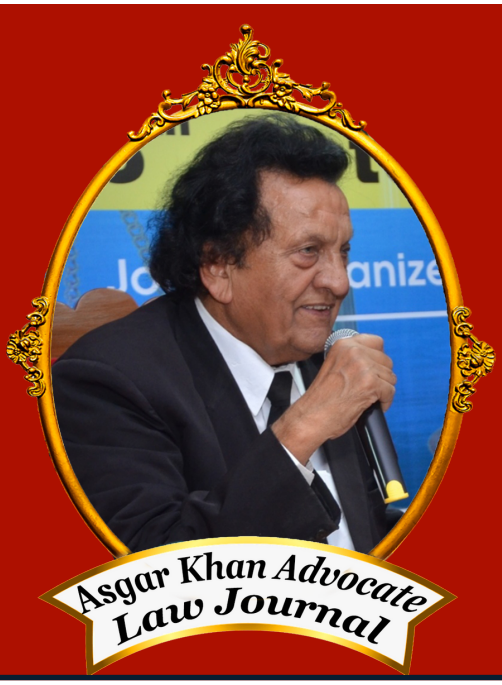
Online ISSN 2582-6476



ASGAR KHAN ADVOCATE LAW JOURNAL

Volume 1. Issue 2
October 2020

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State Welfare Concept

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State Welfare Concept

Introduction

The provisions laid down in the "Directive Principles of State Policy" was mostly influenced by the Irish Constitution 1937, framers of the Constitution were impressed by the idea of State Welfare. However, the concept of the Welfare state was first developed by the Constitution of Republican Spain, and the Irish themselves had taken the idea from Spain. The views of Jeremy Bentham, the political and social stand of the Liberal and Radical Parties of Western Europe, the major principles of Fabien Socialism, and to some extent, those of Guild Socialism, are all akin to much of what is embodied in this part of the Constitution[1]. Some essence of Directive Principles is present in the Government of India Act, 1935. The Directive Principles provide the state with an extraordinary power to work for the welfare of people. This could be achieved by securing and protecting a social order in which justice shall inform all institutions of national life. The Preamble, an integral part of the Constitution, pledges to ensure `socio-economic justice' to all its citizens with stated liberties, 'equality of status and opportunity,' assuring `fraternity' and `dignity' of the individual in a united and integrated Bharat[2]. Directive Principles of state placed some essential guidelines for the state as well as the citizens for building economic democracy in the country. India is famous for its rich culture and heritage. However, the concept of Ram Rajya is very prevalent in the era of Lord Shree Ram, and later, after the war of independence in 1947, Gandhi Ji developed the idea of a perfect state. The teachings of Ramayana profoundly influenced Gandhi Ji. A significant portion of Gandhi Ji's vision of Ram Rajya is described in his famous book 'Young India' in 1929[3]. In the book, Gandhi Ji has described the meaning of every aspect of making India a Ramrajya. But the primary question is that Are we ready to make India a Ramrajya?

What is the Welfare State?

The concept of the welfare state is not clearly defined anywhere in the system of governance, but a quite expanded definition was provided by the historian Asa Briggs. Even the description might contain British/Scandinavian bias and appear a bit ambitious.

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[1] Arvind Kumar. “Essay on The Directive Principles as specified by our Constitution” 11.10.2017 14:58 http://www.preservearticles.com/2011111216903/essay-on-the-directive-principles-as-specified-by-our-constitution.html

[2] Gaurav Jain vs. Union of India & Ors, *AIR* 1997 SC 3021.

[3] M.K. Gandhi. "Young India" in 1927.

“A welfare state is a state in which organized power is deliberately used (through politics and administration) to modify the play of the market forces in at least three directions

- First, by guaranteeing individuals and families a minimum income irrespective of the market value of their work or their property;

- Second, by narrowing the extent of insecurity by enabling individuals and families to meet certain “social contingencies” which lead otherwise to individual and family crisis; and

- third, by ensuring that all citizens without distinction of status or class are offered the best standards available about a specific agreed range of social services."[4]

It is evident from the above three points that to make a welfare state; we must need to bring changes in ourselves.

Directive Principles

Indian Constitution is designed to fulfill everyone's wish ranging from rich to poor. Therefore, the Indian Constitution's framers adopted the Directive Principles of State Policies (DPSP) to strengthen the weaker sections of the society. Directive Principles of State Policies are given in Part IV of the Indian Constitution from Article 36 to 51. Directive Principles are a unique blend of humanitarian, socialist precepts, Gandhian ideals, and democratic socialism. Although all the articles mentioned in Part IV of the Constitution are not enforceable by any court, the principles therein laid down are fundamental in the country's governance. Therefore, it directs states to apply these principles in making new laws for the welfare of the state. These principles provide the necessary structure to the legislative and executive wing of the government to form better statutes and legislation. From 1949 through 1950, when the Constitution of India drafted, the makers designed it to maintain a balance between economic, social, and political democracy. The principles mentioned in Part IV of the constitution have played a crucial role in administrative and legislative policymaking. Sometimes constant efforts of the state were not enough to implement these principles for the welfare of the people. At first, the Directive Principles "shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the country's governance, and it shall be the duty of the state to apply these principles in making laws"[5]. The Directive Principles are requisite for the governance of the country. However, these principles are not

[4] Briggs, 1961.
[5] Indian Const. art. 37.

enforceable by the court, as described in Article 37 of the constitution. At the same time, the Fundamental Rights given in Part III of the Constitution are enforceable by the Supreme Court and the High Courts across India in terms of provisions mentioned in Article 32 and Article 226 of Constitution. However, the social aspect of the principles can be amended only by legislation to manage society's welfare. The Directive Principles can be executed in the following forms:

- Land reforms Act,
- Nationalization of Bank and industries,
- Welfare schemes for the weaker sections,
- Panchayati Raj system,
- Equal remuneration act,
- Environmental safeguards,
- Compulsory education for children, etc.

These are some of the laws and acts which were created to maintain law and order, along with preserving bias less society. It has been witnessed that the Directive Principles were not adequately implemented in the state due to resource crunch and lack of political will or foresight. Poverty eradication, education, the betterment of the backward classes' condition is a few areas where the directives have practically failed to show results[6]. In electoral politics government always tries it's best to provide all the essentials mentioned in the Directive Principles, but they do not get desired results in most cases. No government will ever ignore welfare-oriented policies regarding public health, education, economic equality, and the position of women, children, and backward classes; rather, they always promote these acts.

The Directive Principles mentioned in Article 38, 39, and 46 were inserted in the constitution of India to strengthen the agrarian economy of the country. In Article 39 (b) legislation is provided to fix land ceilings, remove intermediaries such as Zamindar, abolish hereditary proprietors, etc., and made the tiller of the real soil owners of the land were the socialistic goals of the Constitution of the Directive Principles of State policy[7]. The concept of the village panchayat under Article 40 states that the State shall take steps to organize village Panchayat. 73rd Amendment was bought into force on 24.04.1993 for holding village panchayat in the country; in the same, the government had provided Part-IX. By Part-IX in

[6] Dr. JN Pandey. The constitutional law of India, 51st edition 2014.
[7] Indian Const. DPSP.

the constitution, parliament had provided a self-contained code for the Constitution, reservation of seats, powers, authority, responsibilities, and elections to the Panchayat[8].

Some of the relevant principles were added in Part-IV in the case of Randhir Singh V. Union of India[9], The Supreme Court, with the majority, held that though the principle of 'equal pay for equal work' is not expressly declared by our constitution as a fundamental right, it is the goal of the law by Art.14, 16, and 39(c). However, Article 39 (d) of the constitution provides 'equal pay for equal work for both men and women' as a Directive Principle of State Policy.

Article 45 contained in the Directive Principles talks about free and compulsory education for all the children up to the age of 14 years within ten years of promulgation of the Constitution of India. To implement this across India National Policy of Education (NPE) was set up in the year 1986. In the initial years of this, the Government, in partnership with the state government, had made several efforts to provide education to every child in the country. Later to priorities, training in both rural and urban areas, school was added in the Part of Fundamental Rights. Now, the Right to Education is guaranteed fundamental right under Article 21A of the constitution. It states that the State shall provide free and compulsory education to all children age 6 to 14 years in such manner as the State may, by law, determine[10]. The State, as at present, is under the constitutional obligation to provide education to all children of the age of 6 to 14 years[11].

India is believed to be a country with a strong feeling for the protection of nature. Therefore, it is remarkable to note that India was the first country in the world to enshrine Environmental Laws in the constitution. Under Article 48A of the Directive Principles and Article 51A-g of the constitution of India, a strong foundation has been laid down pertaining environment, preservation of forests, wildlife, rivers, and lakes. Article 48A of the constitution states that "Protection and improvement of environment and safeguarding of forests and wildlife The State shall endeavor to protect and improve the environment and to

[8] Krishna Dutt Mishra and Another vs. the State Of U.P. And Others on 18 May 2005.
[9] AIR 1982 SCC 879, 1982 SCR (3) 298.
[10] Indian Const. art. 21.
[11] State of U.P. & Ors. Vs. Bhupendra Nath Tripathi & Ors. On 29 October 2010, SPECIAL LEAVE PETITION (C) NOs. 4854-4856 OF 2009, CIVIL APPEAL NOs. 2010.

safeguard the forests and wildlife of the country"[12]. This contains protection of the environment at the international level.

Thus, everything is written in the constitution has a meaning and to support the people of the country despite their caste, religion, region, race, sex, etc. Therefore, when the Preamble of the constitution is read with Directive Principles in Art.38, 42, 43, 46, and 48A promotes the concept of social justice. The idea of social justice helps to attain social, economic, and political equality among the country's citizens and to make India a welfare state.

Concept of Ram Rajya

The concept of modern Ramrajya was coined by Mahatama Gandhi and is one of the oldest methods to bring welfare in the state. The idea of 'Ram Rajya' has been a part of Indian thinking for centuries. But the term 'Ramrajya' has both practical and a philosophical-cum-utopian aspect. When Gandhi Ji presented the idea of 'Ramrajya' to be established in India, it was a sort of political arrangement leading to social happiness in the country. Some other leaders or political revolutionaries wrote books on the concept of Ramrajya and bought the idea of the utopian state apart from their political interests, and the main reason for that was 'culture resides in the Literature.' Literature not only brings out sense for an ideal state but also promotes a realistic motive behind it. During the struggle for independence, Gandhi Ji started many movements and programs to stop Britishers destroy us. One of the remarkable things was Poorna Swaraj, which was the primary step towards the Ramrajya. Later Hind Swaraj was the step to make the idea of Poorna swaraj into reality. During his visit to Bhopal in 1929, on the invitation of Prince of Bhopal, Gandhi, while commenting upon his simplicity mentioned in 'Young India': "I was prepared to find here the same regal splendour, the same wasteful blaze of luxury as one comes across in our other present-day Indian State. But to my agreeable surprise, I found His Highness living in a "palace," which could be called as such only by courtesy…"YI[13].

During the struggle for independence, Gandhi Ji started many movements and programs to stop Britishers destroy us. One of the extraordinary things was Poorna Swaraj, which was the primary step towards Ramrajya. The comment of Gandhiji on the simplicity of living was an indication that evolution in a democracy is about to come. He hoped for Swaraj democracy in the country, and from this, he often interpreted as 'Ramrajya.' India is a secular country with

[12] Indian Const. art. 48A.
[13] M.K. Gandhi. "Young India" in 1927.

all the religions in the country, some people misinterpreted the meaning of Ramrajya, and then he clarified as: "I warn my Musalmaan friends against misunderstanding me in my use of the words 'Ramraj'. By Ramraj, I don't mean Hindu Raj, I mean by Ramraj Divine raj, the Kingdom of God." YI[14]

Gandhiji never promoted any religious bias with his concept of the welfare state; it only and truly promotes a democratic society. He believed that more than any religion or caste, the idea of Ramrajya was based on principles. The truth and righteousness were the two pillars of Ramrajya.

Lessons of Ram Rajya from Ramayana

Lord Shree Ram always believed that 'good governance comes with good people.' He always thought to maintain peace, progress, and prosperity in the Kingdom. According to the teachings of Ramayana, good governance is the essential requirement in society to maintain peace and tranquillity. However, good governance has become a rarity in today's world. Nowadays, management in the country is managed by some uneducated politicians who were funded by some prominent industrialists. Social justice remains a mere slogan at election rallies in India.

We have heard Ramayana's stories and often heard Ramrajya as an ideal form of governance in the country. It does not doubt that Geeta and Ramayana have the answer to all the questions we have in our minds. The Ramayana tells us about the rule of Rama or the Ramrajya; there was no poverty, pain, grief, or discrimination. These were some inspiration Mahatama Gandhi took from Ramayana and introduced the concept of 'Ramrajya.' In a democratic country, everyone aims to live happily and promote brotherhood in the society. Everyone has equal rights in the society to perform their tasks or duties. Justice is swift and accessible even by the poorest and marginalized sectors in the country. Some simple rules to implement Ramrajya in real life are the path of truth, non-violence, and other moral principles. It promotes respect and faith for all the religions, to summarise this in three words, ¬ justice, respect, and non-coercion.

Sage Valmiki, in Yuddha Kanda of Ramayana, describes Ramrajya as follows:

पर्यदेवन्विधवानचव्यालकुतंभयम्।

[14] M.K. Gandhi. "Young India" in 1927.

नव्याधिजंभयन्वापिरामेराज्यंप्रशासति।

While Lord Rama was ruling the kingdom and everyone in the kingdom was happy, with no widows to lament, no animals were harmed, nor any fear of borne diseases.

सर्वमुदितमेवासीतसर्वोधर्मपरोअभवत्।
राममेवानुपश्यन्तोनाश्यहि्सन्परस्परम् ।

Every creature in the Ramrajya was full of joy and happiness. Everyone follows the path showed by lord Rama and pray to achieve complete penance in life. Turning their eyes towards Rama alone, a creature did not kill anyone.

सर्वेलक्षणसम्पत्रा:सर्वेधर्मपरायणाः ।

All the people were endowed with excellent characteristics. All were engaged in dharma.

Conclusion

India is a country in which have different characters ranging from politician to priest sitting inside the temple. If we talk about the implementation of Directive Principles in the state, it is seen in some decisions taken by the government to promote Directive Principles. However, not everyone is enjoying the drafts in our constitution; hence it needs to reach people in rural areas or someone who needs it. No one could deny the fact that there are some principles which need to be looked again to modify it, for instance, Article 47 talks about improving Public Health and living standards of citizens but even today condition of pollution level is too bad or disturbing not only in the capital Delhi but in almost all northern parts. The state under Article 21 of the Constitution is bound to provide free education, create the necessary infrastructure, and all effective machinery to all despite their caste, religion, race, sex, etc. The right to Education will remain illusionary if the state does not take any necessary steps to fulfill the basic requirement of schools and qualified teachers. Before teachers are allowed to teach the children, they are required to receive appropriate and adequate training from a duly recognized training institute[15].

[15] State of U.P. & Ors. Vs. Bhupendra Nath Tripathi & Ors. On 29 October 2010, SPECIAL LEAVE PETITION (C) NOs. 4854-4856 OF 2009, CIVIL APPEAL NOs. 2010.

The process to evolve India as 'Ramrajya' is not easy and requires a lot of faith in the teachings of Lord Ram and Lord Krishna. They both are believed to be the pillars to establish Ramrajya in the country. The basic meaning of Ramrajya is an ideal government, a government where the ruler and the subjects have a parent-child relationship, where subjects can approach rulers anytime. But the reality is that we are not even close to that. Nowadays, every government is only seeking its benefit to fulfill a political agenda and not helping people.

मुखिआमुखुसोचाहिएऐखानपानकहुएक।

पालइपोषइसकलअंगतूलसीसहितबिबेका।

It means that "a chief or a leader should be like the mouth, which is the organ responsible for eating and drinking, but the latter nourishes all the limbs of the body, with due care," says Tulsidas.

Therefore, it is clear from the above research that the concept of Ramrajya is in which the King takes all the decisions, but it has some considerations:

- View of civil society;
- the opinion of holy persons;
- political ethics and
- Injunctions of sacred scriptures.

Following this decision-making process will surely ensure that the decision was framed according to dharma and for the larger good of society.

(CASE COMMENTARY)

(2 years of the LANDMARK JUDGEMENT of DECRIMINALIZING ADULTARY)

In the SUPREME COURT of INDIA,

Joseph Shine vs. Union of India (UOI) [MANU/SC/0167/2018]

Writ Petition (Criminal) No.: 194/2017

Decided On: 27.09.2018

Supreme Court Bench: (CJ) Dipak Misra, (J) A. Khanwilkar, (J) R. F. Nariman, (J) D. Y. Chandrachud, (J) Indu Malhotra

Parties:

- Petitioner(s) – Joseph Shine
- Respondent(s) – Union of India

Facts:

The writ petition was filed challenging the validity of Section 497 of Indian Penal Code which makes adultery a criminal offence and Section 198(2) of Code of Criminal Procedure, 1973.

Background:

Adultery in India was based on the notion of patriarchy and male chauvinism. This offence makes a man criminally liable who has sexual relations with a woman, who is the wife of another man. And if the husband consents or connives to such an act it will no longer be adultery. There is no right to a woman in case her husband commits adultery. In ancient history, adultery was a sinful act either done by a married man or woman. Adultery in India does not treat a woman as a culprit but as a victim who has been seduced by a man to do such an act. This law is violative of our constitutional principles i.e. equality, non-discrimination, right to live with dignity and so on. Adultery has been struck down as an offence in as many as 60 countries including South Korea,

South Africa, Uganda, Japan etc., on being gender discriminative and violating the right to privacy. Even Lord Macaulay, the creator of the penal code objected its presence in the penal code as an offence rather suggested that it should be better left as a civil wrong.

Issues raised:

- Whether the provision for adultery is arbitrary and discriminatory under Article 14?
- Whether the provision for adultery encourages the stereotype of women being the property of men and discriminates on gender basis under Article 15?
- Whether the dignity of a woman is compromised by denial of her sexual autonomy and right to self-determination?
- Whether criminalizing adultery is intrusion by law in the private realm of an individual?

Contentions:

- **Petitioners:**
  - The counsel for the petitioner contended that the provision criminalizes adultery on classification based on sex alone which has no rational nexus to object to being achieved. The consent of the wife is immaterial. And hence violative of Article 14 of the constitution.
  - The petitioner contended that provision is based on the notion that a woman is property of the husband. The provision says if the husband gives consent or connive then adultery is not committed.
  - The provision for adultery is discriminative based on gender as it provides only men with the right to prosecute against adultery which is violative of Article 15.
  - The petitioner contended that the provision is unconstitutional as it undermines the dignity of a woman by not respecting her sexual autonomy and self-determination. It is violative of Article 21.

Section 497 of IPC read with Section 198 of CrPC must be struck down.

- **Respondents:**

- The respondents contended that adultery is an offence which breaks the family relations and deterrence should be there to protect the institution of marriage.
- The respondents claim that adultery affects the spouse, children and society. It is an offence committed by an outsider with full knowledge to destroy the sanctity of marriage.
- The discrimination by the provision is saved by Article 15(3), which provides state right to make special laws for women and children.

They request the court to delete the portion found unconstitutional but retain the provision.

Supreme Court Observations:

- **(CJ) Dipak Misra and (J) Khanwilkar**
  - "Adultery law is manifestly arbitrary. It creates dent on the individuality of women"
  - "Mere adultery can't be crime unless something is added"
  - "There can be no shadow of doubt it can be ground for divorce"
  - "A man having extra marital relationship with a married woman is no longer a criminal offence"
- **(J) RF Nariman**
  - "Man being the seducer and women being the victim no longer exits"
  - "A man having sexual intercourse with a married woman is not a crime"
  - "IPC 497 is violative and quashed"
- **(J) DY Chandrachud**
  - "Section 497 deprives a woman of autonomy and dignity"
  - "Society attributes impossible attributes to a woman...raising woman to a pedestal is one part of such attribution"
  - "A woman loses her voice, autonomy after entering marriage and manifest arbitrariness is writ large in Section 497"
- **(J) Indu Malhotra**
  - "Women living under the shadow of husbands have gone"
  - "Section 497 institutionalizes discrimination"

- "State cannot interfere by punishing man alone"

Supreme Court Judgement:

The five-judge Bench unanimously struck down Section 497 of the Indian Penal Code, thereby decriminalizing adultery. It struck down Section 497 of IPC on the grounds that it violates Articles 14, 15 and 21 of the Constitution. The Bench held that the section is an archaic and paternalistic law, which infringes upon a woman's autonomy and dignity. The Bench also read down Section 198 of the Code of Criminal Procedure Code.

Conclusion:

This is the 21st century where equality and liberalism have taken over the world. There is a need for legislative reforms to eliminate laws that are discriminatory against women. In India, many laws have become redundant with the passage of time. Adultery being one of them, it was necessary to get rid of it. Adultery not only discriminated between men and women but also demeans the dignity of a woman. But the times have changed, women are no longer behind the shadows of men. There is sexual autonomy to every individual and hindering the same would violate the constitutional principles. Criminalizing both men and women as suggested by Law Commission reports would not have served the purpose as adultery is an act which is an extremely private affair related to the matrimonial realm. The Legislature should have taken this step long ago but nevertheless our judiciary has been very efficient in filling the gaps and removing redundant laws with changing societal notions.

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Charting the Contours of State Responsibility of China for Pandemic under International Law*

1. INTRODUCTION

International law unlike municipal law is a horizontal branch of law. It regulates the relationship between states which enjoy sovereign equality in the international arena.[1] The problem associated with a horizontal structure is the sanctioning for wrongful acts becomes rather complex. The theme of the article revolves around the possibility of holding a state responsible for their wrongful acts especially in case of pandemic while analyzing the tenets of public international law. Moreover, the article further analyzes whether China can be held responsible for the spread of COVID 19 virus leading to pandemic.

Many aspects of severe acute respiratory syndrome coronavirus (SARS-CoV-2) remain unidentified. The novel coronavirus has created havoc all over the world, crippling the world's most developed economies and taking over a million lives. The world witnessed this massive attack on human life only after the Spanish flu in 1918.[2]As the death toll crosses 800,000,[3] a glaring picture of the world coming to an end is no more a fiction. Countries in these times are trying to attribute liability to hold the one responsible for this travesty.

On December 31st, 2019 WHO China country office was informed of a string of pneumonia cases with unknown cause in the city of Wuhan. As informed by Chinese authorities some patients were operating dealers or vendors in the Hunan seafood market.[4] The seafood market in Wuhan is considered as the center of the outbreak. The highly contagious virus has now spread to all parts of the world. An epidemic that was soon declared as pandemic has taken over all economies leading to a global health crisis. States are now contemplating ways to attribute responsibility under the International law framework. And all things come down to holding China responsible

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***By-Samiksha Mathur**

[1] Art 2(1) UN Charter

[2] 1918 Pandemic (H1N1 virus),Centre for disease control and Prevention, https://www.cdc.gov/flu/pandemic-resources/1918-pandemic-h1n1.html last accessed 09/10/2020.

[3] COVID-19 Death toll, https://www.worldometers.info/coronavirus/coronavirus-death-toll/ last accessed 09/10/2020.

[4] Timeline of WHO's response to the pandemic from 31st December,2019, World Health Organization, https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen.

for its reckless and often referred deliberate attempt to shackle world economies. The delayed course of action to bring to the knowledge of the World Health Organization about the epidemic soon turning into a pandemic has put China in a spot. There is an urgent need to determine the state responsibility of China in light of Public International Law concerning this pandemic. Moreover, it is crucial to find out if China failed to comply with its international obligations under the Constitution of World Health Organization, International Health Regulation and other norms of public international law. The current situation of China vs. the rest of the world makes for an important case study for reassessing the law on international state responsibility and its application in new age problems like epidemics and pandemics.

The Article discusses the contours of state responsibility *vis-a-vis* COVID-19. It analyzes the argument that China is responsible for spreading the novel virus and the need of holding it internationally accountable. The article further discusses whether the claim against China for spread of virus is tenable under current International law framework. It also discusses viable options available to states to ensure accountability for this massive destruction.

2.State Responsibility under International law

State responsibility is a fundamental principle of international law. The concept has emerged from the nature of the international legal system and doctrine of state sovereignty and equality of states. State responsibility means to hold a state responsible for breach of an international obligation. In theory it may appear easier to hold the state responsible for a wrongful act but as the foundation of international law rests on state sovereignty it becomes rather difficult. Nonetheless, the idea of holding a state accountable remains a subject of perennial discussion amongst lawyers, scholars and international courts and tribunals. International courts have recognized the importance of holding the state accountable for breach of international obligations. It ensures reparation for wrongful acts of state which is a cornerstone of Public international law. The aim of law is to get fair and due compensation for breach of international obligations.

In *Charzow Factory case*[5], the Permanent Court of International Justice observed that:

[5] PCIJ, Series A No. 17, 1928 p.29.

"It is a principle of international law and even greater conception of law, that any breach of an engagement involves an obligation to make reparation".[6]

The International Law Commission extensively dealt with the matter of state responsibility in 1975 and decided that draft articles on state responsibility will be divided into three parts. Part I to deal with origin of state responsibility, Part II to deal with content, forms & degrees of international responsibility and Part III to deal with settlement of disputes and implementation of international responsibility. The final text of the Draft Articles was adopted by the ILC in August 2001, bringing to completion one of the Commission's longest running and most controversial studies. On 12 December 2001, the United Nations General Assembly adopted resolution 56/83, annexed the text of the articles and commended them to governments without prejudice to the question of their future adoption or other appropriate action."[7]The International Law Commission Draft on State Responsibility for Internationally wrongful Act, 2001 legislated one of the most sensitive areas of international law. The Act lays down general principles on law of state responsibility. It also lays down conditions for attributing responsibility against a state in case of breach of international obligations.

Though the draft on state responsibility does not prima facie speak about specific situations like epidemics, pandemics or environment but it lays down general rules which may be applied to a variety of situations. It is pertinent to take a look at some of the key provisions which may be relevant in our study of specific problems like pandemic.

- Article 1 of ILC's draft on State Responsibility recapitulates the general rule that every internationally wrongful act of a state attracts responsibility.
- Article 2 provides that there is an internationally wrongful act of a state when conduct consisting of action or omission is attributable to the state and constitutes breach of international obligation.
- Article 31 of the Draft reiterates the rule, widely supported by practice that the responsible state is under an obligation to make full reparation for the injury caused by an

[6] Malcolm N Shaw, International Law, 8th edition, p. 592.
[7] GA Res 56/83, para 3(Dec 12,2001).

internationally wrongful act. Injury may be material or moral caused by an internationally wrongful act.

- Article 34 specifies that reparation may be in the form of restitution, compensation and satisfaction, either singly or in combination.

It is important to address whose acts will constitute acts of state as the state is not a real person. At this juncture, the doctrine of attribution comes into play. It is often seen that a state cannot act on its own rather it acts through agents and when these agents commit a breach of international obligation the same is attributed to the state.

The draft article on state responsibility attributes liability of organ or person with that of state under Article 4 & Article 5. Article 4 holds that acts of organs of state, whether legislative, executive, or judicial or any person functioning under the same does an act which breaches international obligation, it will be attributed to the state. Article 5 on the other hand attributes responsibility with such persons who are exercising elements of a government authority.

In the initial days of COVID-19 outbreak, the municipal and provincial authorities of Wuhan and Hubei were involved. The PRC has reported that Wuhan Center for Disease Control and Prevention was the first to detect 'pneumonia of unknown cause', after which the Wuhan Municipal Health Commission instructed medical institutions on the treatment of such patients.[8]The local authorities have later been criticized for suppressing information and jailing whistleblowers,[9]which even led the central government to fire local health officials two months after the start of the epidemic.[10]The Wuhan Mayor has also admitted to mistakes having been made. However, higher-level authorities also became involved early on. The National Health Commission of China sent experts to Wuhan to assist with the epidemic. During the first month of the epidemic, the Chinese Center for Disease Control and Prevention together with the Chinese Academy of Medical Sciences worked on identifying the pathogen.

All actors listed by China as handling the outbreak of Covid-19 can be considered state organs; their acts or omissions are therefore prima facie attributable to China. The acts of provinces,

[8] China Publishes Timeline on COVID-19 Information Sharing, Int'l Cooperation', Xinhua, 6 April 2020.
[9] Palmer 2020; Kynge, Yu and Hancock 2020.
[10] Kuo, I. C. (2020). A Rashomon Moment? Ocular Involvement and COVID-19. Ophthalmology, 127(7), 984-985. https://doi.org/10.1016/j.ophtha.2020.04.027.

municipalities or cities are acts of the Chinese state. Not even the fact that the state could not control lower-level units in its state organization would absolve China from responsibility. In fact, states broadly accept this rule, and generally do not try to evade international responsibility by blaming the municipalities.[11]

China's failure to timely inform the WHO of the spreading of virus and active concealment of information pertaining to it can be considered as a breach of international obligation, thus attracting state responsibility under the current international regime.

3.Failure to comply with obligation of due diligence

In international law, the concept of due diligence is recognized as a general principle of law. Due diligence, a principle of good governance assesses whether a state has met the obligation as is expected from a responsible government. The principle of due diligence has become increasingly popular in the international sphere as it may be applied to a variety of cases like human rights, climate and public health. It ensures that states act with a certain standard of care when responding to a harm or threat. China has failed to comply with this obligation in case of the spread of coronavirus. It failed to stop or resolve internal or trans-boundary harms associated with this virus. This amounts to violation of Article 14 of draft on state responsibility due to failure of disclosure and transparency with the WHO in accordance with IHR leading to extending its violation over the entire period during which the act continued and remained in non-compliance of international obligations.[12] A study by University of Southampton examining non-pharmaceutical interventions (NPIs) in response to the (COVID-19) in China highlighted that if intervention were conducted by one, two, or three weeks, the cases would have decreased by 66%, 86%, and 95%,

[11] Katja Creutz, China's Responsibility For The Covid-19 Pandemic An International Law Perspective, Fiia Working Paper June 2020, https://www.fiia.fi/wp-content/uploads/2020/06/wp115_chinas-responsibility-for-the-covid-19-pandemic.pdf.

[12] Abhishek Kumar, *Covid-19: China's Responsibility and Possible Legal Actions*, Jurist(May,2020) ,https://www.jurist.org/commentary/2020/05/abhishek-kumar-china-covid19-responsibility/ last accessed 09/10/20).

respectively.[13]This clearly shows negligence on part of China and its indifference towards international law.

4. Did China violate its obligation under the World Health Organization and International Health Regulation, 2005?

The preamble of WHO recognizes health as a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity. Moreover, it recognizes the right to health as a fundamental right of all human beings which is also recognized under the International Covenant of Economic, Social, and Cultural Rights.[14] The idea of constituting this

body was to ensure the attainment of the highest possible level of health.[15] The organization has been bestowed with functions of assisting, directing, and coordinating authority on international health work. Currently the organization consists of 194 members who are committed towards achieving better health for everyone, everywhere.[16]China is a member of the WHO and has to comply with provisions laid down under the Constitution as well as other subsidiary instruments introduced from time to time.

The International Health Regulation (IHR) adopted by the WHO for the first time in 1969 and last revised in 2005 are legally binding instruments of international law. It aims for international collaboration "to prevent, protect against, control, and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks and that avoid unnecessary interference with international traffic and trade".[17] The IHR, 2005 lays down a series of conditions to be implemented by the state parties. It specifically declares the responsibility of state governments, including all sectors, ministries, levels, officials and personnels for implementing IHR at the national level.[18]

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[13] Early and combined interventions crucial in tackling Covid-19 spread in China, University of Southampton (March,2020), https://www.southampton.ac.uk/news/2020/03/covid-19-china.page.
[14] Article 12, International Covenant on Economic, Social and Cultural Rights.
[15] Article 1, Constitution of World Health Organization.
[16] About WHO, https://www.who.int/about.
[17] Background International Health Regulation, WHO, http://www.emro.who.int/international-health-regulations/about/background.html.
[18] Implementation of International Health Regulation, WHO, https://www.who.int/health-topics/international-health-regulations#tab=tab_2.

4.1 Key provisions of IHR, 2005 important for the current study

- Article 3- IHR shall be universally applied in the global interest for the protection of the human race from the international spread of the disease.

Article 7 - state are duty bound to share information of unexpected or unusual public health events within their territory having potential of causing public health emergency. The information of such event has to be provided to the WHO expediently. Moreover, every state is under an obligation to assess events occurring within its territory, and within 24 hours of assessment of all events which may constitute public health, the emergency must intimate WHO.

Article 6 – state parties are duty bound to notify WHO, by way of National IHR Focal Point, and within 24 hours of assessment of public health information, of all events within its territory having potential to constitute public health emergency of international character. Along with this the measures implemented to deal with such events have to be attached.

4.2 Has China complied with the above provisions?

The most probable answer to the above question is NO.

China is a member of the WHO and thereby had the duty to inform about any anomalous situation that has occurred within its territory having potential to be a threat to human health. As per media reports, it took China an unreasonably long period to disclose the information on the spread of a novel virus. Thus, the Chinese government's omissive conduct attracts international responsibility arising from IHR Regulations.

5. Whether breach of IHR, 2005 provides recourse to the International Court of Justice?

Interestingly, IHR does not provide the recourse to the International Court of Justice rather it is provided under Article 75 of WHO Constitution.

The International Court of Justice (ICJ) has recognized the validity of Article 75 of the WHO Constitution *in Armed Activities on the Territory of the Congo.* The court observed that both DRC and Rwanda were members of the organization and the Constitution provides for Court's

jurisdiction. Therefore any dispute concerning interpretation or application of this instrument can be brought before it.[19]

But the problem remains that it is difficult to equate obligation in case of breach of IHR, as the resort to ICJ is only available under WHO Constitution. In the case of transnational pandemic though it is clear that containment and transparency in communication are prima facie grounds which China failed to comply with lack of such provisions in WHO Constitution may constitute a practical hurdle. Though, under Article 18 of the Vienna Convention on Law of Treaties, 1969 states which have signed or ratified a treaty refrain from any act which will breach the object or purpose of a treaty. China's reckless attitude does violate the foundation of the Constitution of WHO. However, it is still difficult to hold China accountable for the spread of COVID-19 before the world court.

Another practical hurdle involves active prior consent of state for a matter to be adjudged by ICJ. However, looking at the current scenario China's consent to submit the dispute to ICJ for adjudication is quite unlikely.

6. Is there light at the end of the tunnel?

In these times of uncertainty in international legal framework and practical deadlocks, it is important to assess other alternatives. The advisory opinion of ICJ may come to rescue, though not binding but enjoy a high place under intentional law. The WHO can seek advisory opinion under Article 76 of WHO Constitution. It allows the organization to seek opinion on a legal question arising within the competence of the organization. Seeking an advisory opinion this matter provides multifold benefits. Firstly, advisory opinions are significant in laying down the foundation for future course of actions. This may give a leeway to General Assembly to pass resolutions condemning apathy of China in controlling the spread of COVID 19. Secondly, in the landmark advisory opinion in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*[20], the ICJ observed that victims can be provided reparations. Drawing the

[19] Valerio Mazzuoli,*State responsibility and COVID-19: Bringing China to the International Court of Justice?*, International Law Blog (May 15,2020), https://internationallaw.blog/2020/05/15/state-responsibility-and-covid-19-bringing-china-to-the-international-court-of-justice/ last accessed 23/08/20.

[20] Advisory Opinion, Legal Consequences Of The Construction Of A Wall In The O('Cup1ed Palestinian Territory 9 July 2004, https://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf.

same analogy in case of a pandemic, China can be instructed by ICJ to compensate for losses. Thirdly, advisory opinion does not require prior consent of states, thereby broadening the scope and allowing judicial activism thereby surpassing the hurdle of passivity associated with contentious cases. Finally, in advisory opinion the state has to supply all relevant documents, facts, and evidence, thereby the final opinion of the court rests upon evidentiary value.[21]

7. CONCLUSION

It is undeniable that the epidemic swiftly turned into pandemic as was declared by the World Health Organization in March 2020. The novel virus has the capacity of quick transmission from person to person threatening to be the most lethal virus attack of all times. After a thorough study of the timeline of the spread of COVID-19 it cannot also be denied that China has acted in contravention with international obligations. Its delayed course of action and lack of transparency has led to spreading of virus thereby not just leading to public health emergencies but also crumbling of world economies. There is an urgent need for international responsibility by China for chaos created by COVID-19 and adequate reparation for the injuries caused. There is a clear violation of the Constitution of WHO, IHR, 2005 and due diligence principle but sanctioning may still be difficult due to practical shortcomings. The lack of robust sanctioning agencies at international level makes it difficult to hold a state internationally responsible. A matter to be submitted to ICJ requires prior consent of state parties and there is every possibility that China will refuse to give its consent. Also as China is a permanent member of the UN Security Council it will use its veto to even deliberate on this matter. In the current light the best alternative available is knocking the doors of the advisory opinion of ICJ by the WHO, though non- binding but still enjoys a prominent position in international law. It will help open up a path for future actions. Moreover, no prior consent of state is needed in case of advisory opinion of ICJ and the opinion is based on evidentiary value.

[21] Atul Alexander, Gauging the Advisory Jurisdiction of the International Court of Justice in the Face of COVID-19, Jurist (Apr 6,2020), https://www.jurist.org/commentary/2020/04/atul-alexander-icj-covid/ last accessed 09/10/2020.

WHITE COLLAR CRIMES IN INDIA

BY:- SAKTHI SIDDHARTH S

ABSTRACT:

This gives an understanding of how white-collar crimes are committed and its causes, effects need of change in the judicial system and also attitude of the judiciary towards it. Presently with the development of technological know-how and innovation more updated sort of guiltiness has emerged called cubicle violations. Professional wrongdoing typically alludes to violations conferred by using marketers, business visionaries, open government and specialists via misleading or extortion in place of conventional guide violations which will be predisposed to consist of savagery. White Collar Crimes are the crimes committed by using someone of excessive social reputation and respectability throughout the course of his profession. It is a criminal offense that is dedicated by way of salaried professional employees or folks in business and that typically includes a form of monetary robbery or fraud. The time period "White Collar Crime" was defined with the aid of sociologist Edwin Sutherland in 1939. These crimes are non-violent crimes dedicated with the aid of enterprise human beings thru deceptive activities who are able to get right of entry to big quantities of money for the purpose of financial advantage. Specialists have named the individuals sporting out wrongdoing, wherein the violations were negligible and kept to a selected place of administration as Grass Eaters. Individuals blanketed in comfortable wrongdoings and which has spread in almost all fields of business are named as Meat Eaters. With the method of innovation and development of practise, cubicle wrongdoings are on the ascent, being secured through professionals coming across break out clauses inside the legal executive and backing from the administration by means of implication.

Key words: *White-collar crimes, Judiciary, Corporate crime, Eradication.*

INTRODUCTION:

White-collar crimes are far more severe crimes when compared to any other financial theft crimes exiting in the world; the other financial crimes have high risks and low rewards, whereas White collar crimes have significantly fewer risks and high rewards; it has to that more than 200 million dollars are being lobbied because of white-collar crimes and their committer. Sir Edwin Sutherland was the first person to coin out White collar crimes in the year 1939. The distinguishing proof of casualties is troublesome, and deaths are uninformed of exploitation. It is standard information that specific calling offers rewarding open doors for criminal acts and unscrupulous practices that barely pull in general consideration; there have been evildoers and exploitative people in business, different callings, and even real life. They watch out for corrupt due to their disregard at school, home, other social establishments, their covetousness, benefit making madness, or need to reach on top by an alternate route. These freaks have insufficient respect for genuineness and other moral qualities. Subsequently, they carry on their criminal operations without risk of punishment, unafraid of loss of renown or status. They are a result of the tough economy of the mid-20th century. Today, a criminal thinks about the world as his field of activity. He carries out particularly in his area, calling, business, exchange, and this sort of people are not from any criminal foundation or with solidified arms and ammo, they do wrongdoings through their advantaged position.

WHITE-COLLAR CRIME IN INDIA:

White-collar guiltiness has become a worldwide wonder with the development of trade and innovation. Like some other nation, India is similarly in the grasp of white-collar criminality. The purpose behind the colossal increment in white-collar wrongdoing in later years in the quick creating economy and mechanical development of this creating nation. One of the significant destructions that are made in present occasions is a direct result of the strange vanishing of enterprises. Of the 5,651 organizations recorded on the Bombay Stock trade, 2750 have disappeared. It implies that one out of two organizations go to the stock trade to raise crores of rupees from speculators' plunder and fled. Indeed, even huge names like 'Home Trade' concocted gigantic exposure stunts, however in the wake of fund-raising, disappeared into thin air. Around 11 million speculators have contributed Rs 10,000 crores in these 2750 organizations. We have the Securities Exchange Board of India, Reserve Bank of India, and Department of Companies Undertakings to screen the stock trade exchanges, yet none has

recorded the whereabouts of these 2750 odd organizations suspended from the stock trade. White-collar criminality has become a worldwide wonder with the development of trade and innovation. Like some other nation, India is similarly in the hold of white-collar guiltiness. The ongoing improvements in data innovation, especially during the end long periods of the 20th century, have added new measurements to white-collar guiltiness. These crimes have gotten a matter of worldwide concern and a test for law requirement organizations in the new thousand years. These crimes' particular ideas can be perpetrated namelessly and distant from the casualties without physical presence. Further, digital hoodlums have a significant favourable position: they can utilize P.C. innovation to deliver harm without the danger of being secured or gotten. It has been anticipated that there would be a concurrent increment in cybercrimes with the expansion in new web sites. The zones influenced by cybercrimes are banking and money related organizations, vitality, and media transmission administrations, transportation, business, enterprises, and so on in India.

WHITE-COLLAR CRIME IN THE FOOD AND DRUG INDUSTRY:

In India, the issue is broad: 25% to 70% of the vast majority of the foodstuffs expended in the nation are defiled are tainted. As indicated by the paramedical inquiry council, Government of India, the misleading medications exchange prospers India to a monster expand. This is because of the covetousness of the fabricates, obliviousness of the helpless buyers who go in for modest medication from unapproved sellers, and the deficiency of veritable goods. Prosecution under the counteraction of the food corruption act flops much of the time due to short reports of the public investigation or postponement in the assessment of tests or because the technique recommended by the representing taking examples isn't permitted.

WHITE-COLLAR CRIME IN CORRUPTION:

The commonness of corruption is one of our nation's issues from days of yore. The word corruption is far-reaching in its significance. It suggests all the illegal exercises and society. Its degree is vast, and it incorporates all the circles of public activity. The corruption is enormous in India. It has entered and exists in each part of our cutting-edge society. It is additionally not a one-side act. There must be one corruptor for each corruption, regardless of the continued advancement of the idea of white-collar crimes, no agreement about a criminology hypothesis

that clarifies white-collar crimes. Specialists of the humanism, lawful, and criminology territories have conflicting speculations. Other than the conventional crimes like attack, battery, theft, dacoity, murder, assault, seizing, and different acts and exclusions including viciousness, there are expanding the number of against social and hostile to human exercises which the people of upper layers in a debilitated society like our own, carry on in the course of their business, occupation or calling. Thus, any report or complaint against such business or occupation/capable strategies goes typically unnoticed and unpunished to the upside of guilty parties, the violators of law provoking debasement as salaried destructive behaviours in general. Regardless, everybody knows close to think about the cunning of these business mafia crooks, and despite when they see, they are standoffish towards the issue and as hugeness considering the way that of the unsavoury reality that the battles in court, including such infringement, are deferred for a significantly long time in the courts and boards.

WHITE-COLLAR CRIMES IN THE FIELD OF MEDICINE:

In India, most medical specialists are discovered with exercises like issuance of a bogus medical endorsement, superfluous charging, and selling test medications to patients. These exercises are a portion of the unimportant crimes. However, not many of the very much rehearsed specialists with an attitude of doing wrongdoing strategically would assist them with getting away from disciplines, intentionally includes in the motivation behind cash making to play out specific exercises like rehearsing medication with no capability and by utilizing a phony authentication of finishing the particular course (these individuals are named as deception), premature birth as a typical term yet female foeticide as a medical term when mainly accomplished for the young lady youngster, organ exchange joined with murder will fall under real crimes. The medical specialists are regularly discovered engaged with the issuance of bogus endorsements, doing illicit premature births, selling out, for example, medications and medication, even sometimes debased medications and meds to the patients. Slow strategies are regularly embraced by them in furnishing treatment to their patients with menswear to separate colossal cash, regardless of whether they have a great practice. A portion of the famous occasions resembles that of the Nithari case, where the medical professionals set up before the general public the ideal degree of merciless character they can go after the pine for making cash. Deluding and phony notice guaranteeing outright fix is likewise one of the regular misbehaviours conveyed in the medical profession. The issue lies in the way that they

regularly get away from discipline since they can't be said to have abused the letter of the law; however, by disregarding the soul of the law, they carry out crimes which are hostile to social and cause enormous harm to the general wellbeing and security on the loose.

WHITE-COLLAR CRIMES WITH THE HELP OF INSIDER TRADING:

Another commonplace white-collar crime is this is insider trading. Insider buying and selling entail the man or woman using connections that they have got on the inside to shop for or sell for the stock earlier than the applicable statistics is made public. For example, a person who knows that an employer can be going through a lawsuit or a layoff may additionally decide to promote stock earlier than the information is released to sell at a higher fee. Conversely, a person may also wait to shop for till the insufficient information hits to get purchased at a decrease price. In contrast to a few different white-collar crimes, regulators have become increasingly savvier to detect sure trades that seemed to get primarily based on tipped off statistics. It can be difficult for someone to keep onto the inventory, understanding that this will, in the long-run, means losing money after they have the confidential facts.

WHITE-COLLAR CRIMES IN OTHER PROFESSIONS:

Among the numerous professions in India, the opportunities for perpetrating white-collar crimes are abundant. The more significant part of individuals having a place with the medical profession may not carry out lawbreakers or dishonest acts over the span of their work, yet the number of individuals who abuse the professional and legal standards isn't unimportant. The most well-known case are illegal premature birth, bogus medical endorsement, and pointless delayed therapy in numerous instances. Another broad spread infringement comprises recommending prescriptions in which one should having respect for his preparation or the arrangement of medication allowed to be trailed by him. White-collar criminality among legal counselors is accepted to be genuinely widespread. However, such crime is found to exist in numerous nations the circumstance in India; it is additionally disturbed by the way that there is an excessive number of legal advisors having respect to the work accessible to them with the outcome that a wide range of deceitful practices has degenerate into the profession. The regular legal and professional infringement perpetrated by attorneys is exhorting composed crooks, helping bogus cases, and creating a counterfeit-proof.

GROWTH OF WHITE-COLLAR CRIMINALITY IN INDIA:

When a nation creates, the white-collar crimes in that nation are likewise Increased, in white-collar wrongdoing can be seen by the improvement underway division, which helps expand the general public's economy. The more significant part of the white-collar crimes is straightforwardly or in a roundabout way associated with the creation and conveyance of wealth. The advance innovation and logical improvement place a significant function in expanding the pace of white-collar crimes. During the most recent 30 years, the nation has seen the execution of different five-year plans, including a gigantic consumption by the administration for a foreign country – building exercises. Degenerate officials, finance managers, and temporary workers never had so well. Most likely, the nation gained some ground, yet white-collar hoodlums have stashed a significant piece of cash reserved for the formative ventures. The threats and wickedness acted by White Collar Crimes to the thriving of Indians, and the financial improvement of this country can't be slandered. White-collar Crimes is the worst thing about most making nations, especially India. It is the driving reason for its being taken a shot at with its affiliated effects of poverty, dinginess, and sickness. White Collar Crimes thrives with weak foundations, terrible position, and horrendous organization; something from perceiving among liable gatherings dependent on wealth, occupation, race, sexual direction, nationality, or other individual attributes no uncertainty, there are one of a kind opposition concludes that apply to explicit kinds of authoritative performing artisans. The factor is accepted to be liable for the inability to rebuff or for insufficient disciplines most definitely. Judges of the courts commonly have a place with the upper layers of society, and this factor may decide their mentality towards white-collar wrongdoers, who has likewise originated from similar social layers. Another obstacle in the indictment and discipline of white-collar hoodlums separated from how the general population isn't just detached and indifferent towards such infringement of law is that frequently the individuals from the network themselves add to the commission of different white-collar crimes.

PRESENT SCENARIO OF WHITE-COLLAR CRIMES IN INDIA:

White Collar Crimes are rapidly growing in India. With the advancement of commerce and technology. The latest traits within the technology have given the new dimensions to pc related crimes called the cybercrimes. As such, white-collar crimes are growing with the development of modern websites. These crimes' regions are tormented by banking and financial institutions,

industry, commercial enterprise, and many others. Thus, crime is an act or omission that constitutes an offense and is punishable below India's regulation. As the white-collar crimes are growing daily, it injures society on a considerable scale because the legal guidelines aren't nicely administered, and therefore there's a need to curb the elements that can be assisting inside the commission of such crimes. White-collar criminal activity has become a worldwide phenomenon with the advance of commerce and generation. Like every other state, India is similarly in the grip of white-collar criminality. The recent developments, in fact, generation, in particular for the duration of the final years of the 20th century, have brought new dimensions to white-collar crime. An unprecedented increase of a recent sort of laptop ruled white-collar crimes, which can be usually called cybercrimes.

PROBLEMS OF CONTROLLING WHITE-COLLAR CRIMES IN INDIA:

The qualities of expert wrongdoing of authentic blue-collar crimes in India, spatial detachment, and look of authenticity to increase splendid troubles for its control through the crook fairness framework. The maximum eminent difficulty is that of discovery. Most ordinary street wrongdoings are prominent by using their casualties, who would then report the episode to the police. Be that as it could, as a result of cubicle wrongdoing, casualties might be completely uninformed that they have been deceived. Consequently, no transgression may also ever be accounted for to the police. Since revelation is risky, it's miles hard to gauge the cubicle wrongdoing problem's scale and, therefore, choose picks with admire to the way to allot belongings closer to its control. A second control difficulty raised using workplace wrongdoing includes doling out duty regarding the offense. Numerous desk violations happen in hierarchical or corporate settings and are the aftereffects of combination actions made utilizing individuals' gatherings. In those instances, it's far regularly hard to differentiate the individual or those who ought to be taken into consideration liable for the unlawful action. Since it can now not be clear who's in the price of a selected offense, prosecutors frequently are hesitant to deliver such cases to trial. Identified with the troubles of vicinity and duty is the problem of securing emotions in court. Since cubicle white-collar crime is frequently tricky and inserted in genuine enterprise schedules, it may be troublesome for prosecutors to illustrate past a realistic uncertainty that an individual is blameworthy of an offense. The big problem is demonstrating that the guilty birthday celebration deliberately proposed to push aside the law.

LAW RELATED TO DIFFERENT TYPES OF WHITE-COLLAR CRIMES:

The perils and wickedness acted on White Collar Crimes to the flourishing of Indians, and the money related improvement of this country can't be vilified. White-collar Crimes are the worst thing about most making countries, especially India. It is the driving reason for its being taken a shot at with its combined effects of poverty, lack of sanitization, and infirmity. The Government of India has presented different administrative enactments, and the penetrate of which will add up to white-collar criminality. The legislations include legislations are Essential Commodities Act 1955, Prevention of Money Laundering Act, 2002, the Industrial (Development and Regulation) Act,1951, Companies Act, 1956, The Import and Exports (Control) Act, 1947, the Foreign Exchange (Regulation) Act, 1974. The Indian Penal Code contains provisions to check crimes such as Bank Fraud, Insurance fraud, credit card fraud. The Information technology Act,2000, has much strict and infringement laws towards cyber-related white-collar crimes to the Instance Section 43 – 47 of the Act has much more complex rules and regulations to be followed, and the punishments are stringent.

JUDICIARY TOWARDS WHITE-COLLAR CRIMES IN INDIA:

Courts generally use exclusive treatments to white-collar criminals. Trial courts in India now fail to recognize the gravity of white-collar crimes and therefore tend to be contented with the aid of awarding mild or even token punishments to white-collar criminals. In 47th Law Commission, the committee made the following remark: "Suggestions are regularly made that during order that the decrease magistracy may recognize the seriousness of some of the social and economic offenses, some approach ought to be evolved of making the judiciary conscious of the grave harm prompted to the USA's economic system and fitness by using such anti-social crimes. We hope that the higher courts are alive to the harm, and we don't have any doubt that the perfect event, together with the judicial conference, the situation will receive attention". It is of extreme importance that all nation instrumentalities concerned in the investigation, prosecution, and trial of those offenses have to be oriented to the philosophy which treats the financial crimes as a supply of grave project to the material wealth of the nation.". In the case of M.H. Hoskat vs The State of Maharashtra, it may be taken into consideration as an example of a decrease judiciary mindset towards white-collar crimes and criminals. Hoskat, a reader at Saurashtra University, was discovered responsible for striving to get admission to the Karnataka University diploma certificate. The consultation court offered him a single day of

imprisonment. The court docket justified its action to mention that the wrongdoer has no crook inclinations to get involved in a criminal offense in the future. On an enchantment via the state, the high courtroom beautifies the imprisonment's length to a few years. Supreme Court termed the sentence provided by employing the consultation court docket as "Incredibly indiscreet" and warned the consultation court docket for awarding the wrong penalties. According to Sutherland's definition, there may be no white-collar crime in this example, but it can be taken as an instance for higher expertise. In Muralidhar Megharaj Loya vs State of Maharashtra, the court said that "it's miles trite that this social undertaking of food laws should be knowledgeable the interpretative procedure." So that, the legal blow can also fall on every adulterator. Any slender and pedantic literal and lexical creation probable to go away loopholes for those risky criminals tries to sneak out of the law's measures need to be discouraged. Finally, courts in India have given strict interpretation of the socio-financial statues that do not require any men's rea inside the shape of purpose or knowledge for committing an offense.

EFFECTS OF WHITE-COLLAR CRIMES IN INDIA:

The rate at which white-collar crimes are growing has become a matter of issue globally. It has been located that the detriment that white-collar crime purpose to society is a whole lot greater than different types of crime. Moreover, India is a developing nation, so a remarkable increase in white-collar crime hampers its picture in conjunction with being a threat inside the increase of its financial system. Moreover, white-collar crimes purpose emotional traumas, no longer simplest to the crime's sufferers but the society at massive. The sufferer isn't always capable of bearing white-collar crime prices that he had evidence; society begins losing faith in the government. If the authorities at higher positions, who have enormous powers, start using it unlawfully, then who else will the citizens accept as true with. Also, as these crimes are flourishing worldwide, people don't find themselves comfy anywhere, neither inside the physical world nor within the virtual international. People were introduced to the virtual international to keep away from tiring jobs like standing in the queue to deposit or withdraw cash from the bank and reduce other sorts of physical labor; it has no longer come to be the most critical platform for the fee of white-collar crimes. Nowhere does the humans locate themselves safe. Above all, no matter several moves towards white-collar crimes and instituting several regulations and guidelines via enchantments, the government has now not been able to do much for the white-collar crime sufferers. The complex nature of committing

such crimes makes it hard for the authority to locate evidence. That is why many criminals pass freely, which has become the main reason for the offense to flourish. The criminals don't find any incentive to dedicate such crimes, which helps them make clean cash. One of the foremost motives for such crimes to flourish is that media coverage of only a few cases takes region in case of white-collar crime. Often the media person and the offenders fall below the same group or class and stars favoring them to show their truth to human beings. Moreover, humans sitting at a higher role, who commits such crimes, purchase the media individuals or threaten them to close their channel, as a way to forestall the media coverage in their wrongful or unlawful acts which they commit or have committed all through the route in their career.

CONCLUSION:

White-collar crime has been in India for the long term. It might have been over regarded, but it was available even inside the 20th century despite everything. Professional wrongdoing is a fashionable elegance containing an extensive range of styles of offenses. The authorities internationally have given a free hand to businesses to take advantage of the natural and community resources while depriving the not unusual people of their proper on these sources. For instance, in India, Corporations at Eloor, Kodaikanal, and Gujarat have now not best destroyed the water and land resources in those areas but also disadvantaged groups by degrading their livelihood sources and fitness. Screw-ups afflict all those communities, just like Bhopal. The provisions of the Indian Penal Code coping with white-collar crimes must be amended to enhance punishment, mostly excellent in song with changed socioeconomic situations. The unique Acts handling white-collar crimes and the provisions of Indian Penal Code should be harmoniously interpreted to control the hassle of white-collar crimes. India is a growing Country, and white-collar crimes are not handiest a detriment to the economic increase of the economy and spoil the picture of our economy as a whole. It can be effortlessly understood that to take away white-collar crime isn't comfortable in any respect because it has been into life for many centuries. However, we, together with government and felony entities, must try to lessen such crime. The decrease in Foreign direct investment in 2011 and the international monetary institutions' outflow of price range from inventory markets are clear indicators of the terrible effect of fraud and corruption.

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Are Laws Schools preparing Law students for real life/careers?

By: Vishal Vyas

Are Laws Schools preparing Law students for real life/careers?

Many law students face difficulties when they enter professional life. It's aptly said; it is one thing in theory and another in practice or to perform. However, if law schools adequately prepare their students they can perform exceptionally well.

In developing countries, the system depicts a sorry story, and improvement in law schools is yet to be seen. It could be a complete recipe of disaster for the legal profession. First things first, the curriculum is not revised hence, students are compelled to go through or invest their time of 5 years to not-so updated syllabus. This has done more harm to them than good. Secondly, law schools are not making their students tech-savvy. This not only wastes time but also takes away another learning opportunity from students. They are unable to access information in a quick time. For example, it’s much easier to look for case laws through law sites instead of law digests. Thirdly, the inefficacy of assignments and projects, if not all most of the students copy-paste the things. It’s not all their fault, as when one is given homework without creating one’s interest in it – this is going to happen (yes, CTRL+C & CTRL+V). Another, most important thing research in a legal study is the foundation of being a good lawyer and Legal drafting is a pillar to support the roof which is the strength to argue. Unfortunately, the emphasis of law school is on just grades and not learning.

To make a good business of course in-take of law students is more than required or available resources. Ultimately, this is counterproductive both for students and institutions as well. Is that the college does not really care or deliberately compromise on legal interest for the sake of exploitation and making money? Well, the things (apparent) do say so. Cheating in exams is trending, too. Colleges fail to anticipate its student’s creativity and put credibility and reputation of the legal profession on stake. No strings attached, the ratio of females in the law profession is extremely low and law schools are doing nothing in this regard. Not any scholarships for them, not any incentives. The law schools within curriculum years do not even offer any internships. There are many other factors involved, and the jury is still out.

Nonetheless, in developed countries, the situation is far better. From curriculum to given assignments, from a way of teaching to giving students an exposure to different kinds of activities, from moot courts to mock trials, from legal clinics to offering students paralegal or clerk jobs at law firms, from legal drafting to the latest research method and whatnot? You name it! Law schools produce the best lawyers and not just liars.

There are no two opinions on it, to excel, developing countries shall follow models of developed countries. If law schools want to clear their names they shall start amending the system. Here are my two cents how law schools can prepare future lawyers, superlatively.

1-Admissions strictly adhere to merit-based and the practice of excessive enrollment shall be spurned.

2- Law schools must be keeping in trend with technology, modern world, and improvised syllabus.

3- Pathetic and old system shall be replaced by innovative and creative ways of teaching and inclusive education.

4- Legal research shall be given as much impotence as it deserves, besides, legal drafting must be taught.

5- Moot courts and mock trials are important to develop argumentative skills.

6- Legal clinics at every law school is mandatory to get acquainted with their students to different medico-legal procedures and several other practical aspects of different cases.

7- Internships will give them exposure, and are necessary for them to gain an insight of legal practice also towards more diverse experiential learning.

8- Cheating in exams is malpractice, and it shall be condemned.

9- Management must inculcate ethical and moral values into students.

10- The focus shall be on the business side of the law as well.

11- Law schools require proficiency in legal technologies.

12- Access to law sites for every student shall be free of cost.

The ineffectiveness is not worth defending however, worth correcting. Effective strategies and amendments can do wonders. Law schools are mandated to carry out its function in a magnificent manner. To reform the institutions the due process shall be less political and more legal, as this is a serious cause of concern for both the law students and legal fraternity. To do justice with the

common public in general and the legal profession in particular, the law school system needs to be changed according to the world's needs. I hope to see changes – positive ones of course. Lawyers are the most important segment of society that's why they shall be prepared well as William Howard Taft nicely put,

"Lawyers are necessary in a community. Some of you...take a different view; but as I am a member of that legal profession, or was at one time, and have only lost standing in it to become a politician, I still retain the pride of the profession. And I still insist that it is the law and the lawyer that make popular government under a written constitution and written statutes possible."