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1.

Criminal Justice Ethics

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Abstract

Legality is always coupled with morality and that is why the study of the criminal justice system is incomplete without the introduction of ethics in the system. Ethics refers to the code of conduct in determining whether a decision is right or wrong. Every criminal justice system has certain ethics for its better administration. Several ethical theories are construed in reference to the criminal justice system. These theories are Normative ethics, Metaethics, and Applied ethics. While some aspects deal with the standard of conduct, the others deal with the morals and behavior of the person. In a criminal justice system, ethics influences not only the court and offender but also the attorney, police, and a common man. The ethical system can be categorized into two heads such as Deontological Ethical systems and Teleological Ethical systems. The former one is the non-consequential system and the latter one being the consequential system. Ethics also helps the courts in the formulation of a rationale decision. Any criminal justice system without ethics shall be considered as a hollow system. The beliefs and behaviors helps in maintaining the status quo in the system. There are different categories of ethics such as Police ethics, Court ethics, Correctional ethics and Probation & Parole ethics. The utilitarianism approach aims at achieving good for the maximum people. Every country has its own criminal justice ethics. While surveying, the criminal justice system with ethics is proved to be more successful and beneficial than the one without the ethics and that is why ethics plays a vital role in the criminal justice administration.

Keywords: Ethics, Morality, Criminal justice system, Crime, Administration.

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1. Introduction

"I count him braver who overcomes his desires than him who conquers his enemies, for the hardest victory is over self."

-Aristotle

The most commonly appreciated Public service system is the Criminal Justice System. Ethics plays a vital role in the administration of the criminal justice system. Ethics not only helps in the formulation of the policies but also in determining the legality of the policies framed by the policy makers. Ethics is commonly known as moral philosophy. Morals help the courts in delivering a rationale judgment.

Ethics is considered as an asset in the Criminal justice system for it is not based upon biasness. Criminal justice ethics is independent of prosecution or defence. It helps in determining whether a decision is right or wrong. Though right or wrong is an arbitrary term. It differs from person to person but that rationale shall be inferred from the sight of a prudent man.

There are two views as to study of ethics in the criminal justice system.[1] The first view says that the implementation of ethics can be done without having the proper knowledge of ethics. In this form, the ethics is completely abstract. It depends upon what the judge feels to be right or wrong at the moment, such as concept of equity. The other view regarding study of ethics contains a completely standard code of conduct in the determination of right or wrong.

The complete study of ethical behavior not only figures out what is evil but also determines the factors that caused evil to occur. The criminal justice system with an ethical code of conduct shall be binding on the professionals too so as to restrict them to act fiercely in a particular matter. The concept of ethical pluralism specifies that where the ethical standards differ from each other, then it shall be resolved by the four principles such as:

1) The principle of understanding
2) The principle of tolerance

[1] Banks, C. (2020). *Criminal justice ethics : theory and practice*. Sage Publications, Inc.

3) The principle of standing up against evil
4) The principle of fallibility

The more sorted the ethical standards are, the more they keep relevance in the criminal justice system.

1.1 Origin and Development

During the 1940s the United States National Institute of health wantonly infected the Guatemalans prisoners, prostitutes and mental health patients with sexually transmitted diseases to evaluate the efficacy of penicillin treatment protocols.[2] In the early 1963 under the custody of Washington and Oregon state prisons, 131 convicted offenders were exploited so that the researchers can assess the effect of radiation on testicular function.[3] Similar incident occurred during the 1960s when inmates were administered psilocybin and LSD in an attempt to reduce recidivism.[4]

The prisoners were subjected to such experiments for a long time including the injection of liver cancer cells, electric shock therapies and many more. Such unethical behavior with the prisoners demanded the need of reformation of criminal justice system. Subsequently, in 1970s by the government intervention an alert was set to the authorities to use ethical policies having regard to the rights of the participants who were traumatized by the researchers.

Aristotle happened to be the first western philosopher to study ethics in an organized manner. However, the development in criminal justice ethics is bifurcated into two views.[5]

[2] Semeniuk, I. (2010). A shocking discovery. *Nature*, *467*(7316), 645–645. https://doi.org/10.1038/467645a
[3]Kramer, R. C., Michalowski, R. J., & Kauzlarich, D. (2002). The Origins and Development of the Concept and Theory of State-Corporate Crime. *Crime & Delinquency*, *48*(2), 263–282. https://doi.org/10.1177/0011128702048002005
[4] Doblin, R. (1998). Dr. Leary's Concord Prison Experiment: A 34-Year Follow-up Study. *Journal of Psychoactive Drugs*, *30*(4), 419–426. https://doi.org/10.1080/02791072.1998.10399715
[5] Cohen, M. R. (1940). Moral Aspects of the Criminal Law. *The Yale Law Journal*, *49*(6), 987. https://doi.org/10.2307/792227

1.1.1 Older View

In older times, crime was considered as a violation of some eternal laws set by the god, nature or reason. The traditional laws can be understood in two forms:

1) **Theologic point of view**: This is considered to be the oldest yet most widespread form of ethics. According to theologians, all the laws especially criminal law are anointed by the Manu or by Zeus. According to them, crime means the violation of divine will. This theory includes crime as sex relation that is prohibited by the divine will, uncharitable attitude for others, etc. This theory considers crime as the violation of ethics set by the divine power.

2) **Rationalist point of view**: This theory is considered as the point of view of moral intuition. This theory suggests that the penal code shall be formulated on the basis of morality. Kant propounded the need of moral standards which then helps in stepping the foundation of ethical relations. This viewpoint has not much relation with the divine will. According to Kantian theory, ethics is mainly concerned with the popular conscience of the people.

1.1.2 Positivistic View

The positivists are of the belief that ethics is concerned with the science of criminology. This view manifested that science deals with the existence of facts. They do not believe in prior legislation. According to them, crime is an abstract term that differs from person to person. This theory also talks about temporal changes in the ethical behavior of the people. Positivists claim that a crime is identified when the concerned act is inconsistent with the social norms such as smuggling, prostitution, harboring the offenders and prisoners etc.

Since there is no certain definition of what is moral and what is immoral. This led to the need of formulation of ethical code of conduct in the criminal justice system.

1.2 Theories of Criminal Justice Ethics

The question may arise as to why we need to study the ethical theories developed about a century ago while dealing with the current issues. The answer to that question would be that the theories lay down the philosophical standards in determining whether a particular decision is ethical or unethical. Sometimes a decision may seem to be unethical apparently but when we look in the philosophical standards then we can ascertain the root of the decision. The ethical theories for the criminal justice system are[6]:

1) Normative Ethics

This theory is considered with an ethical standard of conduct and the ways of behaving. The normative ethical theory is the most important theory. Since the perspective of a thing differs from person to person and therefore, there cannot be a single standard for determining the ethicality of a decision. There shall be different ethical standard in different situation. This phenomenon of setting up of different set of standard is known as *Ethical Relativism*. The decision shall be formulated on the basis of 'what is known to be right' across the societies.

Evans and MacMillan (2014, p.27) define the normative ethics as "theories of ethics that are concerned with the norms, standards or criteria that define principles of ethical behavior". Normative theories tells us 'what ought to do' along with 'why we ought to do that'. The normative ethics have further ethical theories such as:

a) **Utilitarianism:** This theory focuses on achieving the maximum good of the people. This theory is best described as the 'theory of pain and pleasure' as also propounded by the famous jurist Bentham. According to this theory, those policies which grabs the maximum satisfaction of the people shall be adopted.

[6] Evans, D. R., & Macmillan, C. S. (2014). *Ethical reasoning in criminal justice and public safety*. Emond Montgomery Publications.

b) **Deontology:** This theory claims to be the duty based theory. It says that an individual has certain obligations and responsibilities towards another while engaging in decision making and that is when the ethics shall come into picture.

c) **Rights:** The rights are bestowed by the society upon the individuals and they are deemed to be ethically correct and valid. The rights shall be conferred with utmost care as such rights are enforceable in the court of law.

d) **Virtue:** This theory judges a person by its character and not by action. It specifies that ethical standards are formulated on the basis of a man's behavior, reputation and conduct. One loophole of this theory is that it does not take into account the changes moral behavior of the person.

2) Meta Ethics

This theory deals with study of ethical theory itself. Evans and MacMillan (2014, p.27) define the Meta ethics as "theories of ethics concerned with the moral concepts, theories and the meaning of moral language". Meta ethics theory deals with the manner of looking at a situation. It deals with the interpretation and evaluation of the language used within the normative ethics theories.

3) Applied Ethics

Applied ethics theory look for solving the practical moral problems that usually arise in the profession and hence useful in the administration of criminal justice system. The applied theory deals with the application of normative theories in a particular issue. Evans and MacMillan (2014, p.27) define the applied ethics as "theories of ethics concerned with the application of normative ethics to particular ethical issues".

2. Criminal Justice Ethics

"When discretionary decisions are guided by ethics, decisions can be said to be fair and just, because there are always shades of moral obligations that are higher than others" (Souryal, 2006). Criminal justice professionals are the agents of the government and hence they are expected a higher degree of morals than the others. This higher degree of morals helps them in attaining the confidence of the people. All the criminal justice professionals be it attorneys, courts, correctional officers etc. faces a situation of ethical dilemma at some point in their careers and that is when the need of ethical standards are required in the delivering of fair and rationale judgment.

2.1 Types of Criminal Justice Ethics

The criminal justice ethics[7] can be categorized into many areas such as:

1) Police Ethics

The police ethics is the set of standards for the policemen who are acting as community professionals. The goal of police ethics is to maintain social peace in the community. The police ethics prototype performs twofold roles:

(i) **The traditional (crime control) role:** This prototype is more dominant in the United States and considered as less formal. Under this paradigm, the police is considered as an army personnel to control the crime and the aim is to catch the criminal who is considered as an enemy since he breaks the peace norms (Kleinig, 2008). This gives rise to the birth of the police subcultures where loyalty is the key. Many a times, the police subculture indulges in the unethical behavior which leads to weakening the system (Pollock, 2007).

(ii) **The modern (public service) role:** This paradigm is more prominent in the Europe. This viewpoint is the total opposite of the traditional one. This prototype

[7] Kleinig, J. (2008). *Ethics and criminal justice : an introduction*. Cambridge University Press.

is more of 'right based and duty oriented'. Under this role, police acts as a friend of the people by mingling in the community. The offender is not considered as an enemy but a neighbor who just lost track. (Pollock, 2007).

2) ***Correctional Ethics***

The offenders in the correctional facilities shall not be dealt with excessive force than actually required. In 1980 under the New Mexico Prison, the guards of the prison got engaged with goon squad as a mean of achieving control over the inmates. In 1998, three of the female inmates in federal penitentiary in California were sold as sex slaves to the other male inmates.[8] These incidents clearly determine how the prisoners were treated unethically in the correctional facility. They were not only subjected to physical brutality but also by sexual assault. Also, there were cases when the staff members were indulging in the unethical behavior with the inmates and so the need of correctional ethics arose.

3) Court Ethics

As in the police ethics, the in-court practitioners also have the tendency to indulge in unethical and unprofessional activities. This is so because they have the discretionary power to act in their own way. The ethics differs in the case of prosecution, defence and judges.

Prosecution Ethics: It is the prosecutor who opens up the case. He has the authority to decide which case shall be sent for trial and which one to be dismissed. The prosecutor shall not be impartial. His motto shall be the seeking of justice and not compulsory conviction. The U.S Supreme court in ***Brady v. Maryland***[9] held that the suppression of evidence (exculpatory information) by the prosecutor led to the violation of due process of law against the defendants.

Defence Ethics: The defence attorney shall aim to provide a fair representation to his clients. He shall not care about whether his client is guilty or innocent. Also, he shall not encourage his clients to commit perjury in order to save themselves from the

[8] Lucas v. White, (1999)
[9] 373 U.S 83 (1963)

conviction. In ***Burdine v. Johnson***[10] the defendant was given the benefit of violation of his legal right as his attorney fell asleep during the trial and held that a new trial shall be ordered on the ground of incompetent defence counsel.

Judges Ethics: The weight of justice lies on the shoulders of the Judge. He shall be impartial while delivering the judgment. He shall not be indulged in any organization based on discrimination such as caste, creed, race, sex etc. While delivering a judgment a judge shall keep this in mind that someone's life is at stake. He shall interpret the law carefully and shall analyze the evidence wisely. He shall use his own conscience too apart from the evidences produced.

4) Probation and Parole Ethics

Since probation and parole is a type of correctional facility. All the correctional ethics shall be applicable in the case of probation and parole ethics too. Apart from that, efforts shall be made to reform the offender. He shall be provided employment, job training. The probation and parole officers shall not be indulged in any unethical behavior. The authorities shall not misbehave with the offenders and even with their family members (Souryal, 2006)

2.2 Role of Criminal Justice Ethics

Ethics lays down the very foundation of the Criminal justice system. It is because of the ethics we can determine what a *due process* is. It is because of ethics we can analyze which decision is right and which one is wrong. Ethics determines which moral standards shall be used so as to make it acceptable by the society. Ethics can be adopted by surveying about how a prudent man reacts to a particular situation.

Ethics usually plays key role in the criminal justice system in the following ways:

[10] 262 F.3d 336 (2001)

1) Attorney Behavior

As discussed above in the court ethics, the role of attorney is to provide a fair representation to his clients. He shall not aim to win the case at all costs rather he should focus on representing his client in a best possible way. There shall be ethical code of conduct for the attorneys by maintaining the spirit of the law. Ethics influences the criminal justice system in a way that by keeping the standard code of ethical conduct no attorney can indulge in unscrupulous activities.

2) Police Operations

Previously discussed in the police ethics, a police shall behave ethically while dealing with the crime and the criminal. They shall not treat offender as an astray but a member of the community only. The policemen shall get mingled in the community for the purpose of preventing crime. He shall act as the friend of the people living in the community. By adopting this ethical way of conduct, the criminal justice system can nourish itself and will result in reduced recidivism.

3) Self Participation

The criminal justice system usually does not take into consideration the will of the common people. The personnel shall take the opinion of the people about what ethical measures can be adopted in the system, how they want to get the offender treated in an ethical way. They shall impose a duty on the people to self participate in the assistance of the authorities and that to report the local authority anytime they heard of any crime occurred.

3. Ethics and Criminal Law

Legality& Morality is the basis of every criminal justice system. Gert (2006) defines morality as “a set of beliefs about what is good or bad, a code of conduct or a guide to behavior that is considered to be overriding, but generally confined to a specific culture of society”. The terms ‘ethics’ and ‘morality’ can be used interchangeably. Both terms denotes the conduct as to right or wrong. The only difference between the two is that morality is more of a perception. It can

differ from person to person. On the other hand, ethics is a set standard of conduct framed by some superior authority.

Ethics keeps much relevance in the criminal justice system. The only requirement is that it shall be fair and in an organized manner. It shall not be rigid. No penal law can be drafted equitably without considering the ethics in mind. To rule out the injustices in the system, the ethical conduct of conduct shall be reviewed frequently and modifications shall be made accordingly.

3.1 Ethical Systems

Plato considered the idea of 'goodness' holds much virtue even than the 'justice' (Souryal, 2006). According to him, ethics lights up the inner soul of the people ultimately forcing them to behave ethically. Ethics helps an individual and the society to create social peace in the community.

In the history of western world, Aristotle provided the first ever systematic study of ethics. He specifies 10 ethical virtues to be enlightened such as *courage, prudence, justice, temperance, truthfulness, pride, wittiness, ambition, having a good temper* and *being a good friend.*[11] There are several ethical systems that justify the ethicality of a judgment.

3.1.1 Deontological Ethical Systems

Deontologist is the non consequential ethical system. They deal with the inherent nature of the act. Immanuel Kant (1724-1804) is the most eminent deontologist. He saw ethics as a duty that everyone must do. He propounded the concept of categorical imperative. According to this system, men should just follow the duties conferred upon them without worrying about the consequences (Close & Meier, 2003).

[11] Aristotle. (2020). *Nicomachean Ethics.* Penguin Publishing Group.

3.1.2 Teleological Ethical Systems

Teleological is the consequential ethical system. This is called teleological because it is concerned about the needs of the one affected by the decision. The concept of teleological ethical system was first ruled out from the theory of utilitarianism propounded by the Jeremy Bentham. The concept of Utilitarianism aims to achieve maximum good of the people. The maximum satisfaction can be achieved by the hedonism principle i.e. the theory of pain and pleasure, also propounded by the Bentham. This ethical system says that the ethical rules shall be framed so as to keep in mind the consequences that one may go through because of the decision based upon this ethical code of conduct.

3.2 Relation between Ethics and Criminal Justice

The most common question arises as to why there is need to study about the relationship between legal and moral. One possibility is that it is a common belief of the people that the one who commits the wrong shall be punished. The basic tenet of the Indian legal system (including the criminal justice system) is based upon the principle "Equals should be treated equally and unequal's unequally". This principle is emanated from the basic moral norms. Also, the legal philosophies of eminent jurists such as Plato, Aristotle & John Rawls are associated with Ethics and moral principles.

For the better functioning of the Criminal justice system, there shall be an organized and unambiguous ethical code of conduct. The ethical code of conducts is specifically significant for the members of the criminal justice system as they are in powerful position and they administer the justice to the society. It is most important that the machineries and agents administering the criminal justice system shall be far away from the biasness. They shall act according to the moral standards. Honesty, impartiality, fairness etc. are the key essentials of a criminal justice system. The agents shall have a fair knowledge of the criminal justice system so as to create balance of interest and to best facilitate the society.

One thing about the morality is that it is not certain. It can differ from person to person or time to time. The criminal justice system shall be so flexible so as to adapt the changing morals in the society. The Indian Legal System also encourages the shift in moral perspectives. In ***Naaz***

Foundation v. Govt. of NCT of Delhi*[12]*, the Supreme Court decriminalized section 377 of The Indian Penal Code, 1860 and put forward that homosexuality is not immoral. Also, in the case of ***Joseph Shine v. Union of India*[13]*,*** the Supreme Court decriminalized Adultery under Section 497 of the IPC but still considered it as a ground of divorce.

Ethics plays a vital role in the punishment itself. The administration shall provide the punishment as only necessary to prevent the offender from further wrongdoing. Excess force shall not be used. Rehabilitation shall be put above the punishment. Also, the harm caused shall be taken into consideration while granting the punishment. An ethical code of conduct allows the authorities to come to a wise decision about how to maintain social peace in the community.

4. Need of Criminal Justice Ethics

The Criminal justice system has its completely different system of values also known as *subculture.* Subculture contains completely unique yet organized set of rules, regulations, code of conduct, procedure and standard. The idea of ethics is useful in curtailing down the retribution as a mode of punishment. Ethics influences the mental health of the people and the offender shall be dealt with criminal justice ethics only.

Ethics not only is a written code of conduct, it regulates the behavior of the society. By incorporating ethics in law, the criminal justice system can prevent mis-happenings such as abortion. Without the moral guidelines, the Criminal justice system cannot function properly. It shall keep in mind the needs of the society especially of the victim. The institution shall compensate the victim for the loss caused by providing financial assistance (if the same can be adequately compensated monetarily) or by incarcerating the offender (if money is not an adequate relief) so as to give the victim the feeling of crime free society. Ethics is considered as an asset in the criminal justice system as it is applicable both in the cases of the victim and the offender for the better application of the justice.

[12] 2009 (160) DLT 277
[13] 2018 SCC Online SC 1676

Value of ethics to maintain civility

The needs of the individual are different from the needs of a group or culture. By setting up the ethical code of conduct the authorities receives the feedback of the society. It leads them to know which rules are acceptable by the society and which are discarded by the society. Apart from the victim and the offender, civilians also play a major role in the criminal justice system. Ethical values are determined by the personal behavior of the variety of the people in a society as to what is moral or immoral. Ethical behavior rationalizes the conflicting interest of the people by putting forward a particular set of values and acceptable norms to be followed in the case of contingency.[14]

4.1 Consequences of system free of Ethics

It is already discussed in detail that ethics plays a major role in the criminal justice system. It builds up the morale of the people by assuring them the balance of interest up to a possible extent. If any criminal justice system does not have ethical code of conduct, then it goes through many consequences such as:

1) ***Coercive***

   The Criminal Justice System with no ethical code of conduct becomes coercive in nature. It is coercive in the sense that the authorities only aims to apprehend the offender and punish him for his wrongdoings. They do not look after what would be the outcomes of such an apprehension. The accused after serving his sentence in the jail or Prison may get indulged in the recidivism which ultimately increases the crime rate in the society.

2) ***Judgmental***

   When an accused is punished, the whole system condemns him and stigmatizes him for his wrongful act. The society and even the system become judgmental. This disturbs

[14] Johnstone, P. (2020). *Ethics in the Criminal Justice System*. Kendall Hunt Publishing Company.

the reintegration process of the offender. In the absence of Criminal Justice ethics, an offender becomes the negligent member of the society who only deserves punishment and not rehabilitation.[15]

3) Preemptive

In an Ethical Criminal Justice System only the government is the legitimate punisher. But, in an ethic less system there is no prescribed standard as to who shall punish the offender. This may lead to civilians indulging in the process and attacking the offender as a mode of punishing him for his wrongful act such as in the case of rape, murder etc.

That is why there is need of ethics in the Criminal Justice System because ethics helps in laying down the foundation of the criminal justice system.

5. Criminal Justice Ethics in various Countries: A Comparative Analysis

Various international professional bodies such as United Nations developed several international standards and norms related to Criminal Justice Ethics. Some of them are:

- The ***Law Enforcement*** Code of Ethics prepared by the International Association of Chiefs of Police.
- The Code of Ethical Conduct prepared by the ***International Corrections and Prisons*** Association.
- The Code of ***Judicial*** Ethics of the International Criminal Court.

The comparison between different countries can be made by distinguishing the type of criminal justice system they belong to. There are two types of Criminal Justice System such as adversarial and inquisitorial Criminal Justice System. It is the presumption of the law that an accused is innocent until proven guilty. The difference between the two systems is that, in adversarial system the judge acts as an umpire. The truth has to be ascertained by him by

[15] Lee, Y. (2013). What is Philosophy of Criminal Law? *Criminal Law and Philosophy*, *8*(3), 671–685. https://doi.org/10.1007/s11572-013-9222-0

scrutinizing the prosecution and the defence evidences. While in inquisitorial system, the judge plays an active role in order to ascertain the truth.

Countries like India, United States of America and United Kingdom has adversarial Criminal Justice System and the civil law countries like France, Italy, Newzealand, Germany and Austria follows the inquisitorial Criminal Justice System.

A. India

Ethics assumes its source in Indian Criminal Justice System via Indian Constitution. There are many provisions that emphasizes on using ethical code of conduct in the administration of justice such as Article 14, 17, 19, 22, 23, 32, 38, 39, 226 etc. Ethics is an important criterion in all the sectors of the criminal justice such as *Law Enforcement, Courts,* and *Corrections.*

A law made by the legislature is enforced by the administrative authorities majorly by police. Police brutality has not been concealed from anyone throughout the globe. The unscrupulous behavior by the police calls the criminal justice system in question. To deal with such an issue, an ethical code of conduct was drafted by the Indian Legislature named as *The Police Act, 1861.*

When any witness is produced before the court, it is ethical to not to pronounce judgment on his sole testimony and to give the defense the right of cross examination to check the veracity of the witness. The right of cross- examination is guaranteed by *The Indian Evidence Act, 1872.*

There are many cases of indecent behavior by the employees of correctional facilities such as sexual assault, brutality, physical and mental torture, experimental procedures etc. This affects the mental health of the inmate. To deal with such disputes and to prohibit the authorities from indulging in such activities, the code of ethics was formulated. *The Probation of Offenders Act, 1958* not only specifies the Probational guidelines for the offenders but also the code of conduct for the Probational officers.

Rehabilitation programs shall be setup for the offenders and the needs of victim shall be justified. Indian adversarial system was more tilted towards accused ignoring the rights of the victim and that is why criminal system was reformed on the recommendation of the Malimath

Committee in 2008. *The Code of Criminal Procedure, 1973* also provides for victim compensation scheme[16].

Ethics plays a vital role in the court process too. Justice S.H. Kapadia said: "When we talk of ethics, the judges normally comment upon ethics among politicians, students, professors &others. But, I would say that for a judge too, ethics, not only constitutional morality but even ethical morality, should be the base". Court ethics specifies that the court shall at each time maintain its integrity. It shall not be impartial and honesty shall be the key to any decision. The judges shall always use fair and just means while delivering any judgment.

B. United States

The United States adopted various ethical codes in its Criminal Justice system. For Law Enforcement, USA has enacted ***Law Enforcement Code of Ethics***[17] under which there are various canons are adopted by the nation for its peace providing officers. Such canons includes: *upholding the Constitution of the United States, knowledge and proper use of Ethical Behavior, balance between personal and professional life, maintaining the integrity of the Law Enforcement profession etc.*

For Correctional institutions, the USA has enacted **American *Correctional Association*** (ACA) in the year 1870 for its employees to refrain them from committing any unscrupulous behavior with the inmates and the staff, to safeguard the rights of the inmates, to act with no intent of personal gain, to look after the interest of the public etc. [18]

For the Court Ethics, USA has enacted ***American Bar Association*** (ABA) for the attorneys. The ABA provides module rules for professional conduct for the members of the association by providing ethical guidelines for the criminal justice personals. And for the judges, the USA has adopted ***Code of Judicial Conduct for United States Judges*** in 1973 according to which a Judge shall maintain the integrity and the independence of Judiciary, to act with impartiality and with due diligence, to not engage in any sort of misconduct etc.

[16] Section 357A of The Code of Criminal Procedure, 1973
[17] American Bar Association. (1953). *Canons of professional ethics : [and] Canons of judicial ethics*. The Association.
[18] ACA Code of Ethics, 1994

C. United Kingdom

For the Law Enforcement, the United Kingdom has ***Code of Ethics***[19] formulated by the 'College of Policing'. The Code of Ethics drafted *9 Policing Principles* emerged from the **'**Principles of Public Life' and 10 standards of Professional behavior originated from 'The Police (Conduct) Regulations, 2012' and from 'The Police Staff Council Joint Circular 54'.

The 9 policing principles are *accountability, integrity, fairness, objectivity, honesty, openness, self respect, leadership* and *selflessness.* The 10 standards of professional behavior are *conduct, orders and instructions, authority & courtesy, honesty & integrity, use of force, equality & diversity, duties & responsibilities, confidentiality, challenging improper conduct* and *fitness for work.*

The **Courts and tribunals Judiciary** in its ***Guide to Judicial Conduct, 2020*** laid down guidelines for the conduct of sitting judges, retired judges and other professional bodies to deal with the Criminal Justice System. However, every judicial system has the common tenets such as impartiality, integrity, maintain peace etc.

D. Australia

The *Australia Federal Police* (AFP) laid down professional standards for its law enforcement authorities. These standards include acting with due care and diligence, avoiding conflict of interest, to act with honesty and in an appropriate manner etc. The rules for judicial conduct have been laid down by the Australian govt. in the **Guide to Judicial Conduct**[20] to maintain the integrity of the criminal justice system and to achieve the independence of judiciary. The five major pillars of the Australian Criminal Justice Ethics are: *Duty, Respect, Integrity, Accountability* and *Accountability.*

[19] Office, H. (2014, July 15). *Code of Ethics launched*. GOV.UK.
[20] Australasian Institute Of Judicial Administration, & Australian Institute Of Judicial Administration. (2017). *Guide to judicial conduct*. Carlton, Vic. Australasian Institute Of Judicial Administration.

6. Case Study

1. Police Brutality in New Orleans[21]

In March 1990, an African American named Adolph Archie got severely injured in an incident where police claimed that he shot a white police officer. While taking Archie to the hospital, those who were accompanying him to the hospital, heard about the death threats to the Archie because of the deceased police officer. They thought that taking Archie to the hospital may cause lynching, so they took him to the police officer where the deceased officer used to work. The police officer didn't bother about Archie and called it a 'scuffle'. The sergeant at the police station didn't ask about the bloodstains rather simply ordered them to be cleaned.

When Archie got medical treatment, it was very evident that he was severely beaten up. But, his X-rays of injuries got disappeared and the hospital authorities could not record the personal details and background of the Archie. Archie died under suspicious circumstances. He was treated with iodine to which he was allergic allegedly. The then Police Superintendent Warren Woodfork cleared all officials involved in the incident. The officer who arrested Archie was castigated by the other fellow officers as he didn't kill Archie on the spot.

Later, in May 1993, a report by the Advisory Committee on Human Relations concluded that Archie was severely brutalized by the police personnel's and that the department had failed to hold them accountable for the incident.

Another case of police Brutality was noted a week after **Hurricane Katrina struck New Orleans[22]**, where the police shot six civilians for crossing the Danziger Bridge. The officers then faced possible life sentences in Prison.

2. Death Row Inmate Set Free[23]

Derrick Jamison was convicted and sentenced to death in 1985 for the death of a bartender named Gary Mitchell. Gary was murdered on August 1, 1984 in Cincinnati. On February 28, 2005 and Ohio Judge dismissed all the charges against the Jamison and the prosecutor had

[21] Human Rights Watch, 1998
[22] "A Bad Shoot" 2010
[23] Death Penalty Information Center 2007

elected to not to retry him in the case. On the day of murder, an impression of shoeprint was found on the top of the bar which was of the Jamison. An accomplice Charles Howell was also arrested months after the arrest of Jamison. Her own sentence got reduced for testifying against the Jamison.

The prosecution denied the existence of exculpatory evidence though the testimony of accomplice and shoeprint of the Jamison was enough evidence to charge him. Charles identifies Jamison at the trial but the police offence report indicated that she could not make such identification. It was clear that there was tempering of evidences and destruction of records.

7. Conclusion

From all the theoretical perspectives and the case studies discussed in this paper justifies the need of Criminal justice ethics in the system. The Criminal Justice System shall stand upon the pillars of Ethics and Morality. However, it is inappropriate to say that the Criminal Justice System shall entirely be modeled on Ethics only. The system shall seek to maintain balance between the public good and the private good and if there arises any conflicting ethical issue then utilitarianism approach shall be followed. The public good shall be kept over the private good.

> *"societies disintegrate from within more frequently than they are broken up by external pressures. There is disintegration when no common morality is observed and history shows that the loosening of moral bonds is often the first stage of disintegration, so that society is justified in taking the same steps to preserve its moral code as it does to preserve its government…the suppression of vice is as much the law's business as the suppression of subversive activities."*
>
> *-Devlin*[24]

[24] Devlin, P. (2009). *The enforcement of morals*. Liberty Fund

7.1 Suggestions & Recommendations

Some suggestions for the better functioning of Criminal Justice Ethics are:

- Organized set of standards for Criminal Justice administrators.
- Routine check on the activities of the officials and the offenders.
- Adaptation of changes in the system as the moment requires.
- Introduction of reformation programs and ethical policies.
- Friendly behavior with the staff and the inmates.

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2.

Influence Of Race and Religion on Electoral Method

By: Megha Solanki

Pg. No.: 24-35

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Abstract

The essence of a democratic election is freedom of choice, but in a country like India where race, religion, caste, language plays a crucial role in the life of citizens, such aspect tends to be misused by political candidates for their electoral agenda.

Dr. B. R Ambedkar who is well known as the "father of Constitution of India" introduced the Representation of People's Act 1951 in the Parliament of India to provide a conduct of election for the house of Parliament. The act declares gaining or influencing the prohibition of votes for a particular race, caste, creed, community an act prohibited by law. [25]

Election is pivotal to the quality of a country's governance, it relates to political liberty and equality. Hence, it must be conducted in a Free and fair manner. The right to vote must be practiced without any strain of corruption. It is worth mentioning that though, in a country of diversity like India, race, religion are inherent to the Individual. However, it shouldn't be an influence in the political regime.

This research intensively studies the importance of free politics of all traces of religious controversies; it is solely based on research, legislation, policies, and responses to the impact of religion and race on the choice of candidates. The paper emphasizes an approach that the mix of religion and politics with vengeance must be discouraged at all times.

Keywords: Communal Riots, Representation Of People's Act, Voting Behaviour, Religious Influence.

[25] Sec 123(3) of the Representation of People's Act 1951

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EQ. CITATION: BNWJ-1020-049

1. Introduction

India is a land with a diversity of religions and the purity of devotions. India has a population embracing different religions and cultures; it is the foundation for most areas of life for individuals and families. However, the integral connection of an individual to its religion and its race is witnessed to be misused in the political arena. India is a home to individuals from nine religions and is considered to be a birthplace to some major religions in the world. Religions since ancient times have played a crucial role in human life; from religion shaping the personal development of an individual, it also prescribes rules of human conduct.

While all the religions are different from others in a unique way, this difference is used to gain votes or refrain votes against a candidate in the electoral process. The electoral candidates in the world's largest democracy are endorsing religion-based voting rather than a secular democratic election.

Religion has proved to have a strong grip over the thought process of the citizens. Religious considerations dominate every sphere of human life. India is a secular nation where religion is entitled to play no role in politics. However, religion is playing a dominant role in election campaigning, voting behavior, policymaking. Politicians cater to the needs of specific religious groups in return for political support, poverty in India is used as a target to cater votes; individuals living in poverty are given monetary benefits and voting behavior is influenced by emotions rather than rationality. Illiteracy of the voters also hampers the purity of the election process. Politicians are also not well qualified which is also another reason why focus on religious faith is more than the need for adequate policies and programs for the benefit of all.

In a country like India, religion is inseparable from politics. A support of a political party in India is from the religious group it acknowledges. Support of a political party towards a specific religion also enumerates hate among the groups in society, also resulting in riots such as riots in Muzaffarpur before the Uttar Pradesh elections.

Even now when COVID 19 pandemic has taken so many lives globally, it has turned out to be a battle of Hinduism- Islamic belief after the "tablighi jamaat" incident which increased the number of COVID 19 positive cases in India. Where a disease with the capability to eradicate the human race is treated as a battle of religion in India, it is imperative that it affects the regular political regime. It is believed among the commoners that Bhartiya Janata Party came to force due to support from northern India which is known as the Hindu belt and AamAadmi Party won state legislative election in Delhi due to support from the Muslim Community.

The diplomacy of the Indian National Congress in the early eighties was nothing however exploitation of spiritual sentiments of Indian society. In India where personal laws play an important role in society, it must be isolated from the electoral process. While freedom to profess, celebrate diverse religions is in the roots of Indian history, it should not be used as a tool to influence the governance. It must be noted that an election should be conducted to achieve smooth functioning and effective growth of the state, there is no role of faith and personal affairs of an individual.

The influence of race on the electoral process has low emotional appeal comparative to the role of religion in Indian politics. In the state of Tamil Nadu, the movement lead by Dravida Munnetta Kazhakam is based on racial consideration viz the conflict between aryas and dravidas. It is surprising to note that no election appeal in Tamil Nadu questioning the validity of elections on the ground of race has come up.

2. Religious Riots and Politics

Eighteenth-century witnessed innumerable revolts; there were communal riots in the state of Ahmadabad in 1714; in 1719-20 in the state of Kashmir, in Delhi in 1729, and Vidarbha in 1786.

The historians observe and record evidence of occurrence of riots for the 19th Century, Benaras (1809-15), Koil (1820), Moradabad in the year 1833, Bareilly, Kanpur and Allahabad (1837-52) Bayly in the year 1983, Bengal 1907, Peshawar (1910), Ayodhya (1912), Agra (1913), Shahabad (1917) and Katarpur (1918). Between the years 1920 and 1924 there have been revolts in Malegaon, Multan, Lahore, Saharanpur, Amritsar, Allahabad, Calcutta, Delhi, Gulbarga, Kohat, Lucknow. The year 1950, has the highest number of reported riots, 50, till the 1980s. The period between the years 1950-1976 witnessed an average of about 16 riots reported per year. The period of 1981-2001, witnessed an increased rate of incidents of about 47 riots reported per year from across the nation.

The death of Indira Nehru Gandhi by her Sikh bodyguards in 1984 was trailed by a spate of anti-Sikh riots. During this time, the BJP along with other ancillary associations of the RSS started a movement to construct a temple at the site of the controversial Babri Mosque or Babri Masjid in Ayodhya. This was another political move by the Bhartiya Janata Party which gained them an 11% increase in votes in the coming elections. The Supreme Court in November 2020 put an end to the Babri mosque battle between Hindus and Muslims. Riots were seen before

the judgment had to be delivered. The political moves of Babri mosque give rise to years of hatred between the Hindu and Muslim communities.

In 2002, a series of riots were witnessed in the state of Gujarat, where leaders of the Bhartiya Janata Party were said to be allegedly involved. These riots resulted in the death of a thousand people, forcing approximately 98,000 people into refugee camps. This was followed by a period of silence till the year 2013, when revolts were again witnessed in Kishtwar in Jammu and in Muzaffarnagar, Uttar Pradesh which resulting in 62 causalities.

The February 2020 Delhi riots, which left more than 40 dead and hundreds injured, were triggered by protests against a Citizenship law which many critics view as anti-Muslim and part of Bhartiya Janata Party's Hindu nationalist agenda. Reports state that religious violence has increased by 28% under the leadership of present Prime Minister Shri Narendra Modi[26]

According to data released by the Lok Sabha, 7486 communal riots have been witnessed in India between the periods of 2008-2017, killing over 1,100 people.[27]

3. Introduction to The Representation of the People Act, 1951

The Representation of the People Act, 1951 is a sanction enacted by the Parliament of India which makes provisions for the conduct of the election of the Houses of Parliament and the House of the general assembly of each state, the capabilities and exclusions for membership of those Houses, the corrupt practices and other offenses in connection with such elections and the decision of disputes arising out in connection with such elections. It was introduced in Parliament by India's First Law and Justice Minister, Dr. B.R. Ambedkar. The Act was enacted by the probationary parliament under Article 327 of the Constitution of India, before the primary elections.

The Representation of People Act, 1950 extends to the whole of India. The Act was commenced on the 17th of July 1951. The act has been amended several times; the latest amendment was in the year 2001. The Representation of people's Act contains 13 elements. Each element is divided into different sections making it a total of 171 sections.

[26] Data by Home Ministry of India http://164.100.47.190/loksabhaquestions/annex/14/AU590.pdf
[27] Lok Sabha Data on Feb 8, 2018;Aug 8, 2017; Dec2, 2014; May 7, 2013 and Aug2010 http://164.100.47.193/Annexture_New/lsq15/5/au2545.htm

4. Race and Religion as a Ground of Appeal

Appeal to influence voters on the ground of religion, race, caste, community, and the use of or appeal to national symbols constitute corrupt practice. Section 123 of the R.P. Act, 1951, preceding the revision act of 1961, subsection 3 of section 123 was as follows:

"The appeal by a constituent competitor or his agent or by some other individual with the assent of such applicant or his agent to cast a ballot or cease from deciding in favor of any competitor on the ground of his religion, race, caste, community, or Language or the utilization of religious symbol, or the utilization of, or bid to, national image, such a national Flag or national symbol, for the Furtherance of the possibilities of the appointment of that candidate or for preferentially influencing the election of such candidate."

For explanatory purposes, appeal on the ground of race and religion is taken together, and claim to religious or national images is restrained individually.

In **Harcharan Singh v. Sajjan Singh,**[28] the court held that "single appeal by the candidate or his election agent or by any other person on the ground of religion, race, caste or

Community would be a corrupt practice ".

However, the corrupt practice, committed by a person other than the candidate or his election agent without the consent of such candidate is excluded from the purview of the provision. This provision intends to remove race, religion, and caste factors from the election process. The peculiar scenario which exists in the world's largest democracy has compelled the lawmakers to enact such provision.

Purity of election demands that consideration of race should not play any role in the election and such considerations should not influence the voters while exercising their franchise. The constitution of India recognizes universal adult franchise which grants the right to vote to all citizens above the age of 18 years without any discrimination on caste, color, religion, or gender. The principle of Universal adult franchise is the essence of the Democratic Government. Therefore, the election law specifies that an appeal on the ground of race is a corrupt practice.

[28] AIR 1958 SC 236,238

An appeal on the ground of race would be a corrupt practice even if the rival candidates belong to the same religion. [29] Though appeal on the ground of race is a ground for setting aside the election, no election petition seems to have been filed so far alleging the corrupt practice of appeal to vote on the ground of race. This may be owing to the reason that in India there exists no conflict among the people on a racial basis.

The first part of the model code of conduct given by the Election commission of India for the guidance of political parties and candidates expressly provides prohibition of any kind of speech that encourages, or attempts to encourage, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, community by the candidate or his agent or any other person with the consent of the candidate[30]

5. Voting Appeal on Ground of Race and Religion: A Corrupt Practice

It cannot be denied that the quality of any democratic establishment relying upon the purity of the electoral method. If the elections are free and fair, then only there would be a true illustration of the people within the government. Indeed, racism is not prominent in India, rather religion since the primitive times have played a dominant role in the political process. However, the appeal to vote or prohibition of the vote on the ground of race and religion is unlawful, penalized by the Representation of people's acts. There is a possibility of manifestation of racial based voting.

The less educated part of the society is prone to racial based voting. Race is used as a factor alone in combination with other factors such as religion, community to gather votes.

The choice of a suitable candidate should be made depending upon the merits and demerits of the candidate and programs by the political party. When considerations other than the capabilities of the candidates and policies overtake the mind of the elector or influence his choice of vote, it can be concluded that the method of election has been contaminated such acts of interference constitute corrupt practice.

[29] Kultur singh V Muktair Singh AIR 1966 SC 141
[30] Sec 123(A) of the Representation of People's Act,1951

It is on the law to preserve the purity of the electoral method. Therefore race and religion must not be used to gather votes and therefore the same is prohibited by section 123 of the Representation of People's Act. Racial discrimination hampers democracy and the protection of the same is the responsibility of law of the land. In a country like India, Afro- phobia is prominent, black people have been discriminated against. However, the same cannot be traced to politics.

6. Key Cases

- **Abhiram Singh v. C.D. Commanchen by LRS. And Ors.[31]**

The seven-judge bench decision of the Supreme Court of India that electoral Candidate cannot gain a vote on grounds of religious faith, race, caste, community, or Language seems a progressive step that could potentially rewrite the principles of engagement in India. India is a secular state and, the court argues, It is solely in the fitness of things that race, religion are likely to be kept out of the electoral method.

The Apex Court analyzed the law on corrupt practices under the R.P Act 1951 taking into

Account series of case laws. The Court interpreted the two clauses: subsection 3 (A) under section 123 of the RP Act and section 153 A of the Indian penal code, both of which deal with the promotion of feelings of enmity or hatred between different categories of voters of the Republic of India.

The judges traced legislative history to support their broad interpretation. The question was the interpretation of the pronoun “his” under subsection Three of section 123 of the R.P Act and If it is qualified for only electoral candidate or whether it qualified the voters as well.

The majority judgment penned by Justices Madan Lokur and Nageshwas Rao, aided by the judgment of justice Bobde and chief Justice (currently retired) Tirath Singh Thakur gave section 123 (3) an additional expansion meaning “for maintaining the purity of the electoral method and not vitiating it, sub-section (3) of section 123 of the Representation the People's

[31] (1996) SC 665,(2014) 14 SCC 382

Act, 1951 should tend a wide and purposive understanding thereby bringing within the definition of corrupt practice, any appeal made to an elector by a candidate or his agent to vote or refrain from voting for the furtherance of the probability of the election of that candidate.

The opposition judgment delivered by Justice Goel, Lalit, and Chanderchud held that that the expression "his" in section 123 (3) must denote to religion, race, community, or language of the candidate in whose favor a request to cast a vote is made or that of another candidate against whom there is an appeal to refrain from voting on the religion, caste, community or language of with one sweep, the Apex course was reiterated the founding values of the Indian constitution, the complete separation of the church and the state what it means that religion is a purely personal affair of private domain. While every person has the right to preach, practice, and propagate his or her faith, it has no place in the public affairs of the nation. This judgment would recharacterize the Indian strategy and purge it of all the aberrations that have crept into the electoral arena since the principle general appointment of 1952.

- **Zlauddin Burhanuddin Bukhari v. Brijmohan Ramdassmehran [32]**

The reason why appeal on the ground of race, religion, caste, community, or language in election are considered reprehensible and a corrupt practice has been succinctly explained by the supreme court in the above-mentioned citation. Our constitution makers certainly intended to set up a democratic republic the binding split of which is summed up by the objectives outlined in the preamble of the Constitution. No democratic political and social order, within which the conditions of freedom and their progressive growth for all produce some regulation of all activities imperative, might endure without any agreement on the

Necessities and which could unite citizens together despite of constraints of religion, race, caste, and community.

It appears that section 123, subsection (3) and (3A) were enacted so as to eliminate, from the electoral method, appeals to those factious factors that arouse irrational passion that run counter to the fundamental tends of the constitution and so of any political and social order.

[32] AIR 1975 SC 1788 ,1975 SCR 453

7. Conclusion

Though the Indian Government, through the autonomous constitutional body, the election commission of India and the Representation of the People's Act 1951 has made numerous efforts to isolate the aspects of race, religion, community, language from the Political Process. The bitter reality is that even present political parties i.e. Bhartiya Janata Party.

Indian National Congress and Aam Aadmi party use race, religion to cater to votes in the elections. The Representation of People's Act 1957 and the code of conduct election commission have failed to completely eliminate elections from religious sentiments. Where elections should solely be based on the merits and demerits of candidates, policies, and programs of the political party, it has witnessed a major influence due to race, religion, caste, creed, and language.

8. Recommendations

In a country like India where religion and culture form the identity of an individual, it is not realistically possible to eliminate religion out of politics and elections. Since the partition of British India, Muslims in India are national minorities who feel left out from the mainstream hence resulting in the Hindu Muslim conflict, comfortably used by politicians to increase their vote bank. It is impossible in India to eliminate religion and politics. However, efforts must be made to minimize the use of religion for political benefits.

- Literacy should be the primary concern of the government. The more literate the citizens are, the less likely they would fall into the trap of religious-based voting.
- Efforts must be made to provide the same benefits to all the religious groups in society. Any law favoring one religious community shall be considered violating Article 14 of the Indian Constitution.

- Education must be important eligibility criteria to be a Political Candidate. This is long required in the Indian statue.
- Laws need to change to suit the changing scenario. The law identifying Corrupt Practices needs a subsequent look. A rigid statue must be enacted to completely govern all the possible scenarios arising in elections with its penalized punishment. Cancellation of candidature is an easy punishment.
- To ensure purity of elections is not only the responsibility of the Election Commission of India but also the Government and the electoral Candidates as well. To signify this perspective the constitutions must have a provision to that effect. Article 326 should be amended to include fair and free elections.
- The Election Commission of India is the only executive body which is responsible for conducting elections of legislative bodies. The scope of power of the Election Commission should be widened; granting power to Election Commission to file a petition in the appropriate court to set aside the election of a candidate who it finds to have indulged in any of the Corrupt Practices.
- The Representation of People's Act 1951 should be amended to apply the provisions of Corrupt Practices on the candidate from the date he has been duly nominated.
- A committee must be established under The Representation of People's Act 1951 to monitor the activities of Political Candidates and submit the report to the Election Commission of India to take any further action if the conclusion of the report highlights any activity against the model code of conduct.
- When the election of a candidate is set aside for being guilty of corrupt practices, the question to determine the period of disqualification has been left to the President of India who shall be advised by the Election Commission of India. This provision appears to be absurd and in our submission, such a question must be left to the decision of the judiciary and not the executive.
- The law governing qualifications and disqualifications for being a legislator needs reformulations.

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3.

Product Liability

By: Irene Elizabeth Anup

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Abstract

Product liability is a key area of law in which manufacturers, distributors, suppliers, and retailers are held responsible for the injury or harm caused by the product on the buyer. It is the legal responsibility imposed on a business for the manufacturing or selling of defective goods. The term product liability is described in Section 2(34) of the Consumer Protection Act,2019. The suits usually filed for the liability on products are concerned with the design defect, manufacturing defect, distribution & the sale of goods or services.

Claims on liability of products were guided by the principles of the CPA 1986, Indian Contract Act, 1872, the law of torts before the recent Act of 2019 emerged. The laws of product liability are also primarily based on the case of Donoghue v Stevenson which states that the manufacturers have a duty of care for the product to the ultimate consumers. The courts are also governed by the principles of natural justice. The relationship between the parties is similar to that of a contract as the liability of defective products is linked with the damage or the injury caused to the consumer. The liability on the parties to a contract can be either joint or several which will depend upon the case and the relationship formed between the buyer and seller.

This research paper comprises of substantive civil laws that relate to product liability, the causation, the litigation, developments in product liability laws, and certain case laws. This research paper deals with the litigation process and the steps a buyer has to go through for getting the compensation for the injury or harm caused by the defective product.

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1. Introduction

Product liability is a type of liability that falls on the manufacturers, retailers, or sellers of products for the injury caused by the products they sell. Historically, the theory of letting the buyer beware was in existence which meant that the sellers had very little legal responsibility for products once they were sold. A buyer can get a guarantee over a product only if it is stipulated in a contract between the buyer and the seller. The buyer has to prove that there was a fraud or misrepresentation by the seller which would make him liable.

Despite the specialized large-scale manufacturing and technological sophistication in the present era, the law recognizes that the consumers are at a disadvantage when it comes to assessing the condition of goods offered for sale. The quality, reliability & safety of the commodities are recognized and interrogated in a more advanced way by the manufacturers or sellers. In order to protect the interest of the consumers from the defective products, the courts have jurisdiction to try and make those engaged in the selling and distribution of products to be held responsible. In light of this reality, courts and state legislatures have assigned liability to those engaged in the business of selling or distributing products for the manufacture and sale of defective products.

2. Evolution of Product Liability

Product liability laws provide the consumers with legal resort for the injuries or damages suffered from the usage of a defective product. The estimation is that millions of people around the globe are negatively affected by the defective products and that the manufacturers or sellers end up paying large amounts for products-liability insurance as well as damages. A product is required to meet the ordinary expectations of a consumer and the responsibility lies on the manufacturers and the sellers to ensure the safety and quality of the product as per description. However, it is not the same always. The notion of ‘let the buyer beware’ governed the general consumer laws from the 18th century up to the 20th century. Where During this period, the lifestyle was the if the consumers had a complaint about a product they could directly approach

sellers. However, a tremendous rise in the cases of product liability claims can be seen with the latest technological developments.

With the enormous rise of international trade and the rapid development of e-commerce there has been a tremendous rise in products and services along with new delivery systems, choices and opportunities for consumers. This has rendered the consumers with a risk to the new forms of dishonest and unprincipled practices & the trading of products based on fallacious information. A powerful legal framework is thus necessary in order to safeguard the consumer's interest as well as to have a control over the industries.

In the previous year, the CPA 1986 was effectively replaced by the CPA 2019 by the authoritative bodies of the Indian Ministry of Consumer Affairs, Food and Public Distribution. The concept of product liability is one of the important features of the CPA 2019.There was no specific provision under any statutes in India which governed product liability and also there was no comprehensive legislation regarding this till the CPA 2019 came into existence. The Acts such as the Consumer Protection Act, 1986, the Sales of Goods Act, 1930, the Indian Penal Code, 1860 and certain other statutes which relate to appropriate goods and certain standards regulated the product liability claims in India before the existence of the CPA 2019.[33]

3. Legal Theories of Product Liability

When a person is harmed by a faulty product, there are three avenues in which he can recover compensation. They are as follows:

- **Breach of warranty: -**This theory is based on the contract law, where in a contract formed between the buyer and the seller. A warranty is more like a guarantee. There are express warranties and implied warranties. An agreement by the seller to provide for repairs or replacement for a defective product or service within a prescribed time period is termed as an express warranty. An assurance given by the seller that a product is fit for its intended purpose is termed as implied warranty. The two major implied warranties are fitness for a particular product and merchantability. Merchantability is

[33] Ghosh, A. (2020, August 7). Product Liability Law In India: An Evolution - Consumer Protection - India. Www.Mondaq.Com. https://www.mondaq.com/india/dodd-frank-consumer-protection-act/974270/product-liability-law-in-india-an-evolution

defined as a term where the product has to meet the market expectations. A warranty for the fitness of a particular purpose states that the product has to be in an able condition to perform for which it is intended.

Product liability claims rarely include a breach of warranty. It has several limitations that restrict its utility. A privity of contract should be formed between the affected party and the seller. According to violation of principles of warranty, the injured or affected party can only sue the seller of the product and not the manufacturer or the party responsible for making the product defective. There is a restriction on the claims the affected consumer can make as the sellers often put limitations on the warranties in the written contract.[34]

- **Negligence:-**Negligence is the lack of ordinary care. If a person's negligence causes a product to be defective, the liability falls on them for the harm by the defect of the product. The makers or the distributors of the product will be the negligent party who is in charge for the defective product. The negligence theory of product liability is used. This theory is exempted from the restrictions of the breach of warranty.According to this theory, not only the seller will be held liable but also the person who contributed to the defect of the product which is a result of their carelessness. The attempts to limit warranties doesn't matter in a claim of negligence. This theory is not always clear and it requires detailed investigation so as to identify on whose part the negligence is.

- **Strict Liability:-**The basis of Strict liability makes it possible for the injured party to look out for compensation from the authority liable for the product's liability. In this theory, there is no need of the injured to identify as to on whom the negligence lies .In a strict liability claim, the basic requirement is that the product has defect and it is unreasonably dangerous. Any party from the manufacturer, distributor, seller or the parts supplier in the chain of commerce can be held liable under the theory of strict liability: This basis lets the injured party to obtain a cheaper & approachable way to compensation if the manufacturer or the seller is in a foreign country. [35]

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[34] Sanchez, K., & Lundberg, J. (2018, July 28). Theories of Product Liability. Allegiance Law; Allegiance Law. https://www.allegiancelaw.com/4-theories-of-product-liability/

[35] Sanchez, K., & Lundberg, J. (2018, July 28). Theories of Product Liability. Allegiance Law; Allegiance Law. https://www.allegiancelaw.com/4-theories-of-product-liability/

4. Case Law Development

In a famous English case of case Winterbottom v. Wright (1842), a contract was formed linking the coach company & the postmaster general to make available coaches for the mail service; along with the responsibility for the maintenance of the coaches. The plaintiff hired by the postmaster general to drive the coach, was subsequently injured as a result of the poor maintenance of the coach. The injured sued the coach company. The court in this case held that the injured was not a party to the contract and so he could not recover from the coach company. This case led to the evolution of the concept of negligence and strict liability in tort for the manufacturer of a product which upheld the requirement of privity in a contract. Further, in the case of MacPherson v. Buick Motor Co (1916), the requirement of privity of contract for negligence was removed.[36]

In order to prove negligence on the part of the defendant, the plaintiff has to prove that the defendant's conduct fell below the relevant standards of care. Proving the standard of care , breach, and causation of negligence is quite difficult. As a result of this difficulty in the early 20th century, several courts observed that it was unfair to require the injured plaintiff's to prove the claim on negligence and they were likely to impose strict liability. Res ipsa loquitur's doctrine was meant to reduce the plaintiff's burden of proof. The evolution of the concept of strict liability on the manufacturer was with the Greenman v. Yuba Power Products, Inc. and the concept of implied warranty of safety came up with Henningsen v. Bloomfield Motors, Inc.

The issues of product liability claims in India are mainly dealt by courts on the basis of principles of strict liability & negligence . With the enactment of the CPA in 1986 , the consumer markets for goods and services have undergone profound transformation. The CPA 2019 set aside the uncertainty and ambiguity in the legal framework for product liability laws in India.[37]

[36] Ghosh, A. (2020, August 7). Product Liability Law In India: An Evolution - Consumer Protection - India. Www.Mondaq.Com. https://www.mondaq.com/india/dodd-frank-consumer-protection-act/974270/product-liability-law-in-india-an-evolution

[37] Ghosh, A. (2020, August 7). Product Liability Law In India: An Evolution - Consumer Protection - India. Www.Mondaq.Com. https://www.mondaq.com/india/dodd-frank-consumer-protection-act/974270/product-liability-law-in-india-an-evolution

5. Elements of Product Liability

In order to claim a product liability, the plaintiff must prove the following;

(1) the product was already defective and

(2) the injury occurred due the defective or faulty product.

Both of these elements must be specifically stated to go for a claim of strict product liability. The first element is such that the plaintiff has to prove that a defect already existed in the product during the purchase of it from the manufacturer, supplier or the retailer The second element to be proved by the plaintiff is that there was a fault existing in the product when the damage was caused. The inherent defect and the injury caused must be connected.[38]

Manufacturing defect, design defect, label defect or a defect due to failure of providing a prior warning about an unavoidable danger associated with the utilization of the product are the various defects of a product where liability arises. A manufacturing defect in a product arises when it is not manufactured as intended. A design defect may exist in a product if use of the product caused injury even though the product A manufacturing defect occurs during the manufacturing process, causing the product to depart from its intended design. Design defect is a flaw in the actual design of the product which makes it extremely dangerous for the use by consumers. The failure to give an appropriate warning of an unavoidable risk related with the product by the manufacturer, retailer or seller is also a defect. [39]

6. Civil Product Liability in India

Prior to the emergence of the Act of 2019, the liability for product claim in India were governed by the following laws: The Consumer Protection Act, 1986, The Sales of Goods Act, 1930,

[38] Pandey, R. (2015, November 23). An analysis of Product Liability. Mondaq; Singh & Associates. https://www.mondaq.com/india/product-liability-safety/445496/an-analysis-of-strict-product-liability
[39] Pandey, R. (2015, November 23). An analysis of Product Liability. Mondaq; Singh & Associates. https://www.mondaq.com/india/product-liability-safety/445496/an-analysis-of-strict-product-liability

The Monopolies and Restrictive Trade Practices Act, 1969, The law of Torts & special statues pertaining to specific goods.

There has been a constant evolution of product liability laws in India by way of judicial interpretations and amendments, to become a significant socio-economic legislation for the security of consumers. The legislations in India enacted laws to safeguard the interest of buyers of products from product liability but in recent times the courts started adopting a pro-consumer approach to protect and safeguard their interests. Compensations and damages which are more punitive than compensatory is awarded by the courts as of now.[40]

The laws in India regarding the liability of product's claim also imposes criminal liability in case of non-compliance with the provisions of each of the mentioned Acts. Sale of specific goods such as drugs, food or cosmetics are governed by certain acts that are inclusive and not condemn any other laws in force. The Drug & Cosmetics Act, 1940; The Indian Penal Code, 1860;The Foods Adulteration Act, 1954;The Food Safety and Standards Act, 2006;;The Standards of Weights and Measures Act, 1956;The Agricultural Produce (Grading and Marking) Act, 1937;The Indian Standards Institution Act, 1952 & The Bureau of Indian Standards Act, 1986 provides for imposition of fine and imprisonment in case of supply of defective products or adulterated consumables.

There are certain legislations dealt brought in with respect to the food and safety standards to be observed by the manufacturers & makers in the Act passed in 2006 which is the Food Safety and Standards Act. The non-compliance of which will impose liability on the defaulters with fine which amounts to about 10 lakh rupees along with imprisonment.

The Indian Penal Code deals with respect to product liability when the defects of a product are attached with the elements of fraud and cheating. The provisions of IPC also includes the penalty on the accused for false weights and measures, adulteration of goods and false property marks. In Smt. Uma Deepak v. Maruti Udyog Ltd (2003), the complaint brought up by the affected party was that the price of the car was overcharged and it was not accidental. The Court directed the arrest and remand of the dealers of the car. Later the opposite party was granted a bail & was ordered to displace the disputed car with a new one.

[40] Bajaj, V., Raghavan, K., & Kaul, S. (2020, June 8). Product liability laws. AZB. https://www.azbpartners.com/bank/product-liability-laws-india/

In cases of false packaging, weights, or measures which does not conform to the standards and breaches the mandatory requirements on a package are imposed upon with a fine of upto Rs2000 as per the Rule 39 of the Standards of Weights and Measures Act, 1976. According to the Drugs and Cosmetic Act 1940, there lies a criminal liability for the manufacturers and producers of medicinal products or cosmetics etc, which does not conform or adhere to the prescribed standards stated in it.[41]

7. Causation

Causation requires a link that has to formed between the faulty product and the injury caused. If an act or intervention by a third party takes place,then it can be taken as a protection to point out that the link between the loss caused and the defendant's responsibility is broken as in K Madhusudan Rao v Air France, Revision Petition No. 3792 of 2008 decided by the NCDRC on 1 April 2010, a case was successfully defended relying on this principle since a theft of a passenger's valuables in a hotel lobby could not be pinned upon the airline that had arranged for the hotel on account of a cancelled flight. A defect in a product is not a determinant factor but has to be served as an essential condition or the immediate cause for the injury. In an another case of Geeta Jethani and Others v Airports Authority of India a defective unserviced escalator caused the death of a minor.

Often at times, the principle of res ipsa loquitur is used to transfer the responsibility onto the manufacturer. This term means that the "thing speaks for itself". In certain cases the maintenance is only required to ensure that the machinery functions at its optimum capacity, but the manufacturing process should be such that there are built-in safety mechanisms to prevent the machine from becoming hazardous, and in the absence of such safety mechanisms, there could be an automatic presumption of defect in the manufacturing process following an accident that caused death or injury as in Geeta Jethani v AAI.[42]

Once a product is defective, the manufacturer must establish that the defect could not have arisen from the manufacturing process. In case of a manufacturing defect, it is the duty of the

[41] Bajaj, V., Raghavan, K., & Kaul, S. (2020, June 8). Product liability laws. AZB. https://www.azbpartners.com/bank/product-liability-laws-india/
[42] Bajaj, V., Raghavan, K., & Kaul, S. (2020, June 8). Product liability laws. AZB. https://www.azbpartners.com/bank/product-liability-laws-india/

plaintiff to prove that the product was faulty or not good enough to be used. The responsibility is on the plaintiff to prove that the product was defective or not in good condition in a manufacturing defect case. The responsibility to show any form of defect in goods is always on the person who alleges the deficiency, and the cost of getting the product tested must ordinarily be borne by the party alleging the defect. [43]

8. Litigation

1) Forum: An injured or aggrieved party can approach multiple forums depending on the case which relates to the injury, loss or damage arising from the defects in goods and services. These include the following;

(a) jurisdictional consumer court under the CPA 2019;

(b) jurisdictional civil court in cases of breach of contracts or torts;

(c) an arbitrational tribunal in cases of arbitration agreement &

(d) jurisdictional magistrate's court in case of criminal offence.

If due to a breach of duty or an act of a lawful authority, which causes the distribution of faulty products, then the injured parties can go for a relief to a jurisdictional High Court. In 2015, Commercial Court's Act came into existence (which was later amended in 2018) was meant for the adjudication and speedy disposal of commercial disputes.[44]

2) Burden of Proof: The Indian Evidence Act,1872 sets out the law relating to burden of proof for both civil and criminal cases. An aggrieved party who seeks the court's relief as to protection of legal rights has to prove the facts that establish and support its claim. The plaintiff will be to prove:

[43] Hart, Christine, and Mark Kinzie. (2002). Product liability (Inc editorial (ed.)). https://www.inc.com/encyclopedia/product-liability.html
[44] Wishnia, J. (2020, February 28). Product liability defences. Legal Match. https://www.legalmatch.com/law-library/article/product-liability-defenses.html

a) the defect present in the goods

b) breach of warranty or a condition or

c)breach of duty of care and the resulting damage[45]

In some cases, the Indian courts have held that the existence of the defect per se is proof of negligence. In criminal case, it is to be proved by the prosecution unless the specific statutes expressly provide. In certain circumstances such as in the statutes of the Drugs Act and the FSSA, assumption of a crime or violation is created and the responsibility lies on the defendant to prove that the offence was not committed.[46](Wishnia,2020)

3) Defences: The most frequently used defenses against a products liability claim include the following:

- Unforeseeable Usage: If the plaintiff has misused the product in such a way that it is unforeseeable to both the manufacturer and to the purchaser, the accused will not be held liable.
- Assumption of Risk: A plaintiff may be barred from recovering monetary damages for the injuries if they knew of and voluntarily accepted the risks affiliated with the product, but chose to use it regardless.
- Substantial Changes: If a plaintiff has substantially altered a product and that alteration led to their injuries, then it may be possible to relieve the defendant of liability.
- Comparative Fault: Comparative fault is a defense against a claim for negligence where a plaintiff is responsible for causing the injuries.
- Contributory Negligence: Similar to comparative fault, contributory, it is a defense to a negligence claim. The difference between the two is that if a defendant proves contributory negligence, then it can completely omit a plaintiff from recovering.[47]

[45] dahl, R., & Rainey, J. (2018, November 30). Legal Basis for Liability in Product Cases. Team-Find Law; Findlaw. https://injury.findlaw.com/product-liability/legal-basis-for-liability-in-product-cases.html
[46] Wishnia, J. (2020, February 28). Product liability defences. Legal Match. https://www.legalmatch.com/law-library/article/product-liability-defenses.html
[47] Wishnia, J. (2020, February 28). Product liability defences. Legal Match. https://www.legalmatch.com/law-library/article/product-liability-defenses.html

4) Personal Jurisdiction: A product liability claim where the cause of action, wholly or in part arises within a particular jurisdiction is adjudicated in a civil court. The Code of Civil Procedure(CPC) sets out the requirements for adjudication of cases in civil courts where the plaintiff has the discretion to file a suit for compensation for damages done to a person or a property. In cases involving foreign parties, The Indian courts favor the common law principle of comity in cases involving foreigners. If in a case where the foreign court has jurisdiction, the Indian courts will be opposed to interfering with the aggrieved party to seek compensation before the relevant foreign court.[48]

5) Expert Witnesses: Under Indian civil law, experts may be appointed by the court when it is necessary to form an opinion based on a technical or scientific issue. Experts can be appointed to examine the defective products where a proper examination is necessary according to the CPA 2019. It is the choice of the court to admit the opinions of experts.

6) Discovery: The discovery of documents or particulars under Indian law is principally governed by the CPC for civil matters and CrPC for criminal cases. The Indian courts have the inherent powers to demand for presenting the documents or information which are in the possession of a party or a third party whenever during the delay of proceedings. The court has the decision whether to admit the discovery of information or not.[49]

7) Apportionment: Under Indian law, a decree passed for the payment of compensation in a suit for breach of contract or tortious claims may be passed by a court of competent jurisdiction only against persons named as defendants in the suit.

In cases of product liability that arise due to the breach of contract, the apportionment of liability maybe joint or several which varies from case to case. Under the CPA 2019, the proper

[48] Pandey, R. (2015, November 23). An analysis of Product Liability. Mondaq; Singh & Associates. https://www.mondaq.com/india/product-liability-safety/445496/an-analysis-of-strict-product-liability
[49] Bajaj, V., Raghavan, K., & Kaul, S. (2020, June 8). Product liability laws. AZB. https://www.azbpartners.com/bank/product-liability-laws-india/

forum has upheld the principle of joint and several liability & held the manufacturer and dealer to be jointly and severally liable for sale of faulty products in cases of consumer complaints.

8) Mass Tort Actions: The CPA 2019 recognizes the right to initiate a class action, including enforcing recall, refund and return of products when necessary, in order to prevent detrimental effects to the consumer's interests. Under the CPA 2019, before institution of the proceedings, the plaintiff's have to obtain permission in advance from the adequate body for the adjudication of the dispute. The Act also deals with a provision for benefit to the consumers who cannot be identified. This power under the Act is implemented in the happening of a loss or injury which is endured by a multitude of defective goods or services.[50]

9) Damages: The SGA, Contract Act, the CPA 2019 and the law of torts deals with the laws of economic damages. The Contract Act has provisions for the discharge of indemnity to the aggrieved or injured party for the harm or injury which arise as a natural outcome of a breach; or which the parties had knowledge while taking part in a contract. The CPA 2019 permits awards of punitive damages in certain circumstances which is the discretion of the consumer courts. The compensation granted upon the laws governing consumer protection laws or by a civil court is lower than as to what is awarded in other developed countries. [51]

10) Time limits: The period of limitation for a tort claim is for 3 years from the date on which the right to sue occurs. The CPA,2019 however provides a limitation period of two years from the date of cause of action. If a consumer complaint is filed beyond the period of limitation,it is at the choice of the court to decide given that the reasons are duly provided by the consumer for the delay.

[50] Wishnia, J. (2020, February 28). Product liability defences. Legal Match. https://www.legalmatch.com/law-library/article/product-liability-defenses.html
[51] Bajaj, V., Raghavan, K., & Kaul, S. (2020, June 8). Product liability laws. AZB. https://www.azbpartners.com/bank/product-liability-laws-india/

9. Strict Product Liability

Strict liability is said to take place in a situation where even though the product is safely designed & properly manufactured; the people responsible for the selling of the product may be made liable for a product liability claim. The elements to be proved are as follows:-

- The product was unreasonably dangerous when it was bought;
- The parties to the product had no presumption that it would be altered prior to before it reaches the consumer or user.
- The consumer was injured due the defective product's usage;
- The consumer was injured by the product; and
- The product was used as directed by the person who sold the product. [52]

The plaintiff's injury was due to the product and it was in the same condition as it was when it was purchased by the plaintiff had to be proved. If in any case the product is altered by the plaintiff which resulted in the injury,in such a case the seller, manufacturer or retailer may not be held liable.[53](Haag et al,n.d.)

10. Developments in Product Liability Laws

The year 2019 has gone through significant development in product liability laws in India. The aim of CPA 2019 is to strengthen consumer protection laws and the product liability structure in India. The notable changes in the CPA 2019 include the following:

(i) Penalties imposed against fake or misleading advertisements not just against manufacturers, traders, advertisers and publishers, but also against endorsers of the products;

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[52] LaMance, K. (2015, July 29). What Is Strict Product Liability? LegalMatch Law Library; Legal match. https://www.legalmatch.com/law-library/article/what-is-strict-product-liability.html#:~:text=Strict%20Liability%3A%20Strict%20liability%20is

[53] Haag, A., Kammer. (n.d.). Three Legal Theories for Products Liability. Atterbury, Kammer & Haag, S.C.; FINDLAW. https://www.yourwisconsininjurylawyers.com/articles/products-liability/three-legal-theories-for-products-liability/

(ii) the idea of unfair contracts is introduced and it allows the consumers to raise claims in this regard;

(iii) restriction on unfair trade practices in the area of e-commerce is done by the Central Government with the power offered by the Act;

(iv) Enables complainants to file complaints at the place the suer resides or work in writing or electronically.

(v)It also provides for alternate dispute resolution through mediation;

(vi) It takes into consideration the foundation of the CCPA (Central Consumer Protection Authority) set up by the Central Government. This authority will keep a keen check on the matters which relate to the unfair trade practices, violation of consumer rights, deceptive advertisements which are detrimental to the regards of the public and consumers and to protect the rights of consumers.[54]

A statutory framework for the recall of defective vehicles has been initiated by the Act of Motor Vehicles. This vehicle recall is meant to put a limit to the liability of the manufacturers and dealers. The Hyundai Motors, Maruti Suzuki and Mahindra and Mahindra are some of the major automobile manufacturers who initiated several voluntary recalls in the year 2019.

In the year 2019, several drug related recalls under the regulation of pharmaceutical sector were made for not meeting the stipulated standards of quality. There has been an enhancement in the authoritative structure for medical devices which took effect on April 1st,2020; it also includes an online device for the registration of medical devices.

In areas of rapid technological change, such as 3D printing and driverless cars, the existing principles of product liability laws are still not sufficiently evolved to identify and apportion liability in cases involving human and machine error. In the era where artificial intelligence systems takes important decisions and the involvement of human element is comparatively less, the clarity of issue of liability is not specific. The legislators and judiciary are continuously

[54] Majmudar. (2019, September 27). Important changes to India's Product liability laws and Consumer Protection Act. https://www.majmudarindia.com/insight/important-changes-to-indias-product-liability-and-consumer-laws/

in an attempt to keep the Indian laws updated so as to keep up with the challenges proposed due to the rapid change and development in the society.[55]

11. Conclusion

The product liability laws in India has undergone a constant evolution by way of the interpretations and amendments of the judiciary, to constitute to be a beneficial socio-economic legislations for the safety of consumers. Protecting the consumers from dangerous or defective products and making the sellers liable is the ultimate goal or aim of product liability laws.

The recent Consumer Protection Act of 2019 is more comprehensive and in conformity with the consumer protection rules and authorities around the world in comparison to the Act of 1986. To conclude this paper contains a thorough discussion on the general aspects of product liability, its evolution, the litigation process and the developments in the product liability laws. For safeguarding the consumers from the defective or dangerous products a good safety & security system is essential for the. The development of a unified regulatory framework is necessary, where the burden of the product's safety lies on the manufacturer, the pre-market and post-marketing surveillance activities of the authorities are responsible. In addition, the development of a uniform labeling and provide full transparency of information to consumers is essential for most of the products, in light of the provision of better safety standards for consumers. In addition to the above, the consumers should be given fully transparent information of the product as well which is necessary to state that the product conforms to the safety standards provision.

[55] Majmudar. (2019, September 27). Important changes to India's Product liability laws and Consumer Protection Act. https://www.majmudarindia.com/insight/important-changes-to-indias-product-liability-and-consumer-laws/

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4.

Effects of Unfair Contract Terms on Insurance Contracts

By: Divya Sharma

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Abstract

A standard variety of contract is one that's prepared by a celebration to the contract where the opposing party has little or no opportunity to barter which suggests the offer is formed on a 'take it or leave it' basis. The topic of unfair terms in contract has attained profound significance in recent times, in relevancy both consumer contracts and others. Within the previous few decades, many countries have undertaken new laws on the topic touch protect small businesses and consumers and most significantly to grant protection from the disadvantages of the intensive introduction of normal terms of contracts that are one-sided. The Unfair Contract Terms Act (referred to as UCTA) is one such law that is intended primarily to guard consumers who are also prejudiced for the weaker bargaining positions they occupy. The Unfair Contract Terms Act works to manage the contracts and limit the extent to which one party can avoid liability through the utilization of exclusion clauses like disclaimers. If any court or tribunal finds a term 'unfair' within the contract then that term is held void and therefore the remaining terms of the contract will still be binding on both parties. While the unfair contract terms cover almost every standard style of contracts, there are a variety of exceptions, including insurance contracts. But, now it's shortly until the unfair contract terms are going to be extended to insurance contracts as, in 2019, the Treasury released an exposure draft of the Treasury Laws Amendment Bill 2019(the Bill) to increase to unfair contract terms(UCT) regime to insurance contracts.

While in India, the principal legislation regulating the insurance business is that the Insurance Act, 1938, and also the recently enacted Insurance Regulatory and Development Authority (IRDA) Act, 1999. Within the Indian Contracts Act, 1872, and also the Specific Relief Act, 1963 there is no clear demarcation of unfairness provided by the law to date. The web results that the Indian Contracts Act, as stands today cannot come to the protection of consumers when handling business. Hence, it becomes even more important to possess comprehensive sets of laws to accommodate the unfairness of contracts as simple and plain laws wouldn't only put the common buyer in great comfort but would also add a check on frauds. The absence of such guidelines leaves it up to the judicial interpretation which ends up in uncertainty of outcome for the parties involved. Therefore, introducing a higher frontier would ensure both clarity and certainty of law.

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1. Introduction

A standard form of contract is a contract between two parties which needs to constitute an offer and acceptance while making a legitimate contract and doesn't afford any negotiation. In such forms of contracts, one will is exclusively pre-dominant, which dictates its terms. The quality terms and conditions are prepared by one party and are offered to a different on a “take it or leave it” basis.

Within the late 20th century, the Parliament passed its first comprehensive incursion into the doctrine of contractual freedom within the Unfair Contract Terms Act, 1977. The Unfair Contract Terms Act regulates clauses that exclude or limit terms implied by the common law or a statute. In England, the Unfair Contract Terms Act, severely limits the rights of the contracting parties to exclude or limit their liability through exemption clauses within the agreements.

Unlike England, there's no specific legislation in India regarding the exclusion of contractual liability. The law of damages in India is codified in Sections 73 and 74 of the Indian Contract Act, 1872 (Contract Act). While there's no express statutory bar in India against contractually excluding or limiting the liability for damages, section 23 of the Contract Act provides that the consideration or object of an agreement is unlawful inter alia if it's of such a nature that, if permitted, it might defeat the provisions of any law or if the court regards it as immoral or critical public policy. An agreement whose object or consideration is unlawful is deemed to be void. There is a touch possibility of striking down unconscionable bargains either under section 16 of the Contract Act on the bottom of undue influence or under section 23 of that Act, as being critical public policy.

2. Meaning and Scope of Unfair Contract Terms

1. *Meaning*

A contract is an agreement between two or more parties which is enforceable by law. Contracts are either written or formed orally. The terms and conditions of every contract varies from another depending upon the sort of business dealing. Sellers are liberated to set the contractual terms. Generally, contract terms are unfair if they put a party to the contract at an unfair

disadvantage. If a court or tribunal finds the term 'unfair', the term is going to be termed as void. This suggests it would not be binding on the parties of the contract. While the rest terms of the contract will still continue to bind the parties to the contract to the extent it's capable of operating without the unfair term.

2. Scope and Application

Indian Contract Act

Section 16(3) of the Contract Act provides that, where someone, who is in a position to dominate the will of another, enters into a contract with him, and transaction appears, on the face of it or on the evidence adduced to be unconscionable, the burden of proving that such contract was never induced by undue influence shall lie upon the person in position to dominate the will of the alternative. The term unconscionable has not been defined anywhere within the Indian law. Section 16 explains that a contract is obtained by undue influence if one in every of the party dominates the alternative party and uses his unfair position to urge an unfair advantage over the other.

The 199th Law Commission Report explained procedural and substantive unfairness within the proposed bill and laid out guidelines to hunt out if a contract is substantially or procedurally unfair.[56] As per section 19 of the Act, the contract obtained by undue influence is 'voidable' at the selection of the party whose consent was so obtained. Section 23 of the Act explains that the agreement is void if the thing of the agreement is unlawful, fraudulent, immoral, or opposition public policy. The law of damages in India is codified in Sections 73 and 74 of the Indian Contract Act, 1872. Section 73 of the Act provides that a celebration that suffers a breach of contract is entitled to receive from the alternative party that has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose within the standard course of things from such breach or which the parties knew, after they made the contract, to be likely to result from a breach. Section 73 of the Contract Act bars the grant of compensation for remote and indirect loss or damage sustained on account of breach of contract.

[56] 199th Law Commission Report. (2006).

This divergence between the damages and towards the losses, that naturally arise within the standard course of actions (first limb) and also the losses which the parties knew, after they entered into the contract, to be likely to result from the breach of the contract (second limb), appears to be borrowed from the principle laid down within English people decision of Hadley v. Baxendale.[57] The first limb is popularly remarked as indemnification, while the second limb is noted as special damages i.e. additional loss caused by a breach on account of a special circumstance or outside the quality course of things, which was in contemplation of the parties.

Australian Consumer Law

The Australian Consumer Law protects small businesses from unfair terms in standard sorts of contracts. Australian Law could be a national, state, territory law from January 1, 2011, and includes unfair contract legislation introduced on 1 July, 2010. Enforcement of the unfair contract term laws is shared between the ACCC, ASIC, and also the state and territory consumer protection agencies. The Law applies to plain style of contracts entered into or renewed on or after 12 November 2016. a typical form contract is that the one that has been prepared by one party to the contract and also the opponent has little or no opportunity to barter the terms of the contract i.e. it's offered on a 'take it or leave it' basis. The UCT regime currently applies to most financial products and services through the Australian Securities and Investments Commission Act, 2001. The effect of the legislation is that a term during a consumer or small business contract which is unfair is void. A term is unfair where:

- it causes a big imbalance within the parties' contractual rights and obligations;
- the term isn't necessary to shield the legitimate interests of the advantaged party; and
- the term would cause it detriment if it were to be relied on.

English Law

The Unfair Contract Terms Act, 1977 is an Act of the Parliament of the UK. Within the late 20th century, it passed the primary comprehensive incursion into the doctrine of contractual freedom within the Unfair Contract Terms Act, 1977.

[57] Hadley v. Baxendale, (February 23, 1854).

The Act regulates contracts by limiting the operation and legality of some contract terms. It limits the extent to which one party can avoid liability through the employment of 'exclusion clauses' like disclaimers. It applies to exclusion terms within the bulk of contracts, including notices that may bring into existence contractual obligations. What constitutes an exclusion clause isn't defined. The UCTA applies to contracts made within the course of business. Therefore, it excludes the contracts made between individuals. Additionally, it doesn't apply to:

- contracts of employment
- contracts concerning interests in property and land
- contracts associated with material possession rights

The Act renders terms excluding or limiting liability, ineffective or subject to reasonableness, depending upon the character of the requirement speculated to be excluded and whether the party purporting to exclude the liability, is acting against a consumer. It's normally utilized in conjunction with the Unfair Terms in Consumer Contracts Regulations 1999 (Statutory Instrument 1999 No. 2083),[58] likewise because of the Sale of products Act 1979 and therefore the Supply of Products and Services Act 1982.

3. Effects of Unfair Terms of Contract on Insurance Contracts

1. Insurance Contracts

The insurance policy has been existing during this world from the very start i.e. quite a couple thousand years ago.[59] People across the state have an outlook to safeguard their life and interests from any possible risk or contingency. Earlier, there accustomed be no written kind of documents or contracts to support insurance policies but still, people discovered ways to safeguard their lives against the risks. Insurance in a very layman definition is defined to have proper coverage against a risk and if anyone desires to guard or safeguard their own life, they will buy an insurance policy. An insurance policy may be a written material that is ready to precise a contract between the insurer and therefore the person purchasing the policy i.e. the insured.

[58] Unfair Terms in Consumer Contracts (Amendment) Regulations 2001. (n.d.).
[59] Desai, G. R. (1973). *Life insurance in India* : Its history and dimensions of growth. Delhi.

The Law that governs and regulates the Insurance business in India, is that the Insurance Act, 1938. However, the Act doesn't contain a correct definition of the term insurance in it but it defines "life insurance business" in section 2(11) as:

> *"business of effecting contracts of insurance upon human life, including any contract whereby the payment of cash is assured on death (except death by accident only) or the happening of any contingency addicted to human life, and any contract which is subject to payment of premiums for a term addicted to human life….."*[60]

This definition includes an entire lot of life contingency contracts which consist of death, disability, redemption of capital, and annuities. But there are many provisions and practices underlying the insurance that don't seem to be mandated by the Insurance Act or the other legislation.

In India, all contracts including life assurance are governed and controlled by the provisions of the Indian Contract Act, 1872. Although, insurance has been differentiated into various forms like fire, marine, life, etc., but there are certain principles that apply to any or all varieties of insurance. A contract is an agreement between parties, which are enforceable at law.[61] So as to be enforceable by law, the contract must possess all the essentials of a sound contract is contained in section 10 of the Act. Insurance is an intangible good, therefore, there's a contract of promise where one party i.e., the insured, fulfills the promise to pay earlier the premium while the insurer's a part of the promise gets into activation at the time of the event insured.[62] In India, the premium on insurance should be paid at the time of the proposal.

2. Extension of Unfair Terms of Contract to Insurance Contracts

Existing UCT Legislation

The UCT regime currently applies to most of the financial products and services through the Australian Securities and Investment Commission Act, 2001 (ASIC Act). At present, the UCT regime does not extend to the insurance contracts, as section 15 of the ICA expressly provides that a contract of insurance isn't capable of being made the topic of relief under the other Act i.e. a State Act, or an Act or Ordinance of a Territory. The rationale for this exclusion has been

[60] Kutty, S. K. (2008). *Managing life insurance*. New Delhi Prentice-Hall Of India.
[61] Padhi, P. K. (2013). Legal aspects of business. Phi Learning.
[62] Sudhir Kumar Jain, "Consumer Orientation – insurance product", IRDA Journal, April, 2012, 27.

that insurance contracts are categorized as a special category of contracts that have their own given protections, like the duty of utmost honesty under the ICA, and also that insurance contracts have specific characteristics that make them unsuitable for defense under the UCT regime.[63]

Extension of the UCT Regime

The extension of this regime to insurance contracts has been considered and supported by a variety of inquiries, including the 2017 Senate Economics References Committee's inquiry into the overall insurance industry, the 2017 Australian Consumer law review, and therefore the 2018 Parliamentary Joint Committee on Corporations and also the Financial Services' inquiry into the life assurance industry. The rationale for the extension of the UCT regime to insurance contracts included**:**

- The symmetrical nature of good faith duty is incompatible with the highly asymmetrical nature of the link between a private or small business coping with the big, powerful insurance companies.[64]
- The duty of utmost honesty connotes fair dealing and community standards of fairness, but it's generally seen as being restricted to operating within the four corners of the contractual bargain, and also the UCT regime offers the prospect of re-writing the contractual bargain.
- There are various terms prevalent within the insurance industry which are potentially problematic and unfair. These are:
    1) Terms that allow a claim to be denied on the premise of a blanket status exclusions in travel insurance;
    2) Terms that prevent an insured from making a disability claim if they weren't diagnosed with the incapacity before leaving work with relevance line of credit insurance; and
    3) Total permanent disability provisions that offset policy benefits against those paid under other policies held.

[63] Australian consumer law review, final report (p. 52). (2017).
[64] Parliamentary Joint Committee on Corporations and financial services (2018), life insurance industry, page 47.

In June 2018, the govt. issued a proposal that outlined a proposed model regarding the extension of the UCT regime to the insurance contracts and sought stakeholder and shareholder views. On 4 February 2019, the govt. confirmed that it'd extend the UCT regime to insurance contracts in response to the recommendation 4.7 of the Royal Commission Final Report which endorsed the need to introduce the UCT regime to the insurance contracts. Recommendation 4.7 made by the Royal Commission included that the provisions should be amended to supply a meaning of the 'main subject matter' of an insurance contract because the terms of the contract that describe what's being insured. It was also recommended that the duty of "utmost good faith" contained in section 13 of the Act should operate independently i.e. doesn't include the provisions of unfair contract terms. While making recommendation 4.7, the Royal Commission's primary objectives were to:

- Ensure that every one consumer and tiny businesses who purchased insurance received the identical access to protections from unfair terms in those insurance contracts as they are doing in other financial services contracts;
- Increase incentives for insurers to boost the quantity of clarity and transparency with relevance to the terms, and take away potentially unfair terms from their contracts, and to
- Provide appropriate remedies to the consumers, additionally as provide enforcement powers to the Australian Government to require advantage in cases where unfair contract terms don't seem to be covered.

Here is, what could be a summary of the key terms included within the proposed legislation of the new exposure draft Bill:

- The UCT regime will apply to plain styles of insurance contracts issued to consumers and little businesses to which ICA currently applies. A policy is treated as being standard form even where it provides options for levels of premium, excess and amount insured.
- Terms that describe the insured risk (such as house, car, or any person) are excluded from the UCT regime, so will the terms that outline the upfront price of the contract and therefore the excess or deductible amounts (provided these are transparently disclosed).
- Third-party beneficiaries will enjoy the correct to bring an instantaneous claim under the UCT regime, consistently with their existing rights to create a right away claim against an insurer under Part V of the ICA.

The already existing statutory duty of "utmost good faith" won't be impacted by the proposed legislation and can still apply as earlier to the insurance contracts.

3. Effects of Unfair Terms of Contract on Insurance Contract

The effect of having an unfair contract term means that if a Court or tribunal finds the term "unfair", that term will be termed as void i.e., it will not be binding on the parties and will be struck out of the contract. The remaining contract will continue to be valid and function similarly as before to bind the parties to the extent the contract is capable of operating without unfair terms. The unfair contract terms cover almost every standard form of contract but there are exceptions, insurance contracts being a part of them. Most insurance contracts that are not included are home insurance, car insurance, consumer credit insurance (which might be covered under the Insurance Contracts Act, 1984) while some contracts including private health insurance, are covered.

Exclusion Clauses

There are certain terms in a contract that allows a party to avoid or limit the amount of their liability or obligation towards the other under a contract, which has been often ruled as unfair by the court. The most common terms in an insurance contract that do this are identified as exclusion clauses. The UCTA, 1977 regulates the clauses which exclude the terms implied by the common law and regulates the contracts that limit or exclude the extent to which one party to the contract can limit their liability towards the opponent through the use of "exclusion clauses" such as disclaimers. Perhaps, the term 'exclusion clause' has not been specifically defined in the Act.

Exclusion clauses which are at the highest risk of being considered unfair are those that exclude liability for damages or losses that the insured would definitely expect to be covered and secured, either because of the fact that it is generally covered under the type of insurance or because the coverage is implied on policy documentation or marketing materials. For example, consider an insurance policy that contains a broad exclusion for liability arising from acts of war. But however, this exclusion might as well be considered 'unfair' if it is used to exclude

the liability for a hacking attack carried out by a terrorist act or govt. organization that would ordinarily be covered if carried out by an ordinary criminal.

One of the first cases relating to exclusion clauses was George Mitchell Ltd. V. Finney Lock seeds.[65] Here, in this case, it was held that the exclusion clause did not extend to the seeds sold, hence, limiting the extent of liability of the seed seller to damages for replacement rather than extending them to the greater loss of profits suffered by the claimant after the failure of crop, was unreasonable and to claim for them would torture the language of the contract. Therefore, it was observed that on the facts of the case, this was an unfair term and could have been struck out by the court under the UCTA, 1977.

The Directive and the Regulations

The Unfair Terms in Consumer Contracts Regulations were enacted first in 1994, in order to implement Council Directive 93/13/EEC on unfair terms in consumer contracts i.e. "the Directive". After entering into a contract with the trader there are certain protections available under the Directive. It is a consumer protection measure which applies to unfair terms in standard contracts between buyer and sellers (not been individually negotiated).[66] The goal of the Directive is to protect the consumer from the abuse of power of the supplier. It protects the aggrieved party from one sided unfair contracts and the unfair exclusion of essential terms in a contract.

Five years later, the Regulations got replaced by the Unfair Terms in Consumer Contracts Regulations 1999 i.e. "the Regulations". However, the Regulations have given a little rise in the way of cases reported in context to insurance. The financial services authority has used its powers of enforcement under the Regulations to secure the undertakings in relation to 'unfair terms' from an amount of UK firms in the insurance industry. The earlier legislation on unfair contract terms i.e. the UCTA, 1977 excluded the insurance contracts from its scope therefore, increasing the importance of 1999 regulations. The Regulations require standard forms of contracts to be just and fair. The contracts are not expected or allowed to create any amount of imbalance between the rights and obligations of a consumer with that of the seller. A term is 'unfair' if it is harmful to the consumer's interests or if puts the consumer at a risk of an unfair disadvantage. "Effect of unfair terms" which provides that an unfair term in a concluded

[65] George Mitchell (Chesterhall) Ltd. V. Finney Lock Seeds [1983] 2 AC 803
[66] Article 3(1) and Regulation 5 (1)

contract between two parties shall not be binding on the consumer. And, it shall continue to bind the parties to the contract if it is capable of existing without the unfair terms. A term is 'unfair' if, it causes a significant imbalance between the rights of the parties and in the obligations arising in the contract to the detriment of the consumer, which is contrary to the requirement of good faith (which is not defined).[67]

In the case of Banco Español de Crédito SA v Camino, a borrower entered into an agreement of loan with a bank. The charge per unit on late payment was fixed at 29% and also the term of the loan was seven years. Within the second year of the term, the borrower didn't make seven of the monthly repayments. The bank made an application within the Spanish court for repayment of the outstanding sum, contractual interest (including interest for late payment), and costs. The court held that the term was unfair and void but amended it and also the interest on late payments was fixed at 19%. One of the questions put to the ECJ was whether Article 6(1) of the Directive precluded legislation of a member state which allowed a national court to revise the content of a term which is found to be unfair. The ECJ answered this question within the affirmative. In reaching its conclusion, the ECJ relied on the wording of Article 6(1), which expressly required member states to produce that unfair contract terms "shall not be binding on the consumer", and on the target and overall scheme of the Directive. In relevance to the latter, the future objective of the Directive is to stop the employment of unfair terms in contracts that are concluded between consumers and sellers or suppliers. The ECJ was concerned to preserve the "dissuasive effect" of the Directive. It agreed with Advocate General, who had described Article 6(1) as having a "deterrent effect" on sellers or suppliers, and effectively raising the stakes for sellers or suppliers who gambled on including unfair terms in their contracts. The Advocate General had earlier stated that if national courts were ready to change or modify, instead of just declaring void, unfair terms, the risks to a supplier or seller from the utilization of unfair terms in standard contracts would be reduced considerably. During this way, if national courts were permitted to amend the matter of unfair contractual terms, sellers and suppliers would be persuaded to still use those terms. Whether or not they were declared to be invalid, the national court could amend the unfair terms in such how to safeguard the interests of sellers and suppliers. Not only this could encompass the achievement of the long-term objective of preventing the employment of unfair terms in consumer contracts by sellers or suppliers, it might not ensure such efficient protection of consumers because of the refusal to use, in their totality, terms found to be unfair. The implications of the Camino ruling for English

[67] Article 3(1) and Regulations 5 (1)

law are clear: terms found to be unfair cannot be modified by the courts and must be disregarded in their entirety. The approach taken in Bankers Insurance Co Ltd v South to the development of the Regulations disregarded in their entirety. Within the light of the interpretation of the Directive by the ECJ, incorrect as a matter of law and cannot be followed. The impact of the ruling in practice is a smaller amount certain. it's not quite common for the Regulations to have relied on litigation involving insurance policies, and reference isn't, if ever, made to Bankers Insurance Co Ltd v South. However, the ECJ also considered a side of Spanish law and held that the Directive precluded procedural arrangements in national courts which failed to allow the court to assess of its own motion at the outset or at any time the fairness of a term. The judgments in the Camino case entirely gives rise to the appealing prospect of courts raising of their own motion, the question of whether a term in an exceedingly consumer insurance contract is unfair within the meaning of the Regulations.

4. Concerns and Remedies related to Unfair Contract Terms

At present, there are not any amount of penalties imposed upon the utilization of unfair terms during a contract, the court only declares the unfair term as void and treats it because it never existed while the remainder of the contracts continues to process the identical. There is no amount of penalty or fine imposed on the party guilty for using unfair terms in a very standard contract. Also, there is not always complete transparency of the terms. A term is taken into account to be transparent in it's legible, presented clearly, expressed in plain language, and is quickly available to any party stricken by the term. Any term lacking these characteristics is also considered as not transparent it should also include terms that are hidden in fine print or schedules or terms phrased in complex legal or technical language. Even a transparent term is often found unfair at certain times. That's why, it should be the duty of the courts to also assess the fairness of a selected term in context to the contract as a full, including any term which can offset the fairness of the opposite terms within the contract. For example: a possible unfair term may be counterbalanced by some additional benefit being offered to the alternative party to the contract. This suggests that a term can be unfair in one contract but might not be unfair in another.

Benefit to the Consumers

A legislation to bring this into effect has been glided by the Parliament in February 2020, which can get effect from April 2021. This legislation has been already available to most of the commercial contracts but this point it's able to be applied to the sector of insurance. The centralized is consulting to introduce penalties within the UCT Regime. If the penalties are introduced, then the companies will have to have rather more guidance as possible regarding the unfair terms in an exceedingly contract like whether a specific term is unfair or not, etc. The central considers to own a broader definition of what constitutes the 'main subject matter' of an insurance contract instead of having a narrow one. This may lead to an increased number of terms that can be subject to the fairness test, eventually increasing the benefit to consumers and tiny businesses. These proposed changes will communicate be of great interest to the insurers who write down consumer products or insure within the SME market with standard sorts of products. Following the Royal Commission and throughout the COVID-19 pandemic to this point, there has been renewed specialty in ensuring customers are sold products useful to them. The govt. has also recently consulted UCT Regime and intends to introduce civil pecuniary penalties for including such terms in standard form contracts. While on the opposite hand, are a variety of important factors that insurance intermediaries or brokers will get accustomed with the introduction of the UCT Regime to the insurance industry which includes:

- The policy must be a consumer contract or a little business contract
- The contract must be a financial product and this includes insurance
- The policy must be a customary variety of contract
- The provisions of the contract must fulfill the concept of an unfair term of contract as set within the legislation.

However, not all terms of a contract are captured by the regime. The regime doesn't apply to terms of a contract that:

- define the most material of the contract;
- set the upfront price payable under the contract;
- set the quantity of an excess or deductible provided this can be a transparent term; or
- is the term required, or expressly permitted, by a law of the Commonwealth or a State or Territory.

Remedy for the Insurers

Insurers should be reviewing their standard form consumer and tiny business policy wordings already. The primary task should be to make sure that policy wordings are "transparent" - in plain and clear language, during a legible-size font, and taken off in an exceedingly single document that's easily accessible to the policyholder. The second task should be to review the substance of policy wordings carefully to spot clauses which will be in danger of being considered unfair under the extended UCT regime. Insurers and stakeholders should undertake legal review of affected policy wordings and will even have to engage with underwriters and actuaries where policy conditions and coverage have to be amended. Although unfair contract terms laws are in situ within the financial services industry for a few time, insurance contracts operate differently and can still be subject to the ICA. A selected insurance-focused lens is therefore required when implementing these laws, keeping in mind other insurance regulatory changes which is able to get effect at a later date.

5. Analysis of Unfair Contract Terms

Position in India

Today India stands at an edge where there's no express statutory bar against contractually excluding or limiting the liability for damages. There are certain provisions present within the Contract Act but they sure don't seem to be completely enough. Section 23 of the Act provides that if an object or consideration is unlawful then the agreement shall be deemed void.

In 1986, the Supreme Court introduced to India the principle that courts will not enforce an unfair or unreasonable contract or an unfair or unreasonable clause during a contract, entered into between parties who do not seem to be equal in bargaining power.[68] Illustrative instances of such inequality in bargaining power were enumerated, including where it's a results of the nice disparity within the economic strength of the contracting parties, where the weaker party is in an exceedingly position within which he can obtain goods or services or means of livelihood only on the terms imposed by the stronger party or go without them, where a person

[68] Central Inland Water Transport Corporation. v. Brojo Nath Ganguly Brojo Nath Ganguly (1986) 3 SCC 15.

has no meaningful choice, but to grant his assent to a contract or to register the line in an exceedingly prescribed or standard form or to simply accept a group of rules as a part of the contract, however unfair, unreasonable and unconscionable a clause therein contract, form or rules is also. Contracts that contain terms so unfair and unreasonable that they shock the conscience of the court were held to be void as against public policy. Though the court was managing a provision for termination of employment, which was found to be unfair, the aforesaid findings were made in an exceedingly more general context, and after touching on English judgments coping with commercial matters, including contracts that contained exclusion or limitation of liability clauses. The court did, however, exclude the applicability of this principle to cases where the bargaining power of the parties is equal or almost equal, or where both parties are businessmen and therefore the contract may be a commercial transaction.

In Bharathi Knitting Company v. DHL Worldwide Express Courier Division of Airfreight Ltd.,[69] the Supreme Court was coping with a clause, which limited the liability of a courier company just in case of any loss or damage to a shipment, within the terms and conditions printed on a consignment note for shipment of a package. The Supreme Court upheld the choice of the National Consumer Disputes Redressal Commission, which limited the number awarded to the consignor for deficiency of service, to the number per the limitation of liability clause. The court held that parties who sign documents containing contractual terms are usually bound by such contract and rejected the contention that there was no consensus ad idem between the parties on limitation of liability, visible of the National Commission's finding of incontrovertible fact that the consignor had signed the consignment note.

In 2010, a Single Judge of the Delhi High Court dealt with the issue of whether contractual clauses could disentitle a person from claiming damages, which he is otherwise entitled to claim under law i.e. whether parties can contract out of Section 73 of the Contract Act.[70] In this case, the court considered a clause in a very government construction contract, which barred a claim for compensation by the contractor from being admitted, where works were delayed and time for completion was extended on account of certain specific instances beyond the control of the contractor. The court was faced with two conflicting decisions of the Supreme Court, which interpreted the identical clause. Within the first decision, the Supreme Court held that the clause in question would bar the contractor's entitlement to damages, additionally to

[69] (1996) 4 SCC 704.
[70] Simplex Concrete Piles (India) Limited v. Union of India ILR (2010) II Delhi 699.

extension of your time for completion, on account of delay.[71] Within the other, the Supreme Court held that the clause only prevented the department (relevant authority of the employer) from granting damages, but wouldn't prevent an arbitrator from awarding damages, which were otherwise payable by the employer on account of its breach of contract.[72] The Delhi court held as follows:

- Clauses which bar and disentitle a contractor from claiming damages, which it's entitled to assert by virtue of Sections 55 and 73 of the Contract Act, are void by virtue of Section 23 of the Contract Act.
- A law, which is formed for individual benefit, is waived by a private, but when such law includes a public interest/public policy element, such rights arising from the law cannot be waived because the identical becomes a matter of public policy/public interest.
- Provisions regarding breach of contract (including Sections 55 and 73 of the Contract Act) are the very heart, foundation and basis of the existence of the Contract Act. According precedence to the sanctity and binding nature of contracts over the entitlement of a celebration to breach the contract by virtue of clauses with no remedy to the aggrieved party, could be a matter of public policy.
- To permit a clause that has the thing of defeating the contract itself could be a matter of grave public interest and defeats the very basis of the existence of the contract.

Clauses like the one within the present case would be void under Section 23 of the Contract Act, as they deem to be violative of public interest and public policy.

It is also very important to contemplate the scope of the clause excluding or limiting liability further as any exceptions which will be specified therein. In Simplex Infrastructure v. Siemens Limited,[73] The Bombay judicature had occasion to contemplate a limitation of liability clause in an exceedingly works contract. The petitioner therein sought certain interim reliefs, including restraint against encashment of a bank guarantee, pending conclusion of arbitral proceedings on various grounds, including the actual fact that the contract limited the petitioner's liability to a particular amount. The limitation of liability clause excluded the petitioner's liability for specific losses, including loss of production, loss of use, loss of profit,

[71] Ramnath International Construction (P) Limited v. Union of India (2007) 2 SCC 453.
[72] Asian Techs Limited v. Union of India (2009) 10 SCC 354.
[73] 2015 (5) Mh.L.J. 135.

loss of knowledge and/or data, and any indirect or consequential damage, and capped the petitioner's liability for all losses, claims or damages arising out of the contract. However, the clause also on condition that it might not apply to any damage or loss or claims caused or arising intentionally or by wilful misconduct. The court clearly found that the respondent therein invoked the bank guarantee inter alia to recover additional expenses that it had to incur on account of various defaults by the petitioner, which such recoveries wouldn't be covered by the limitation of liability clause, which was limited in scope. The court also found that the petitioner's conduct would fall within the wilful misconduct exception, and so the petitioner's contention that its liability was capped under the contract was rejected.

The Madras state supreme court also refused to enforce a clause limiting the liability of a shopkeeper, which was printed on the reverse of the bill handed over to the customer, to 50% of the market value or value of the articles just in case of loss.[74] The court found such a term to be critical public policy, public interest, and therefore the fundamental principles of the law of contract and held that imposition of such a condition is in flagrant infringement of the law regarding negligence.

Position in England

The position during this regard was codified within the Unfair Contract Terms Act, 1977 ("UCTA"), which inter alia prescribes limits on the extent to which liability for breach of contract, negligence, or other breaches of duty are often contractually avoided through exclusion or limitation of liability clauses. Clauses that try to exclude liability for death or personal injury, resulting from negligence are rendered void, whilst clauses excluding liability for the other loss or damage resulting from negligence are subject to a test of reasonableness. [75] In cases where one party is dealing with the other's written standard terms of business, the latter cannot, by relation to any term of the contract, exclude or restrict any liability in respect of his breach, except insofar because the contractual term satisfies the necessity of reasonableness.[76] This is applicable only to cases where parties are governed by the quality business terms of 1 of the parties. The aforesaid limits don't apply to international supply

[74] Lily White v. R. Munuswami AIR 1966 Mad 13.
[75] Section 2 of the UCTA.
[76]. Section 3 of the UCTA.

contracts, which are defined inter alia as contracts purchasable of products made by parties whose places of business are within the territories of various States.[77]

The UCTA provides that a term is reasonable if it's a good and reasonable one to be included, having relevancy circumstances which were, or ought reasonably to own been, known to or within the contemplation of the parties when the contract was made.[78] The factors to be considered while determining whether the restriction of liability to a specified sum of cash satisfies the need of reasonableness, are the resources which the person restricting his liability could expect to be available to him for the aim of meeting the liability should it arise, and the way far it absolutely was hospitable him to hide himself by insurance. Certain other guidelines for determining reasonableness are specified, including the strength of the bargaining power of the parties relative to every other, whether the customer received an inducement to comply with the term and whether the customer knew or ought reasonably to own known of the existence and extent of the term.[79] The UCTA places the burden of showing that a contractual term satisfies the need of reasonableness on the person claiming that it does. Most of the provisions of the UCTA don't apply to consumer contracts, which are separately governed by the patron Rights Act, 2015.

Contracts, which aren't the quality business terms of 1 of the parties, are going to be subjectively examined to see the bargaining powers of the parties to such contracts. The House of Lords, in Photo Production Ltd. v. Securicor Transport Ltd.,[80] held that an exclusion clause would apply even just in case of a fundamental breach of the contract which it'd be wrong to put a strained construction upon words in an exclusion clause, which are clear and fairly susceptible of just one meaning, in commercial contracts negotiated between businessmen capable of taking care of their own interests and of deciding how risks inherent within the performance of varied varieties of contracts will be most economically borne. The UCTA wasn't applied during this case because the go for question was executed before the UCTA came into force.

[77] Section 26 of the UCTA.
[78] Section 11 of the UCTA.
[79] Schedule 2 to the UCTA.
[80] [1980] 2 WLR 283.

Position in Australia

Since 2010, Australia has had laws coping with unfair contract terms (UCT Laws) in consumer contracts. These are contained in sections 23 to twenty-eight of the Competition and Consumer Act 2010 (ACL) and, in respect of monetary products and services, sections 12BF to 12BM of the Australian Securities and Investment Commission Act 2001 (ASIC Act). From 12 November 2016, the scope of the UCT Laws was extended to 'small business contracts' (a small business is one that employs but 20 people, including casual employees employed on an everyday and systematic basis). The govt. announced in December 2017 that it'd extend the UCT Laws to use to contracts of insurance in 2018. The central has finally released proposals in respect of the proposed extension of the UCT laws. The applying of the proposed model to insurance contracts would mean that:

- an insurance contract is going to be considered as standard form whether or not the patron or small business can make a choice from various options of policy coverage
- when determining whether a term is unfair, a term is going to be reasonably necessary to shield the legitimate interests of an insurer if it reasonably reflects the underwriting risk accepted by the insurer in regard to the contract and it doesn't disproportionately or unreasonably disadvantage the insured
- examples specific to insurance are going to be added to the list within the ASIC Act of samples of sorts of terms which will be unfair, which could include terms that let the insurer to pay a claim supported the value of repair or replacement that will be achieved by the insurer, but couldn't be reasonably achieved by the policyholder
- where a term is found to be unfair, as an alternate to the term being declared void, a court is going to be able to make other orders if it deems that more appropriate
- the definition of 'consumer contract' and 'small business contract' will include contracts that are expressed to be for the advantage of a personal or small business, but who aren't a celebration of the contract
- for insurance policies, as defined by the insurance Act 1995, which are guaranteed renewable, it'll be made clear that a term which provides a life insurer with the power to unilaterally increase premiums won't be considered unfair in circumstances within which the premium increase is within the bounds and under the circumstances laid out in the policy.

6. Consequences of the Breach

In a standard sort of contract, there are certain terms that permit a celebration to terminate the contract or have severe consequences for minor breaches on the part of the buyer are considered unfair and if the implications don't seem to be necessary to safeguard a party's legitimate interests.

Within the context of Insurance, section 54 of the ICA already functions and prevents the insurers from depending upon the breaches made by the insured to refuse payments of claim, until and unless the breach actually prejudices the claim.

However, the new extended UCT Regime may additionally effect the terms which impose other unreasonably severe consequences for breaches, besides denial of coverage. Similarly, clauses which prevent the insured or policyholder from terminating the contract under any given circumstances, or do not give the insured reasonable rights in a very breach of contract by the insurer, might additionally be considered unfair.

7. Conclusion

The current position of India today in context to the applicability and availability of laws and legislation with respect to unfair terms in a contract is beneath several countries. Unlike England, in India, there is no specific legislation regarding the exclusion of contractual liability from the standard contracts. There are a few provisions and sections present like section 16 and section 23 of the Indian Contract Act that have a possibility of striking out unconscionable bargains.

Hence, it becomes very necessary to have a law dealing with the 'unfairness' in contracts, and equally necessary to have a justified differentiation between procedural and substantive unfairness. To date, this kind of division has not been done in any country. While conducting the research, this has been analyzed and examined that there are various laws and provisions present in different countries and none of them describes a clear picture of the difference between substantive and procedural unfairness. A contract or a term in a contract is procedurally unfair if it has resulted in unfair and unjust advantage or disadvantage to one party

accounting of the conduct of the other party (see section 5 of the Bill).[81] Similarly, a provision relating to 'general substantive unfairness' in section 12 says that a term in a contract or a contract as a whole shall be treated as unfair if the terms of the contract are harsh or oppressive or unconscionable. Section 13 of the Bill contains guidelines to adjudge the substantive unfairness.

Thus, it is the need of the hour to impose and implement the suggestions proposed in the 103rd and 199th Law Commission Report. The legal system needs to consider the provisions of UCC and enact a law allowing the courts to refuse enforceability of unconscionable contracts. Therefore, it is very much needed to introduce a certain set of laws that would deal with unfairness and at the same time will ensure clarity and certainty of the law.

[81] Reddy, Shri v. Vijayasai. (2019). UNFAIR (PROCEDURAL AND SUBSTANTIVE) TERMS IN CONTRACT BILL, 2018 A. http://164.100.47.4/billstexts/RSBillTexts/AsIntroduced/unfair-E-21619.pdf

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5.

Software Protection: International Instruments and Trends

By: Neeharika

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Abstract

The main objective of Intellectual property rights is to protect the products of the mind. In this digital age with the continuous advances in technology, software has become an indispensable part of the said evolution. Software is an algorithm designed to give machines and computers the directions they need to do work as per the right commands. Definition of software as per Encyclopaedia Britannica is a set of instructions that includes programs, procedures, and routines, given to a computer for operating. There are usually two types of software, system software and application software. A third type of software is application software which is used between computers linked in a network.

Therefore, it becomes just as crucial to protecting the rights of such software manufacturers. Software being a product of the mind becomes qualified to be protected under the intellectual property rights laws.

The laws regarding software protection have seen great changes over the past, as these are still relatively new and constantly maturing, so as to give full protection to the creators, from various acts of piracy, and to encourage creativity.

With this paper the author has aimed to study the basic intellectual property right laws, mainly copyright and patent laws, and how these are used to give the due protection to the software creators, and analyze how at the international level various instruments involving international laws, conventions, treaties, etc have treated software protection. Further, the author has also aimed to analyze the general trend in the evolution of software protection worldwide.

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1. Introduction

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1.1. What is a Software?

Definition of software as per Encyclopaedia Britannica is a set of instructions that includes programs, procedures, and routines, given to a computer for operating. There are usually two types of software, system software and application software. A third type of software is application software which is used between computers linked in a network.[82]

Software-defined as per the U.S. Copyright laws is a "set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result". As per The

[82] *Software | Definition, Types, & Facts*. (n.d.). Encyclopedia Britannica. https://www.britannica.com/technology/software

Indian Copyright law, software is protected under 'literary works' and has defined 'computer program' as 'mean a set of instructions, expressed in words, codes, schemes or in any other form, including a machine-readable medium, capable of causing a computer to perform a particular task or achieve a particular result'.[83]

1.2. What is Intellectual Property Law?

Intellectual property right is the right which is exclusively granted by the government to protect the original work of the creators as well as the inventors. In general terms, the intellectual property is the intangible creation of humans which protects the intellectual activities in the field of scientific, artistic, and literary works. Intellectual property rights can be defined as the rights over the creation of their inventions through their creative mind. They give the creator right over the use of their creations for a limited duration of time. The IPR includes copyright, trademarks, patents, designs that maintain the quality and safety of any product and services. Intellectual property rights are divided into 2 kinds: Copyright and Industrial property.[84]

Copyright is the type of intellectual property that protects creative work Such as songs, books, movies, sound-recording, sculptures and software, etc Copyright is basically the right to copy, it refers to the legal right of the Owner or creator of the intellectual property. Copyright laws Safeguards the rights of authors over their creation and protection of their creativity. The copyright provides protection to the efforts of the Writers, musicians, designers, artists, and every other individual involved in the atmosphere of creativity.

Patents are a right which is granted for an invention of a product which somehow gives technical solutions to a problem. It generally protects the inventor of the product; the patent protection is granted for a period of 20 years. The term patent protection means that such a product cannot be distributed or sold commercially without the prior consent of the patent holder. Some of the things that can be patented are products, machines, manufacture, etc.

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[83] Mellema, C. L. (n.d.). *COPYRIGHT PROTECTION FOR COMPUTER SOFTWARE: AN INTERNATIONAL VIEW*. Published by SURFACE, 1984

[84] WTO | intellectual property (TRIPS) - what are intellectual property rights? (n.d.). Www.Wto.Org. https://www.wto.org/english/tratop_e/trips_e/intel1_e.htm#:~:text=Intellectual%20property%20rights%20are%20the

Trademark consist of drawings, symbols, shape, and packaging of goods, which creates a distinction between various goods and services in the market. It protects the owner of the mark by ensuring the right to use it to identify goods or services exclusively this helps consumers to identify a product or service due to its unique identification which is indicated by its unique trademark.

Designs refer to creative activity which contain the formal appearance of a product, and design right refers to original design that is registered design according to the proprietor it is an element of intellectual property. The main objective of the design law is to protect and promote the design of industrial production.[85]

1.3. How can a Software be Protected under Intellectual Property Laws?

For the most time, software protection has been majorly granted by three fields of IPR, these are, Copyright, Patent and Trade secrets. But the reliance over these three has changed over the years.[86]

1.3.1. Under Copyright Laws

Under copyright law, computer software is protected as a literary work. As stated before, the US copyright laws have defined a computer program as a *'set of instructions'*, similar to these are the provisions under the Japanese laws as well. In most national legislations this definition has been provided. This understanding is taken from the WIPO Copyright Treaty[87], the definition is not provided in the treaty, but a general understanding was formed while framing of it. Even as per the Indian Copyright laws, computer software is treated as a literary work and is said to be a *'set of instructions'*. Sometimes, the Computer Programme Derivatives are

[85] WIPO INTELLECTUAL PROPERTY HANDBOOK. (2004). https://www.wipo.int/edocs/pubdocs/en/wipo_pub_489.pdf
[86] International IP Protection of Software - WIPO. (n.d.). Wipo.Int. Retrieved August 17, 2020, from https://www.wipo.int/edocs/mdocs/copyright/en/wipo_ip_cm_07/wipo_ip_cm_07_www_82573.doc
[87] Supra at 5

also included within the definition of a computer software, as it is the basis for a software and but is not yet a complete 'set of instructions'.

1.3.2. Under Patent Laws

In many national legislations, software has neither been protected under patent laws nor been given the status of a patent. Under Indian laws as well, softwares are mostly protected under copyright laws as literary works and need special technical applicability to get recognized to be patentable. But various judicial decisions over the years, have often recognized software to have patentable properties. For instance, in the U.S. case of *Diamond v. Diehr,*[88] it was held that mathematical formulas embodied in the software programs are patentable.

This debate revolving around software exist due to the conflicting nature of software, involving both the written expression for performing a certain technical task. With software, it can often be the case that the written expression of two different software can be very different but the result is quite similar. Because of this many software manufacturers started protecting the said result under patent laws, so that the end result which is often the commercialized product, remains protected.[89]

1.3.3. Trade Secret

Softwares can be well protected under trade secrets. Trade secrets are often processes or formulas to develop a certain product. Trade secret does not provide protection against *'infringement'* but does against *'theft'*, for as long as the owner can prove that this was not something which was commonly known and was not easily be ascertainable.

Softwares make a perfect definition of a process or a formula, which is made to eventually give a certain result or make a commercialized product. As under trade-secrets, the subject can be

[88] Diamond v. Diehr, 450 US 175 (1981)
[89] Supra at 5

protected for its lifetime, the manufacturers often have been seen to seek protection of software as a trade secret than as a copyright or a patent.[90]

1.3.4. Others

Certain Open Source Software (OSS) also exists, wherein the manufacturers have granted only certain people the right to use it for free. This is done by licensing. These are not yet allowed by all the legislations of the world.[91]

Trademarks are also sometimes used to protect the design and the logos of such software companies, or particular software. It does not protect the content of a software, rather just the identifiability of it.

2. International Instruments and Treaties

Over the years, ever since Software has become an important commodity in the commercial world, various laws and legislations have been formulated, both at the national as well as international levels. In this section let us study some of the most important international instruments existing to give software its due rights.

2.1. TRIPS

The Trade-Related Aspects of Intellectual Property Rights (**TRIPS**) was one of the first instruments to discuss the legitimacy of including Software under copyright protection. Furthermore, it had also given three different areas of software protection: Copyright, Patent,

[90] Freibrun, E. (2019). Intellectual Property Rights in Software – What They Are and How to Protect Them – Freibrun Law. Freibrunlaw.Com. https://freibrunlaw.com/intellectual-property-rights-software-protect/#:~:text=The%20term%20refers%20to%20a
[91] Supra at 5

and Trade secret. Under section 10 of the treaty, it has been explicitly provided that the member countries are to protect software. Further, the states were independent to extend this protection.

Article 27.1 of the treaty recognizes the invention aspect of the software to be patentable. As for the member states, the patent right will be guaranteed as long as it fulfills whatever other characteristics a software has to have to be patentable, as per the national legislature. Article 39 provides for software protection as undisclosed information under trade secrets.

Other than this three protection, the TRIPS does not include anything else. Hence, most software developers choose to protect the source-code under trade secret protection and copyright the object-code.

TRIPS has further allowed the practice of reverse engineering, which is very common when it comes to software. This is allowed as long as it is done with honesty, that is it is not copied. Copying, as long as a few changes are made, is allowed, as well as when used under fair use.

To encourage healthy competition between various companies, it has been provided that the final product can be extremely similar as long as the written code for it is different, i.e., as long as it has been manufactured using a different process.[92]

2.2. Berne Convention

Berne convention became enforceable from the 5th of December, 1887, and has since been an important instrument to form the basis of many software protection legislation all over the world. Under the Berne Convention, explicit areas of software protection have not been mentioned, but the requirement of the member states to give software protection under literary works, as per the TRIPS treaty, has been made mandatory.

The Berne convention has given the power to the national legislation to set up the premise of providing intellectual protection to works. It has given an inexhaustive list of examples of works, which are to be given protection. Further, a time period of 25 years was set up by this convention to give protection, from the date of manufacturing.

[92] Marshine P, M. A. (n.d.). Software Protection: International Instruments and Trends.

2.3. WIPO Copyright Treaty

This treaty was formed in 1996, wherein under WIPO (World Intellectual Property Organisation) two treaties related to copyright were formulated, the WIPO Copyright Treaty ("WCT") and the WIPO Performances and Phonograms Treaty ("WPPT"). WCT was a treaty formed under the Berne convention, and has made it explicitly clear that computer programs are to be protected as literary works as per the Berne Convention. The WCT has not contain any definition of "computer program". But, in the course of the formulation of the Treaty, it was agreed upon that the definition of "computer program" adopted as part of the WIPO Model Provisions on the Protection of Computer Programs, to be held valid.

This definition reads as follows: "computer program" means a set of instructions capable, when incorporated in a machine-readable medium, of causing a machine having information-processing capabilities to indicate, perform or achieve a particular function, task or result".

It also stated that data in the form of compilations, as long as the selection or arrangement of the contents are original, are to be protected. One very distinct right was granted under this treaty, which was the right to rent the computer programs. It was further said that the member of the nation to this treaty were to provide enough protection to the software, so as to not restrict the right to use the software only to the owners.[93]

This treaty has done an important job to bring the various different copyright legislation in harmony with each other and with the international provisions. The laws related to copyright protection for most countries vary from each other. For instance, a U.S. author with a U.S. based work will have to register their work to the U.S. Copyright Office to be able to take legal action against it. This is not necessary in most other countries. Whereas in some other countries, extra benefits may incur from registration of work. For example, in Japan, one such benefit of optional registration is to create a rebuttal presumption.[94]

[93] Supra at 5
[94] Supra at 11

2.4. Universal Copyright Convention

The Universal Copyright Convention resulted from a compromise between the European view, as under the Berne Convention and the American law, thus making it significant for the Americans.

The Universal Copyright Convention gives protection to "literary, scientific and artistic works, including writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture."

Under this Convention, similar treatment was to be granted to the works by nationals of the United States, wherever published, as to the copyright protection as of that nation accords to works of its nationals first published in its own territory.

Applying the "national treatment" requirement to computer programs, the result would be that any foreign member country national can publish a computer program in the United States, that program would be afforded the degree of protection granted by the U.S. Copyright Act.

The reverse of that situation would be if an American national published a program in a member nation, and that nation's copyright law did not grant any protection to computer programs, then the published program would automatically enter the public domain.

The UCC provides that any member country that provides for compliance with formalities (such as registration, deposit, or notice) to obtain copyright protection, must have the copies of the work bear the symbol “©”, the name of the copyright proprietor, and the year of first publication.

India being a member of the UCC, authors of software in the US will get protection in India, as per the terms and conditions laid down in the Indian Copyright law.[95]

3. International Trends

The international trends of providing protection to the software programs started around the 1960s-70s, when WIPO started to consider it. Initially, the idea of forming a sui generis law trended which would cover all three elements of computer programs: object code, source code, and documentation. However, the understanding of the protection of software programs

[95] Supra at 11

differed from nation to nation, thus the sui generis system was not followed by national legislations, and the idea was dropped. National laws that already contained provisions on the copyright protection of computer programs, in general, granted the same kind of protection as for other categories of works.

The most important two developments which occurred in order to create a bond between the national and international regimes were the Computer Programs Directive of the European Community, published in July 1991, and the TRIPS Agreement of 1994, both of which clarified that computer programs should be protected as literary works under of the Berne Convention.

These two international agreements were the basis of the international trend which was followed in many countries thereafter.[96]

3.1. The United States of America

The problem of copyright protection for software products in the United States emerged in 1908 in the case of *White-Smith Music v. Apollo Company*[97]. The amendment of 1980 gave the owner of a copyright, two kinds of rights, 1) the right to copy or adapt the program for use and 2) the right to make backup copies.

Whereas, in the current Copyright laws, a copyright holder has been given 5 exclusive rights.[98]

In the US, no patent protection is given to computer programs, but only to recorded media. This provision fails when it comes to the online distribution of software. No clear distinction between the two has been formulated as of now from the supreme court decisions.[99]

[96] Supra at 5
[97] White-Smith Music v. Apollo Company, 209 US 1 (1908)
[98] Sudha. (n.d.). Software Protection: International Instruments and Trends. Www.Legalserviceindia.Com. Retrieved August 17, 2020, from http://www.legalserviceindia.com/legal/article-3-software-protection-international-instruments-and-trends.html#:~:text=Instruments%20And%20Trends-
[99] Jedrusik, A., & Wadsworth, P. (2017). Patent protection for software-implemented inventions. Wipo.Int. https://www.wipo.int/wipo_magazine/en/2017/01/article_0002.html

3.2. India

Computer software is considered to be an extremely valued property, especially today in the age where technological advancements are happening very fast. Thus, the status of intellectual property is given to computer software that holds ground. In India, on the other hand, the regime of intellectual property is still growing and catching up to the international markets.[100]

As per the Indian legislations, software is protected under the Copyright Act, 1957, can also be patented under the Patents Act, 1970. A degree of creativity is necessary for the software to be protected and can only be protected under the Patent Act if it has a certain technical applicability. Section 2 (o) of the Copyright Act defines 'literary work' and it includes computer programs. Thus, it is explicitly protected. The same remedies will follow from the infringement of the Copyrighted Computer software which is allowed in case of any other infringement of copyrights.[101]

India's patent law has not been accommodating of computer software, as it requires the process of creating a patentable subject-matter to result in something "tangible" and "vendible." But at the same time, the demand for software protection in India is also very less. Though as seen with the trend of many other developed economies, we know that it is a much-needed protection considering the growth of the Information Technology industry in the country. Still, India has adopted most of the international instruments like the WIPO Copyright treaty, TRIPS, etc. and has its domestic laws on software protection. The laws which majorly cover software protection are the Copyrights Act, 1957, and Patents Act, 1970.

National Association of Software and Service Companies ("NASSCOM") has been spelling the need for strong intellectual property laws in India for a long time. It has been actively working on spreading awareness about the use of software, providing various anti-piracy methods, etc. It has also successfully facilitated enforcement of laws against software piracy in India and has been a great driving force behind the evolution of software protection laws in India.[102]

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[100] CHAPTER -VII SOFTWARE PROGRAMS: PROTECTION IN INDIA 7.1 INTELLECTUAL PROPERTY REGIME IN INDIA. (n.d.). Retrieved August 12, 2020, from https://shodhganga.inflibnet.ac.in/bitstream/10603/20952/13/13_chapter_7.pdf
[101] Supra at 17
[102] Jain, S. (2014). Legal Protection of Computer Software in India. SSRN Electronic Journal. https://doi.org/10.2139/ssrn.2462269

3.3. Japan

Japan's stand on software protection has been slightly different. Being a more technologically advanced economy than India, it software protection laws are more evolved. As per the WCT, Trips, and the Berne Convention, Japan also recognizes Computer Software as a literary work and gives copyright protection.

Japan's Patent Act, on the other hand, explicitly mentions computer programs as patentable subject matter. The act provides that for a subject matter to be patentable shall be recognized as a "creation of technical ideas utilizing the law of nature". In general, according to the Examination Guidelines of the Japan Patent Office, to be patent-eligible, a claim for a software-related invention must demonstrate that software and hardware resources work cooperatively.[103]

3.4. UK

In 1977 the 'Whitford Report' presented to the parliament had put software under literary works, as it was broad enough to encompass any kind of computer programs whether the programs were directly perceivable, or only perceivable with the aid of a device. Prior to his as well, the software was given copyright protection under 'literary works'.

The U.K. laws are similar to that of India's as many of the Indian laws were derived from U.K. laws. There also, a certain degree of creativity in software is necessary to be copyrighted. This standard requires that the idea must begin with the author. The Copyright Amendment Act of 1985, confirmed that a computer program is a literary work. The amendment also gave that a software theft can result in unlimited fines and up to two years imprisonment.[104]

[103] Supra at 18
[104] Supra at 2

4. Analysis of the International Trend

Overall, it would be safe to conclude that the international trends have heavily been influenced by the international instruments. After the confirmation by WCT and TRIPS, it was accepted by most national IPR legislation, that a computer software is to be considered as a 'literary works', and shall be given the due protection under the copyright laws, as long as they fulfill any other requirements of a copyright.

Furthermore, in the case of the patentability of computer software, it is still a debate. Only a few national legislations have allowed for software to be patentable, as technological inventions along as they fulfill all the other requirements necessary as per the national legislations.

Recent trends have demonstrated that relying on Copyright alone would not provide adequate protection for Computer Software in view of the inherent features governing the law of copyright. But it has often been noticed, that giving the source-code part of the software trade secret protection and the object-code part of it, copyright protection, would allow complete protection to a software program.

Therefore, reliance on additional safeguards has become a necessity. Intellectual Property Rights in Information Technology based products have grown rapidly in importance even in Sri Lanka.[105]

5. Conclusion

There still is an evident growth that can be seen in the development of software and in general in the technical world, and we are yet to have definite legislation protecting software. The piracy rates, in the age of the internet, are also on the rise. As per a research based on 24

[105] Supra at 11

European countries, which suggested that there might be a rise in piracy rates due to weak protection of software.[106]

Within the Indian regime, the introduction of anti-circumvention and Rights Management Information laws was also in the talk, though it is not obligatory as India is not a to WCT. Though there is a need for stricter laws in India, it is more for the future, the demand for stricter laws is not much high as of now and can be managed by the judiciary, if handled properly.[107]

Thus, for future trends, the need for a proper law is very evident. As for India, despite having been seeing evolution on its IPR law, it still has a long way to go when it comes to software protection.[108]

[106] Andres, A. (2003). The Relationship between Software Protection and Piracy: Evidence from Europe. *European Journal of Law and Economics*. https://doi.org/10.1007/s10657-006-5670-5
[107] Supra at 11
[108] Miyashita, Y. (1991). Article 3 Winter 1991 International Protection of Computer Software, 11 Computer L.J. 41 (1991) Recommended Citation Yoshiyuki Miyashita, International Protection of Computer Software, 11 Computer L. The John Marshall Journal of Information Technology & Privacy Law, 11(1), 41.

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6.

Domestic Violence against Men: A Gloss Over

By: Ekta Pandey

Pg. No.: 92-103

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Abstract

"*Sometimes the shame is not the beatings, not the rape. The shaming is in being asked to stand judgment."*

-*Meena Kandasamy*

As social media is always occupied by domestic violence on women but what about men. While changing the dynamics of power, men are sufferers too. The above-quoted line wonderfully defines the Indian mentality that men were judged when they spoke on spousal violence. Women have suffered for centuries but in today's era violence against women is broken now it's time to take effective justice measures that can support male victims. Our Hippocratic society believes in women because of crocodile tears. Men are silent victims because they always considered as the perpetrator. We have to changes the thought that women can't be violent and men can't be victims. Men get abused by various aspects such as economic, emotional, physical, and sexual by their intimate partner. They are also human, according to article 21 of the Indian constitution mere breathing is not life, living with choice and dignity is life.

In India, many laws are in favor of women and now women misuse the liberty provided to her. So, its high time now domestic violence act needs to be gender-neutral.

The ambit of the author research is to focus on why violence against men is not reported, analyze a static estimate of data, along with famous male victim cases. The authors conclude on a note that legislatures must strive hard to update laws and possibly, a lot more amendments needed in the future.

Keywords: Domestic violence, Men, Physical abuse, Emotional abuse, Marriage.

Table of Contents

1. Introduction

Human beings are aggressive. Stereotype thinkers can never assume that women can be violent and men can be victims. Domestic abuse is a global issue. Domestic violence is also termed as Intimate partner violence. The substantial body of research only focused on female violence. Evidence shows that men are victims too. The extent of abuse on men of violence that they face is in private. There is always an imbalance in power, as from centuries women suffered now the empowerment in the position of women makes her violent and abusive in behavior. Physical aggression and threats are among the strategies available to humiliate, isolate, exhaust, punish and reward the partner to demonstrate power. Domestic violence includes not only physical harm but also threats and verbal, psychological, and sexual abuse. In some cases, men and women both are instigators of violence. Sometimes their behavior is affected by norms, values, and socio-cultural environments. Not always women are the only sufferers of all forms of violence. There are assumptions that men can never victim because they are superior, powerful, aggressive, and masculinity. In a study. This research paper exclusively deals with the amendments in the area of domestic violence by highlighting the ambiguities of in-laws. Moreover, the need for gender-neutral law.

Definition and Meaning

Domestic violence is a broad range of offenses. The act expressly used' the word 'any women". Is it equality in developing countries like India? Male and female equally suffered psychological harm with mental health symptoms and severity of abuse experienced, irrespective of gender. According to section 3(a) of the domestic violence act 2005, the term domestic violence means any harms or injures or endangers the health, safety, life, limb, or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse[109].

[109] (*THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005*, n.d)

2. Crimes Committed against Men in India

In many states of India, a man with good looks or with income is abducted and forced to marry without his consent. They were slapped with false rape charges, false dowry, and cruelty cases that affect life in every way, physically, mentally, emotionally, and psychologically, and is a violation of basic human rights concomitantly, injustice with men. Article 21 which deal with the right to life, where Supreme Court said that mere breathing and physical existence is not life, rather a life with choice with dignity. In the present day, it's a direct assault on the right to life of the men. There were numerous cases where men and his parent have to suffer a lot because forged F.I.R is logged against the whole family member. Ironically men who want to lodge F.I.R against violence, they left out just because the domestic violence act 2005 expressly used the word 'any women' hence no laws for men. Even police do not register men's cases, and an incident was also witnessed that 33-year-old Jitesh Sachdev said that they both approached the police, they registered her case but not his[110]. Kumar Jahgirdar is the founder of the World's Rights Initiative for Shared Parenting, he said "This country is biased against men,".

Some forms of violence against men are:[111]

i. **Physical Cruelty:** In this form of abuse, the male partner suffers a punch, hitting from a deadly instrument, slapped from the female partner, hence no attention and medical care of being physically abused in a relationship. The male victim used to bewail in the absence of gender-neutral law.
ii. **Emotional Cruelty:** The wife demands to separate from his parents and family, denigrate, yell, criticize, ignored. The wife doesn't allow her husband to meet his child in the non-fulfillment of her demand, restrict to meet his family and friends.
iii. **Verbal Cruelty:** A female partner uses the derogatory name of her partner, with the intension to hurt.

[110] Gole, E. (2018, November 19). *International Men's Day: 'I'm a Man Who Faced Domestic Abuse.'* TheQuint. https://www.thequint.com/news/india/stories-male-victims-domestic-violence-india.

[111] *I'm a man and experiencing domestic violence*. (2019). Family & Community Services.https://www.facs.nsw.gov.au/domestic-violence/my-situation/im-a-man.

iv. **Economic Cruelty:** The female partner takes all decisions related to finance and purchase. She used to buy costly products, automobiles, real estate, cloth, beauty products, and demand money.

v. **Sexual Cruelty:** Intimate female partner threatening to file cases of rape and molestation after consensual sex.

3. Data Analysis of crime against Men

The national crime records bureau was established with the aim to collect information on crimes and criminals. The crime bureau has done a fabulous job with regards to a crime against women in India. Due to media and law the number of crime were reported by women, but what about men? It's difficult to get data, from the national crime record of male victims. In 2015, 1,33,623 suicides in India were reported, of which 91,528 (68 percent) were by men, 42,088 were by women, Of the 86,808 married people who committed suicide in 2015, 64,534 (74 percent) were men, the NCRB data shows. According to data from National Crime Records Bureau (NCRB). Out of 60 males, 25 (2.5%) experienced physical violence in the last 12 months. The most common form of physical violence was slapping (98.3%) and the least common was beaten by weapon (3.3%). Only in one-tenth cases (seven males), physical assaults were severe. In all cases, the spouse was responsible for physical violence. The total prevalence of gender-based violence was found to be 524 (52.4%) among males. The majority (51.6%) of the subjects experienced emotional violence followed by physical (6%), then sexual violence (0.4%) by any female. The overall prevalence of emotional, physical, and sexual spousal violence[112].

In a large study of Navy recruits (1,307 men and 1,477 women), 32% of men and 47% of women reported using some form of physical aggression against an intimate partner[113]. Out of 1000 respondents, only four (0.4%) had experienced sexual violence, out of which only one

[112] Malik, J. S., & Nadda, A. (2019). A Cross-sectional Study of Gender-Based Violence against Men in the Rural Area of Haryana, India. Indian Journal of Community Medicine : Official Publication of Indian Association of Preventive & Social Medicine, 44(1), 35–38. https://doi.org/10.4103/ijcm.IJCM_222_18.

[113] Swan, S. C., Gambone, L. J., Caldwell, J. E., Sullivan, T. P., & Snow, D. L. (2008). A review of research on women's use of violence with male intimate partners. *Violence and Victims*, *23*(3), 301–31 4. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2968709/.

respondent experienced it in the last 12 months. Only one female physically forced her spouse to have sexual intercourse and three physically forced to perform any sexual act with her against his will[114]. The study of saving family foundation and my nation reveals the data that, Due to domestic violence, 14,439 married men committed suicide in 2014. In 2015, a total of 21,545 married men committed suicide. Every year approximately 17,302 married men are committed suicide and in between, 2006 – 2015, around 1, 82,583 married men have committed suicide due to domestic violence[115].

In research of further estimate data researchers came to know that a Wide range in perpetration rates: 1.0% to 61.6% for males. According to national samples, 0.2% of men have been forced to have sexual intercourse by a partner. Approx. 0.5% to 2% of men report at least one incident of stalking during their lifetime[116]. According to the National Crime Records Bureau in the year 2015 1, 33,457 men lost their civil liberties and they were arrested under s. 498A, I.P.C. without trial or investigation[117].

4. Impact of Violence on Men's Health

Nowadays women are powerful because they are protected by law. No one can assume that innocent face and crocodile tears can also become violent in relationships. Abuse by an intimate partner is a devastating and negative impact on health. When the husband comes back from work wife starts murmuring and cursing. The wife doesn't serve food on time. Sometimes the husband has to cook by themself. The wife withholds intercourse without any reason. Sex is like a weapon against men for bargaining anything. We live in an Indian society where men

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[114]Ibid *at* 5.;

[115] Mr. Swaroop Sarkar , B.Tech, DEM. (n.d.). *"DOMESTIC VIOLENCE AGAINST MEN" STUDY REPORT BY Save Family Foundation Vice President of Manasa Global -Pune*. https://ipc498a.files.wordpress.com/2007/10/domestic-violence-against-men.pdf.

[116] DV RESEARCH. (2020). *Domestic Violence Facts and Statistics At A Glance – Domestic Violence Research*. Domesticviolenceresearch.Org. https://domesticviolenceresearch.org/domestic-violence-facts-and-statistics-at-a-glance/.

[117] Mr. Swaroop Sarkar , B.Tech, DEM. (n.d.). *"DOMESTIC VIOLENCE AGAINST MEN" STUDY REPORT BY Save Family Foundation Vice President of Manasa Global -Pune*. https://ipc498a.files.wordpress.com/2007/10/domestic-violence-against-men.pdf.

can't have sex with other women, it's a crime. The wife takes all earnings of her husband and refuses to take care of husbands' old parents and mentally force her male partner to send parents to old age home. There were many cases were the husband parents lives in old-age home just to stop mental harassment on son. In the research data of saving family foundation out of 295, 91 men were mental torture and 99 were verbally abused.

The impact on health is physiological as well as physical. The habit of consuming alcohol and other injurious drugs. Because of frustration and stress, they go through depression[118].

5. Unreported Violence against Men

Why violence against men is not reported, simply there is no law to protect man. The word men is a symbol of power that has been assumed and stated by our so-called Hippocratic society. Since childhood, both family and parents teach men "a boy can't cry". Why so much of restriction and judgment on the expression of emotions, they are also human they do have feelings. Men's victimization is mostly analyzed in the discourse on sexual violence in various social spaces. legal proceedings against her husband, and sit calmly watching that how her husband fight for his whole life to prove that he has done nothing wrong with his wife and even after doing so, what will be the result. At last, he will lose the case and will have to spend the rest of the life in some corner of a dark jail.

6. Rights of man against Crime

Marriage or relationship is the crucial factor of violence in India. Divorce is the first step taken by a large number of women. The legislature intended to prevent atrocities against women, but now domestic violence act used as a weapon to destroy her male partner. While seeing the

[118] Mr. Swaroop Sarkar , B.Tech, DEM. (n.d.). *"DOMESTIC VIOLENCE AGAINST MEN" STUDY REPORT BY Save Family Foundation Vice President of Manasa Global -Pune*. https://ipc498a.files.wordpress.com/2007/10/domestic-violence-against-men.pdf.

current scenario and increased crime against men, the judiciary allowed the male partners to file a petition under the Domestic Violence Act, and that can be entertained[119]. In a verdict, the high court said that the ingredients of domestic violence are wholly absent, and both not persons living together in a shared household. Because of the vague allegation, the petition is dismissed[120]. In a verdict, the Bombay high court proposed that if a wife is divorced, then she cannot file a case under the Domestic violence act to take benefit[121]. In a trial court, the wife, along with her minor son, filed a domestic violence petition against the husband, the court directed the husband to pay maintains. Afterward, the wife appealed to the additional sessions judge who enhanced the maintenance. Bombay High Court has quashed the trial court's order and allowed a husband to file a petition[122].

The husband can also file a case of Divorce not under the domestic violence act but on the ground of Cruelty, i.e., Section 13(1)(i a) of the Hindu Marriage Act 1955. In a case "the wife filed a false complaint against the husband and his family members under section 498A of IPC, husband and his family members have acquitted, the husband was entitled to seek divorce on the ground of cruelty under section 13 (1) (i a) of the Hindu Marriage Act, 1955 against wife. The husband can file a criminal complaint against his wife[123].

7. Fight for Men's Right: An overview

We live in that era, where society is dynamic, but the law is still static. No doubt, women are suffering for centuries. The boundaries that have been broken and now its time to amend the law and make it gender-neutral. Women's rights and harassment is always rampant, but what about men's rights. To demand gender-neutral laws that save India Foundation held a candlelight vigil on April 04, 2013, in memory of Manoj Kumar, from Bangalore, who committed suicide because of unable to bear the harassment by his wife and mother-in-law.

[119] Mohd. Zakir v. Shabana & Ors., (The High Court of Karnataka 2018).
[120] Kamlesh Devi vs Jaipal & ors., (October 4, 2019).
[121] Sadhana vs Hemant, (Justice Giratkar, Bombay High Court April 18, 2019).
[122] Vijayanand Dattaram Naik v. Vishranti Vijayanand Naik, (C.V. Bhadang, J. of Goa Bench of Bombay High Court February 13, 2019).
[123] Indian penal code, 352 (1860).

An NGO, Akhil Bhartiya Naari Raksha Manch, also took an initiate on an unheard issue; they focused that there is a gross misuse of women protection laws, and women marched from Rajghat to Parliament. They served a memorandum to Hon'ble President of India, Prime Minister, Home Minister, Law Minister, Ministry of Women and Child Development, and Commission for Women after holding a press conference.

Dr. Indu Subhash, a woman who fought for men's rights, and demand gender-neutral laws and rooted for national commission for men.

The root to fight for men's rights is rooted by Ram Prakash Chugh, a Supreme Court advocate, who deals with false torture and dowry cases. It was called Crime against Man Cell, also known as the Society for Prevention of Cruelty to Husbands.

In the year 2000, Men's rights activist Rudolph D'sSouza popularly known as Rudy and help the male victims who were abused by wife or face false dowry complaints. The movement knows as the misuse dowry act. In the year 2000, a helpline is initiated by rudy and goukal for the harassed in the wrong dowry case against male partners and family members.

Between 2006-2015, child rights and family welfare demand for laws for men, including child custody. The Karnataka high court on 12 September 2013, granted an equal right to custody of 12 years of a boy child. Both have to bear education and other expenditure.

In 2015, vaastav foundation released a calendar named malender that highlights the special days of men, intending to raise awareness for the same. In the Mumbai marathon approx 150 men dress like atm and take part in the marathon, to show that they are just an Atm for his wife.

There are millions of people who fight for women's rights, but Ms. Deepekika Bhardwaj, a former journalist and documentary filmmaker, stand-alone and decided to raise voice for atrocities faced by men[124].

[124] *Man (disambiguation) explained*. (n.d.-b). Everything.Explained.Today. Retrieved August 24, 2020, from http://everything.explained.today/Men.

8. International Men's Day

Do we find that men's day is celebrated in the same way as women's day? On International Women's Day huge discount on women's product, Lots of lectures, Street plays, campaigns going on around this day. No doubt women empowerment is the need of the hour but men do exist they also need humanity. There were people for them, the men's day hardly matters. People didn't even know that on which day and why it was celebrated.
So, every year on 19th November international men's day was celebrated in the memory of Dr. Jerome Teelucksingh, father's birthday. Dr. Jerome Teelucksingh, a history lecturer at the University of the West Indies in Trinidad and Tobago[125].

The aim behind the celebration of International men's day is to generate gender equality, raise awareness of men's health. It's another goal is to protect men from discrimination, exploitation, violence, and inequality. On 19th November in 80 countries international men's day was celebrated every year. UNESCO also supported it. The theme of men's day is – 'Making a Difference for Men and Boys. Its goal is to give importance to men and boys. For the first time in 2007, the international men's day was celebrated in India. Though it was not much popular in India, and only Private organizations, NGOs encouraging to raise their voice for men[126].

9. Unfair Laws towards Men

India regularly gets pulled over shabby treatment of women but never assumed that women too harass a man. Under the Hindu marriage act, the Special Marriage Act, only the wife can claim permanent alimony and maintenance. According to section 304 B of the Indian Penal Code, it's

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[125] *Why we celebrate International Men's Day, 2019 theme and how to do it right*. (2019, November 19). Hindustan Times. https://www.hindustantimes.com/art-and-culture/international-men-s-day-2019-why-we-celebrate-international-men-s-day-2019-theme-and-how-to-do-it-right/story-NYDGJyyeIS0r5HYeNYJlPN.html.
[126] *International Men's Day 2019: Everything you need to know*. (2019, November 19). Jagranjosh.Com. https://www.jagranjosh.com/current-affairs/international-mens-day-2019-everything-you-need-to-know-1574134575-1#:~:text=According%20to%20the%20website%20of

the husband's fault if the death of the woman is caused by burns or bodily injury within 7 years of marriage. As per the Hindu succession act, a boy is entitled to maintenance only till he turns 18, whereas a girl is entitled to maintenance till she gets married. As per Section 354 A of the Indian Penal Code, a man can serve up to 3 years of imprisonment for sexually harassing a woman, but there is no such law for women.

10. Conclusion and Suggestion

Everyone has an eye on women's empowerment. Sometimes women's emancipation became a political agenda. It's a truth that male partners never depend economically on female partners. In India, there are no laws for the protection of husbands. Is this justice to male victims? Research researchers found so much difficulty in getting the systematic data of male victims. What I realize is men's lives do not matter. They are just a source of income for her wife. The problem of men only whispered in India. The UN Charter of human rights clearly says a person must treat innocent until proven guilty. Still, in India, after filing a false complaint, the husband is treated as a culprit by our society.

There is no doubt that women have suffered for centuries, but now society and power are changing, and with this broken dynamic, women started to misuse the protection laws. In recent years the violence against men has increased, and they feel shame to report because, in the end, no proceeding would be against women for the same. Every year budget passed and a certain amount sanctioned for women empowerment, but what about men. The moto of equality creates a divide, and eights of men are ignored from everywhere.

In our constitution, there is a provision of equality, then the way our government does not make gender-neutral laws, anti-dowry laws, and a national commission for men.

Now it's time to save the male victim by amending our laws.

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7.

Laws Related to Bioterrorism: A Comparative Analysis of USA, UK, and India

By: Pariyal Gupta

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Abstract

Over the years the weapons used by the terrorists globally have shifted from sword to bullets and bombs and are now heading towards biological weapons. Bioterrorism is emerging as a looming global security threat. It refers to the intentional release of biological agents such as viruses, bacteria, toxins, and other pathogens to spread fatal diseases on a mass scale in pursuance of political, or social objectives. Biological agents are typically found in nature but their intensity can be modified to make them more harmful and resistant to available medications. Biological weapons if used in a densely populated area can cause large scale mortality, morbidity, and civil unrest. The rapid development of technology and the advancement of biotechnology have smoothed the way for terrorist groups to access resources and provides them with the necessary expertise for developing a biological weapon. With cutting-edge biotechnology available to large masses, the danger of bioterrorism is now greater than ever and this necessitates the need for strict and effective bio-defense and legal measures. Laws such as the Model State Emergency Health Powers Act and the USA PATRIOT Act were enacted in the United States to control disease outbreaks and respond to bioterrorism. In India, standard operating procedure which indicates the operational procedure for averting and responding to a public emergency situation or a bioterrorist attack has been laid down by the National Crisis Management Committee. Governments and agencies across the globe continue to work towards curbing the problem of this bio-threat. This research paper focuses on identifying, comprehending, and making a comparative analysis of the laws and policies in India, the USA, and the UK to counteract bioterrorism.

Keywords: Bioterrorism, biological weapons, international regimes, comparative analysis, India, USA, UK.

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1. Introduction

Bioterrorism is defined as the deliberate or threatened use of biological agents such as viruses, bacteria, and other germs with an intention to cause injury to people, animals, and plants by causing death so as to achieve a political or social agenda. [127] Biological agents may be tailored to suit a wide number of terrorist options from tactical to strategic. Based on their accessibility and the ease with which they can be disseminated, scientists have recognized certain agents that may be more conveniently utilized for terrorism. Pathogens that can be employed for terrorism include anthrax and plague causing bacteria, viruses that can cause smallpox and ebolavirus, and other toxins.[128] These diversified groups of agents may more expediently infect people considering their distinct characteristic of having minute particles which can perforate the bronchioles.[129]Bioterrorism has the potential to result in higher rates of morbidities and mortalities as minute particles of biological agents have the potential to infect and endanger huge masses.

Bioterrorism can be prejudicial to society and can take a toll on human life while disrupting the society. Over recent years, though the numbers of terrorist acts have decreased around the globe, an increase in the lethality of such attacks remains of great concern. Advances in biotechnology and microbiology, especially the increased understanding of pathogenesis and genome sequencing have offered unparalleled opportunities for using technology to counter bioterrorist threats. Unfortunately, these advances are being misused to create newer agents of mass extermination. The global approach to combat bioterrorism focuses on the five key areas- Preparedness and Prevention, Detection, Diagnosis, and Response.[130] Early detection and preparedness is the key to success in tackling the threat of bioterrorism. Although the governments across the globe continue to create policies and laws to identify and respond to a bioterrorism attack, none of these systems have been perfected. Public health infrastructures must be well prepared to respond to an outbreak caused by chemical or biological weapons.

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[127] Hooker, E. (n.d.). *Bioterrorism definition and agents used*. MedicineNet. Retrieved August 18, 2020, from https://www.medicinenet.com/bioterrorism/article.htm#what_is_bioterrorism.
[128] Abrol, S. (2016). Countering Bioterrorism Threat to India: Employing Global Best Practices and Technology as Force Multiplier. *India Quarterly*, *72*(2), 146–162. https://doi.org/10.2307/48505493.
[129] *CDC | bioterrorism agents/diseases (by category) | emergency preparedness & response*. (2018). Cdc.Gov. https://emergency.cdc.gov/agent/agentlist-category.asp.
[130] Ibid.

Combating bioterrorism will require the coordination and assistance of information systems, medical sciences, and technology.

2. Historical Background

Biological terrorism is not a present-day threat, it dates as far back as 600 BC when the Greeks used animal carcass to infect the wells of their enemies. This approach was also put to use by the Romans and the Persians. [131]The use of biological toxins that were extracted from plants and animals and applied on arrowheads or poison darts to kill enemies in games and reality certainly predates history. Historical studies reveal the use of arrows infected with animal and plant waste to harm the enemy. Similarly, the use of arrows for transmission of plague was also reported by some historical reports.

During the battle of Tortona, Italy in 1155, Emperor Barbarossa's troops used human bodies to contaminate the water wells.[132]In the medieval times, the military leaders acknowledged the use of humans infected with diseases as weapons. Owing to this form of early biological warfare, the city of Kaffa became pestilent. During the siege of Kaffa under Tartar in 1346, the plague was spread by the Mongols by throwing deceased carcasses using catapults into the beleaguered city. This plague turned into an epidemic that claimed the lives of more than 25 million people when the Genovese soldiers escaped the city spreading and contaminating people along their way. [133] This strategy continued to be used in the future, there were incidents of human corpses being thrown at their enemies in Karolstein in 1422, corpses of plague-infected victims were used to spread diseases during the battle between Russian and Swedish troops. Historical recordings cite the use of human and animal carcass and various biological agents to spread diseases on several occasions in the past 2000 years. During the French- Indian War in America, the distribution of smallpox contaminated blankets to the Native American

[131] Block, S. M. (2001). *The growing threat of biological weapons*. American Scientists. https://www.americanscientist.org/sites/americanscientist.org/files/20051220155539_306.pdf.
[132] Frischknecht, F. (2003). The history of biological warfare. *EMBO Reports*, *4*(Supp1), S47–S52. https://doi.org/10.1038/sj.embor.embor849.
[133] Wheelis, M. (2002). Biological warfare at the 1346 siege of Kaffa. *Emerging Infectious Diseases*, *8*(9), 971–975. https://doi.org/10.3201/eid0809.010536.

tribes who were allied with the French was ordered. This type of practice became an effective military tactic and was put to use during the Revolutionary War.

The advancement of modern microbiology during the 19th century has made the employment of biological warfare more sophisticated. Biological vandalism in the form of anthrax was taken up by the German government during World War I, to disrupt economic and political life by targeting enemy livestock. The international revulsion of the horrors of World War I resulted in the enactment of the Geneva Protocol of 1925 which prohibited the use of biological weapons but did not put a ban on their research and production. In the Second World War, nations conducted several research programs to develop bio-weapons. In the Japanese program to produce bio-weapons, the prisoners were subjected to numerous bio-weapon tests such as the Yersinia pestis, Vibrio cholera, Neisseria meningitides, and Bacillus anthracis during which thousands of prisoners died. During this period many other nations also carried out experimentation and research of biological agents. In the Vietnam War, the Viet Cong guerillas used needles dipped in feces to attack the enemy soldiers which caused severe infections to the injured soldiers after he had been stabbed. In 1979, there was an accidental anthrax release from an armory in the USSR which claimed the lives of more than 66 people.

Today, nations are eager to acquire biological warfare as they can be utilized to gain an advantage over the enemy but are concerned about terrorist groups gaining expertise and technology to use them as destructive agents. Biological warfare is no longer ancient history and remains a serious concern, locally and globally, particularly in the light of their use by non-state sponsored biological weapons.

3. International Legal Regimes to Combat Bioterrorism

In the 1900s, International Law was recognized as an indispensable component of the set of measures serving to protect against the malicious release of biological or chemical agents which could help mitigate the impact therefrom. Over the years a binding legal mechanism was developed at an international level to eliminate the threat of bioterrorism. The existing international regime mechanism is an aggregation of international agreements that focuses on prevention and non-proliferation.

3.1. The 1907 Hague Convention

The ban on the use of chemical weapons was first extensively codified in the Hague Convention. The Hague Peace Conference of 1899 adopted a Convention which contained rules and regulations concerning land warfare. These regulations in the Convention were revised at the International Peace Conference in 1907. The regulations and provisions of the two conventions of 1899 and 1907 have been regarded as the embodying rules of customary international law.[134]The 1907 Convention prohibits the deployment and utilization of poisonous weapons as well as other weapons which may cause mass suffering. Unfortunately, these provisions did not dissuade the use of chemical weapons in World War I. With the development of biological weapons being nascent in the early 1900s this ban on chemical weapons is as close as the 1907 convention came to barring biological weapons.

3.2. The 1925 Geneva Protocol

The first agreement to explicitly and significantly address biological weapons was the 1925 Geneva Protocol. The Geneva Protocol was ratified as a response to the shortcomings of the 1907 Hague Convention. This Protocol prohibited the use of poisonous, virulent gases and other warfare. [135] The treaty could not prevent the use of chemical weapons during World War II. The Protocol proved to be as ineffective as the Hague Convention of 1907 because of the many gaping loopholes in the coverage. Although the Protocol banned the use of biological methods of warfare, it did not put a ban on the testing, stockpiling, or production of chemical and biological weapons, which incited the countries to continue producing and stockpiling these weapons. Some State Parties reserved their right to use these weapons against those states which were not a party to the protocol. In light of these weaknesses, it became apparent that the Geneva Protocol was not the ideal solution for this growing problem of biological terrorism.

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[134] *Treaties, states parties, and commentaries - hague convention (IV) on war on land and its annexed regulations, 1907*. (2019). Icrc.Org. https://ihl-databases.icrc.org/ihl/INTRO/195.
[135] Protocol: For the prohibition of the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods of warfare. (1931). *The American Journal of International Law*, *25*(2), 94. https://doi.org/10.2307/2212913.

3.3. The Biological Weapons Convention, 1972

The prolonged efforts of the global community to create an agreement that would supplement the shortcomings of the Geneva Protocol led to the adoption of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction. The Biological Weapons Convention was the first treaty that banned the development, production, and stockpiling of biological weapons of mass destruction. The Biological Weapons Convention opened for signature on 10th April 1972 and came into force on 26th March 1975. [136] Provisions of the Convention ban the State Parties under any circumstance from developing, producing, stockpiling and acquiring biological weapons. This solved two primary shortcomings of the Geneva Protocol. Firstly, the Geneva Protocol did not forbid the use of biological weapons in peacetime and internal conflict; this was resolved by adding the term 'never in any circumstance' which completely bans the use of biological weapons under any circumstance. Secondly, the term 'bacteriological' was broadened and replaced by the term 'biological agents, or toxins regardless of their origin or mode of production'. The scope of this Convention was to adopt an approach so as not to obstruct the bio-medical and non-hostile applications of biological agents and other toxins while also identifying and covering biological agents and toxins which may find use as weapons owing to bio-technology.

3.4. UN Security Council Resolution 1540, 2004

Resolution 1540 was adopted by the United Nations Security Council on 28th April 2004. The Resolution aimed at stopping nations from providing support to the non-state actors that acquire, develop, and make use of chemical, biological, and nuclear weapons for terrorist activities. The resolution mandates the member states to adopt and enforce effective laws and measures to prevent the proliferation of chemical, biological, and nuclear weapons.[137] This resolution filled the lacuna in international law by addressing the mortal danger of terrorists

[136] *Biological weapons - unoda*. (2017). Un.Org. https://www.un.org/disarmament/wmd/bio.
[137] *UN security council resolution 1540 (2004) - unoda*. (2012). Un.Org. https://www.un.org/disarmament/wmd/sc1540.

using, obtaining, and proliferating weapons of mass destruction. It reiterated the importance of maintaining and promoting existing non-proliferation treaties and agreements and recognizes it non-interference with state obligations under such treaties. To strengthen the implementation of Resolution 1540, the United Nations Security Council adopted Resolution 2325 in December 2016.

3.5. Other International Law Mechanisms

Other international law mechanisms include the International Convention for the Suppression of Terrorist Bombings of 1997, the Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (the SUA Protocol) of 2005, and the Beijing Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (Beijing Convention) of 2010. These instruments also concern and affect bioterrorism but at a much lesser degree than those mentioned previously.

International Convention for the Suppression of Terrorist Bombings was adopted on 15th December 1997 by the United Nations General Assembly. The Convention establishes a regime for international cooperation in matters concerning wrongful and deliberate utilization of explosives and other deadly weapons in various defined public places, with an intention to kill or cause serious bodily injury or to cause extensive destruction of the defined public place.[138]

The Beijing Convention offers a legal basis for criminalizing counter-terrorism and other criminal acts that target civil aviation.

The Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (the SUA Protocol) was adopted on 14th October 2005. The SUA Protocol provides important ship boarding procedures in case of suspected terrorist activity including illegally transporting weapons which may cause mass destruction with an aim to prevent international peace and security.[139]

[138] Witten, S. M. (1998). The international convention for the suppression of terrorist bombings. *The American Journal of International Law*, *92*(4), 774. https://doi.org/10.2307/2998146.
[139] *Convention for the suppression of unlawful acts of violence against the safety of maritime navigation*. (n.d.) http://oceansbeyondpiracy.org/sites/default/files/SUA_Convention_and_Protocol.pdf.

4. Laws related to Bioterrorism in the United States of America

The terrorist attack of 11 September 2001 and the subsequent bioterrorist attacks in October and November of 2001 highlighted the need for strengthening the overall security of the US. Although over 150 nations have signed the Biological and Toxin Weapons Convention of 1972, which forbids nations from producing, developing, and stockpiling biological agents, it is believed that several nations are violating the provisions of this agreement by stockpiling biological agents which may later be utilized for terrorist activities. Moreover, after the downfall of the Soviet Union, the biological weapons of the Soviet Union Program were left with no security and have been reported to be lost or stolen. It is feared that these biological weapons are in the hands of the non-state actor Al-Qaeda which raises security concerns for the United States. The United States Government took concrete steps to combat this threat of bio-terrorism by bringing in force acts such as the USA PATRIOT Act of 2001, Model State Emergency Health Powers Act, the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Project Bio-Shield Act of 2004, and the Pandemic and All-Hazards Preparedness Act of 2006.

4.1. USA PATRIOT Act of 2001

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act was enacted into law on 26 October 2001. The purpose of this Act is to punish and stop terrorist activities across the United States. The Act penalizes the possession of biological agents, toxins, or delivery systems, especially by certain restricted persons. [140]

4.2. Model State Emergency Health Powers Act (Model Act)

The MSEHP or Model Act was drafted with an effort to avoid the problems of inconsistency, inadequacy, and obsolescence by updating and modernizing the state public statutes. This Act provides state actors the power to take necessary steps in order to identify and respond to a

[140] *USA PATRIOT act | fincen.gov*. (2019). Fincen.Gov. https://www.fincen.gov/resources/statutes-regulations/usa-patriot-act.

disease outbreak or a bioterrorist attack. It aims to facilitate five key public health functions- preparedness, surveillance, management of property, protection of persons, and communication.[141]

4.3. Public Health Security and Bioterrorism Preparedness and Response Act of 2002

Public Health Security and Bioterrorism Preparedness and Response Act also known as The Bioterrorism Act was promulgated into law on 12 June 2002. US Centre for Disease Control along with the government organizations implemented this bioterrorism preparedness and response program to detect and appropriately respond to a potential bioterrorist attack. This Act aims at strengthening the capabilities of the country in order to effectively prevent, prepare, and respond to a public health emergency or biological attack. The Act contains provisions concerning the control of biological toxins and agents and for the development of counter-terrorism measures to combat bioterrorism.[142]

4.4. Project BioShield Act of 2004

Project BioShield was enacted into law by President George W Bush on 21 July 2004. It was created as a special project to help fund the general countermeasures program and to help develop new anthrax vaccinations. This Act amends the Public Health Security Act of 2002 and provides countermeasures to deal with an attack by chemical or nuclear agents. It establishes an annual budget to fund for countermeasures against biological weapons and other weapons which may cause mass destruction.[143]

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[141] *Overview of potential agents of biological terrorism | SIU school of medicine*. (n.d.). Www.Siumed.Edu. https://www.siumed.edu/im/overview-potential-agents-biological-terrorism.html.
[142] *Public Health Security and Bioterrorism Preparedness and Response Act of 2002*. (n.d.). https://www.govinfo.gov/content/pkg/PLAW-107publ188/pdf/PLAW-107publ188.pdf.
[143] Dudley, G., & McFee, R. B. (2005). Preparedness for biological terrorism in the united states: Project bioshield and beyond. *The Journal of the American Osteopathic Association*, *105*(9), 417–424. https://doi.org/10.7556/jaoa.2005.105.9.417.

4.5 All-Hazards Preparedness Act of 2006

The All-Hazards Preparedness Act which was promulgated into law on 19 December 2006 recognizes the Secretary of Health and Human Services as the federal officer responsible for public health and medical response for emergencies. It also establishes standards of preparedness that are required to be met by each state.

5. Laws related to bioterrorism in the United Kingdom

The United Kingdom once possessed a large number of biological and chemical warfare programs. It was actively involved in biological research on various types of pathogens and toxins and had also weaponized anthrax. The British Government progressively reduced its biological weapons research programs after signing the Biological and Toxins Weapons Convention in March 1975. Today, the United Kingdom has a strong biological defense program. There was a significant shift in the UK Government to respond to disease outbreak and biological incidents after the foot and mouth disease outbreak in 2001. To keep up with the rapidly evolving world, the Government seeks to focus on realizing their full capabilities by learning from their response to past disease outbreaks and biological incidents. They spend millions of pounds annually to prepare and protect against such outbreaks.

The UK bio-defense regime for meeting the challenges of bioterrorism includes a wide range of national and international programs and strategies such as the 2015 National Security Strategy and Strategic Defense and Security Review, Global Health Security and UK Antimicrobial Resistance Strategy, CONTEST- counterterrorism strategy, the National Counter-Proliferation Strategy to 2020, the UK Influenza Preparedness Strategy, UK International Biological Security Program and the Global Health Security Initiative. Most of these strategies are governed by a cross-governmental body comprising of the Ministry of Defense, Home Office, Department of Health and Social Care, Department for Environment Food and Rural Affairs (DEFRA), Foreign and Commonwealth Office (FC0), Agri-food and Biosciences Institute, Department for Business Energy and Industrial Strategy, Government Office for Science, Cabinet Office, Health and Safety Executive, Office for Life Science, Department for International Trade and the Devolved Administrations.

5.1. National Security Strategy and Strategic Defense and Security Review

The National Security Strategy and Strategic Defense and Security Review was published on 23 November 2015 by the British Government to develop and execute the defense strategy for the country up to 2025. This strategy intends to develop counter-terrorism ideologies to tackle terrorism, to strengthen their armed forces and security and intelligence agencies, to strengthen their law enforcement capabilities, and to strengthen the implementation of international orders and reforms.

5.2. CONTEST-United Kingdom's Strategy for Counterterrorism

CONTEST is a framework that allows the British Government to ensure the safety of all British citizens and overseas interest from terrorism. This Strategy is built on the vision of the 2015 National Security Strategy and Strategic Defense and Security Review which identifies terrorism as a high priority risk to the United Kingdom. This strategic framework is built on four work strands of Prevent, Pursue, Protect, and Prepare. This well organized and comprehensive approach has proved effective and continues to plan and guide many agencies and departments in the UK.[144]

5.3. UK International Biological Security Program

The United Kingdom International Biological Security Program (IBSP) is overseen by a cross-governmental body that includes the Ministry of Defense, Department of Health, Foreign and Commonwealth Office, and the Department of Science. It aims at reducing the risk of disease outbreaks caused by toxins and biological agents by improving international biological security and safety. This program establishes measures to address deliberate biological threats. It

[144] *The United Kingdom's Strategy for Countering Terrorism Cm 9608*. (2018). https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716907/140618_CCS207_CCS0218929798-1_CONTEST_3.0_WEB.pdf.

represents the UK's contribution to Global Partnership concerning biological security and also supports the UK's Biological Security Strategy which provides a comprehensive approach to bioterrorism threats.[145]

The UK is actively engaged in international organizations and forums that work to strengthen biosecurity and biosafety across the world. These include the Biological and Toxin Weapons Convention, United Nations Secretary-General's Mechanism for Investigation of Alleged Use of Chemical and Biological Weapons (UNGSM), the G7 Global Partnership against the Spread of Weapons and Materials of Mass Destruction, Australia Group, Global Health Security Agenda and the Global Health Security Initiative. The membership and association of these international organizations enhance their ability to counter deliberate biological threats.[146]

6. Laws related to bioterrorism in India

India has not been faced with any major bioterrorism attack until now. However, there have been several suspicious incidents over the past decades. In 1965, during the Indo-Pakistan war of 1965, there was a suspicious outbreak of scrub typhus in northeastern India. The plague outbreak of 1994 in Gujarat and Maharashtra and the dengue outbreak of 1996 in Delhi which killed thousands of people were also some of the suspicious outbreaks which raised biosecurity concerns in India. The anthrax scare reached India when suspicious packages covered in white powder reached Mumbai, the government then issued guidelines on biological and chemical attacks to various hospitals and health care centers.

The Indian legal regime to combat bioterrorism includes several acts and nodal ministries. The Ministry of Home Affairs, which works in conjunction with the Ministry of Health and Family Welfare, assess the threat perspective, sets up prevention mechanism, and provides intelligence inputs for the effectively managing a bioterrorist threat. The Ministry of Health and Family Welfare employs Rapid Response Teams and manpower to deal with an epidemic or other

[145] *UK International Chemical, Biological, Radiological and Nuclear Security Assistance Programmes and their Contribution to the Global Partnership Against the Spread of Weapons and Materials of Mass Destruction*. (n.d.). https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/473876/FCO859_CBRN_Security_Report_-_PRINT__1_.pdf.

[146] *UK Biological Security Stratergy*. (n.d.). Assets Publshing Service, Government of UK. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/730213/2018_UK_Biological_Security_Strategy.pdf.

emergencies. Ministry of Defense is responsible for managing the consequences of a biological attack. It coordinates war-related activities, conducts casualty evacuations, and provides for medical assistance through a countrywide network of army hospitals. Biological disasters by animals, livestock, and plants are dealt with by the Ministry of Agriculture.

On an international level, India is party to the International Health Regime which was adopted by the World Health Organization in May 2005. The International Health Regime mandates the member states to strengthen their ability to detect and respond to a health emergency. India is also party to the Biological Weapons Convention of 1975 which prohibits the use and possession of biological agents and weapons for any purpose whatsoever. India has entered into a US-India biosecurity dialogue to enhance prevention and response efforts to deal with a natural or deliberate biological attack. In 2018 India entered the Australia Group which works towards limiting the spread of biological and chemical weapons by means of export controls on chemical equipment and agents.

The laws and policies in India which deal with bioterrorism include the Epidemic Diseases Act of 1897, the National Security Act of 1980, the Disaster Management Act of 2005, and the Prevention of Terrorism Act of 2002. The National Disaster Management Authority has issued guidelines for the management of biological disasters. It has also set out a Standard Operating Procedure which lays down the steps required to be taken by agencies when responding to a terrorist attack using chemical or biological weapons[147].

6.1. Epidemic Diseases Act of 1897

The Epidemic Diseases Act aims to provide provisions to prevent the spread of epidemic diseases. It empowers the Government to undertake and prescribe any such regulations to be followed by people to prevent and curb the outbreak of a disease. The Act also provides provisions for inspection of people traveling from one state to another during such an outbreak and for the segregation of people suspected to have been affected by the disease. Public Health Emergencies Bill of 2017 was introduced to replace the Epidemic Diseases Act and to provide

[147] *National Disaster Management Guidelines- Management of Biological Disasters*. (2008). National Disaster Management Authority, Government of India. https://nidm.gov.in/pdf/guidelines/new/biological_disasters.pdf.

for effective management, prevention, and control of epidemics and biological disasters but the bill lapsed and never became an Act.

6.2. National Security Act of 1980

The National Security Act gives the Central and State Government the power to detain a person who is acting detrimentally towards national security or disrupting public order.

6.3. Disaster Management Act of 2005

The Disaster Management Act became effective in January 2006. It seeks to provide effective administration and management of disasters through mitigation strategies and capacity building. The Act advocated the establishment of a three-tiered Disaster Management system- National Disaster Management Authority at the center, State Disaster Management Authority in every state, and District Disaster Management Authority in every district. The act calls for the creation of a National Disaster Mitigation Fund to provide funds for the mitigation process.[148]

6.4. Prevention of Terrorism Act (POTA) of 2002

The Prevention of Terrorism Act was passed by the Indian Parliament in the year 2002 after an attack on the Parliament by Pakistani terrorists. It replaced the previous anti-terrorism law- Terrorists and Disruptive Activities Act (TADA). The objective of this act is to strengthen anti-terrorism operations in the country. This is the only Indian Act that mentions and penalizes the use of biological warfare. Article 4 of this Act provides that a person found in unauthorized possession of chemical or biological warfare or any other lethal weapon which is capable of

[148] *The Disaster Management Act, 2005*. (2017). Ndmindia.Nic.In. https://www.ndmindia.nic.in/images/The%20Disaster%20Management%20Act.

mass destruction shall be guilty of a terrorist act. Article 3 provides that whoever uses lethal weapons, noxious gases or other chemicals or by any other substance (whether biological or otherwise) shall be punished for such terrorist acts.[149]

7. Comparative analysis of bioterrorism laws of US, UK, and India

In order to tackle the growing threat of bioterrorism, countries must focus on three key objectives- preventing an increase in the number of nations possessing biological weapon programs, verifying the peaceful use of biological research, and eliminating the possibility of bio-weapon possession by terrorists. The laws, policies, and strategies of nations and the various international regimes are serving as a deterrent and prevent the terrorist from executing bioterrorist attacks.

As a consequence of the 9/11 and anthrax attacks in the year 2001, the United States realized its vulnerability to having a bioterrorist attack. It introduced several programs and legislations to combat this threat. The National Bio-defense Analysis and Countermeasures Centre (NBACC) was established to conduct research and to fill the gaps in bio-defense. Legislations such as the USA PATRIOT Act, Model State Emergency Health Powers Act, the Public Health Security and Bioterrorism Preparedness and Response Act, Project Bio-Shield Act of 2004, and the Pandemic and All-Hazards Preparedness Act were introduced to prevent and plan for a bioterrorist attack. The Covid-19 pandemic, which is considered to be a bioterrorist attack by China against the world in furtherance of an economic agenda, has caused heavy damage to the US not only in terms of health security but also in term of national security by allowing the terrorists to unleash a bioterrorism attack by taking advantage of the situation. Despite several legislations, the US seems unprepared to deal with a biological attack. It lacks coordination between various sectors and departments of the Government. Although enough laws exist there is no proper implementation of these laws. To stop the spread of a biological attack each state must enact a law for bioterrorism detection and response. Moreover, the Government must review the preparedness of emergency services and work out its coordination program from time to time.

[149] admin. (2014, September 1). *Bioterrorism*. Academike. https://www.lawctopus.com/academike/bioterrorism.

Legal Regime of the United Kingdom includes several Acts and Strategy Programs such as the National Security Strategy and Strategic Defense and Security Review, Global Health Security, UK Antimicrobial Resistance Strategy, the counter-terrorism strategy, and the National Counter-Proliferation Strategy. The UK is renowned for its preparedness and strategies to address emergencies and biological risks. This can be observed through their quick implementation of The Coronavirus Act during the Coivd-19 pandemic. This Act modified the public health legislation to give powers to the Government to adopt necessary measures to decelerate the spread of the virus. The UK Government aims to make a coordinated use of resources and legislation to combat the threat of bioterrorism. Its bio-defense strategy also includes creating awareness about bio-security and ways to respond to a bioterrorist attack by educating the undergraduate students of biological sciences and related fields under the UK International Biological Security Program. However, the Covid-19 pandemic has made the Western Countries, such as the US and UK, more vulnerable to a bioterrorist attack. Although the UK has effective legislation for research and response to a biological attack, it needs to establish strong anti-terrorism laws.

India's dense population and poor hygienic conditions make it more vulnerable to a biological attack. The impact of a biological attack in an Indian city could be devastating as the symptoms usually take hours and days to manifest and considering the increased mobility of the masses the disease could become highly contagious before the authorities are informed of such an attack. The threat of bioterrorism in India is the responsibility of the Ministry of Home Affairs and the Ministry of Health and Family Welfare. The legislative framework to deal with bioterrorism includes acts such as the Epidemic Diseases Act of 1897, the National Security Act of 1980, the Disaster Management Act of 2005, and the Prevention of Terrorism Act of 2002. Bioterrorism has not been covered extensively in any of the above-named acts but only finds a small mention in the Prevention of Terrorism Act. Although guidelines have been issued by the National Disaster Management Authority there is no legislation that covers these guidelines. There is an urgent need to introduce new mechanisms and to renew and amend the old laws to monitor the threat of bioterrorism as the old laws are proving to be obsolete are not fit to be implemented in this modern era. For instance, the provisions provided in the outdated Epidemic Diseases Act along with the provisions contained in the Indian Penal Code were implemented to tackle the Covid-19 pandemic.

8. Conclusion

Bioterrorism is a grave and a growing potential threat to the world. The Covid-19 pandemic has made the world more vulnerable to biological attacks by critically impairing the healthcare systems and economies. The existing international regimes for bio-warfare and biological research have proved ineffective in curbing the spread of bio-weapons across nations. Presently, governments and agencies across nations have adequate biological research agencies, policies, and legislation to deal with biological attacks but such laws and policies are proving counterproductive due to their non-implementation. Countering bioterrorism would require the utmost preparedness and response to an attack along with the proper implementation of existing laws. Public engagement and education of the masses about the threat of bioterrorism and ways to respond to a biological attack is necessary to ensure preparedness if faced with a biological attack.