGOs), and academic institutions.

6. Monitoring and Reporting: One of the most crucial parts of monitoring non-compliance is the recording and reporting of IHL infractions. By documenting and reporting on any breaches, international organizations, non-governmental organizations, and media outlets can raise awareness of the problem and take necessary action.

7. Sanctions and Countermeasures: In a few cases where parties persistently breach international humanitarian law, the international community may apply penalties or take other action. To encourage compliance, these strategies—which include economic penalties, arms embargoes, and other types of pressure—can be used.

IHL is nevertheless difficult to apply and enforce despite these efforts, especially in situations involving non-international armed conflicts and where there is not enough political will or ability to defend the principles of IHL. Sustained endeavours are required to fortify the global framework and enhance the security of civilians throughout armed crises.

CHALLENGES AND VIOLATIONS

The implementation and enforcement of international humanitarian law (IHL) to protect individuals during armed circumstances is beset by a number of grave challenges and violations. Here are some important details:

1. Non-international Armed Conflicts: Terrorist organizations and non-state armed forces are involved in several non-international military confrontations in the contemporary era. As terrorist organizations often break IHL rules, it is difficult to ensure the safety of civilians.

2. Deliberate Targeting of Civilians: Parties to some wars violate international humanitarian law when they intentionally target people as part of their war strategy. This includes intentional assaults against civilian infrastructure, such as residential districts, schools, and hospitals, as well as the use of human shields and indiscriminate strikes on civilian areas.

3. Lack of Accountability: The majority of IHL crimes go unpunished because there is insufficient political will or accountability framework to prosecute offenders. If war crimes and crimes against humanity go unpunished, they may inspire more offences.

4. Challenges in Providing Humanitarian Aid: It may be more difficult for organizations and people providing humanitarian aid to reach those in need if access is limited or refused. Humanitarian efforts may be severely hampered if aid workers are the focus of the violence or become entangled in it.

5. Urban Warfare: Urban warfare is becoming more and more common, which presents serious problems for public safety. It becomes more difficult to tell combatants from civilians, and using explosives in populous places might result in a disproportionately large death toll.

6. Asymmetric Warfare Tactics: It can be challenging to uphold the principles of International Humanitarian Law (IHL), particularly the concept of distinction, when non-state armed groups employ tactics like guerilla warfare, IEDs, and suicide bombers.

7. Lack of Training and Awareness: International humanitarian law can also be broken by military personnel and non-state armed groups due to inadequate training or ignorance of the law's obligations.

8. Limited Resources and Capacity: Many countries and international organizations struggle to effectively monitor, investigate, and respond to violations of international humanitarian law, especially during protracted and complex conflicts.

9. Geopolitical Interests: Strong countries or other notable parties may overlook IHL violations by allies or proxies as IHL enforcement is usually eclipsed by political or geopolitical concerns.

The international community needs to work together to address these issues, which include developing more effective strategies for protecting civilians in urban and asymmetric warfare environments, advancing the capabilities of the military and non-state actors, and strengthening accountability mechanisms.

CONCLUSION

International humanitarian law (IHL) is one of the most crucial instruments for reducing the horrific impacts of armed conflicts on civilian populations. The rules of international humanitarian law (IHL), which include the distinction between civilians and combatants, the prohibition of

indiscriminate attacks, and the protection of humanitarian aid, provide the legal framework for preserving the lives and dignity of non-combatants involved in conflicts.

Nonetheless, there are still a lot of challenges to be solved in order to implement and uphold IHL. In many international conflicts, there are still IHL breaches occurring, such as the deliberate targeting of people, the blocking of humanitarian supplies, and the lack of accountability. In addition to urban warfare, non-international armed conflicts and the involvement of armed non-state organizations provide additional obstacles to the efficient implementation of International Humanitarian Law.

To effectively address these issues, it will be crucial to fortify global cooperation, enhance accountability frameworks, augment the capacities of both armed forces and non-state entities, and fortify the determination of all concerned parties to conform to the principles of International Humanitarian Law (IHL).

The international community must place the protection of civilians at the top of its priority list and endeavour nonstop to promote adherence to IHL. Helping fact-finding teams, providing relief to people in need, and pursuing appropriate legal action or punishment against those who commit serious crimes are some examples of this. Additionally, steps need to be done to educate the general people, the armed forces, and governments on the fundamentals of international humanitarian law.

In the end, it is ethically and legally necessary to execute IHL efficiently. By adhering to the laws of war and ensuring that civilians are safeguarded, we may reduce the suffering caused by armed conflicts and uphold the fundamental principles of humanity even in the midst of turmoil and bloodshed.

REFERENCES

- *What is international humanitarian law?* (2024, May 24). International Committee of the Red Cross. https://www.icrc.org/en/document/what-international-humanitarian-law/
- *Fundamental principles of IHL | How does law protect in war?*(2024, May 24) - *Online casebook*. (n.d.). https://casebook.icrc.org/a_to_z/glossary/fundamental-principles-ihl/
- *Protection of civilians mandate*. (n.d.). United Nations Peacekeeping. (2024,May 24) https://peacekeeping.un.org/en/protection-of-civilians-mandate#:~:text=Many%20peacekeeping%20missions%20have%20a,%3A%20civilian%2C%20police%20and%20military./
- *ICRC, IHL and the Challenges of Contemporary Armed Conflicts | How does law protect in war? - Online casebook*. (n.d.). (2024,May24) https://casebook.icrc.org/case-study/icrc-ihl-and-challenges-contemporary-armed-conflicts
- *Implementation mechanisms | How does law protect in war? - Online casebook*. (n.d.). (2024, May 24) https://casebook.icrc.org/law/implementation-mechanisms