Vol. VIII Jan-Mar, 2023 Issue I

NUJS Journal of Regulatory Studies

(A Multidisciplinary Blind Peer Review Journal)

ISSN: 2456-4605(O)

CENTRE FOR REGULATORY STUDIES, GOVERNANCE AND PUBLIC POLICY

WBNUJS

(A Multidisciplinary Blind Peer Review Journal)

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MOB LYNCHING IN INDIA: DESPERATE NEED OF LAW AGAINST UNNECESSARY VIGILANTISM

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Abstract

The present paper is an idea of the author put into expression examining the alarming issue of mob violence and cow vigilantism in India, focusing on the lynching of Mohammad Akhlaq in 2015 and analysing several other such prominent incidents. The study utilizes available data from reputable sources, as official government statistics on mob lynchings are not currently collected. The rise in hate crimes and cow-related violence since 2014 suggests a troubling escalation, although the reasons for this increase remain unclear. The analysis reveals that mob lynchings are often driven by suspicion of cow slaughter or beef consumption, with Muslims and other minorities being the primary targets. While religious prejudice may not be the sole motivator in every case, it frequently plays a significant role. Lynchings are often pre-planned, serving as a means to exert power over a community or send a message. Social media platforms have been used purposefully to propagate hostility and disseminate disinformation, exacerbating tensions and inciting violence. The paper highlights specific case studies, including the Dadri lynching, the Alwar lynching, the Nowhatta lynching, the Jharkhand lynching, and the Palghar lynching. Each incident exemplifies a unique set of circumstances, showcasing the diverse nature of mob violence in India. The analysis emphasizes the need to separate lynching from vigilantism, as purpose distinguishes between these acts. Furthermore, the paper explores the cultural and religious factors underlying cow vigilantism in India. Cows hold significant religious symbolism in Hinduism, and state legislation, as well as constitutional provisions, prohibit cow slaughter. The paper argues for the urgent need to address this issue through the nation-wide implementation of an "anti-lynching law" that specifically targets mob violence and acts as a deterrent. In conclusion, mob violence and cow vigilantism pose a grave threat to the rule of law, communal harmony, and the social fabric of India. A comprehensive understanding of the statistical trends, underlying motivations, and case studies is essential for policymakers and society at large to effectively combat and prevent these heinous crimes.

Keywords: Mob-Lynching, Post-2014 Era, Palghar Lynching, Vigilantism, Anti-Lynching Law

Introduction

Mohammad Akhlaq, a resident of Bisara village in Dadri in the Indian state of Uttar Pradesh, was lynched on September 28, 2015, and his 22-year-old son was seriously injured by an angry crowd who claimed he had butchered a cow and was in possession of meat. When individuals came to his house and claimed to have found beef, Akhlaq and his family tried to explain that it was mutton, but they refused to listen. Cow slaughter is illegal in Uttar Pradesh, but the question of "*was it actually cow meat*" is irrelevant when it comes to denouncing the lynching occurrence because it is a horrific crime regardless of who the victim is.[1] In one of its own kind judgments in the *Tehseen Poonawalla versus Union of India and Others* case,[2] (Writ Petition (Civil) No. 754 of 2016, Judgement dated 17 July 2018 and 24 September 2018), the Supreme Court of India stated:

"*No one has the authority to enter into the said field and harbour the feeling that he is the law and the punisher himself. A country where the rule of law prevails does not allow any such thought. It, in fact, commands for ostracisation of such thoughts with immediacy*".[3]

Despite official condemnation of such a crime, many people, including politicians, defended the criminals or attempted to politicise the situation. Some Bisara village residents protested the arrest of the perpetrators of the lynching. Later, a district court case was filed against Mohammad Akhlaq for alleged cow slaughter, but a government investigation revealed that he was not storing beef for consumption.

The term "mob lynching" refers to a "extrajudicial killing" by a group, whereas "vigilantism" refers to the act of "taking the law into one's own hands." Unfortunately, lynchings like the one in Dadri have become all too regular in India.[4] Many such occurrences, like as the lynchings in Alwar, Nowhatta, and Dhule, Palghar, have occurred since then. The most common reason was suspicion of cow slaughter or beef consumption. In certain cases, however, the victims were alleged perpetrators of horrible crimes, such as the Dhule lynching,

[1] Amil Bhatnagar, *Dadri lynching: Case picks up pace after seven years, Akhlaq's daughter records testimony*, INDIAN EXPRESS (Jun. 15, 2022, 08:16 PM), https://indianexpress.com/article/cities/delhi/dadri-lynching-case- pace-seven-years-akhlaq-daughter-records-testimony-7972061/.
[2] Tehseen S. Poonawalla v. Union of India, (2018) 9 SCC 501.
[3] *Id.* ¶ 17.
[4] Lauren Frayer, *'This Is It. I'm Going To Die': India's Minorities Are Targeted In Lynchings*, NPR (Aug. 21, 2019, 09:35 AM), https://www.npr.org/2019/08/21/751541321/ this-is-it-im-going-to-die-indias-minorities-are-targeted-in-lynchings.

in which the victims were said to be child-lifters. Although some lynchings may not have been motivated by religious prejudice, the majority targeted Muslims and other minorities, demonstrating the sometimes-premeditated character of these killings. While the lynchings appear to be spontaneous, this detailed study reveals that many were pre-planned crimes designed to punish not only an individual but also to exert power over a whole community or to "send a message."

Aside from the presence of a mob and provocation, purpose distinguishes between lynching and murder. In India, social media has been widely and purposefully used to propagate hostility towards minority communities. The majority of lynchings are photographed or filmed, and the sensitive content is "forwarded" to thousands of individuals in a matter of hours, in order to instill feelings of hatred and suspicion. Many of the lynchings were the consequence of messages accusing people of being anti-social, child-lifters, cow slaughterers, or kidnappers.[5] The spread of virtual disinformation is not limited to India, but the enormity of the problem is concerning given the country's more than 487 million registered WhatsApp users,[6] and more than 314.6 million registered Facebook users.[7]

Mahatma Gandhi once said, "*Nothing is so easy as to train mobs, for the simple reason that they have no mind, no premeditation. They act in frenzy. They repent quickly*". Like political parties, vigilantes from cow protection groups or gaurakshaks are quick to distance themselves from hate crimes. While gaurakshaks are not always the "obvious perpetrators" of cow-related violence, they are occasionally the provocative power behind the scenes. Section 505 of the Indian Penal Code of 1860, which deals with comments inciting public mischief, applies in such cases.[8] While some of those directly involved in the lynching are prosecuted, the crimes of others who wilfully propagate vile rumours in order to incite mobs are not always reported to authorities. Criminal laws not only codify the process of punishment or trial, but they also instill fear in individuals. The Supreme Court states in the *Tehseen Poonawalla* decision that "*in a civilised society, it is the fear of the law that prevents crimes.*"[9] As a result, a law developed specifically to deal with mob lynching or a "anti-lynching law" would be beneficial

[5] Ishan Gupta, *Mob Violence and Vigilantism In India*, WORLD AFFAIRS: THE J. OF INT. ISSUES, 23(4) (2019):152–72. https://www.jstor.org/stable/48566204.
[6] Simon Sharwood, *India to send official whassup to WhatsApp after massive spamstorm*, THE REGISTER (May12, 2023), https://www.theregister.com/2023/05/12/india_whatsapp_spam_privacy_demands/.
[7] *Facebook Users by Country*, OBERLO, https://www.oberlo.com/statistics/facebook-users-by-country (last visited Jun. 12, 2023).
[8] The Indian Penal Code, 1960, § 505.
[9] *Supra* note 02, ¶ 39.

in deterring the crime.

Statistical Analysis of Mob Violence

A statistical examination of numbers is required to comprehend the gravity and escalation of mob violence. Because the National Crime Records Bureau does not collect data especially for mob lynchings or cow vigilantism, there is currently no official/government statistics. As a result, the most reputable sources accessible were utilised for the purposes of this research paper.

Hate Crimes

In this context, hate crimes are defined as "*incidents that are prima facie crimes committed either partly or entirely because of the victim(s)' religious identity*." According to a source, these incidents exhibit one or more of the following bias indicators:

"*cow or cattle protection, interfaith relationships, religious conversion, insult to religious symbols, insult to national symbols, affiliation of the alleged perpetrators to organisations with an extremist or violent agenda against certain religious groups, statements made by the alleged perpetrator(s), before, during, or after the incident, reflecting religious bias or prejudice, the incident be a religious bias or prejudice.*"[10]

While not all of these hate acts qualify as "mob lynchings," Since 2014, the number of reported hate crimes has increased drastically.[11] It is unknown whether the police reporting system became efficient or the hate crimes have increased haphazardly.

Cow Related Violence

In this study, "cow related violence" refers to cases of mob attacks in the name of "cow protection" or gauraksha on anyone accused of consuming, storing, or trading meat, slaughtering livestock, or being involved with the slaughter of cows. Victims are typically Muslims, Dalits, or other minorities, while attackers may or may not be affiliated with cow vigilante groups. However, illegal activities done by cow traffickers operating across states and the India-Bangladesh border have also been documented. Their victims are typically cattle owners who have been assaulted by thieves who illegally trade in cow meat—violence is not always unilateral.

[10] *Supra* note 05, ¶ 155.
[11] Shoaib Daniyal, *The Modi Years: What has fuelled rising mob violence in India?*, SCROLL (Feb. 23, 2019, 07:30 PM), https://scroll.in/article/912533/ the-modi-years-what-has-fuelled-rising-mob-violence-in-india.

Incidents of Mob Lynching

The section that follows examines several incidents of mob lynching in order to identify a general pattern. The details of the Dadri lynching case have already been discussed:

Alwar Mob Lynching Case of 2017

Pehlu Khan, 55, a dairy farmer from Jaisinghpur hamlet in Nuh, Mewat, was the main victim of the Alwar lynching. He was on his way back to the village after purchasing cattle for milking in Jaipur. He was stopped on the Jaipur-Delhi route while carrying cows and calves by 200 cow vigilantes who suspected Pehlu of buying the cattle for slaughter. Pehlu Khan and six others were taken from the truck and thrashed with sticks and rods. Pehlu died as a result of his injuries. The others, despite being severely damaged, survived. The cops apprehended three people. While the majority of lawmakers and ministers condemned the incident and promised that justice would be served, a minority attempted to defend the vigilantes or just denied the incident occurred. Later, on their way to court, important witnesses to the incident were shot.[12]

Nowhatta Mob Lynching Case of 2017

The Nowhatta lynching case differs from others in the following ways:

1. The lynching victim was a police officer on duty for security reasons.
2. One of those involved in the lynching was a member of the terrorist outfit HizbulMujahidin.
3. The lynching occurred in the state of Jammu and Kashmir, where law and order remainsa problem due to the actions of separatist and terrorist organisations.

Incident

Mohammed Ayub Pandith, a Deputy Superintendent of Police in Jammu and Kashmir, was posted in civilian clothing outside Jamia Masjid for security concerns on the holy night of Laylat al-Qadr. When he exited the mosque, he was questioned by a few people who suspected him and began crowding around him. Ayub attempted to flee the throng with his military weapon but was unable since his firing apparently hurt many people and the mob began assaulting him. Soon, suspicions arose that he was a non-Muslim, a RAW agent (the Research and Analysis Wing is the foreign intelligence agency of India) or belonged to a security agency.

[12] India Today Web Desk, *2017 Alwar mob lynching: Victim Pehlu Khan, sons charged for smuggling cattle*, INDIA TODAY (Jun. 29, 2019, 04:15 PM), https://www.indiatoday.in/india/story/alwar-mob-lynching-2017-rajasthan-police-chargesheet-against-pehlu-khan-1558417-2019-06-29.

A few felt that he was a Kashmiri Pandit (a Hindu) as his surname was Pandith. More people then came around him and began hitting him. The assailants stripped him nude and beat him with rods, stones, swords, and other objects. The next day, the disfigured body of Ayub was discovered.[13]

The lynching in Nowhatta is particularly disturbing because the victim was a police officer. The fact that a police officer on duty, responsible for maintaining peace and security, could be killed by a mob shows how widespread hate is in Kashmir. Furthermore, the episode demonstrates that the perpetrators are not limited to a specific community. While perpetrators of such lynchings are frequently affiliated with or influenced by Hindutva-supporting vigilantes, there are cases when their origin is unknown or non-Hindu. Although lynching may be the consequence of injured religious feelings in some circumstances, it is not a religion-specific crime; hence, lynching should not be connected with vigilantes of a single faith. Even ordinary folks, fuelled by hatred and fuelled by hearsay, might become members of a "mob" responsible for lynchings.[14]

Jharkhand Mob Lynching Case of 2016

The mob lynchings in Jharkhand must be addressed in the perspective of the following:

1. A 12-year-old kid was one among the casualties.
2. According to the authorities, the criminals (supposedly livestock protection vigilantes) intended to steal money and cattle.
3. The culprits murdered and then hung the two victims.

Incident

On the morning of March 18, 2016, the bodies of two Muslims were discovered hanging from a tree in Jharkhand's Latehar district. The first victim was a 32-year-old cattle merchant called Mazlum Ansari, and the second was a 12-year-old Muslim child named Imtiyaz Khan. Both bodies bore evidence of having been beaten to death before being hanged. An inquiry by the Jharkhand police showed that the two were on their way to a livestock market in Chatra district with eight buffaloes to sell. Vigilantes who murdered and robbed them lynched them in

[13] Express Web Desk, *Nowhatta mob lynching: DySP Mohammed Ayub Pandith beaten to death near Jamia Masjid*, INDIAN EXPRESS (Jun. 23, 2017, 04:51 PM), https://indianexpress.com/article/india/nowhatta-mob-lynching-jammu-kashmir-dysp-mohammed-ayub-pandith-killed-jamia-masjid-srinagar-4717934/.
[14] Kamaljit Kaur Sandhu, *Ayub Pandith lynching: Jammu and Kashmir cop was stripped, dragged and beaten with rod*, INDIA TODAY (Jul. 16, 2017, 03:16 AM), https://www.indiatoday.in/india/story/ayub-pandith-lynching-jammu-and-kashmir-dsp-jama-masjid-1022935-2017-07-07.

Balumath woodland. The story demonstrates the lengths to which offenders would go to satisfy their intentions and demonstrates how religion is frequently utilised to carry out criminal activities motivated by avarice.[15]

Palghar Lynching Case of 2020

On April 16, two Hindu sadhus were murdered to death by a frenzied crowd of more than 100 people in the satellite town of Palghar, close to 100 km from the country's financial nerve hub and Maharashtra's capital, Mumbai. This act jolted the consciences of countries and was unique in that the lynchers were Hindus.[16]

Incident

A mob killed two Sadhus of Juna Akhara, Chikne Maharaj Kalpavrukshagiri (aged 70) and Sushilgiri Maharaj (aged 35) on April 16, 2020, along with their 30-year-old chauffeur. The event occurred in the hamlet of Gadchinchale in the Palghar district of Maharashtra. They were in route to Surat, Gujarat. The cops were present at the incident, but they apparently did nothing to halt the crowd or save the sadhus.[17]

The police first stated that their squad, who had hurried to the scene to save the 70-year-old man, was also attacked by the hostile mob. However, further films emerged that entirely refuted the police story. Contrary to allegations, the police apparently handed over the Sadhus to a frenzied crowd, who then beat them to death in front of the officers.[18]

Several accounts that emerged in the aftermath of the bloodcurdling lynching suggested that the violent murder of the Hindu sadhus was part of a larger scheme to destroy the Hindu priests. An investigation into the lynching found an ultra-left link, with a CPI(M) gram panchayat member reportedly gathering a crowd armed with rods and stones to kill the sadhus.[19]

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[15] Vishal Sharma, *Eight sentenced to life imprisonment for lynching cattle herders in Jharkhand*, HINDUSTAN TIMES (Dec. 21, 2018, 11:59 PM), https://www.hindustantimes.com/ranchi/eight-sentenced-to-life-imprisonment-for-lynching-cattle-herders-in-jharkhand/story-zmbZoHrI5QUOtEoogFBWKL.html.

[16] Express News Service, *3 years after Palghar sadhu lynching, local police avert similar incident*, INDIAN EXPRESS (Apr. 10, 2023, 02:23 PM), https://indianexpress.com/article/cities/mumbai/3-years-after-palghar-sadhu-lynching -local-police-avert-similar-incident-8538672/.

[17] Debasish Panigrahi, *Everything you need to know about the Palghar attack where Sadhus were lynched by a mob*, MUMBAI MIRROR (Apr. 20, 2020, 02:48 PM), https://mumbaimirror.indiatimes.com/mumbai/crime/everything-you-need-to-know-about-the-palghar-attack-where-sadhus-were-lynched-by-a-mob/articleshow/75248136.cms.

[18] OpIndia Staff, *Palghar lynching: Two years on, justice still eludes two Hindu sadhus who were handed over to a bloodthirsty mob by the police*, OPINDIA (Apr. 16, 2022), https://www.opindia.com/2022/04/palghar-lynching-two-years-on-slain-two-hindu-sadhus-still-await-justice/.

[19] Alok Deshpande, *Cong., CPI(M) slam BJP for giving communal angle to Palghar lynching*, THE HINDU (Apr. 21, 2020, 02:21 AM), https://www.thehindu.com/news/cities/mumbai/cong-cpim-slam-bjp-for-giving-communal-angle-to-palghar-lynching/article31392390.ece

According to reports, the Sadhus' murder may have been premeditated and politically motivated. Christian missionary organisation, as well as certain local NCP officials and communists, were suspected of being involved.[20]

The horrible lynching had rocked the country's collective consciousness, with cries rising from throughout the country to bring the perpetrators of the heinous act to justice. Several legislators from across the political spectrum banded together to urge heavy punishment for the perpetrators, ensuring that similar tragedies never happen again and establishing a solid precedent.[21]

Cow Vigilantism in India

Cows are revered and revered as mother symbols in Hinduism. Cow slaughter in India is governed by state legislation, which means that each state has its own law (if one exists). The Supreme Court of India has on occasion confirmed the constitutional legality of legislation prohibiting cow slaughter in several states while permitting the killing of a select breeds under specific circumstances.[22]

In an October 2005 decision, the Supreme Court overturned an earlier finding and affirmed the legality of a Gujarat state legislation prohibiting the killing of bulls and bullocks.[23] Article 48 of the Constitution of India states:

"*The state shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle*".[24]

However, as stated in the Directive Principles of State Policy, this is not legally enforceable. The export of beef (meat of cow, oxen, and calf) is now forbidden in India, although the export of boneless meat of water buffalo (carabeef) is permitted.

Cultural Hegemony

Hindu Nationalism and Cow Vigilantism on the rise since 2014, the prominence of Hindu

[20] Kavitha Iyer, *Palghar lynching: Sarpanch says she watched attack for 2 hrs, NCP leader couldn't control mob either*, INDIAN EXPRESS (Apr. 23, 2020, 03:25 PM), https://indianexpress.com/article/india/palghar-lynching-sarpanch-says-she-watched-attack-for-2-hrs-ncp-leader-couldnt-control-mob-either-6374896/.
[21] PTI, *Palghar lynching case: CBI to take over investigation, Maharashtra tells SC*, HINDUSTAN TIMES (Apr. 28, 2023, 04:02 PM), https://www.hindustantimes.com/india-news/palghar-lynching-case-cbi-to-take-over-investigation-maharashtra-tells-sc-101682677084804.html.
[22] Mohd. Hanif Quareshi & Ors. v. The State of Bihar, 1958 AIR 731.
[23] TNN, *SC upholds cow slaughter ban,* TIMES of INDIA (Oct. 27, 2005, 00:22 AM), https://timesofindia.indiatimes.com/india/sc-upholds-cow-slaughter-ban/articleshow/1276425.cms.
[24] The Constitution of India, 1950, art. 48.

nationalist movements in India has steadily grown. The name "Hindutva" more accurately describes the present strain of Hindu nationalism. To comprehend its current usage, one must first study the philosophy that underpins it. Hindutva, as promoted by right-wing Hindu organisations like as the Rashtriya Swayamsevak Sangh and the Vishwa Hindu Parishad, is a type of religious or cultural nationalism that seeks to define the country in terms of its indigenous traditions and ethnicity. Hindu nationalist organisations regard Hindus as victims of discrimination. They claim that minorities in India are granted preferential, apparently unjustifiable treatment. Hindutva supporters believe that faiths not of Indian heritage endanger Hindu identity. Hindu nationalist organisations have been accused of being culturally dominant due to specific interpretations of Hindutva. They have also used force in the past to achieve their goals, which are driven by Hindu nationalism. Cow vigilantism refers to – "*extrajudicial acts of violence in the name of gauraksha, a phenomenon that has gained traction with the rise of Hindutva outfits that purportedly, and sometimes intentionally, support cow protection organisations*."[25] The underlying presence of Islamic terrorism across the world, as well as terrorist activities done in India, such as the 2008 Mumbai Terror Attacks, the 2016 Pathankot and Uri Terrorist Attacks, and so on, by Muslims terrorists dispatched from or sponsored by Pakistan, are undoubtedly triggering factors. The environment of fear and anger has resulted inan increase in anti-Muslim attitudes among some segments of the public.

Circulation of Misinformation through Social Media Platforms

In recent years, there has been a significant increase in the use of social media in India.[26] Its effect on the population has risen along with it, as political parties have acknowledged. Political parties spent a considerable chunk of their advertising budget on social media marketing for the 2019 Lok Sabha elections, mostly to attract first-time voters.[27] Any media with widespread influence and reach is unlikely to be limited to positive applications. Social media platforms are no exception, and they quickly evolved into vehicles for disseminating misinformation with negative overtones. They have been routinely utilised to instill hatred in people, groups, and communities. This virtual animosity has manifested itself in the form of mob lynchings on several instances. The enormous population size, the affordability of smartphones, and the comparatively low cost of internet access are the key reasons that have driven the rise of social

[25] Tazeen Ahmed and Shabbir Ahmed, *Law, Morality, and Society: The Legal Stance of Vigilantism and Moral Policing in the Context of India*, INT. J. L. MAN. & H., Vol 5(2) 1968-1985, 1968 (2022).
[26] *Social Media in India - 2023 Stats & Platform Trends*, OOSGA (Apr. 01, 2023), https://oosga.com/social-media/ind/.
[27] M. Rushi Abheeshai, *Impact Of Social Media On Politics In India*, IJCRT Vol. 10(3), 944-958 (2022).

media and messaging services in India. It has been stated that persons between the ages of 15-20 and over 50 are the most susceptible to "fake news," while younger internet users also more prone to trust "fake news."[28]

Misuse of Social Media

Misuse of Facebook: Rohingyas case

The Myanmar Situation Rohingya Due to conflicts with the majority Buddhist population, Muslims in Myanmar's Rakhine state endure persecution and violence on a daily basis. The Myanmar government has refused to accept the Rohingya as citizens, seeing them as Bengali immigrants. Many people have been slaughtered by the military in what some call "ethnic cleansing" and compare to apartheid in South Africa. Thousands of stateless Rohingya have fled to neighbouring countries, particularly Bangladesh. Some persons in Myanmar (supposedly military officers) used a new medium, Facebook, to preach hatred and encourage violence against the Rohingya. This truth has been accepted by the California-based social networking service.[29] Through posts that contained fake news and nasty remarks, Facebook was purposefully utilised to incite anti-Islam/anti-Rohingya sentiments among Burmese population.[30] The majority of the hate postings were written in Burmese script, which Facebook was first unable to read and act on. Because the matter was not effectively addressed in the early stages, the virtual animosity resulted in killing and violence, which is commonly referred to as "genocide incited on Facebook." Facebook officials claim to have implemented technological upgrades to block nasty remarks on their site, including those written in Burmese.[31] The slaughter incited by Facebook demonstrates the extent to which these platforms can be abused and underscores the necessity for rigorous controls, even if it means restricting free expression.

Misuse of WhatsApp

[28] Stefan Gaillard, Zoril A. Oláh, Stephan Venmans, and Michael Burke, *Countering the Cognitive, Linguistic, and Psychological Underpinnings Behind Susceptibility to Fake News: A Review of Current Literature With Special Focus on the Role of Age and Digital Literacy*, FRONT. COMMUN. Vol. 6, https://doi.org/10.3389/fcomm.2021.661801 (2021).

[29] Barbara Ortutay, *Amnesty report finds Facebook amplified hate ahead of Rohingya massacre in Myanmar*, PBS NEWS HOUR (Sep. 29, 2022, 01:05 PM), https://www.pbs.org/newshour/world/amnesty-report-finds- facebook-amplified-hate-ahead-of-rohingya-massacre-in-myanmar.

[30] Dan Milma, *Rohingya sue Facebook for £150bn over Myanmar genocide*, THE GUARDIAN (Dec. 0, 2021, 05:03GMT), https://www.theguardian.com/technology/2021/dec/06/rohingya-sue-facebook-myanmar-genocide-us-uk-legal-action-social-media-violence.

[31] Libby Hogan and Michael Safi, *Revealed: Facebook hate speech exploded in Myanmar during Rohingya crisis*, THE GUARDIAN (Apr. 03, 2018, 01:06 BST), https://www.theguardian.com/world/2018/apr/03/revealed-facebook-hate-speech-exploded-in-myanmar-during-rohingya-crisis.

Lynching WhatsApp, a messaging app owned by Facebook, has been used several times to transmit incorrect and misleading information, inciting mob violence. Lynching episodes caused by "WhatsApp forwards and messages" have become so widespread that the term "WhatsApp Lynching" is now used to refer to such instances collectively. The extraordinary speed with which even incorrect information travels on this platform is the reason it has been so frequently abused. A crowd attacked five persons, including a two-year-old kid, in the Malegaon region of the Indian state of Maharashtra because they were suspected of being child lifters.[32] The mob was allegedly sparked by a WhatsApp video that "warned" families to keep their children safe.[33] Furthermore, such "warning" messages, images, and videos of lynching instances are widely shared on WhatsApp. The dangers of such a platform must be addressed right now. WhatsApp was instructed to investigate the situation, and as a result, it implemented a variety of actions, including sponsoring research, launching advertisements, and limiting the number of groups to whom a message may be shared at one time.

Dealing with the Issue

Following a lynching occurred in Tripura, the state authorities restricted internet and SMS services in the region for 48 hours, owing mostly to Internet claims regarding child lifters. Solutions like these may be useful in momentarily normalising the situation, but they are not sustainable in the long run.[34] In Kerala, 150 government schools have begun teaching kids how to identify false news and distinguish between legitimate and untrustworthy sources.[35] While numerous campaigns by governments, private organisations, and non-profit organisations aim to raise public awareness about misinformation on the internet, evidence from around the world shows that it is difficult for people with strong convictions to reject "information" that supports their position. Those who do not share their political viewpoint frequently regard governments as untrustworthy sources. In the United States and other countries, "conservatives" do not trust the information provided by "liberal" non-governmental groups that uncover fake news.[36] The

[32] Aarefa Johari, *'The crowd was willing to kill a child': Malegaon residents stopped a lynching but are in despair*, SCROLL (Jul. 0, 2018, 09:00 AM), https://scroll.in/article/885345/the-crowd-was-willing-to-kill-a-child-malegaon-residents-stopped-a-lynching-but-are-in-despair.

[33] *A timeline: Fake WhatsApp rumours trigger series of mob lynching across the country*, THE NEW INDIAN EXPRESS (Jul. 02, 2018, 02:37 PM), https://www.newindianexpress.com/nation/2018/jul/02/a-timeline-fake-whatsapp-rumours-trigger-series-of-mob-lynching-across-the-country-1836934.html.

[34] FP Staff, *Tripura lynching: Mobile internet, SMS services banned in state for 48 hours to check rumour-mongering*, FIRSTPOST (Jun. 29, 2018, 01:42 PM), https://www.firstpost.com/india/tripura-lynching-mobile-internet-sms-services-banned-in-state-for-48-hours-to-check-rumour-mongering-4627811.html.

[35] Shraddha Goled, *Kerala: 150 Govt Schools Are Teaching Kids How To Spot Fake News*, THE LOGICAL INDIAN(Aug 23, 2018, 11:45 AM), https://thelogicalindian.com/exclusive/kannur-govt-school-fake-news.

[36] Katherine Ognyanova, David Lazer, Ronald E. Robertson and Christo Wilson, *Misinformation in action: Fake news exposure is linked to lower trust in media, higher trust in government when your side is in power*,

Pradhan Mantri Digital Saksharta Abhiyan of the Indian government intends to make rural families digitally literate.[37] It should be expanded to teach individuals how to identify false information. However, in the legislative domain, rules banning the use of social networking sites are frequently believed to infringe an individual's right to free speech and expression and are attacked.

Legislative Provisions and Judicial Stance

Legal Provisions to Deal with Lynching in India

The Indian Penal Code of 1860 has the parens patriae jurisdiction to any criminal offence committed within and outside the jurisdictions of India however it fails to have any provision specifically dealing with mob lynching. Probably the concept surfaced post-2014 era. Frequently, in India, the primary suspects/accused of fatal lynchings are tried for murder.

For example, in the 2015 Dadri Lynching Case, the First Information Report contained charges against the primary suspects under the following sections of the Indian Penal Code enumerated below:

1. Section 147: Rioting,[38]
2. Secti.on 148: Rioting, Armed with a deadly weapon,[39]
3. Section 149: Unlawful Assembly,[40]
4. Section 302: Murder,[41]
5. Section 307: Attempt to Murder,[42]
6. Section 458: Housebreaking,[43] and
7. Section 504: Intentional insult with intent to provoke breach of peace.[44]

While Section 223 of the Code of Criminal Procedure of 1973 allows perpetrators to be tried

MISINFORMATION REVIEW, HARVARD KENNEDY SCHOOL (Jun. 02, 2020), https://misinforeview.hks.harvard.edu/article/ misinformation-in-action-fake-news-exposure-is-linked-to-lower-trust-in-media-higher-trust-in-government-when-your-side-is-in-power/.

[37] *Overview of PMGDISHA*, https://www.pmgdisha.in/ about-pmgdisha/ (last visited Jun. 13, 2023).

[38] The Indian Penal Code, 1860, § 147.

[39] Id.

[40] The Indian Penal Code, 1860, § 149

[41] Id.

[42] Id.

[43] The Indian Penal Code, 1860, § 458.

[44] Id.

collectively i.e., joining of trial.[45] Section 505 (criminalises the statements conducing to public mischief) and 153A (criminalises fostering enmity) of the Indian Penal Code are usually applicable in cases of lynching.[46]

The Supreme Court judgment on the *Tehseen Poonawalla case*, stated:

"*Apart from the directions we have given hereinbefore and what we have expressed, we think it appropriate to recommend to the legislature, that is, the parliament, to create a separate offence for lynching and provide adequate punishment for the same. We have said so as a special law in this field would instil a sense of fear for law amongst the people who involve themselves in such kinds of activities*".

The need for an anti-lynching statute is so obvious that Dr. Shashi Tharoor, an Indian National Congress Member of Parliament from Thiruvananthapuram in Kerala, submitted a private anti-lynching bill in the Lok Sabha in August 2018 but was denied permission to table it.[47]

Judicial Stance

The Supreme Court's decision in the *Tehseen Poonawalla v. Union of India and Others* case[48] in 2018 is the most recent and contextually relevant example of the supreme court's stance on lynching in India. The crimes were described as "*horrendous acts of mobocracy*" by a three-judge bench that included then-Chairman Dipak Misra, Justice AM Khanwilkar, and Justice DY Chandrachud. The court provided directions for the national and state governments to adopt preventative, corrective, and punitive measures to deal with the crime while urging that parliament pass an anti-lynching law in the country.

The bench stated, "*Vigilantism cannot, by any stretch of imagination, be given room to take shape, for it is absolutely a perverse notion*".

Anti-Lynching Act in Manipur

In late 2018, the Manipur state assembly overwhelmingly passed an anti-lynching bill in order to implement legislation that tackles the region's rising problem. The statute closely follows the Supreme Court's directions in the *Tehseen Poonawalla* case[49] and seeks to outline the roles and obligations of the state government and police agencies in lynching cases. Although this

[45] The Code of Criminal Procedure, 1973, § 223.
[46] Id.
[47] The Protection From Lynching Bill, 2017, *available at:* https://shashitharoor.in/private_member_bills_details/22%22.
[48] *Supra* note 02.
[49] *Supra* note 02.

isan admirable project, it cannot serve as a model for other governments to follow. Lynchings inManipur are not politically driven and have distinct origins, motives, and aims than in other states.[50]

Conclusion

Ancient Greek political theorists accurately characterised mobocracy as one of the three "bad forms" of rule that resulted from anarchy. The rule of the crowd must not be permitted to prevail in a country that values the qualities of equality, fraternity, and justice. When the perpetrators of mob lynchings are not immediately brought to justice, it inspires and empowers others to take the law into their own hands, supporting mob rule or mobocracy. An accused has the right to be considered as innocent until he or she is fairly tried and found guilty by a court, but vigilantes who mistakenly perceive themselves as "principled" law enforcers taint the sanctity of the state's law. It is the state's obligation to defend the rights of all citizens, especially minorities. An anti-lynching statute is required to instill terror among vigilantes who believe in "justice without a trial." Along with those accused with murder, housebreaking, and other crimes, those responsible for "hate speech" and "fake news" that incite the mob must also face trial. Although a lynching may appear to target only one person, the underlying purpose is generally to "send a warning" to a certain group. While there is a lack of data—official statistics are not reported by the National Crime Records Bureau—to claim that the political party in the state government directly affects the frequency of lynching incidents due to the inaction of law enforcement agencies would be statistically incorrect. According to a statistical analysis of mob lynchings, the BJP's pro-Hindu image enables far-right Hindu nationalist organisations cow protection organisations, and vigilantes to administer their illegal version of "justice." Politicians should not be permitted to make communal comments in order to further their political objectives while going unpunished. Offensive words made to sway voters may have unintended consequences in the future. State governments must quickly evaluate and follow the guidelines made by the Supreme Court in the *Tehseen Poonawalla* case. The Indian lynchings show that a mob in any country has a similar barbaric nature during the lynching, and unless the issue is addressed early on, the frequency and intensity of the crime could continue to grow at a rapid rate. The recent spike in the distribution of incorrect information through social media platforms is cause for considerable worry, as seen by the atrocities against

[50] PTI, *Manipur assembly passes anti-mob violence bill*, TIMES OF INDIA (Dec. 22, 2018, 11:25 PM), https://timesofindia.indiatimes.com/india/manipur-assembly-passes-anti-mob-violence-bill/articleshow/67211670.cms.

the Rohingya in Myanmar. While punishment measures such as provisions in the Indian Penal Code are appropriate in dealing with incidents of intentional dissemination of disinformation to incite violence, preventative measures such as awareness campaigns and technology advancements are desperately needed.

PRECAUTIONARY PRINCIPLE OF SUSTAINABLE DEVELOPMENT DURING COVID-19 PANDEMIC

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Abstract

India, a democratic country, is promoting sustainable development through the "Precautionary principle" to promote better health and environmental decisions. This principle arises from the lack of indefinite scientific knowledge and uncertainty, making it a controversial debate in ecological management. The Covid-19 pandemic has highlighted the impact of the virus on the environment, with potential consequences due to deforestation and toxic genetic material introduction into the food chain. The "Rio Declaration" on Environment and Development outlines the principle as a core principle of environmental legislation. This research examines the principle's emergence in India and the inability to implement precautionary steps to address climate change. The research will explore the complex interaction between biodiversity loss, climate change, and increased pandemic incidence. The burden of proof shifts to lawmakers in determining a permissible vulnerability relation, with the key challenge being determining which criteria should use when scientific evidence partially establishes and considers stakeholders' best interests.

Keywords: Precautionary Principle, Covid-19, Health-crisis, Environmental Laws, Constitution.

Introduction

Earth's resources are currently used and manipulated by people for their benefit. Now, human interaction with biodiversity contributes to environmental dangers. Humans are subject to illnesses such as COVID-19, resulting in great suffering and loss. The COVID-19 pandemic has raised awareness of the importance of precaution in human interactions without the environment and pushed for applying the precautionary principle throughout all walks of life.

To prevent causing humankind irreparable harm throughout the aftermath of a pandemic, where Indian regulations must change. The development of the precautionary principle in India and

the lack of action to stop climate change emphasizes. Furthermore, there is a complicated relationship between pandemics, climate change, and biodiversity loss. Pandemics further exacerbates by environmental deterioration and rising temperatures. To avoid potential pandemics in the future, the precautionary principle ought to include climate change policy alternatives. Genetically modified crops have for commercial purposes, but there is a need to control production and circulation and build a biosafety framework.

During a pandemic, indigenous peoples and their traditional knowledge endangering. Big companies embrace practices disregarding indigenous peoples' contributions, jeopardizing their very existence and valued knowledge. As a result, preventive measures and regulatory systems must implement to safeguard their cultural and financial rights. The precautionary principle ("Principle"), the cornerstone in environmental laws, maintains that when there's any scepticism regarding the detrimental environmental effects of any operation, it is preferred to correctly assess every action rather than waiting for unfavourable outcomes. The research presented here makes suggestions for recovery following a pandemic program to guarantee human-nature coexistence for the long term.

Research Methodology

The research adopted by the researchers is purely Doctrinal, without the researchers aiming to explore precautionary concepts based on numerous environmental law reviews and scientific publications. The researcher used the doctrinal research approach, in which the contributors acquired all material linked to the precautionary principle due to Covid-19 from many different publications, journals, e-books, and other secondary sources. As a result, the researcher has to pinpoint loopholes in the law by offering relevant cases and judicial precedents.

Research Objectives

The ultimate goal of doing this research is

- It acquires an in-depth account of the function of the precautionary principle in the Indian legal system.
- It discovers deficiencies in legislation that safeguard the precautionary principle or its significance within the legal system.
- The Precautionary Principle, which proved essential during Covid-19, must be understood to understand the environmental laws

Prevention of environmental changing issues

COVID-19, climate change, and habitat loss are the three greatest environmental challenges the world and its inhabitants are now experiencing. All of them have varying effects on human existence, and the root cause is the unfettered economic plundering of nature. Although these problems exacerbate through human activity, their solutions rely on individual engagement. There have been several negative outcomes as a result of global warming. The upsurge in sea level raises the likelihood of torrential rains, and weather extremes that threaten crop yields are two of the most visible effects of climate change, which has had an unfathomable influence worldwide. Another issue that demands immediate attention is biodiversity loss,[1] especially in the aftermath of the outbreak. During recent decades, a growing percentage of ailments have been passed from humans, the most recent being COVID-19. Disease transmission occurs due to intensifying degradation, accounting for 31% of all incidences. It has been stated that all pandemics evolved in living creatures (primarily wildlife) and that their formation results from interactions involving humans and livestock. In the long run, exposure to tiny particulates in dirty air decreases human immunity, according to Research. As a result, the number of fatalities among COVID-19 patients has increased. In a nutshell, pollution levels lead to global warming even while having other adverse ramifications during the outbreak. While making policy decisions on responding to pollutants, incorporating preventative measures to address environmental challenges would be beneficial. Countering global climate change may lower the risk of pandemics. Such actions include:

- Promoting the use of natural vegetation.
- Minimizing distribution networks by supporting more local eco-friendly companies.

As a result, there is a strong correlation between global warming and outbreaks.

Furthermore, the research found that when worldwide temperatures rise in response to climate change, ice in the Northern area will thaw, releasing a slew of hazardous species. Bacteria and viruses' humans have not encountered and are assumed to have been eliminated or preserved are examples of such species. The harmful effects of these microbes on humans are unreliable, but specialists have concerns that they could spread contagious, life-threatening conditions, including COVID-19, [2] which pose a hazard. On the contrary extreme, a group of experts says

[1] (NBSAP) National Biodiversity Strategy and Action Plan - FEDERAL REPUBLIC OF SOMALIA - NBSAP Forum, https://www.readkong.com/page/nbsap-national-biodiversity-strategy-and-action-plan-1891941 (last visited Feb 13, 2023).

[2] Anthony Capon, Fiona Armstrong & Ro McFarlane, *Coronavirus is a wake-up call: our war with the environment is leading to pandemics*, THE CONVERSATION (2020), http://theconversation.com/coronavirus-is-a-wake-up-call-our-war-with-the-environment-is-leading-to-pandemics-135023 (last visited Feb 13, 2023).

that there is an amplification effect, which indicates that as biodiversity increased, so did the danger of transmission of infection.[3] According to another source, places with biodiversity[4] potentially be a source of virus infections. Several experts & politicians have denounced environmental issues as a myth and are resistant to actions to save the world.

Regulatory Framework

Over here, under the constitution of India as decided in various judicial precedents concerning Art.48(A) & Art.51A(g), which talks about the wider protection of the ecosystem of the environment thus their several provisions arrive those Air Act 1987[5], water Act, EP Act 1986 and CBD provisions. The Air and Water Act aims to prevent climate change by controlling greenhouse gas emissions and preserving air quality. The Central and State Pollution Control Boards (CPCB) monitor air pollution issues and establish air pollution control areas in regions with heavy industrial activity. However, the current statutory framework faces problems such as increased staffing, ineffective criminal penalties, overburdened Indian Courts, and the reluctance of industries to implement clean technology due to associated costs.

The EP Act aims to address these issues, focusing on environmental protection and development. It seeks to conserve and safeguard biological diversity but has yet to materialize as specified in the law. The EIA[6] needs help in producing accurate reports, with ongoing judicial conflicts, conflict of interest in Expert Appraisal Committees, and attempts to adapt its mechanical techniques to new locations.

The NBDA expects to generate approximately Rs. 10,000 crores per year due to improper implementation of the BD. Act rules.[7] The Biodiversity Management Committee is limited to establishing biodiversity registrations to record relevant expertise and bioengineering.

Judicial Precedents

In the case of the *"Indian Council for Enviro Legal Action v. Union of India"*[8] (1996), the Supreme Court of India determined that factories' chemicals were responsible for the most

[3] Biodiversity loss is hurting our ability to combat pandemics | World Economic Forum, https://www.weforum.org/agenda/2020/03/biodiversity-loss-is-hurting-our-ability-to-prepare-for-pandemics/ (last visited Feb 13, 2023).
[4] Moreno Di Marco et al., *Opinion: Sustainable development must account for pandemic risk*, 117 PROC NATL ACAD SCI U S A 3888 (2020).
[5] A1981-14.pdf, https://legislative.gov.in/sites/default/files/A1981-14.pdf (last visited Feb 14, 2023).
[6] Kanchi Kohli and Manju Menon, 'Environmental Regulation in India' (2015) 50(50) Economic & Political Weekly 20, 21
[7] in-nbsap-other-en.pdf, https://www.cbd.int/doc/world/in/in-nbsap-other-en.pdf (last visited Feb 13, 2023).
[8] Indian Council For Enviro-Legal ... vs Union Of India And Ors.Etc on 13 February, 1996, https://indiankanoon.org/doc/1818014/ (last visited Jun 26, 2023).

serious situation in Bichhri, the village in Udaipur District. Such facilities' unmitigated hazardous effluent poisoned groundwater, emitting pollutants into the soil and rendering it unfit for agriculture. The Court referred to *"Sections 3 and 5 of the Environment Protection Act of 1986"* or urged the Central Government to isolate chemical businesses from other sectors and meticulously supervise operations for possible contamination. The Court also proposed the establishment of environmental tribunals to give justice and ecologically responsible alternatives to aggrieved parties.

The Supreme Court of India gave directives regarding *"MC Mehta vs. Union of India (1988)"*[9] for the leather industry on the shores of the Ganga in Kanpur. The *"Environment (Protection) Act of 1986 and the Water (Prevention and Control of Pollution) Act of 1974"* also suggested as the river's major duty for preserving the pristine condition of the Ganga and its adjacent territories lay with Nagar Mahapalika and Municipal Boards. Throughout this instance, the complainant alleged that the tanning facilities generated public annoyance and threatened the natural world. The Supreme Court suggested the proper authorities avoid additional water contamination. Kanpur Nagar Mahapalika should enact suitable bylaws to avoid Ganga river pollution. The initial action is to expand the sewage capacity in Kanpur's labour colonies. The Supreme Court ordered that the practice of tossing corpses and semi-burnt bodies into the Ganga be discontinued. Industries must adapt to trade effluent treatment or risk having their licenses cancelled. The Central Government should require environmental studies at colleges and universities to develop ecological consciousness.

The "*Bio-Diversity Act 2000 and Bio-Diversity Rules 2004"* were not obeyed in the strictest sense in *"Chandra Bhal Singh v. Union of India &Ors."*[10] The Court discovered that Biodiversity Management Committees and Peoples Biodiversity Registers needed to keep current and up to date, leaving residents in the region illiterate in prospective harvesting constraints. The committee ordered all states to have regular monthly meetings and levied a 10-lakh rupee monthly penalty for noncompliance beginning on February 1, 2020.

"Shailesh Singh v. Hotel Holiday Regency, Moradabad, and Others" [11] The issue is the unlawful removal of underground water and its polluted condition due to natural resources'

[9] M.C. Mehta vs Union Of India & Ors on 12 January, 1988, https://indiankanoon.org/doc/59060/ (last visited Jun 26, 2023).
[10] The Jharkhand Biodiversity Board vs Chandra Bhal Singh on 28 October, 2020, https://indiankanoon.org/doc/165322084/ (last visited Jun 26, 2023).
[11] Shallesh Singh vs Hotel Holiday Regency on 31 August, 2016, https://indiankanoon.org/doc/195671138/ (last visited Jun 26, 2023).

excessive use. The Tribunal pointed out that India consumes more than 25% of the world's accessible groundwater. Overexploitation is increasing the depletion of subsurface water, leading to increased soil salinity and triggering water shortage in locations with insufficient surface water, such as areas suffering from drought. It also has an impact on river E-flow. The Tribunal asked the "Ministry of Environment and Climate Change to establish a panel of experts to investigate the procedures needed to avoid groundwater depletion, develop a system for tracking to prevent illegal mining of groundwater, and monitor the exploitation of groundwater circumstances."

The substantive point of legality facing the Tribunal in *" Central Pollution Control Board v. State of Andaman and Nicobar &Ors."*[12] It concerned the appropriate application of the Plastic Waste Management Rules, 2016. The Tribunal ordered a structure and instructed the MoEF&CC to provide a report on it. It also instructed the CPCB to produce a report on its compensation scheme. It urged the government to control unregistered plastic producers and recycling units to halt production and plastic bags of composition 50 microns or less to be stocked/manufactured/sold/consumed. It also instructs governments not to burn plastic garbage when it's open. Failing that, they must file a compliance report or incur a fine of Rs. 1 lakh.

Biosafety in India

Genetic engineering (GM) has become an issue of contention worldwide, with supporters and detractors claiming it may boost yield, grow crops in salty soils, and offer pest and bug protection. The most convincing case for GM crops is that they can improve outcomes significantly, supported by mounting research. In some countries, growers see up to a thirty percent rise in output. GM foods are also suitable for places with high temperatures and droughts, which is significant for nations struggling with land scarcity and low crop yields. However, GM technology faced particularly strong criticism worldwide, including worries regarding potential adverse effects on persons and ecosystems.

Regulations for Biosafety

For the assessment and authorization of GM technology, the Indian biotechnology regulation framework comprises several ministries and organizations. The *"EP Act is the main source law used in India in regulating biosafety, based on sections 6 and 18"* laying the groundwork

[12] Central Pollution Control Board v. State Of Andaman & Nicobar And Others, National Green Tribunal, Judgment, Law, casemine.com, HTTPS://WWW.CASEMINE.COM, https://www.casemine.com/judgement/in/5dcf3b3346571b7a2b3ade2e (last visited Jun 26, 2023).

for developing biosafety guidelines. However, the regulatory structure could be more optimal since it needs more public engagement and input from social scientists and non-governmental organizations. The grouping of key regulating organizations, the *"Review Committee on Genetic Management (RCGM)" and the "Genetic Engineering Appraisal Committee (GEAC)"* need to be revised in social scientists and professional nonprofit organizations adept at grasping the complexity and making essential contributions. The *"Hazardous Microorganisms Rules, 1989"*, have no opportunity for public participation, resulting in a trust imbalance between the government and the people.

In addition, the requirements fail to incorporate prior consent that is informed, an essential element that makes up the *"Cartagena Protocol"*. The biosafety regulatory framework's organizational framework has been criticized, with the division of duty between RCGM and GEAC remaining a subject of contention. The Rules provide State Governments enormous discretion in establishing state and district-level committees, indicating an important area for improvement in the inquiry method carried out by these regulatory organizations. This failure breaches the state's obligation to risk management under "Article 16 of the Cartagena Protocol." The "Food Safety and Standards Organisation of India (FSSAI)," the primary organization in charge of commercializing genetically modified (GM) and processed foods, requires more powerful equipment as well as research assistance for food science and risk assessment. Despite protests, the "FSSAI" has not enacted genuine legislation governing GM food labelling.

Precautionary Principle-Overview

The precautionary principle is concerned with the foreseeability of environmental harm. As a result of this injury, preventative measures are taken to avoid dangerous conduct. It covers both actual threats and prospective damage.[13] Such a theory gets implemented in many environmental devices. It might be seen as the old maxim that being cautious rather than disappointed is safer. According to *"Agenda 21, the necessity to safeguard the environment by deploying the precautionary principle is paramount, and it is the government's responsibility to employ it to the best of its ability." We should take "cost-effective remedies instead of creating excuses when there is no scientific certainty and irrevocable hazards. Prevention is utilized when danger is deliberately analyzed, managed, and communicated."* Scientific judgment may be unpredictable, which decision-makers must assess in terms of logic. It may

[13] H. Sterling Burnett, *Understanding the Precautionary Principle and its Threat to Human Welfare*, 26 SOCIAL PHILOSOPHY AND POLICY 378 (2009).

decide the degree of permissibility by looking at numerous factors, including scientific methodology evaluation. Evaluation, in addition to the geopolitical aspect, involves its concept's social favourability rating. When examining the precautionary principle from a social-political standpoint, it is possible to argue that advanced technologies are inadequate, and the level of danger entailed remains high.[14] Environmental, health, and economic elements all influence the risk rate. Reducing environmental destruction might incur significant capital expenditures, like remedial expenses and reputational damage. While we engage in practices that degrade the environment, there is no long-term sustainability; alternatively, we should do long-term development and research. It should make it possible for lesser economic exposure & better environmental effectiveness. Insurers should look for organizations that enhance ecological sustainability when investing. It must perform studies and research to create more sustainable products to help humanity in the foreseeable future.

A. Explanation of Precautionary Principle

According to "*Art. 15 of Rio Declaration 1992"*, It argues that to conserve the environment. Each state must use the concept to the greatest of its ability. When there is a risk of irreparable and significant damage, an absence of complete scientific evidence should not be used to delay preventative measures.

B. Precautionary Principle and Indian Law

The Indian judiciary thoroughly endorses the Precautionary Principle. In its decision in "*Vellore Citizens Welfare Forum v UOI"*[15], the Court said sustainable development is an urgent imperative. The Court emphasized the need to agree between financial development and environmental conservation. The Court disregarded the conventional wisdom that environment and development are diametrically incompatible. The Court also examined the evolution of sustainable growth at a global scale. The Court cited the *"Stockholm Declaration of 1972, Caring for the Earth, 1991, the Earth Summit, which was and the Rio Declaration of 1992"*, ruling that the Precautionary Principle and the Polluter Pays Principle are required elements of Sustainable Development.

Conceptual Framework Relevance in Covid-19

The concept of uncertainty has now become entrenched with the onset of growth and

[14] Mike Feintuck, *Precautionary Maybe, but What's the Principle? The Precautionary Principle, the Regulation of Risk, and the Public Domain*, 32 JOURNAL OF LAW AND SOCIETY 371 (2005).
[15] AIR 1996 SC 2715.

expansion, and it could claim that danger should praise. Without such a perspective, there would be fewer chances to make wise choices and no way ahead. Contrastingly, there's the burden of ambiguity, and the danger of far more damage remains. The only way to prevent this is to employ caution when analyzing such actions. The effective strategy is to establish the right balance between risks and precautions. Research illustrates further how the precautionary principle and its constituents might establish an equilibrium situation. When such a concept is effectively used, it does not hinder the outcome. Additionally, the strategy further ensures that risk variables consider, which leads to increased productivity. International law exists to mitigate future violations, which allude to industrial success, with a wider basis than environmental regulation.

The conference in Stockholm once more provided a structure for embracing multiple values which have since become prevalent in the global environmental sector. According to the precautionary principle, every construction site must halt and limit if it causes significant long-term ecological harm. It is critical to establish whether or not the project development is sustainable. The Corona Virus pandemic exposed inadequacies in national and international systems, showing the significance of preparing systems to deal with worldwide issues.

Impact of Covid-19 on the Environment

The COVID-19 pandemic contributed immensely to human life and the global economy, with the virus's death toll haunting survivors. The influenza virus's lethality and continual changes offer a serious challenge to the medical community and the government. Various methods, including partial or total lockdowns, have influenced the global reaction to the pandemic, substantially boosting air and water quality. The Central Pollution Control Board (CPCB) reported that during the lockdown, the levels of SO2, NO2, and PM emissions in 115 Indian cities were reduced significantly. The air quality index (AQI) of around 78% of towns was satisfactory or 'good,' compared to 44% of cities before the lockdown. The lockdown also dramatically decreased municipal solid waste (MSW) generation, with Chennai's daily MSW generation decreasing by 28%, Nagpur's by 25%, and Pune's daily MSW volume reducing by 29%. However, it is critical to address COVID-19's detrimental ecological impacts. The coronavirus pandemic killed thousands of people not just in India but also across the world. During the pandemic's peak, the entire global healthcare system collapsed, and the trash generated in treating COVID-19 is extremely infectious. Many individuals in India dropped sick corpses in rivers or buried them in river sand, making bio-medical waste disposal a major issue.

The National Green Tribunal (NGT) has been instrumental in resolving the matter. It addressed an issue of efficient adherence with the *"Bio-Medical Waste Rules, 2016 (BMW Rules)"* for BMW management that resulted from COVID-19 illness management. The NGT determined that remedial action was required to protect public health and the environment, given the probable negative impact of transmissible trash on health workers, professionals, and other concerned employees.[16]

The NGT issued guidelines on various issues related to COVID-19 in its order dated 20-07-2020, such as more isolation hospitals, proper management of specimens collected from COVID-19 patients, appropriate administration of home-care facilities or quarantines camps/homes, responsibilities of urban local bodies in regards to gathering and disposing of bio-medical waste, and how to handle wastewater.

Conclusion

The National Green Tribunal (NGT) has played an important role in resolving environmental disputes in India, particularly on river cleaning and pollution problems involving the Ganga and Yamuna. The Tribunal has imposed substantial penalties and environmental compensations on public bodies for failing to perform their statutory duties and on corporations for causing environmental and ecological damage. To strengthen the administration of justice, the NGT has additionally established committees of experts from academic institutions throughout India. Research shows an unambiguous connection between Covid-19 and air pollution, with particulate matter from sources such as smokestacks and fire accounting for 15% of global Covid-19 deaths. However, in the face of High Court authorities, the NGT's competence tends to be weakened, which renders it less productive. The recent NGT gas spill in Vizag, Andhra Pradesh, claimed hundreds of lives and harmed the environment. The Supreme Court of India refused to intervene in NGT decisions, emphasizing the Tribunal's exemplary performance in providing justice to the "have-nots." The NGT's activities highlight the power of applying preventive principles, and polluter pays principles to any location, date, or time. The National Green Tribunal has made tremendous progress in balancing economic and ecological concerns.

[16] In Re: Scientific Disposal of Bio-Medical Waste arising out of COVID-19 treatment- Compliance of BMW Rules, 2016", Original Application No. 72/2020.

GDPR AND HEALTHCARE: BALANCING DATA PRIVACY AND ACCESS TO MEDICAL INFORMATION

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Abstract

This paper analyses the effect of GDPR on healthcare. The information provided by patients for their healthcare database is a personal information and cannot be made public under normal conditions. However, the regulations regarding the same have not been developed effectively and need a lot of modification. This paper analyses the same challenge. It tries to balance data privacy and data access in a way that artificial intelligence (AI) is allowed to develop in the health care domain while taking care that a patient's data is not exposed to the public. With reference to the General Data Protection Regulation (GDPR) in Europe, it is all the more necessary to consider the ethical concerns of data governance. The paper emphasises the need for an inclusive approach that considers both the benefits of AI and the protection of data privacy. It talks about the necessity of robust government data frameworks, stringent privacy protections, consent procedures, and data anonymization techniques. The rules and regulations applied in this domain need to be extremely clear for collection, storage, and processing of healthcare data. This is necessary to avoid any potential breach of data. This paper compares the various data governance strategies employed by European countries. This includes Germany's cautious approach that prioritises patient consent and Finland's more liberal approach to fostering big data legislation. It explains the difficulty that arises in both such systems while explaining the need for standardized and regulatory framework of healthcare data. The research also discusses privacy issues, the trade-off between data sharing and excessive data protection, and the challenges presented by biases in AI development. It suggests the development of efficient data governance frameworks and regulatory mechanisms to address the privacy issues. It emphasises on equitable resource allocation, evidence-based healthcare practises, and bridging the digital gap.

Keywords: GDPR, Healthcare, Artificial Intelligence (AI), Privacy

Introduction

Healthcare has a lot of prospects thanks to the expansion of digital health data and technological advancements in artificial intelligence (AI). AI has the ability to support many different

procedures, including administration, clinical research, personalised medicine, diagnosis, and drug discovery.[1] Large amounts of data must be accessed in order to employ AI in healthcare, which creates privacy issues. Numerous nations, especially those in the European Union (EU), have made significant investments in AI efforts, allocating budgets and increasing funding for AI-related healthcare projects.[2] While India is following the steps of GDPR through its Digital Personal Data Protection Bill, 2022, it is yet to be enacted. As of now, GDPR is applicable mostly to the EU nations.

In the context of healthcare AI, the intersection of advancing AI and safeguarding data privacy presents a complex challenge that requires careful consideration. On one hand, the expansion of AI in healthcare holds immense potential for improving patient outcomes, accelerating medical research, and revolutionizing healthcare delivery. AI-assisted systems can analyze vast amounts of health data along with recognizing patterns which can subsequently help enhance diagnosis, treatment, and personalized medicine. However, this reliance on data access raises significant concerns regarding privacy, security, and the ethical use of personal information.

The proposed Artificial Intelligence Act and Guidelines for Trustworthy AI[3] are two ethical and legal tools the European Commission has developed to direct the ethical design of AI systems.[4]

But there is a conflict between advancing AI and safeguarding data privacy. Striking a balance between the benefits of AI and the protection of data privacy necessitates both, the consideration of rights of individuals, along with societal benefits of advancing healthcare. It is crucial to establish robust data governance frameworks that enforce stringent privacy measures, consent mechanisms, and data anonymization techniques. Clear guidelines and regulations should be implemented that ensure the collection, storage and processing of data in a transparent way, with strong safeguards against unauthorized access, breaches, or misuse.

The need for diversified and high-quality healthcare data is emphasised in the proposed EU AI Act.[5] It takes careful planning and resource allocation to strike a balance between the privacy

[1] N.J. Schork, N.J., *Precision medicine in Cancer therapy*, 265-283 (2019); N. Fleming, *How artificial intelligence is changing drug discovery*. NATURE, 55(2018);

[2] KPMG, https://kpmg.com/xx/en/home/insights/2018/04/venture-pulse-q1-18-global-analysis-of-venture-funding.html (last visited Jun. 28, 2023).

[3] N.A. Smuha, N.A., *The EU approach to ethics guidelines for trustworthy artificial intelligence*, COMPUTER LAW REVIEW INTERNATIONAL, 97-106 (2019).

[4] B. Custers et al., *EU personal data protection in policy and practice* (2019).

[5] S. McLennan et al., *Practices and attitudes of Bavarian stakeholders regarding the secondary use of health data for research purposes during the COVID-19 pandemic: Qualitative Interview Study* (2022).

threats posed by AI and its beneficial purposes.

GDPR Trends in different countries with respect to patient data

Patient data is necessary for the creation and evaluation of AI models in applications connected to health. The GDPR, which aims to secure personal information and standardise data protection practises, is the primary legal foundation for data protection in Europe.[6] The varying approaches to data governance in European countries highlight the ongoing debate and challenges surrounding the balance between data privacy and advancing AI in healthcare. The GDPR does, however, permit Member States to enact derogations for public interest, academic, historical, or statistical purposes, resulting in a variety of data governance strategies across Europe.[7] Germany's emphasis on patient consent and strict data privacy rules demonstrates a cautious approach to protect individuals' personal information, which can limit the use of data for research. While Germany has a more thorough approach to control, emphasising patient consent for data processing[8], countries like Finland take a more liberal approach, promoting big data and open data policies to facilitate research and public access to health information.[9] Big data and open data policies have been adopted by Finland, which also prioritises public education and offers online services for citizens to access health information.[10] While Finland's approach may foster development of new technologies and resource sharing, it also raises concerns about potential privacy risks and the need for robust safeguards. Germany, on the other hand, places a higher priority on patient consent and has rigorous data privacy rules, which researchers find to be confusing and limit the use of the research exemption.[11] In Germany, secondary health data research often requires either anonymization or consent. The differences in strategies across Europe highlight the complexity of navigating the ethical and legal landscape surrounding healthcare data and the ongoing need for harmonization and clarity to ensure responsible and beneficial use of AI in healthcare.

The difficulty in achieving a balance between data privacy and the advancement of AI in healthcare is highlighted by the complexity of data governance plans in Europe. To enable responsible data use, facilitate international partnerships, and realise the full potential of AI in

[6] M. Shabani & P. Borry, *Rules for processing genetic data for research purposes in view of the new EU General Data Protection Regulation*, EJHG 149-156 (2017).
[7] M.A. Bak et al., *Stakeholders' perspectives on the post-mortem use of genetic and health-related data for research: a systematic review*, EJHG 403-416 (2020).
[8] F. Molnár-Gábor et al., *Harmonization after the GDPR*, 84 SICB 271-283 (2018).
[9] T. Vrijenhoek et al., *Clinical genetics in transition*, JCG 12, 277-290 (2021).
[10] V. Jormanainen et al., *Half of the Finnish population accessed their own data*, FJHW 298-310.
[11] Supra at 2.

enhancing healthcare outcomes, the ethical and legal landscape must be harmonised and made clear.

Making the most of Artificial Intelligence's potential in healthcare

There are trade-offs between data access and privacy due to the various methods to data governance in healthcare. These difficulties are a result of varying interpretations of GDPR requirements and different perspectives on juggling principles like solidarity and informational self-determination.[12] Making a decision between data access and privacy poses moral questions and may have repercussions for bias in AI development and privacy rights. Public opposition to liberal methods to data governance arises from worries about privacy, bias, and discrimination. Consent or anonymization are prioritised in restrictive techniques, although they might result in administrative challenges, biases in selection, and a lack of representativeness in the data. Full anonymization is becoming more and more elusive, and it might not even ensure people's privacy or the effectiveness of AI models.[13] There have been questions expressed regarding the impact on data sharing and AI innovation as well as the potential overprotection of personal data.[14] Due to differing interpretations of data legislation, disregarding the significance of data access could lead to lost investments in the development of AI public instruction.

The complex ethical and practical issues involved in healthcare data governance are reflected in the trade-offs between data access and privacy. The differing interpretations of the GDPR standards and the opposing principles at stake make it difficult to strike the correct balance. The decision-making process entails balancing privacy, bias, and discrimination concerns against the requirement for data access to support AI advancement. While consent or anonymization are prioritised by restricted procedures, these methods can also cause administrative difficulties, biases in selection, and restrictions in the representativeness of the data. Furthermore, obtaining complete anonymization is becoming more and more challenging, and it could not provide privacy or the best performance of AI models. Questions concerning the influence on data sharing, AI innovation, and the possible danger of overprotecting personal data are also raised by the discussions surrounding data governance. Ignoring the value of data access could lead to lost chances for public health AI developments.

[12] A. Podgurski, *Balancing privacy, autonomy, and scientific needs in electronic health records research*, SMUL 85 (2012).
[13] M. Mostert et al., *Challenges to the consent or anonymise approach*, EJHG 956-960 (2016).
[14] M.C. Ploem et al., *Proposed EU data protection regulation is a threat to medical research*, BMJ 346, (2013).

A balanced and sophisticated strategy is needed to address the difficulties and trade-offs between data access and privacy in healthcare data governance. Engaging in open and transparent talks among stakeholders, such as politicians, researchers, healthcare professionals, and the general public, is necessary to strike the correct balance.

Clear rules and procedures should be established in order to preserve people's privacy while simultaneously enabling responsible and secure data exchange for research and AI development. This can be done by putting in place privacy-preserving technology, like secure data exchange platforms, encryption methods, and differential privacy techniques, which permit the analysis of aggregate data while protecting personal data.

It takes a complete approach that takes into account ethical issues, regulatory frameworks, technological advancements, and cultural expectations to correctly balance data access and privacy. We can traverse the complicated environment of data governance in healthcare, stimulate AI innovation, and make sure that the advantages of cutting-edge technology are realised while preserving privacy rights and addressing potential biases by integrating a variety of viewpoints and encouraging interdisciplinary discourse.

Is the extravagant spending on data privacy worth it?

Due to rigorous and conflicting data governance policies in many nations, Europe's potential for healthcare AI is constrained.[15] Because of complicated data protection regulations, a lack of staff, and poor data governance frameworks, national public health institutions only occasionally deploy AI. Researchers want increased access to patient data in a secure setting while yet respecting privacy concerns in order to fully utilise the benefits of AI in healthcare.

To promote health AI innovation while protecting the privacy of patient data, policymakers must find the proper balance. Given the limited nature of public resources, it is unethical to prioritise the development of AI-driven solutions over other healthcare goals or data infrastructure development. Proposed rules, like the EU AI act, may restrict AI applications in healthcare if widespread access to pertinent healthcare data is not available. This would complicate issues even further.

Alongside the creation of AI tools, solid data governance and management frameworks like the European Health Data Space (EHDS) and interoperability standards for medical records should be built to solve these concerns. Prior to making significant investments in AI-driven

[15] R. Haneef et al., *Innovative use of data sources: A Cross-sectional study of Data Linkage Practices across European Countries,* (2020).

healthcare technology, it is essential to invest in addressing data governance issues to prevent resource wastage.[16]

Additionally, focusing only on health AI could deprioritize approaches that don't use AI but have a track record of success. Aside from investing in AI, authorities should think about bolstering evidence-based approaches and tackling fundamental barriers to care given the unknown usefulness of AI treatments and their limited real-world impact.[17] This strategy recognises the necessity of combining human expertise and AI in healthcare.

Allocating resources fairly for health AI is a difficult undertaking that calls for thorough analysis of the advantages, constraints, and competing agendas. To fully realise the potential of AI developed on the healthcare system in Europe while respecting privacy and guaranteeing the efficiency of the entire healthcare system, it is necessary to balance data governance and resource allocation.[18]

Collaboration and cross-border knowledge sharing are essential for achieving the right balance in data governance and resource allocation for healthcare AI. European countries should cooperate to harmonise data privacy laws, simplify data exchange procedures, and establish uniform guidelines for moral AI development in the healthcare industry. This can be done through sharing best practises between nations, conducting collaborative research projects, and collaborating internationally.

Additionally, it is crucial to involve the general public in talks around healthcare AI. Concerns about data security, privacy, and the possible impact on healthcare results must be addressed. Policymakers may make sure that the creation and application of AI in healthcare are in line with social values and priorities by including patients, healthcare professionals, and advocacy groups.

Additionally, funds should be allocated to building the technical infrastructure required to facilitate the ethical application of AI in healthcare. Strong data management and storage systems, safe data exchange platforms, and continual education and training for healthcare personnel are all part of this.

The creation and application of AI-driven solutions can also be hastened by encouraging

[16] Supra at 7.
[17] de Inversiones Innovation, B.B.E. and Advisory, *Artificial intelligence, blockchain and the future of Europe*, EIB (2021).
[18] A. D'Amour et al., *Underspecification presents challenges for credibility in modern machine learning,* TJMLR 10237-10297 (2022).

collaboration across academic, industrial, and healthcare institutions. Public-private partnerships can aid in bridging the gap between research and practical implementations, ensuring that AI technologies are approved, scaleable, and adapted to the unique requirements of healthcare systems.

Europe can realise the full potential of healthcare AI while preserving privacy rights, providing fair access to healthcare, and improving the efficacy and efficiency of healthcare systems by adopting a comprehensive approach that takes into account ethical, legal, social, and technical issues. Europe will be able to handle the challenges of data governance and resource allocation in the age of healthcare AI through these cooperative efforts and a dedication to responsible innovation.

Ethical considerations of data access in Health sector

The research on AI ethics usually overlooks the trade-offs between resource allocation and resource access as well as privacy in lieu of fairness and bias issues. Existing regulations, like those set forth by the EC, have a tendency to limit the ethical discussion to particular AI uses while ignoring more general moral conundrums.[19] Ethics debates concerning AI should be preceded by a larger conversation on priorities and public investments to assure accountability. Steps that involve identifying health needs and prioritising them, should receive more attention in the creation of health interventions.[20] This strategy is in accordance with the suggestions made by the World Economic Forum, which emphasise the value of examining strengths, weaknesses, opportunities, and dangers when developing national AI plans.[21] In the end, decisions about how to allocate resources and use technology entail political debates and trade-offs between conflicting values.

According to Norman Daniels, the emphasis should be on fair procedures and procedural values in the lack of agreement on substantive principles.[22] A useful approach for debating resource allocation in the context of digital health and ethical AI development is the Accountability for Reasonableness (A4R) concept, which highlights important requirements for justifiable decision-making in public health.[23] To ensure justice, decision-makers in EU nations should discuss the trade-offs between data privacy and the benefits of AI with a diverse set of stakeholders, including researchers, data subjects, clinicians, and others. This broad

[19] Supra at 4.
[20] M.A. Bak, *Computing fairness: ethics of modeling and simulation in public health,* SIMULATION 98 (2022).
[21] L. Madzou, & P. Shukla, *A framework for developing a national Artificial Intelligence strategy*, WEF(2019).
[22] N. Daniels & J. Sabin, *Limits to health care*, PPA 303 (1997).
[23] P.H. Wong, *Democratizing algorithmic fairness*, P&T, 33, 225-244 (2020).

engagement, or "data democracy," strengthens public confidence and gives affected groups more influence.[24] Ethicists can help by providing insight into difficult moral dilemmas. For educated decision-making, clear understanding of the available funds and conflicting needs is essential. The morality of judgements regarding data privacy and access techniques ultimately depends on how well they adhere to procedurally fair, accountable, and transparent requirements.[25]

Interdisciplinary cooperation is essential to promote a thorough knowledge of the complicated challenges surrounding data protection, access, and resource allocation in AI ethics. Together, ethicists, legal professionals, lawmakers, healthcare workers, technologists, and members of the public should have open and inclusive debates.

It is crucial to take these conversations into account on a global scale as well. Collaboration between nations can help to set worldwide standards for ethical AI development in healthcare, identify shared values, eliminate discrepancies in resource allocation, and identify shared values. By leveraging the collective expertise and diverse perspectives from different regions, we can avoid a fragmented approach to AI ethics and work towards a more harmonized and globally applicable framework.

In addition, continual research and empirical investigations are required to improve ethical standards and influence governmental decisions. This entails analysing the societal gains and hazards connected with AI deployment in the healthcare industry, as well as the influence of AI interventions on various demographic groups, the efficacy of data governance systems, and more.

In the end, it takes a thorough awareness of the available resources and the competing needs within society to make informed decisions about data privacy, data access, and technology use. We cannot ensure that the development and application of AI in healthcare are consistent with the concepts of justice and serve the best interests of all concerned parties without adopting a transparent and accountable strategy that is based on fair procedures and procedural values.

Conclusion

When developing and using AI in healthcare, trade-offs must be made between protecting personal data and optimising the capabilities of the technology. To solve this, nations should

[24] M. Ienca et al., *Considerations for ethics review of big data health research*, 13 PLoS ONE (2018).
[25] S. McLennan et al., S., *The challenge of local consent requirements for global critical care databases*, 45 INTENSIVE CARE MEDICINE, 246-248 (2019).

develop standardised digital health programmes that embody their core values. In order for countries to convey their priorities and strike a balance between data access and privacy, public discussion is crucial. The chosen balance should manifest in European and national AI resource allocation.

It is critical to address the issue of the digital divide and discrepancies in access to technology in order to ensure the responsible and equitable allocation of resources for healthcare AI in Europe. Although artificial intelligence (AI) has the power to revolutionize healthcare, it is crucial to take accessibility and inclusion into account, especially for vulnerable populations or areas with low resources.

By encouraging digital literacy programmes and investing in infrastructure, especially in marginalised communities, efforts should be made to close the digital divide. Policymakers may ensure that the advantages of healthcare AI are not concentrated in select wealthy areas but are available to all people, regardless of their socioeconomic situation, by ensuring equal access to technology and promoting digital inclusion.

Furthermore, to achieve the ideal balance between AI and human competence in healthcare, an interdisciplinary approach is required. Even though AI has the potential to be innovative and efficient, healthcare personnel should still play a crucial role.

AI should be incorporated as an enhancement to human judgement, speeding up decision-making and increasing patient outcomes. Policymakers can ensure that funds are allocated to assist both AI developments and the development of a trained healthcare staff by recognising the significance of the human element in healthcare.

PRESERVING FISCAL AUTONOMY IN THE INDIAN SOCIAL POLICY LANDSCAPE: ADDRESSING CENTRALIZATION AND INTER-GOVERNMENTAL STRUCTURES

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Abstract

This article explores the challenges posed by centralization in the social policy landscape and its impact on fiscal federalism. The proliferated use of Centrally Sponsored Schemes (CSS) has taken up a significant portion of the Indian social policy landscape; this has effectively allowed the central government to frame policy on matters in the State List. This has had considerable reverberations on the state's fiscal capacity as these schemes are co-funded. Fiscal autonomy is crucial for state governments as it allows them to design and implement social policies that are responsive to local needs and priorities, which as research show, are more effective in delivering policy outcomes comparing to CSS. Drawing on various studies on the workings of CSS, the article points out certain structural elements that hinder the effective working of these policies. Moreover, it is argued that the uniform application of a top-down scheme in a country like India is a sub-optimal policy solution to India's social problems. This is fundamentally because Indian states are extremely divergent as the data on health, education and economy shows; this implies that every state has different policy requirements and one single scheme framed for the entire nation by the Central Government cannot possibly accommodate the unique challenges and specific needs of all the states. Examining various international examples, the article argues for altering inter-governmental structures for creating a space for the contestation and negotiation of top-down and bottom-up policy priorities; where bottom-up inputs complement top-down planning. The Article suggests that, as successfully done by various countries, this can be achieved by introducing bilateral agreements or by creating an inter-governmental forum. Such a mechanism can strike a balance between prioritising national goals and mainlining sub-national autonomy in policymaking for optimal outcomes.

Keywords: Fiscal federalism, fiscal autonomy, centrally sponsored schemes, social policy, public policy.

Introduction

Article 1 of the Indian Constitution defines India as a 'union of states' and as a federal nation, India comprises of diverse states with varying socio-economic needs and priorities. Maintaining a balance between central control and state autonomy is essential for fostering equitable development and effective governance. Fiscal federalism plays a crucial role in shaping the governance and policy landscape of a country. The distribution of fiscal powers and decision-making authority between the central government and subnational governments has significant implications for the effectiveness, responsiveness, and inclusivity of social policies

Fiscal autonomy is a critical issue in modern governance as it concerned with ability of a state to generate and manage its own revenue, without undue interference. This autonomy is essential for states to effectively address the unique needs and challenges of their citizens, and to promote economic growth and development. However, there are imbalances on a vertical and horizontal level that has strong implication on state fiscal autonomy which undermines accountability, erode the principles of federalism, and hinder effective governance and equitable development.

One such mechanism that has serious implications for the fiscal autonomy of states are the Centrally Sponsored Schemes (CSS). These schemes are made by the central government, and the state governments execute them in their states; they are financially supported by both the central and state governments. While these schemes may provide additional resources to states, they also impose certain restrictions and create limitations on their fiscal autonomy.

Centrally sponsored schemes take up a big chunk of the policy landscape; this top-down uniform application of social policy has serious implications for the effective delivery and standard of social policy in the country. This article aims to contribute to the ongoing discourse on achieving an equitable and responsive social policy framework that truly reflects the diverse needs of a nation's citizens.

Constitutional framework

Article 280 of the Constitution of India provides for the constitution of a finance commission every five years to frame directions regarding the allocation of the entirety of taxes between the union and the states (Vertical devolution) and also among states (Horizontal devolution)

As the Indian Constitution provides for a federal structure of governance, the legislative powers of the central and the state government are demarked into three lists as per Article 246 read

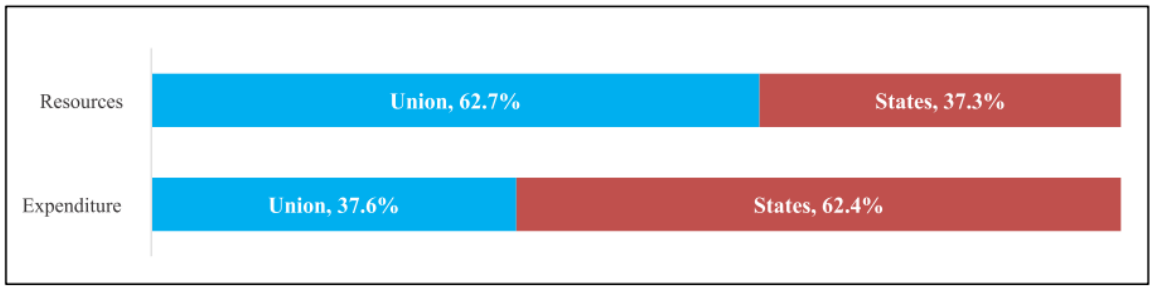
with the Seventh Schedule: Union, State and Concurrent list[92]. The union list concerns with matters of national importance such as foreign affairs, war and peace, extradition, defence and so on. Meanwhile the state list contains subjects that are best suited to be addressed by the state level of government like public order, public health, agriculture, water and so on.

These financial provisions must be read in the wider context of India's federal structure. As several scholars have noted, India is an "asymmetric federation,"[93] where the Union exercises much wider powers than the States. This extends to taxation powers as well, important heads such as income tax, excise duties and corporation tax are in the domain of the Union.

To effectively exercise its authority, a government must have adequate financial resources. The Seventh Schedule reveals that while the central government has greater revenue-generating powers, state governments are responsible for significant expenditures related to public order, healthcare, agriculture and so on.

Vertical asymmetry

INDIA'S VERTICAL FISCAL GAP (As on Financial Year 2019-20)



(Figures from the Fifteenth Finance Commission Report[94])

As illustrated by this chart, while the Union government receives approximately two-thirds of the total tax revenue generated, they are only accountable for slightly over one-third of all expenditures. Conversely, the state governments bear the responsibility for nearly two-thirds of all expenditures while receiving only a third of the revenue

The Constitution endeavours to tackle this uneven distribution of financial resources between the central and state governments by establishing provisions for intergovernmental transfers through specific constitutional provisions. These intergovernmental transfers are provided for

[92] INDIA CONST. art. 246
[93] Sujit Choudhry et al., OXFORD HANDBOOK OF THE INDIAN CONSTITUTION (2016)
[94] XV Finance Commission. 'Finance Commission in Covid Times Report for 2021-26' (2020)

in part XII of the Constitution.

1) Article 270 of the Constitution stipulates that all taxes collected by the Union (excluding those already assigned to the states) must be shared between the Union and the states. This includes any surcharges on taxes collected under Article 270(1). After the introduction of the Goods and Services Tax (GST), amendments were made to include the amounts collected under the head of GST in this revenue pool.[95]

Article 280 of the Indian Constitution provides for a Finance Commission to be appointed by the President every five years to recommend the percentage of the devolution of taxes.[96] The finance commission is responsible for deciding how to distribute funds from a divisible pool to different states. This involves determining the percentage of the pool that should be assigned to each state (vertical distribution) and the percentage that should be allocated among the states (horizontal distribution)

2) Article 275 of the Constitution states that "Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants in aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States"[97]

Thereby this provision enables the parliament to provide grants in the form of aid in favour of a state, based on various parameters, including the states' need for assistance. The Finance Commission has discretion in determining the circumstances in which such grants should be given. These grants are not only used to deal with revenue deficits but also to upgrade administrative and social services, address any specific state need and augment expenditure deployed in the state.

An important objective of such recommendations made by the Finance Commission is to reduce vertical and horizontal fiscal imbalance between the centre and the state.

3) Article 282 empowers both the State and the Union government to "make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws"[98]

The most significant way in which this grant is exercised is the implementation of Centrally

[95] INDIA CONST. art. 270
[96] INDIA CONST. art. 280
[97] INDIA CONST. art. 275
[98] INDIA CONST. art. 282

Sponsored Schemes (CSS) by the Union Government which is sought to be implemented throughout the country. Notably Article 282 effectively gives the Union the power to frame policy for matters that fall under the state list as the provision enables grants to be made for any public purpose. Further, it is pertinent to note that comparatively, only a small proportion of its overall expenditure towards its primary functions, such as defense and foreign affairs[99]

Unlike the intergovernmental transfers made under Articles 270 and 275, transfers made under Article 282 are not subject to the formal purview of the Finance Commission. This provision has been heavily utilised by the Central government to implement centrally sponsored schemes.[100]

Centrally Sponsored Schemes

Centrally Sponsored Schemes (CSS) are developmental policies formulated by the Union government and executed by the state governments, with financial contributions from the State and the Union governments. They are essentially grants in the form of a policy with a specific purpose. These grants slide into state planning and expenditure, and facilitate the implementation of programs specifically designed by the central government to achieve national priorities

These schemes were initially formulated on 'basic national importance' with a limited number of schemes, they have proliferated enormously in each five-year plan in terms of the quantum as well as their share in the total public expenditure in the country.[101] The Fifteenth Finance Commission identified 131 CSS in place.[102]

The budgetary allocation for CSS has shot up by almost 90% from Rs. 2,31,900 crores in 2016-17 to Rs. 4,42,781 crores in 2022-23[103] and effectively takes up a significant segment of India's policy terrain.

CSS can be characterized as a top-down policy approach. In this framework, the central government holds the authority to design and implement the schemes, while the state governments are responsible for their execution at the local level. This implies that the

[99] R.S Nilakantan, South vs north: India's Great Divide (Juggernaut Books 2022)
[100] Venugopal Reddy & G.R Reddy, Indian fiscal federalism (Oxford University Press 2019)
[101] Subrat Das and Sona Mitra, Restructuring Centrally Sponsored Schemes: A Brief Note on the Recent Policy Measures, Centre for Budget and Governance Accountability (CBGA) India (2013), https://www.cbgaindia.org/working-paper/restructuring-centrally-sponsored-schemes-a-brief-note-on-the-recent-policy-measures/
[102] Junghun Kim & Sean Dougherty, Local Public Finance and capacity building in Asia (OECD Publishing 2021)
[103] Ministry of Finance, Union Budget 2022-2023, (Government of India 2022)

decision-making power predominantly rests with the central government, with the state governments playing a subordinate role in the implementation process.

Under the CSS model, the central government sets the objectives, guidelines, and conditions for the schemes. The states are expected to adhere to these guidelines in order to receive financial assistance provided by the central government. The conditions may include meeting specific targets, adopting certain policies, or complying with prescribed procedures.

This top-down nature of CSSs ensures uniformity and consistency in policy implementation across different states. This is a very sub-optimal policy solution to India's social problems because Indian states are very divergent, as the data on health, education and economy reveals. In health, the difference between the best and worst states is as wide as that between the OECD countries and sub-Saharan Africa. In education, it's as wide as that between middle-income and low-income countries. In terms of economic prospects, the better-off states are two to three times richer than the poorest[104]

Moreover, it is noteworthy that the central government exercises significant control over granular aspects of implementation leaving limited room for states and local governments to adapt the implementation according to their specific jurisdiction. Studies[105] have shown how this has rendered policies inefficient as each state possesses its own distinct challenges, priorities, and developmental requirements. By enforcing a uniform policy framework from the central level, the top-down model neglects the contextual nuances and specific needs of different states. This can lead to inefficient resource allocation and ineffective policy outcomes, as interventions may not be tailored to address the specific challenges faced by each state.

Therefore, this policy imposition by the Union government can limit state autonomy and take up their fiscal space as they have to put up a significant portion of the CSS grant thereby augmenting their fiscal burden.

Additionally, the discretionary nature of the transfers and the lack of transparency in their formulation have raised concerns[106] Specifically, there have been apprehensions regarding the insufficient consultation with states in the formulation of several CSS, which necessitate the adoption of expenditure patterns that do not align with their own priorities.

Over the years, the state government have demanded that CSS be rationalised in order to create

[104] R.S Nilakantan, South vs north: India's Great Divide (Juggernaut Books 2022)
[105] Jay Chaudhuri, Going to the operating room without a diagnostic—reforming centrally sponsored schemes, 9 India Review, 169–203 (2010)
[106] Supra note 3

more fiscal space for them to implement state policies. The Fifteenth Finance Commission has taken up this issue and based on their recommendations, the Union government has cut the quantum of CSS to 28 Umbrella schemes with 6 'Core of the Core', twenty 'Core' and 2 'Optional' schemes.[107] In most of these schemes the ratio of funds is 60:40 with the union pitching in more and 90:10 when it comes to North-Eastern states.

However so, it is important for the Union to determine national welfare priorities, to ensure that all States develop at similar rates and also helps in promoting national unity and integration. Union guidance on State-level policies may also ensure a degree of uniformity in benefits available to residents of different States and to provide some alignment on State priorities. For instance, one of the key objectives of Pradhan Mantri Jan Arogya Yojana (PM-JAY) is to make healthcare accessible throughout India.[108] Likewise, Mahatma Gandhi National Rural Employment Guarantee Act (MGNEREGA) is another landmark scheme that has helped promote rural development and reduce poverty by supplementing private employment in the rural Indian economy with public employment[109] Let us look at some of the specific systemic issues that have hindered the effective functioning of these schemes.

Parallel Authorities and red-tapeism

For the functioning and implementation of CSS, the Union government has had to set up several parallel institutions to ensure the execution and performance of these schemes. However, this has resulted in some unintended consequences as it essentially creates an additional stakeholder in the implementation process which has impeded in the smooth functioning of these policies.

A study analysing institutional architecture for the flow of public fund for the National Health Mission, which is the largest scheme in India's health sector, and constitutes about a third of all Government health expenditures in the country highlights the policy barriers that these parallel authorities cause in the execution of health budgets in India.[110]

The findings of this study reveal how the process of transferring funds from the State treasury to State Health Societies (SHS) in Bihar and Maharashtra is convoluted and time-consuming.

[107] Asit Ranjan Mishra, 15th finance commission recommendations: Centrally funded plans face the axe, Hindustan Times, Feb 03, 2021

[108] Vinod Paul, Ayushman Bharat Pradhan Mantri Jan Arogya yojana (AB PMJAY): Hope for millions and exciting new prospects for neuro-healthcare, 67 Neurology India , 1186 (2019)

[109] Parmod Kumar, MGNREGA: Employment, Wages and Migration in Rural India , 231–258 (Routledge India 2016)

[110] Mita Choudhury and Ranjan Kumar Mohanty, Utilisation, Fund Flows and Public Financial Management under the National Health Mission, Economic and Political Weekly (2019)

The study found that a minimum of 32 desks in Bihar and 25 desks in Maharashtra and 10 in Odisha. Under the National Health Mission, for the implementing agency to utilise the allocated funds under this scheme, they have to go through the institutional architecture composed of several units (at the state, district, block and lower-levels) [111]

This illustrates how the paperwork required for fund release must navigate through multiple hierarchical levels within the State administrative structure before the allocated funds can be disbursed to the State Health Society. The majority of the file movement occurs within the State administrative hierarchy, as the State Governments issue approval letters to release the funds to the SHS.[112]

Consequently, release of funds from the State Health Societies takes 5 months in states like Maharashtra and over 3 months in Bihar and Uttar Pradesh. Studies[113] have highlighted how these repercussions of delays at one level are often felt throughout the system, resulting in the funds reaching the final stage of disbursement only in the last quarter of the fiscal year.

This is crucial as ensuring the streamlining of fund flows under any CSS is indispensable to achieve the national priorities these schemes are implemented for. Several studies[114] [115] [116] analysing various schemes have highlighted policy faults regarding the flow of funds regarding CSS due the nature of top-down planning and complex institutional architecture.

State fiscal autonomy

The scaling up of CSS over the years have resulted in the ability of states in India to finance their current expenditures from their own revenues declining significantly. In 1955-56, states were able to finance about 69% of their current expenditures from their own revenues. However, this has decreased to less than 38% in 2019-20.[117] Meanwhile the budgetary allocation for CSS has shot up by almost 90% from Rs. 2,31,900 crores in 2016-17 to Rs. 4,42,781 crores in 2022-23.

[111] ibid
[112] ibid
[113] ibid
[114] K. Gayithri, District-level NRHM funds flow and expenditure, 60 The Indian Economic Journal, 89–112 (2012)
[115] Gupta, Manish, Anit Mukherjee, Tapas K. Sen, and R. Srinivasan, "Improving Effectiveness and Utilisation of Funds for Selected Schemes through Suitable Changes in Timing and Pattern of Releases by the Centre.", National Institute of Public Finance and Policy (2011).
[116] BHANUMURTHY N R & AMAR NATH H K, UNSPENT BALANCES AND FUND FLOW MECHANISM UNDER MAHATMA GANDHI NATIONAL RURAL EMPLOYMENT GUARANTEE SCHEME (MGNREGS), National Institute of Public Finance and Policy, (2014)
[117] KALAIYARASAN A, The poor state of India's fiscal federalism, The Hindu, July 08, 2022

The increasing expenditure of CSS has driven state governments to establish their expenditure priorities in alignment with these centrally devised schemes thereby rendering then unable to finance their own needs. Moreover, the CSS approach, characterized by a one-size-fits-all approach, assumes, at a policy level, that all states are equally positioned, disregarding the specific local needs of each state.

Studies have shown decentralizing policy decisions actually results in increased accountability of local politicians thereby, improving both the efficiency and the effectiveness of public services provided to the citizens[118] [119]

States do not have any agency in the formulation of these policies which may not be alignment with the needs and it is the state governments that have a better understanding of the local conditions, culture, and demographics, which can significantly impact policy outcomes. [120]

Another consequence is that certain states have better infrastructure and delivery mechanisms to carry out the schemes laid down by the Union and end up doing better in implementation.[121] A study enquiring into the implementation of National Health Mission illustrates how as a result of having better infrastructure, economically well-off states like Maharashtra and Gujarat secured more than all of the funds allotted, but States like Bihar that aren't as well off, was able to only secure seventy-nine percentage of the funds, due to their inability to fulfil the pre-requisites for funding due to poor implementation.[122] This horizontal imbalance caused by CSS is a natural consequence of centralized planning.

Moreover, the state governments have no agency over determining micro-level aspects of policy. Accepting a conditional grant such as CSS from the Central government results in the state losing any sort of discretion on implementing these policies.

Many of these centrally sponsored schemes happen to be programmes focused on what are explicitly state subjects, or those on the Concurrent List. In most instances, there is no good reason for the Union to spend that directly; these programmes – most of them in the areas of

[118] Srinivasan, T.N. & Seddon Wallack, "Inelastic Institutions: Political Change and Intergovernmental Transfer Oversight in Post-Independence India", vol. 7(1) India Policy Forum, National Council of Applied Economic Research, 203-251 (2011)
[119] Lorenzo Boetti et al., Decentralization and Local Governments' Performance: How Does Fiscal Autonomy Affect Spending Efficiency?, Vol. 68, No. 3 FinanzArchiv: Public Finance Analysis, 269-302 (2012)
[120] Reddy, Supra note 9
[121] Rajeshwari Deshpande et al., States as laboratories: The Politics of Social Welfare Policies in India, 16 India Review, 85–105 (2017)
[122] Avani Kapur, Towards 'Cooperative' Social Policy Financing in India, Centre for Policy Research (CPR) India (June 25, 2019), https://cprindia.org/towards-cooperative-social-policy-financing-in-india/

health, education, agriculture and social welfare – are better designed and administered by state governments.

Studies have shown that when it comes to the provision of public goods and services, greater decentralization of service delivery results in a positive correlation with outcomes and ensures increasing levels of accountability.[123] A strong reason is the vast heterogeneity across territories in India, where local decision-makers are better equipped to make decisions. The more centralized the policy making process is, the more information asymmetry there will be. Lesser information asymmetry implies knowledge of local constraints and preferences making local authorities better equipped to make sound policy decisions.

Structural Concerns and International Perspective

Let us now examine some of the fundamental challenges that pose structural impediments to the effective working of CSS and explore the approaches adopted by other nations in implementing policies of a similar nature.

Policy framing

Currently there exists a lack of engagement among the central government and state governments in the formulation of Centrally Sponsored Schemes (CSS). The Union is responsible for designing the schemes concerning matters of national significance, while the state's role is restricted to executing the policy at the grassroots level. This approach affects the fiscal autonomy of these states where they have to bear the cost of expenditure incurred for the implementation without having the adaptability to align the scheme to local conditions and incentives. Additionally, for a subject matter covered by a CSS, there is no corresponding state-level policy that enables the states to articulate their policy preferences. Therefore, states should be given a more collaborative role in setting these policies.

Inter-Governmental forum

Globally, in countries that follow a federal structure have seen policy implementation done in this manner. A prominent instance being the Australian ‘National Health Reform’; the central government, states and local territories are made jointly responsible for administering and delivering a system of public health that is standardized across the nation yet allows for local autonomy and decision-making. This is done through the Council of Australian Governments (COAG), where representatives from all three levels of government gather to formulate and

[123] Supra note 28

administer public policy. It is tasked with identifying goals to be achieved and how it can be achieved through the co-ordinated action by authorities at all the level.

By involving representatives from all levels of government, the policy has been able to take into account the unique needs and circumstances of different regions, while still maintaining a uniform coherent approach across the nation. This can lead to more effective and efficient policy outcomes and ensure national goals are met.

Bilateral agreements

Another route to achieving national goals while preserving sub-national autonomy is through bilateral agreements between the state and the central government defining the terms of the enactment of public policy.

An example of bilateral agreements is the system of State-region plan contracts in France known as Contrat de Projets Etat-Régions (CPER); this functions by integrating national and regional plans, by facilitating a unified, collaborative negotiation process between the union and state government to articulate a clear vision on what is to be achieved by the policy, assessment of the infrastructure needed to be developed to carry out the policy and the terms of their coordination in carrying out the scheme.

The CPER is a contract that is agreed upon by the central state and the regions every five years. The Centre sets out general economic objectives for the country, while each state creates its own plans that align with the national framework. It gives regions the freedom to design and implement their own development strategies, as long as they are in line with the national plan. [124]

In principle, it is used to determine financial transfer from the State to the regions. They can be considered as a means to implement national guidelines and specifications to the regional level, and also as a means for the regions to express their own policy priorities and investments mirroring the policy priorities of the State and the Union.

The CPER is based on the principle of subsidiarity; the idea that policy decisions should be taken at the appropriate level closest to the citizen[125]. Such decisions are decentralized because of the firm policy understanding that these decisions should be taken at the level appropriate to its nature.

[124] Delphine Ancien, Local and regional development policy in France: Of changing conditions and forms, and enduring state centrality, 9 Space and Polity, 217–236 (2005)
[125] John Loughlin et al., Routledge Handbook of Regionalism & Federalism, (Routledge 2020)

The CPER has been regarded for its ability to provide an institutionalized space for negotiation among public actors at various levels, resulting in greater coherence, efficiency, and transparency, as well as fostering synergy around shared objectives and national goals.[126]

Conclusion and Policy Recommendations

Research suggests that national level policies like CSS can help achieve key national goals while being considerate of the state governments fiscal health and material conditions. [127] Well-designed policies at the central level can enhance the fiscal health of subnational governments by ensuring that the grants provided are used in a constructive manner and improve the social conditions of the country. While such top-down policies do impose the union government's policy preferences on the state level, when appropriately designed, uphold state autonomy by engaging the local levels of government in the transmission these schemes thereby striking a balance between national goals and vision with state autonomy and local needs.

The disproportionate levels of centralization in the social policy landscape have led to eroding state fiscal autonomy; this need to be addressed structurally by altering the inter-governmental structures. The effective functioning of national schemes, such as those falling under the Central Sponsored Schemes (CSS), necessitates a collaborative approach between all the levels of Government. In this light, the following recommendations are put forth as policy recommendations.

To enhance the efficacy of these schemes, an agreement-based mechanism between the centre and the state that integrates national and state plans which facilitates a collaborative negotiation process between the central government and the states for framing national policies. The Union government can enter into an agreement with every state regarding formulation and implementation of national objectives. This will maintain consistency with national objective while maintaining state autonomy. Further, involving the third tier of government will result in effective policy decisions.

An intergovernmental forum can be established to serve as a suitable platform for negotiating and implementing such agreements, with technical groups providing support. The use of technical groups to provide support can help to ensure that policies and programs are based on

[126] Cecile Crespy et al., Multi-level governance, Regions and Science in France: Between competition and equality, 41 Regional Studies, 1069–1084 (2007)
[127] Jun Ma, Intergovernmental fiscal transfers in nine countries: Lessons for developing countries, Policy Research Working Papers (1999)

sound evidence and best practices, and that they are designed to achieve their intended outcomes. This can help to build trust and confidence among stakeholders, and can contribute to the overall success of the policy or program.

Forums at all the levels of government represented by authorities may be established to create an arena to carry out tasks such as performance assessment, measurement, supervision, reporting, and conflict management throughout the grant cycle. This can be an effective way to promote collaboration and coordination between different levels of government which is an essential for maintaining federal structures.

Moving forward, it is essential to create a mechanism that ensures fiscal autonomy while addressing centralization concerns by providing room for contestation and negotiation between top-down and bottom-up priorities. Bottom-up inputs can complement top-down planning can result in targeted policies that address the diverse needs of the population while maintaining coherence with national objectives.

SHORT SELLING: A CHAOS THAT REQUIRES A SOLUTION?

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Abstract

Short selling is the sale of securities that are acquired in principle which the seller is not the owner of at the time they are sold. The seller sells the securities at a high price and afterwards purchases them again at a lower cost, profiting from of the price gap. Scholars believe, on the one hand, that short-seller reports encourage the finding of negative information that enhances market pricing & market efficiency. Many argue, on the other hand, that short-seller reports are malicious tools used among short-sellers to drive the share price of their targets & financial gains from short positions. Despite the opposing viewpoints, capital market regulatory authorities for most nations, and particularly in all advanced capital markets, acknowledge short selling as a lawful investment activity. These nations additionally have a booming market for equity derivatives, including stock futures. Some counties even acknowledge the utility of naked short sales in only certain circumstances, & rather than banning them, regulatory authorities have allowed them to work inside a regulatory mechanism. The IOSCO has also assessed short selling across marketplaces and it has suggested transparency instead of prohibition of short selling. The position of short selling in India has been critically examined in this paper. The paper's main arguments revolve around the prohibition of negative short-seller information on publicly traded companies that have the potential and are only intended to entice investors to trade in the stock. The author contends that short-seller reports must be handled as fraudulent underneath the SEBI PFUTP Regulations while they create irresponsible interpretations about a corporation, regardless of whether accurate or otherwise, in order to persuade stakeholders to sell the target stock, causing artificial movements with in targets stock price. The author also attempts to highlight some regulations in place in other jurisdictions.

Keywords: Short selling, SEBI, Stock Price Manipulation, Fraudulent, Adani, Hindenburg.

Introduction

Many instances of short-selling reports have occurred in globe over the last few decades like

Muddy Waters' report on Huishan Dairy[1] & Muddy Waters' report on Sino Fores[2], are some of the instances which led to the price of the stock of the company against which such report was published, to plummet to an unprecedented level. The India too is not protected with such practice as the most recent in the box is the Hindenburg report on Adani Group, which accused the latter of alleged discrepancies in its operations, resulting in the erasure of approximately Rs 11 lakh crore or $132 billion from the market cap of Adani Group entities[3].

In the case of 'Anukaran Commercial Enterprises Limited,' the SEBI observed a strange motion in the value of the scrip of a company known as 'Anukaran Commercial Enterprises Limited.' (the Company). SEBI conducted a probe into the trading operations in order to determine if the unexpected price shift was routine or if it was a consequence of fraudulent acts that might have caused manipulation of the cost of the company's scrip[4].

These instances of stock price manipulation and short-selling of stock-in-trade triggered by unauthorised sources call for a more stringent mechanism under Indian securities law, as the same causes artificial movements in the stock-in-trade of the targeted company, and thus the shareholders' interest suffers a significant blow, creating an atmosphere of uncertainty in the minds of potential investors regarding the company's goodwill, as created in the case of Adani Group as well.

In this paper the author conducted an in-depth investigation of short selling as well as how it's regulated in India. Short selling is the practice of selling stocks that you do not own at the point of the sale. The study's goal is to lay the groundwork for a deeper comprehension of such practices, both good and bad. It looks at its potential for positive market pricing effectiveness in addition to its possible for cruel use, such as price manipulation, & thus the necessity of regulating it. It makes a bid to give an equal as well as unbiased viewpoint.

Considering the inadequate level of the administration of short-selling in India alongside an atmosphere rife with exuberant speculation, as well as the lack of a solid procedure related to the publication of a report describing everything a short-seller believes is false with the

[1] China's Huishan Dairy says missed payments, denies forged invoices, available at <<https://www.reuters.com/article/huishan-stocks-idINL3N1H51A0>>, dated 28th March 2017.

[2] Sino-Forest: Red Flags Flapping in the Wind Since 2008, available at << https://www.forbes.com/sites/paulhodgson/2012/04/11/sino-forest-red-flags-flapping-in-the-wind-since-2008/?sh=3963e38c39fd>>, April 11th April 2012.

[3] Data available on BSE website dated 7th April 2017.

[4] IN THE MATTER OF ANUKARAN COMMERCIAL ENTERPRISES LIMITED M/SM/IVD/ID2/10082/2020-, available at << https://www.sebi.gov.in/enforcement/orders/jan-2021/order-in-the-matter-of-anukaran-commercial-enterprises-limited_48706.html>>, 21 dated 8th Jan 2021.

business, and imploring investors to part with its own stakes is an essential regulatory gap in the framework for market regulation, according to the author. This paper does not advocate for an overall prohibition on reports criticizing the operations of publicly traded companies. Criticism is a vital instrument for promoting asymmetry of information & improving market price discovery. But mainly for short-seller reports that sensationalize negative details in order to entice investors to trade the stock.

Analysis of Current Short Selling Set-Up in India:

Background

Short selling by retail investors is currently not prohibited. Short selling is specifically forbidden under the relevant regulations or statutes for "institutional investors," namely FIIs & mutual funds registered with SEBI, financial institutions, & insurance companies, and they have a duty to settle on the basis of deliveries of securities possessed and controlled by them. The institutional investors' transactions were not subject to a margin because they needed to be settled by delivery. Regulation 15(3) (a) of the SEBI FII Regulations, 1995, for example, states that ***"the FII must deal operations solely on the basis of takings & deliveries of securities that are purchased or sold & shall not participate in securities short selling[5]."***

The topic of short sales was initially addressed by SEBI in 1996 when it formed a committee chaired by Shri B D Shah[6]. The discussion of short sales should start with an explanation of the term. As a result, the Committee defined short sale as ***"selling shares with no having physical control of the shares until the sale is for squaring-up of a prior purchase in the same settlement of the exact same stock exchange or to counter ongoing deliveries from the similar stock exchange related to prior settlements[7]."*** All member brokers of stock exchanges had to provide their scrip-wise net short sale position to the exchange at the conclusion of each day of trading in regard to the 60 actively exchanged scrips, in accordance with the committee's recommendation. Following that, disclosure was expanded to incorporate net positions in stocks as well[8].

[5] See Regulation 15(3) (a) of the SEBI FII Regulations, 1995.

[6] Discussion paper on Short Selling and Securities Lending and Borrowing. Available at <<https://www.sebi.gov.in/sebi_data/commondocs/rep40_p.pdf>>, page 3, para 3.5.

[7] Discussion paper on Short Selling and Securities Lending and Borrowing. Available at <<https://www.sebi.gov.in/sebi_data/commondocs/rep40_p.pdf>>, page 3, para 3.4.

[8] Discussion paper on Short Selling and Securities Lending and Borrowing. Available at <<https://www.sebi.gov.in/sebi_data/commondocs/rep40_p.pdf>>, page 3, para 3.4.

Current Position- Allowing room for unauthorised short-selling reports?

SEBI enabled every category of investors to short-sell in December 2007, following proposals from the Secondary Market Advisory Committee, which makes recommendations to SEBI for enhancing market security, effectiveness, & openness.[9] The efficiency of current set-up to curb the unauthorised short-selling report can be seen from the example of 2012.[10] Veritas Investment, a Canadian firm, released a study analysis of Indiabulls called Bilking India in August 2012.

The study accused the company of poor corporate governance. According to Business Standard, it was released on the basis of the public filings of Indiabulls Financial Services, Indiabulls Real Estate, and other group firms. Indiabulls replied by filing a criminal complaint towards the report's two authors, while one of them was arrested[11]. But it didn't last for longer period as Hon'ble Delhi High Court turn down the arrest and held that ***"such legal action might also deter real investigators from producing pieces that are not in the best interests of the investing public.***[12]***"***

This is not the first instant as the ongoing saga between Adani Group and Hindenburg shows how ineffective the current mechanism is to provide an immediate clarity on the chaos going on between Adani Group and Hindenburg post the report of latter on former.[13] The short-selling happened in the stocks of Adani Group post that report by Hindenburg still unanswered whether that findings were actual or were made with an attempt to create to persuade stakeholders to sell the Adani stock, causing artificial movements with in Adani stocks so that the short-seller can earn huge profit. There was no doubt that there was a flaw in the current system because, despite the passage of approximately two and a half months[14], the Indian capital market regulator SEBI was unable to provide a clear picture pertaining to the same

[9] Discussion paper on Short Selling and Securities Lending and Borrowing. Available at <<https://www.sebi.gov.in/sebi_data/commondocs/rep40_p.pdf>>, page 3, para 3.10.

[10] The Economic Times Report titled as, "Delhi High Court calls out Indiabulls for "harassment" of equity analysts". Available at <https://economictimes.indiatimes.com/prime/corporate-governance/delhi-high-court-calls-out-indiabulls-for-harassment-of-equity-analysts/primearticleshow/69209873.cms?from=mdr>>.

[11] The Economic Times Report titled as, "Delhi High Court calls out Indiabulls for "harassment" of equity analysts". Available at <https://economictimes.indiatimes.com/prime/corporate-governance/delhi-high-court-calls-out-indiabulls-for-harassment-of-equity-analysts/primearticleshow/69209873.cms?from=mdr>>.

[12] Indiabulls Housing Finance ... vs Veritas Investment Research ... on 12 October, 2021, available at << https://indiankanoon.org/doc/123434425/>>, Delhi High Court.

[13] Report titled, "Adani Group: How The World's 3rd Richest Man Is Pulling The Largest Con In Corporate History", published by Hindenburg, available on << https://hindenburgresearch.com/adani/. >>, dated 24th Jan 2023.

[14] Report titled, "Adani Group: How The World's 3rd Richest Man Is Pulling The Largest Con In Corporate History", published by Hindenburg, available on << https://hindenburgresearch.com/adani/. >>, dated 24th Jan 2023.

when nearly Rs 11 lakh crore or $132 billion from the market cap of Adani Group entities had been wiped out, which was not Adani money but general investor money[15].

Another point to note is that SEBI decided to investigate the matter promptly only after the Hon'ble Supreme Court of India asked that it do so[16]. Further hon'ble Supreme Court observed that current rules and regulations in the financial sector have to be reviewed and solidified as needed. These rules and regulations must be sufficiently robust to safeguard Indian investors from the kind of volatility that has occurred recently. The regulatory structure, pertinent causal variables, as well as processes required for the continued functioning and growth in the market for securities must all be evaluated.[17]

Analysis of current short selling set-up in international jurisdictions:

Set-Up in UK

Short sales were widely discussed in the United Kingdom. The FSA issued the discussion Paper No. 17 on the subject of "Short Selling" in October 2002 that expressed the FSA's perceptions on the matter. Concerning "the utility of short selling," the FSA believes that permitting it could help the stock market by "speeding up price modifications in overpriced stocks or accommodating unusual demand which might normally over expand the security's price." The FSA believes that this role will become additionally more vital in a market that's that is dominated by large, long-term investors & index funds.[18]

According to the FSA, "short selling helps the stock market as a means of support or trade that rectifies prices anomalies." Without the ability for arbitrageurs to lock in a profit by shorting the 'overvalued' instrument while longing the 'undervalued' instrument, the effectiveness of the price-fixing procedure is accordingly reduced." "A third, more realistic advantage of short selling is the fact that market making & an intermediary liquidity provision have historically served an important part in the United Kingdom's market structure.[19]

The FSA also acknowledges "that short selling may pose certain possible dangers. This is the

[15] Data available on BSE website dated 7th April 2023.
[16] Vishal Tiwari vs Union of India W.P. (C) No. 162/2023, Manohar Lal Sharma vs Union of India W.P.(Crl.) No. 39/2023.
[17] See para 3 of Vishal Tiwari vs Union of India W.P.(C) No. 162/2023, Manohar Lal Sharma vs Union of India W.P.(Crl.) No. 39/2023.
[18] Discussion paper on Short Selling and Securities Lending and Borrowing. Available at <<https://www.sebi.gov.in/sebi_data/commondocs/rep40_p.pdf>>, page 4, para 4.1.1 & 4.1.2.
[19] Discussion paper on Short Selling and Securities Lending and Borrowing. Available at <<https://www.sebi.gov.in/sebi_data/commondocs/rep40_p.pdf>>, page 5, para 4.1.3 & 4.1.4.

reason why in their particular setting & situations, a no. of nations think it needed to put different restrictions on short selling." In general, the FSA has evaluated "the possible hazards associated with short selling" in the following manner: -[20]

- ***"First, there's a number of financial threats which result from how short selling add weight to the market's demand for long sale orders."*** This is not guaranteed to end in unruly or fraudulent trading, but it does increase the possibility of both. Short selling can additionally raise the volatility of prices for stocks in the short term. An additional market risk could be a disruption in settlement for 'naked' shorts and the resulting inability to fulfill orders.
- **Secondly**, risks are connected with the short selling process. These are related to both the settlement procedure as well as a successful risk control in the securities lending market."

In the end, the FSA acknowledges that short selling is a valid form of investment that serves a crucial part in promoting competitive markets, and therefore major modifications to the present rules and regulations weren't necessary. ***"It recognized, nevertheless, that greater openness related to short selling could be beneficial, so long as the data stipulated serves a purpose & the advantages surpass the drawbacks, i.e., it ought to be beneficial; shouldn't be excessively difficult to generate; & must not excessively violate commercial privacy.***[21]

The FSA preferred the release by CREST Co of statistics on settlement unsuccessful attempts for individual securities that the FSA believes will provide useful market data that will suggest settlement tensions developing in specific securities."[22]

This discussion helps out to draw one basic idea that sometimes too much regulations on place won't help in tackling any issue. Even though there is no proper safeguard provided under UK securities law regarding the issue of short-selling but the activism played by FSA there in keeping an close eye on the such is itself a lesson for Indian capital market regulator SEBI. Because lack of monitoring from SEBI on Adani Group activities and even no activism post publication of report by Hindenburg raises a serious concern about the present set-up in India pertaining to short-selling.

[20] Ibid page 6, para 4.1.7.
[21] Discussion paper on Short Selling and Securities Lending and Borrowing. Available at <<https://www.sebi.gov.in/sebi_data/commondocs/rep40_p.pdf>>, page 5, para 4.1.18 & 4.1.19.
[22] Discussion paper on Short Selling and Securities Lending and Borrowing. Available at <<https://www.sebi.gov.in/sebi_data/commondocs/rep40_p.pdf>>, page 5, para 4.1.18 & 4.1.19.

A further thing to take into account involves the LSE's[23] meticulous approach regarding its fortnightly settlement system. There have been no recurring market crises, as occurred in India. The speculation overdoses on both the buying and selling sides were kept under regulate almost automatically by participants in the exchange adhering to the standard business principles of prudential behavior.[24] Another thing to note is that concerning **"market manipulation**," ***even the FSA acknowledged there was a "powerful understanding in certain circles that short selling constitutes basically manipulative action, mainly employed for bringing down prices of the stock-in-trade."***[25]

Set-up in USA

In the United States, the SEC did away from the traditional downtick rule, which was initially implemented by the SEC in 1938, & placed into effect the Regulation SHO, which sets a pair of standards titled **"locate"**[26] **& "close-out"**[27] to deal with issues related to difficulties to deliver, like possibly unlawful "naked" short selling, since January 2005. Prior to making a short sale request in any equity security, a broker-dealer has to have adequate reason for believing that the security can be borrowed to ensure it will be delivered on the scheduled date. [28] This "locate" has to be created as well as recorded before completing the short sale, whereas the "close-out" demand places extra delivery obligations on broker-dealers for securities with a fairly substantial amount of expanded delivery failures at an enrolled clearing agency, ("Threshold securities").[29] ***"Prior to taking procedure as per SHO, the SEC acknowledges an acceptable degree for unsettled trades for 5 successive settlements."***[30]

The SEC believes that, while plenty of short-selling transactions are legal, abusive short-sale practices are not. For instance, it is illegal for anyone to take part in a chain of transactions with the goal to generate real or obvious active trading in a security or to reduce the value of a security in order to induce other people to buy or sell the security in question. Short sales employed to influence the market value of a stock are consequently forbidden.

From the standpoint of its implementation in India, the following are the most appealing

[23] London Stock Exchange.
[24] NSE research initiative paper no.: 12 short selling and its regulation in India in international perspective, available at <<https://archives.nseindia.com/content/research/Paper58.pdf>>, page no. 12.
[25] Ibid page 6, para 4.1.10.
[26] Rule 203(b)(1) and (2) â€“, available at<<https://www.sec.gov/investor/pubs/regsho.htm>>.
[27] Rule 204 â€“, available at<<https://www.sec.gov/investor/pubs/regsho.htm>>.
[28] Ibid page 10, para 4.2.1.
[29] Discussion paper on Short Selling and Securities Lending and Borrowing. Available at <<https://www.sebi.gov.in/sebi_data/commondocs/rep40_p.pdf>>, page 10, para 4.2.1.
[30] See SHO regulations for detail understanding.

features of the USA SHO regulations:[31]

- First, despite the fact that it was created specially to target abuse, the regulator does not have to demonstrate the short seller's desire or reason. In India, we have numerous anti-frauds as well as anti-manipulation provisions in SEBI regulations that are meant to deal with abusive use of short selling, yet they're inefficient since they need evidence of intention, which remains challenging to prove. For instant under regulation 15(3) (a) of the SEBI FII Regulations, 1995, which states that ***"the FII must deal operations solely on the basis of takings & deliveries of securities that are purchased or sold & shall not participate in securities short selling"***[32]***, is one of the glimpses for the same.***
- Second, the limitations on short selling are so clearly stated following taking an extended perspective that administrative discretion in enforcing the regulation is altogether excluded, and no frequent modifications are required. In contrast, in India, with each changing event in the security market, the SEBI would issue a new regulation rather than utilizing the prior set-up in an efficient and effective manner, casting doubt on their method of monitoring stock market events.

Recommendation

Short-Seller Reports Should be treated as Fraudulent under SEBI PFUTP Regulations

SEBI PFUTP Regulations define fraud as,[33] ***"any act, expression, omission, or concealment committed while dealing in securities, whether deceptively or not, with the goal to persuade another individual to engage in securities."*** The standard for determining whether or not an assertion originated with malicious intent isn't, if the assertion caused other people to engage in securities. The 2017 case[34] is a significant SC decision in this respect. The apex court acknowledged the challenges of combating stock market fraud since the standard term for fraud is unsuitable for recording the creative frauds that take place in the security markets.

As a result, the Supreme Court, depending on worldwide legal studies, held in paragraphs 25 to 29 that the meaning of "fraud" under the PFUTP Regulations must provide a comprehensive

[31] NSE research initiative paper no.: 12 short selling and its regulation in India in international perspective, available at <<https://archives.nseindia.com/content/research/Paper58.pdf>>, page no. 16.
[32] See Regulation 15(3) (a) of the SEBI FII Regulations, 1995.
[33] See Regulation no. 2(1)(c) of SEBI PFUTP Regulations.
[34] SEBI Vs Shri Kanaiyalal Baldevbhai Patel and other connected matters CIVIL APPEAL NO.2595 OF 2013, available at << https://www.sebi.gov.in/enforcement/orders/sep-2017/order-of-the-hon-ble-supreme-court-of-india-in-the-matter-of-sebi-vs-shri-kanaiyalal-baldevbhai-patel-and-other-connected-matters_36000.html>>.

term with a broad scope capable of governing any act or absence, regardless of whether it isn't deceptive, if its conduct has an impact on causing a third party to engage in securities. The apex court went on to say that the emphasis is upon the "act of inducement," rather than if the statements, acts, or absences were driven by malicious intent. For example, if a journalist goes on the air & recommends a stock as an investment that is profitable, & this recommendation leads to a large number of investors purchasing the stock, the suggestion is considered a fraudulent depiction under the said regulations.[35]

This is because the statement had an impact on causing potential buyers of the stock to make trades in the shares thus, irrespective of whether the journalist truly thought the security was an investment that was worthwhile, regardless of the accused's intention. This principle has been repeated in numerous SEBI') & 'SAT orders. In one case[36], SEBI determined that any deformed depiction of information with the possibility of impacting the investment choices made by others constituted fraud under the PFUTP Regulations. In another case[37], the SAT ruled that any information that confuses the choice of an investor makes up fraud under said regulations.

> *"All of the case laws emphasize a single point in in common: any information, regardless of whether it's true with no malicious intent, which causes investors to make trades in shares is fraud pursuant to the said Regulations. The goal of having a low fraud threshold is to establish markets that are stable as well as enable the securities regulator to crack down on participants that use novel methods to trigger significant swings in share of the target Company and gain from such unfair trades."*

The recent short-selling into the shares of Adani Group post Hindenburg report is one of the best set-ups to test this principle as following the unveiling of the Hindenburg report the stock-in-trade of the Adani group lost or $132 billion in market value[38]. Short-seller reports have an economically acknowledged effect on the value of stocks, as there are numerous situations of funds agreeing to share their profits with research firms in exchange for the agency's publishing

[35] See para 25-29 of SEBI Vs Shri Kanaiyalal Baldevbhai Patel and other connected matters CIVIL APPEAL NO.2595 OF 2013, available at << https://www.sebi.gov.in/enforcement/orders/sep-2017/order-of-the-hon-ble-supreme-court-of-india-in-the-matter-of-sebi-vs-shri-kanaiyalal-baldevbhai-patel-and-other-connected-matters_36000.html>>.

[36] Netvision Web Technologies Limited & its directors WTM/RKA/IVD/15/2012, available at << https://www.sebi.gov.in/enforcement/orders/apr-2012/order-in-the-matter-of-netvision-web-technologies-limited_22628.html>>.

[37] V.Natarajan V. SEBI AppealNo.104 of 2011, available at << https://www.sebi.gov.in/enforcement/orders/jun-2011/in-the-matter-of-v-natarajan_20113.html>>.

[38] Data available on BSE website dated 7th April 2023.

its findings in a way that optimizes the return on the fund's short positions. These examples demonstrate the power of short-seller reports in rapidly driving down stock prices by inducing shareholders to part with their shares. This fulfills the "inducement" component of the PFUTP Regulations' definition of "fraud," regardless of if the assertions made in the short-seller reports are genuine or not[39] after relying on the decisions of the apex court, SAT & SEBI in their respective cases.

One could contend that the drop in the market value of a company's stock is a natural consequence of a report describing flaws in the way it operates. As a result, there's nothing unacceptable regarding the effect which short-seller reports had on share prices. The claim is based on the presumption that the claims made in the reports are correct, so a decline in prices is a valid price modification. This presumption, nevertheless, is occasionally correct.

In one instance, the Viceroy charged Ebix of being under investigation by the IRS & paying a US$20.8m settlement in the report it published regarding Ebix[40]. In reaction, Ebix filed a complaint for defamation toward Viceroy in the High Court of Delhi & got an injunction prohibiting the report from being published on any of the social networking sites. In addition, the ruling by the High Court necessitates Google and Twitter to remove the report entirely as the claims contained therein had been untrue[41].

Therefore, in light of the same the SEBI can proceed and take action against Hindenburg if the allegations of the Hindenburg in its report against Adani Group found to be fraudulent one because hon'ble apex court ruled in one of the case[42] before it that SEBI has the authority to prosecute individuals who are not physically present in India. In the event that their actions jeopardize the interests of Indian investors. This suggests that the safeguarding of Indian investors is enough for SEBI to start actions regardless of whether the actual act occurs elsewhere than India.

Need to establish a test to see if the odd price movement in the company's scrip was usual or if this was brought about by fraudulent acts that resulted in any potential manipulation of the price of the company's scrip-

[39] See Regulation no. 2(1)(c) of SEBI PFUTP Regulations.
[40] Ebix – Goodwill Hunting The alchemy of creating profits Viceroy Research Group by Fraser Perring, Gabriel Bernarde & Aidan Lau, available at << https://viceroyresearch.files.wordpress.com/2018/12/ebix-presentation-2018-12-03.pdf>>, dated 3rd December 2018.
[41] EBIXCASH WORLD MONEY LTD & ORS.V. FRASER PERRING & ORS CS(OS) 249/2019, available at<<http://164.100.69.66/jupload/dhc/MUG/judgement/17-03-2020/MUG05032020S2492019_144313.pdf>>.
[42] Securities And Exchange Board Of ... vs Pan Asia Advisors Ltd. on 6 July, 2015, available at << https://indiankanoon.org/doc/130310136/>>.

It is generally accepted that when an unbiased individual asserts to gain something from a company's scrip prior to other people do, such an individual would inevitably purchase shares & patiently wait for their value to go up, that will occur if the scrip grows a hit & then offer the shares in order to make a profit. Essentially never will an individual who expects the stock to get popular engage in an infrequent sell of such shares. The practice of short selling thus conveys the underlying belief that one is anticipating the scrip's price to fall.

The norm of evidence for a quasi-judicial proceeding is the preponderance of likelihood. The evidence of an accusation made toward an individual can come presented by way of firsthand evidence of substance or, as in numerous instances, such evidence could have been concluded by an orderly method of logic from the totality of the attending information and events encompassing the allegations/charges rendered or leveled. Although actual proof is a more certain means of reaching an answer, the judicial system cannot be weakened in their lack of it.

Keeping in mind the same it is difficult to prove intention in many cases for such short-selling practices as even we have seen in the USA set-up pertaining to the same that there capital market regulator has focused more on establishing the same rather than relying on this intention or motive test. To move beyond this intention or motive test following things can be undertaken by the SEBI to determine the reason for which such short-selling reports are been published by the individual or a company which are as follows:

- The purpose of the short-selling report,
- If there's an actual shift of the beneficial ownership post that short-selling report,
- The market conditions at the time of releasing of such short-selling report.

These above factors constitute a few of the variables that demonstrate the action of the individual or a company to be made liable to prosecute under Indian securities law set-up for causing artificial price movement into the stock of the target company. Because of the specifics of the situation, this set of variables is not exhaustive. Any single variable can either be or not be vital, & a conclusion must be attracted based on their combined impact of them.

Therefore, in light of the same the SEBI can proceed and take action against anyone if the allegations in the report published by any individual or a company found to be fulfilling any of the factor discussed above because hon'ble apex court ruled in one of the case[43] before it that

[43] Securities And Exchange Board Of ... vs Pan Asia Advisors Ltd. on 6 July, 2015, available at <<

SEBI has the authority to prosecute individuals who are not physically present in India. In the event that their actions jeopardize the interests of Indian investors. This suggests that the safeguarding of Indian investors is enough for SEBI to start actions regardless of whether the actual act occurs elsewhere than India.

Conclusion & Way Forward

In the whole discussion the author put emphasis on putting in place an effective mechanism which can help in putting "check & control" on short-selling reports which are meant to entice investors to trade in the stock so that during that particular period the individual or company as the case may be who published the said report can trade in that particular targeted company and book profit from such short-selling of stock-in -trade. The most common method applied for inducing such kind of practice is the publication of a report outlining all that the short-seller belief is false with the company, imploring the market to unload with their respective shareholdings.

To put a "check & control" mechanism on place for these practices the author outlines the practices in place in the jurisdictions like USA & UK respectively, where the mechanism is well-equipped to deal with these kinds of instances. While in UK the fortnightly settlement system is taking care to put a "check & control" on such practices, in USA, "locate"& "close-out" test is in place for such practices. But in terms of India there is no robust mechanism for the same is available because of the failure and lack of activism on the part of SEBI in dealing with the Adani Group and Hindenburg saga.

Even hon'ble apex court during the hearing of the petition filed in Adani Group short-selling case post publication of report by Hindenburg, pointed out that current rules and regulations in the financial sector have to be reviewed and solidified as needed. These rules and regulations must be sufficiently robust to safeguard Indian investors from the kind of volatility that has occurred recently. The regulatory structure, pertinent causal variables, as well as processes required for the continued functioning and growth in the market for securities must all be evaluated.

The crucial development in the coming days pertaining to our issue would be to see how the Hon'ble Apex Court deals with the Adani Group - Hindenburg saga in the petition filed before it as the Hon'ble Court is also concerned about the current state of affairs, which resulted in the formation of an expert committee by the Hon'ble Court which would investigate the matter and

https://indiankanoon.org/doc/130310136/>>.

will also suggest the court about potential regulatory framework (if any) which led to this crisis and would also, suggest regulatory changes (if any) to the current framework governing short-selling under Indian securities laws.

"In light of the foregoing discussion, the author would like to conclude by stating that the ongoing Adani Group-Hindenburg saga is a wakeup call for all concerned stakeholders to take all necessary steps to prevent such crises from occurring in the future, as when these types of events occur, no one suffers as much as a normal investor who invests his valuable earnings in the stock market with the expectation of receiving a potential expected return from the company because of the trust and goodwill he had on that particular company."

BUDGET-2023-2024: AN ANALYSIS OF TAX PROPOSAL

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Abstract

Indian National Budget is an annual financial report of the country. The Indian government generates revenue from taxes and fees which are then used to fund welfare programmes as well as the nation's infrastructural needs, education, research, national defence and cultural grants. All these aspects are covered in the Annual Budget published by the Ministry of Finance. The Union Budget 2023 also known as the Amrit Kaal Budget 2023 aims to simplify direct tax administration and incorporate the rolling out of Next-generation Common IT Return Form, making it convenient for the taxpayers. It also focuses on strengthening the grievance redressal mechanism. New authorities in the ranks of Joint Commissioner (Appeals) have been introduced to expedite the disposal of certain appeals pending with the Commissioner (Appeals). Our honourable Finance Minister Smt. Nirmala Sitharaman stated, "These (direct taxes) proposals aim to maintain continuity and stability of taxation, further simplify and rationalise various provisions to reduce the compliance burden, promote the entrepreneurial spirit and provide tax relief to citizens." Moreover, while talking about the indirect taxes, she said – "My indirect tax proposals aim to promote exports, boost domestic manufacturing, enhance domestic value addition, encourage green energy and mobility."

***Keywords**:* Indian National Budget, Ministry of Finance, Grievance Redressal Mechanism, Next-generation Common IT Return Form, Direct taxes, Indirect taxes

Introduction

Introducing the topic: Few days in India are as significant as February 1, the day on which the finance minister of the ruling party presents the federal budget. Among other things, the union budget serves as the country's guide for determining how to collect taxes and allocate funds for spending during the forthcoming fiscal year ("FY"). The union budget for the fiscal year 2023–2024 was unveiled by Ms Nirmala Sitharaman on February 1, 2023. Although this would be the Modi government's final budget, it would offer an interim budget the next year before the May 2024 general elections. "The Union Budget is growth accretive, fiscally prudent and

consumption supportive. The huge emphasis on capital expenditure could be the perfect recipe for a private investment cycle that is already visible. Support for MSME and Agriculture will broaden base credit growth. Reasonable Government borrowing numbers will support lower interest rates and the move towards a clutter-free new tax regime will significantly spur consumption. Overall, the budget is forward-looking and will support an inclusive economy."

- Dinesh Khara, Chairman, SBI

In Budget 2023, the finance minister made several statements addressing changes to personal income tax, such as raising the tax rebate cap, the tax-exempt income threshold, the tax-exempt leave encashment threshold, and others. Also, the standard deduction advantage has been extended to taxpayers who are employed or retired, and the maximum surcharge rate has been cut under the new tax system. The direct tax ideas included in the Budget 2023 are meant to guarantee continuity and stability in the tax system, simplify and rationalize numerous rules to lessen the cost of compliance, encourage innovation and entrepreneurship, and give citizens tax breaks. By making compliance simple, the Income Tax Department will keep enhancing the services it offers to taxpayers. [1]***What the paper is pointing out:*** This article aims at covering the various aspects of the 2023 Budget regarding the tax proposals and the various outcomes that the citizens of India would derive from the same. ***Contribution of the paper***: The paper has found and then analysed the notable direct and indirect tax proposals in the financial year 2023-24. ***Skeleton of the paper:*** The paper starts with an abstract followed by the introduction then the objectives, research methodology, conceptual understanding, answering of the research questions and then at the end the conclusion.

Objectives

This current work is aiming to find out the substance of the following concepts. For this, the authors have taken into consideration journals, books, news clips, government data, records etc. The objectives of this study are to explicate the contents of:

1)The notable indirect tax proposals

2) The notable direct tax proposals

Research Methodology

The current work is a conceptual work to identify the importance and weakness of recent tax

[1] Garg, K. (2023) *Summary of direct/ indirect tax proposals: Budget 2023-24*, *CA Club*. Available at: https://caclub.in/summary-of-direct-indirect-tax-proposals-finance-bill-2023-budget-2023-24/ (Accessed: 2 March 2023).

proposals. The authors have analysed the budget for 2023-24. To reach the destined objectives the researchers have used both primary and secondary data available in books, journals, articles, government reports, news clips, news articles etc.

Conceptual Understanding

Indian National Budget: The Union Budget also known as the Indian National Budget is India's yearly financial report; it contains an estimation of the government's monthly revenue and expenses. It is a duty that the government must do in accordance with Article 112 of the Indian Constitution[2]. "On February 18, 1860, James Wilson, a Scot, delivered India's first budget. On November 26, 1947, RK Shanmukham Chetty delivered the first Union Budget of Independent India[3]. This Budget lays a futuristic 'Amrit Kaal' for women, youth, and marginalised communities, big public investment for infrastructure guided by PM Gati Shakti, productivity enhancement, energy transition, and climate action, and financing of investments," Finance Minister Nirmala Sitharaman said in her speech when introducing the 2023 Union Budget.[4]

Ministry of Finance: "The Ministry of Finance, which also serves as the Indian Treasury, is a ministry within the Indian Government that is responsible for the country's economy. It specifically addresses taxation, financial regulation, financial institutions, capital markets, centre and state finances, and the Union Budget.[5] Four core civil services, including the Indian Revenue Service, Indian Audit and Accounts Service, Indian Economic Service, and Indian Civil Accounts Service, are under the overall direction of the Ministry of Finance. Also, the Indian Cost and Management Accounts Service, one of the central commerce services, report to it as its highest regulating authority."

Grievance Redressal Mechanism: Each administration's apparatus includes a grievance redressal mechanism. Without having built an effective and efficient grievance resolution procedure, no administration can assert that it is responsible, responsive, and user-friendly. As

[2] *2023 Union Budget of India* (2023) *Wikipedia*. Available at: https://en.wikipedia.org/wiki/2023_Union_budget_of_India (Accessed: 2 March 2023).

[3] Balakrishnan, P. (2020) *First Union Budget, November 1947: The crying concern was to dress wounds of uprooted humanity*, *Partition | The first union budget of India in November 1947 tried to deal with aftermaths of the partition - Telegraph India*. Available at: https://www.telegraphindia.com/india/the-first-union-budget-of-india-in-november-1947-tried-to-deal-with-aftermaths-of-the-partition/cid/1741154 (Accessed: 02 March 2023).

[4] Livemint (2023) *Decoding 'Amrit Kaal' from FM Nirmala Sitharaman's union budget 2023 speech*, *mint*. Available at: https://www.livemint.com/news/india/what-is-amrit-kaal-decoding-the-term-from-fm-nirmala-sitharaman-s-union-budget-2023-speech-11675244285059.html (Accessed: 02 March 2023).

[5] *Department of Financial Services: Ministry of Finance: Government of India Home | Department of Financial Services | Ministry of Finance | Government of India*. Available at: https://financialservices.gov.in/ (Accessed: 03 March 2023).

it offers valuable input on how the administration is doing its duties, an organization's grievance redressal process serves as a benchmark for efficiency and effectiveness.[6]

Next-generation Common IT Return Form: "To replace six of the seven currently used ITR forms (ITR 1 through ITR 6), the Central Board of Direct Taxes (CBDT) recently suggested a unified income tax return form. The standard ITR form will consist of an online inquiry. The proposed form includes several schedules that are universally applicable, such as the basic information (PAN, name, and address), the computation of total income and total taxes, the details of bank accounts, and the schedule of tax payments (taxes deducted at source, self-assessment tax, etc.). The planned common ITR form will feature "Yes" or "No" questions, and depending on the taxpayer's responses, it will require them to provide information that is specific to them. The goal of the proposed single ITR is to do away with the process of choosing the appropriate income tax return form for a taxpayer.[7]"

Direct taxes: "A direct tax is paid by an individual or group of people to the institution that levied it. Examples include taxes on assets, real estate, personal property, and income that are all paid by the individual taxpayer directly to the government.[8]"

Indirect taxes: "Before a good or service reaches the customer, it is subject to an indirect tax (such as a sales tax, per-unit tax, value-added tax (VAT), goods and services tax (GST), excise tax, consumption tax, or tariff). The customer ultimately pays the indirect tax as part of the market price of the good or service they have purchased.[9] The tax is indirect if, on the other hand, the entity that pays the tax to the tax collecting authority does not experience a comparable drop in income, i.e., effect and tax incidence are not on the same entity implying that tax can be moved or passed on.[10]"

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[6] *CPGRAMS Grievance redress mechanism in Government.* Available at: https://www.pgportal.gov.in/Home/RedressMechanism (Accessed: 03 March 2023).

[7] *Common ITR form for all: What's new in the proposed income tax return form? - common income tax return form proposed* (no date) *The Economic Times*. Available at: https://economictimes.indiatimes.com/wealth/tax/common-itr-form-for-all-whats-new-in-the-proposed-income-tax-return-form/will-cbdt-discontinue-all-the-existing-itr-forms/slideshow/95578540.cms (Accessed: 03 March 2023).

[8] *Common ITR form for all: What's new in the proposed income tax return form? - common income tax return form proposed* (no date) *The Economic Times*. Available at: https://economictimes.indiatimes.com/wealth/tax/common-itr-form-for-all-whats-new-in-the-proposed-income-tax-return-form/will-cbdt-discontinue-all-the-existing-itr-forms/slideshow/95578540.cms (Accessed: 03 March 2023).

[9] *Indirect tax* (2023) *Wikipedia*. Available at: https://en.wikipedia.org/wiki/Indirect_tax (Accessed: 03 March 2023).

[10] Schenk, Alan; Oldman, Oliver (2007). "Chapter 1: Survey of Taxes on Consumption and Income, and Introduction to Value Added Tax". *Value Added Tax: A Comparative Approach* (1st ed.). Cambridge University Press. pp. 5, 23. ISBN 978-0-521-85112-1.

The notable indirect tax proposals

Central Goods and Services Tax Act, 2017

1. Corporate Social Responsibility (CSR)

The CGST Act of 2017 is being proposed to add a new sub-clause (fa) to subsection 5 of Section 17. As a result, there would be no Input Tax Credit (ITC) available on goods or services obtained by a taxable person that is intended to be utilised for activities connected to the CSR duties mentioned in Section 135 of the Companies Act of 2013. [11]Many separate authorities for Advance Rulings (AAR) have rendered rulings in favour of and against the applicant-taxpayer on the applicability of ITC on CSR-related activities. The planned inclusion of the clause puts the matter to rest, although it is likely that the Supreme Court will rule that the provision is illegal.[12]

2. New limitation period for filing certain returns

A registered person is obliged to file returns, among other things, under Sections 37, which calls for the return of outbound supplies in Form GSTR-1, Section 39, which calls for the monthly return in Form GSTR-3B, and Section 44, which calls for the yearly report in Form GSTR-9. An e-commerce operator must file a statement in Form GSTR-8 by Section 52(4). Nevertheless, it is suggested to add a new restriction period, according to which a registered person or e-commerce operator cannot provide such a return or statement if three years have passed after the due date for providing the relevant return.[13] For a certain class of registered people, the government may, however, specify in a notification that the return may be filed more than three years after the due date. Before, Section 37 did not have a deadline for filing returns. By spending the requisite money, late returns might be submitted. Under the aforementioned clauses, a three-year time restriction has now been recommended. Yet, there doesn't seem to be any arbitrary behaviour in the application of such a deadline, and it appears that certain gaps in the GST legislation are being closed.[14]

3. New penalty for non-compliance by e-commerce operators

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[11] Fernando, J. (2023) *Corporate Social Responsibility (CSR) explained with examples*, *Investopedia*. Available at: https://www.investopedia.com/terms/c/corp-social-responsibility.asp (Accessed: 28 June 2023).

[12] *Corporate Social Responsibility* (2023) *Wikipedia*. Available at: https://en.wikipedia.org/wiki/Corporate_social_responsibility (Accessed: 04 June 2023).

[13]*Limitation periods*. Available at: https://incometaxindia.gov.in/Charts%20%20Tables/Limitation%20periods.htm (Accessed: 08 June 2023).

[14] *Taxmann https://mgst.taxmann.com*. Available at: https://www.taxmann.com/budget/budget-story/507/union-budget-2023-2024-a-synopsis-of-the-notable-direct-tax-and-indirect-tax-proposals-of-the-finance-bill-2023 (Accessed: 02 June 2023).

The CGST Act is proposing to add a new sub-section (1B) to Section 122 that states that if an e-commerce operator permits unregistered individuals to transact through it if interstate supplies are made through it by people who aren't allowed to do so, or if the statement required to be provided under Section 52(4) contains inaccurate information about outward supplies, a penalty of Rs. 10,000 is imposed, or the amount of tax that would have been incurred had the supply.[15]

4. Certain offences to be decriminalized, specific punishment for issuing fake invoices, change in minimum and maximum thresholds for compounding of offences[16]

"Section 132 deals with punishment for certain offences. The following offences listed under Section 132(clauses g, j, k) are proposed to be decriminalized:

a) obstructs or prevents any officer in the discharge of his duties under the Act.

b) tampers with or destroys any material evidence or documents

c) fails to supply any information which he is required to be supplied under the Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information;"

A GST officer may be prevented from doing his responsibilities in a variety of situations; thus, the modification is beneficial since such taxpayer actions cannot be considered criminal offences. Second, even if tampering with or deleting tangible evidence may not technically constitute an economic crime, taxpayers must be given some leeway when anything is classified as an "offence" for legal purposes. Evidence tampering or destruction is not an "offence," but rather a prerequisite for the granting of bail under Section 439 of the Criminal Process Code, hence it cannot be considered such. Finally, it is impossible to classify providing misleading information as a criminal offence.[17] Even in the most serious situations, it never involves robbing someone of money or deceiving someone else, etc. It is an effort to escape taxes; it is not actual tax evasion; rather, it is an attempt to evade taxes by providing misleading information. Hence, it cannot be a crime and should be decriminalised. According to Section

[15]*Budget 2023: Penal provisions introduced for e-commerce operators* (2023) *Trilegal*. Available at: https://trilegal.com/knowledge_repository/budget-2023-penal-provisions-introducedfor-e-commerce-operators/ (Accessed: 28 June 2023).

[16]G.S. Bajpai & Vikram Karuna (2022) *Explained: Decriminalisation of offences under GST*, *The Hindu*. Available at: https://www.thehindu.com/business/Economy/explained-decriminalisation-of-offences-under-gst/article66279310.ece (Accessed: 04 March 2023).

[17] Surabhi (2022) *Financialexpress*, *The Financial Express*. Available at: https://www.financialexpress.com/economy/gst-panel-relaxes-prosecution-norms/2918162/ (Accessed: 18 April 2023).

132's clause (b), providing false invoices without the provision of goods or services carries a specified punishment of one year in prison and a fine if the tax avoided or the ITC improperly claimed is between Rs. 1 crore and Rs. 2 crores. [18]By changing clause (c) of Section 139, the offence of providing false invoices for the purpose of avoiding taxes and improperly claiming ITC is no longer compoundable. [19]The amount for compounding has been changed, and now calls for a minimum payment of 25% of the tax at issue and a maximum payment of 100% of the tax at issue.[20]

5. Sharing of certain details by the GST common portal with other systems

"A new Section 158A is proposed to be introduced where the following information furnished by the registered person may be shared by the common portal with such other systems as may be notified and in the prescribed manner:

a) particulars furnished in the application for registration under Section 25 or the return filed under Section 39 or Section 44.

b) particulars uploaded on the common portal for preparation of invoice, the details of outward supplies 92 furnished under section 37 and the particulars uploaded on the common portal for generation of documents under section 68;

c) such other details as may be prescribed.

However, the consent of the supplier will be required under all the above clauses, and the consent of the recipient will be required in clause (b) and clause (c) where such details include the identity information of the recipient. Proposed sub-section 3 makes it clear that no action will lie against the government or the common portal for any information shared by it and there will be no impact on the liability to pay tax on the supply or basis of the return."[21]

6. Retrospective operation for certain exemptions provided under Schedule III to the CGST Act

[18] *Offences and penalties under GST cleartax*. Available at: https://cleartax.in/s/offences-and-penalties-gst (Accessed: 19 April 2023).
[19] Poonamgandhi (2022) *Fake invoice and departmental clarification thereof*, *IndiaFilings*. Available at: https://www.indiafilings.com/learn/fake-invoice-and-departmental-clarification-thereof/ (Accessed: 28 April 2023).
[20] *Central Board of Direct Taxes*. Available at: https://incometaxindia.gov.in/Lists/Latest%20News/Attachments/540/Compounding-Guidelines-dated-16.09.2022.pdf (Accessed: 01 May 2023).
[21] *Taxmann https://mgst.taxmann.com*. Available at: https://www.taxmann.com/budget/budget-story/507/union-budget-2023-2024-a-synopsis-of-the-notable-direct-tax-and-indirect-tax-proposals-of-the-finance-bill-2023 (Accessed: 05 May 2023).

The activities and transactions that fall under Schedule III are those that neither constitutes a supply of commodities nor a provision of services. The supply made from one place in a non-taxable area to another without the products entering India is covered in paragraph 7 of that document. The provision of warehoused products to anybody before approval for domestic use is covered by paragraph 8. It is proposed that each of the aforementioned sentences take effect retroactively on July 1, 2017.[22]

Integrated Goods and Services Tax Act, 2017

1. Amendment of the definition of non-taxable online recipient[23]

"When a person is located in the taxable territory, Section 2(16) is proposed to broaden the definition of a non-taxable online recipient to include any unregistered person who receives online information and database access and retrieval services for purposes other than commerce, industry, or any other business or profession. Online information retrieval and database access services are defined in Section 2(17)." Hence, services like downloading e-books or advertising fall within this category of services given to non-taxable internet recipients.

2. Change in place of supply of services by way of goods transported outside India[24]

The location of the site of provision of services by mail or courier is outlined in Section 12(8). The proviso stipulates that the location of the source for commodities shipped outside of India will serve as their final destination. It is suggested that the proviso be removed. Hence, the location of the provision of services for items moved outside of India would not be outside of India.

The notable direct tax proposals

1. New changes in Section 115BAC about slab rates under old and new tax regimes

With the Finance Act of 2020, a new Section 115BAC was added, giving the assessee the choice of paying tax under the aforementioned provision beginning in AY 2021–2022 or under the current rates. Nevertheless, if the option to pay tax under Section 115BAC was chosen, the majority of Chapter VI-A deductions (under Section 80C, for example), as well as depreciation,

[22] Gupta, A.P. (2023) *Important GST amendments in budget 2023*, *TaxGuru*. Available at: https://taxguru.in/goods-and-service-tax/important-gst-amendments-budget-2023.html (Accessed: 06 May 2023).
[23] *Taxmann https://mgst.taxmann.com*. Available at: https://www.taxmann.com/budget/budget-story/450/oidar-services-under-gst-mayhem-in-order (Accessed: 08 May 2023).
[24] *Gstzen GSTZen*. Available at: https://www.gstzen.in/a/place-of-supply-of-goods-and-service.html (Accessed: 27 June 2023).

the setting off of losses, etc., would not be accessible. The standard deduction now stands at Rs. 3,00,000 instead of Rs. 2,50,000. Nevertheless, this option won't be accessible this AY, i.e., AY 2023-2024, because of the increased standard deduction, difference in slab rates, and income. It will only be available from AY 2024-2025. The personal income tax surcharge was reduced from 37% to 25%. As a result, for individuals, HUFs, AOPs (not cooperative societies), BOIs, and artificial juridical bodies, income beyond Rs. 2 crores will only be subject to a surcharge of 25% rather than 37%.[25]

2. Interplay between the provisions of Section 44AB, Section 44AD and Section 44ADA of the Income-tax Act, 1961

"Section 44AB provides for audit of accounts of certain persons carrying on business or profession. Proviso 1 has been amended and now provides that the said section shall not apply to persons who declare income from business or profession under Section 44AD and Section 44ADA. Therefore, no audit under Section 44AB will be required for such persons. Section 44AD provides for presumptive taxation in the hands of an eligible assessee in the case of an eligible business. The presumptive scheme can be utilized by the assesses if they are engaged in an eligible business. Clause (b) of the Explanation to Section 44AD defines 'eligible business'. Two provisos to clause (b) of the Explanation to Section 44AD have been inserted to provide that:

i) if the total cash receipts of a business do not exceed 5% of the total turnover or gross receipts, the business will be eligible if the total turnover does not exceed 3 crores (Proviso 1)

ii) For the (i) above, if the cheque drawn on a bank is not account payee, the amount of the receipt would be deemed to be in cash (Proviso 2)

Therefore, the business may have a turnover of up to 3 crores in case the conditions are satisfied to avoid audit under Section 44AB. Section 44ADA provides for the computation of profits and gains of a profession on a presumptive basis. Proviso 1 is inserted which states that if the total cash receipts do not exceed 5% of the gross receipts, the total gross receipts for Section 44ADA would be Rs. 75 lacs. Therefore, assuming proviso 1 is complied with, an assessee

[25] *Section 115BAC of Income Tax Act: What is 115bac? eligibility, deduction & calculation* (2023) *Digit Insurance*. Available at: https://www.godigit.com/income-ctax/section-115bac-of-income-tax-act (Accessed: 15 May 2023).

may have gross receipts of up to 75 lac to claim the benefit of Section 44ADA. Proviso 2 of Section 44AD applies *mutatis mutandis* to Section 44ADA."[26]

3. New changes in rebate under Section 87A

For a total income up to Rs. 5,00,000, there was a Rs. 12,500 rebate available under Section 87A. Raising the total income eligible for the refund to Rs. 7,00,000 and the tax rebate to Rs. 25,000 has been raised.[27] As a result, residents of India who earn up to Rs. 7,00,000 would not be required to pay any income tax.

Tax Slab (in lakh)	Tax Rate (in %)
0-3	Nil
3-6	5
6-9	10
9-12	15
12-15	20
Above 15	30

[28]

4. Changes in taxability of trusts and educational institutions under Section 11 and Section 10(23C)

By the Finance Bill of 2023, it is recommended that when an institution's operations have not yet begun, provisional permission be granted for a term of three years. The institution must submit a full registration application after three years, at least six months before the temporary authorisation expires. Subject to meeting the other requirements of the second proviso, authorisation is to be given immediately when the activities have started for a term of five years. So, the Finance Bill, 2023 in this specific context focuses on whether or not the institution's operations have "commenced".[B]efore the Finance Act of 2021, trusts and institutions were able to directly apply for loans and borrowings for exemptions. However, it

[26] *Taxmann https://mgst.taxmann.com*. Available at: https://www.taxmann.com/budget/budget-story/507/union-budget-2023-2024-a-synopsis-of-the-notable-direct-tax-and-indirect-tax-proposals-of-the-finance-bill-2023 (Accessed: 17 May 2023).
[27] Soni, C.A. (2023) *Income tax rebate under Section 87A: Claiming the 87A rebate*, *Income Tax Filing Online*. Available at: https://tax2win.in/guide/section-87a (Accessed: 19 June 2023).
[28] *Summary of the union budget 2023-24 Press Information Bureau*. Available at: https://pib.gov.in/PressReleasePage.aspx?PRID=1895320 (Accessed: 26 May 2023).

was discovered that loans must be returned and that any sum borrowed cannot be claimed as an exemption since it does not belong to the assessee trust seeking it. The money is not considered "income" in any way. As a result, the deduction won't be accessible until the money has been returned to the lender. The Finance Bill of 2023 establishes a deadline on repaying the loan of five years from the end of the preceding year when the amount was applied, beyond which point no deduction would be permitted. Thus, no amount applied from borrowed funds may be claimed as a deduction if the assessee trust or institution is unable to return the amount within five years. As the agreement's conditions may no longer provide a longer payback time, this is severe and burdensome for some assessee trusts or organisations. Now that the agreement must include a 5-year payback term, the assessee's freedom to enter into contracts may be restricted.[29] The Finance Bill of 2023 proposes to classify every payment made to a different fund, trust, or organisation that is comparable to it as an application of income to the degree that the payment exceeds 85% of the application. Nevertheless, the circumstance when voluntary donations are given to the corpus of another trust, fund, or institution is covered by the 12th proviso. It is not recognised as the application of income, perhaps to prevent transactions from being circular in which money is moved from one institution to another and an exemption is claimed. Nonetheless, if they are genuine, amounts other than donations are acceptable as applications of income.[30]

5. Changes in what constitutes benefit or perquisite under Section 28(iv)

Benefits in kind (whether convertible into money or not) as well as benefits in cash, or partially in cash or partly in kind, are now included in the definition of benefit or perquisite under section 28(iv). The modification broadens the scope of a benefit or perk that was formerly solely intended to be given in kind. “Consequently, the ruling in Mahindra & Mahindra Ltd. v. Commissioner of Income Tax. (2003) 261 ITR 501 (Bom), which held that ex-facie Section 28(iv) does not apply to amounts received in cash or money, and which was cited with approval in Prashant S. Joshi v. ITO [2010] 324 ITR 154 (Bom) and upheld by the Supreme Court in, has been overruled.” Under this expanded definition, receipts of any kind will count as perks or perquisites if they otherwise qualify.

[29] *Deduction of tax at source — income–tax deduction from salaries under ...* Available at: https://dor.gov.in/sites/default/files/1_0_0.pdf (Accessed: 28 June 2023).

[30] Choudhury, A. (2023) *Proposals under the finance bill 2023 and impact of the recent Supreme Court decisions in relation to charitable trusts - financial services - India*, *Proposals Under The Finance Bill 2023 And Impact Of The Recent Supreme Court Decisions In Relation To Charitable Trusts - Financial Services - India*. Available at: https://www.mondaq.com/india/financial-services/1284772/proposals-under-the-finance-bill-2023-and-impact-of-the-recent-supreme-court-decisions-in-relation-to-charitable-trusts (Accessed: 29 June 2023).

6. Changes in taxation of capital gains on investment in residential property

A capital gain on the sale of a residential home is excluded under Section 54 when a new residential home is bought. However, starting on April 1, 2024, it is planned that when the price of the new asset (new residential property) surpasses Rs. 10 crores, the amount beyond Rs. 10 crores would not be considered for the capital gains exemption.[31]

7. New provision for computation of income from cooperative society[32]

It is proposed to add a new Section 115BAE that, if certain requirements are met, would tax a cooperative society's revenue at 15% for AY 2024-2025 and following years, or 22% if it is not involved in the manufacturing of any goods. Short-term capital gains on transfers of capital assets for which no allowance for depreciation is made are subject to a 22% tax. One of the requirements for claiming exemption is that the co-operative society must be registered on or after April 1, 2023, have started manufacturing and producing anything before March 1, 2024, and not have been created by the division or reconstruction of another firm.

8. Changes in the law of reassessment/reopening of proceedings

There is now no deadline under Section 148 for submitting a return in response to the reopening notice. "The recommended deadline to file the return is three months from the end of the month in which such notice is issued or as extended on an application filed to the Assessing Officer by the assessee." The subsequent filing of a return will be assumed to be the filing of a non-return if no return is filed within the aforementioned period.[33] If a search is started after March 15th for any given fiscal year, the Assessing Officer will have a further 15 days to reopen the assessment, and the notice will be regarded to have been issued on March 31st of that particular fiscal year. There is also a new limitation period for enacting an order of assessment under Section 153, which is now twelve months for any such order enacted after April 1, 2022.[34]

9. Changes in taxation of income from online games

[31] *Section 54 of Income Tax Act – Capital Gains Exemption cleartax*. Available at: https://cleartax.in/s/section-54-capital-gains-exemption (Accessed: 30 May 2023).
[32]Team, C. (2023) *Budget 2023-2024: 15% concessional tax to promote New Manufacturing Co-operative Society*, *CAclubindia*. Available at: https://news.caclubindia.com/budget-2023-2024-15-concessional-tax-to-promote-new-manufacturing-co-operative-society-22009.asp (Accessed: 28 June 2023).
[33]*Tax charts & tables - central board of direct taxes*. Available at: https://incometaxindia.gov.in/pages/charts-and-tables.aspx (Accessed: 13 June 2023).
[34]*Tax Department reopening old tax assessments based on algorithm The Economic Times*. Available at: https://economictimes.indiatimes.com/news/economy/finance/tax-department-reopening-old-tax-assessments-based-on-algorithm/articleshow/90191453.cms (Accessed: 17 June 2023).

It is now obvious that Section 115BB, which is used to tax winnings from card games, horse races, and other activities, does not apply to winnings from online gaming. It is suggested that a new Section 115BBJ be added, which would tax internet games. Online gaming income will be taxed at a rate of 30%. "An 'online game' is a game that is offered online and that a user can access through a computer resource, including any telecommunication equipment, as described in clause (iii) of the Explanation." The aforementioned Explanation defines "Internet" and "computer resource" as well.[35] Starting on July 1st, 2023, wins from online games are exempt from TDS under Section 194B. To deduct TDS on profits from an online game, a new section 194BA is being suggested. The charge section, subsection 1, provides for TDS to be deducted in the manner specified. It is made clear by Proviso 1 that a TDS deduction is required regardless of when a withdrawal from the account occurs throughout the financial year. On net wins, the TDS must be subtracted. TDS must be taken out of the user account after the fiscal year.[36] Regardless of whether the amount is in cash or in-kind, TDS must be applied to net winnings. If there are issues with how the laws are being put into practice, the CBDT may issue regulations. Due to the complexities inherent in interpreting those sections, identical instructions/regulations have been adopted under Sections 9B and 45(4) in comparable situations.[37]

10. Miscellaneous

a) No matter where the investor resides, a company would be subject to the proposed Angel Tax under Section 56(2) (viib). Hence, after April 1, 2024, investments made by non-residents will also be eligible for this provision.[38]

b) A business incorporated up until the first of April 2024 is now included in the definition of an eligible start-up under Section 80-IAC.[39]

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[35] *Winnings from online games to be taxed at flat 30%, on par with Cryptos, proposes budget 2023 The Economic Times*. Available at: https://economictimes.indiatimes.com/wealth/tax/winnings-from-online-games-to-be-taxed-at-flat-30-on-par-with-cryptos-proposes-budget-2023/articleshow/97527415.cms (Accessed: 18 June 2023).

[36] Guest (2023) *Financialexpress*, *Online Gaming Tax in India 2023: Taxability of winnings from Online Games – A Pandora's Box | The Financial Express*. Available at: https://www.financialexpress.com/money/online-gaming-tax-in-india-2023-taxability-of-winnings-from-online-games-a-pandoras-box/2993013/ (Accessed: 19 June 2023).

[37] *Online gamers should watch out for new TDS, income tax provisions on winnings* (2023) *Business Today*. Available at: https://www.businesstoday.in/opinion/columns/story/online-gamers-should-watch-out-for-new-tds-income-tax-provisions-on-winnings-369473-2023-02-08 (Accessed: 20 June 2023).

[38] *No angel tax on past foreign investments in startups The Economic Times*. Available at: https://economictimes.indiatimes.com/tech/startups/no-angel-tax-on-past-foreign-investments-in-startups/articleshow/97586882.cms?from=mdr (Accessed: 20 June 2023).

[39] Editor (2023) *Section 80-IAC deduction- incorporation date extended for eligible start-up*, *TaxGuru*. Available at: https://taxguru.in/income-tax/section-80-iac-deduction-incorporation-date-extended-eligible-start-up.html (Accessed: 21 June 2023).

c) It is proposed to create a new Section 50AA to tax capital gains on the sale of market-linked debt obligations without including the STT paid as part of the transfer.[40]

d) The MSME Act of 2006's Section 15 specifies a time restriction for payments to be made, and it is suggested to add a new clause (h) to this Section to prohibit deductions made under this Section for any amounts paid after that period. The aforementioned clause calls for payments to be paid by the buyer to the supplier within a specific period; if the payment is not made within that time, Section 43B deductions are not permitted.[41]

Conclusion

The Finance Minister today unveiled the Budget 2023, which nearly covers all areas of national development parameters with generous endowments and is genuinely geared towards ensuring that no area of the country is left behind in terms of growth, i.e., walking the rhetoric of "Sabka Sath Sabka Vikas. Despite this, appropriate attention has been given to the priority areas, such as infrastructure, health, the environment, agriculture, and backward groups and areas, to ensure that the main economic forces continue to propel overall economic and national growth. The seven priorities—inclusive development, reaching the last mile, infrastructure and investment, unleashing potential, green growth, youth power, and financial sector—are appropriately positioned for growth and should not be confused with populist measures, which frequently dominated previous governments' final full budgets." By encouraging savings, consideration has been given to the needs of women and senior residents.[42] The admirable feature is that all of these goals have been predicted to be met while upholding standards of financial responsibility. By connecting the customs tariff structure with the Make-in-India, PLI, and other programmes, among others, the tax ideas represent holistic thinking and support the wider national aspirations. Together with other key measures included in the Budget that stimulate savings, investments, and growth, this also includes a review of direct tax compliances.[43] In all, 2023-24 is a budget for inclusive growth.

[40] Teachoo (2023) *Complete details new section 50aa - capital gains in case of market*, *teachoo*. Available at: https://www.teachoo.com/20129/4235/New-Section-50AA---Capital-gains-in-case-of-Market-Linked-Debenture/category/Budget-Changes-2023/ (Accessed: 22 June 2023).
[41] *Taxmann* (no date) *https://mgst.taxmann.com*. Available at: https://www.taxmann.com/budget/budget-story/449/payments-to-micro-and-small-enterprises-now-covered-us-43b-of-the-act (Accessed: 23 June 2023).
[42] *Welcome to the United Nations*. Available at: https://www.un.org/en/ecosoc/docs/pdfs/fina_08-45773.pdf (Accessed: 25 June 2023).
[43] *EY Global Review 2020*. Available at: https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/global-review/2020/ey-global-review-2020-v3.pdf?download (Accessed: 25 June 2023).

BIO-PIRACY OF TRADITIONAL RESOURCES: A HURDLE TO SUSTAINABLE DEVELOPMENT

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Abstract

Traditional knowledge (TK) is a living body of knowledge that is developed, preserved, and passed down from generation to generation within a community, and is typically regarded as a part of the group's cultural or spiritual identity. Biopiracy has emerged as a word to describe how developed-world firms claim ownership of, or otherwise take unfair advantage of, developing-world genetic resources, traditional knowledge, and technology. Traditional knowledge (TK) is an important aspect of most local groups' identities. It is a vital component of a society's social and physical climate, and as such, it must be protected at all costs. Attempts to manipulate TK for industrial or commercial advantage can lead to its theft and violate the legal custodians' rights. Faced with these threats, techniques and means of securing and cultivating TK for long-term growth must be developed in accordance with the interests of TK holders. The preservation, protection, and development of local community-based TK-based inventions and practices are especially important in poor nations. Their extensive knowledge of traditional knowledge and biodiversity is crucial in areas such as health care, food security, community, religion, identity, climate, trade, and development. This precious asset, however, is under threat in many regions of the world. There are concerns that this information will be utilized and retained by third parties without TK holders' explicit written approval.

Keywords: Traditional resources, traditional knowledge, bio-piracy, sustainable development, local group.

Introduction

The creation's unrestrained assembly with humankind has encouraged a number of worries about how to advance our ways. What are the ways of living more supportably and sympathetically with our parallel creatures? What variations should we bring to our financial activities to minimize and eliminate our negative environmental impacts? Are we really insightful and reasonable enough to make this happen? Gradually, it would be clear that solutions to these problems will have to come from a number of sources.

Earlier it was the assumption that modern science and technology would provide the answers,

it is now clearer than ever that traditional knowledge, perhaps even more so than modern science, has critical insights and practices to offer, if the much longer history of responsible use demonstrated by traditional peoples is to be taken as an indicator.

To begin with it has to be a discussion of the terms traditional knowledge (TK) and sustainable development (SD). It drives on to exemplify how the two are inseparably linked, as well as how TK subsidizes to diverse characteristics of human wellbeing and progress. Thereafter, it fleetingly contemplates the damage of TK and probable tactics to revive or bear it in the sunlit of the wider requirement to protect the integrity of the system. This study does not go into great length about how to protect traditional knowledge in the face of current intellectual property rights regimes, as this is a topic that has been thoroughly researched and discussed in academic and popular literature around the human civilization[1].

Indeed, it is a matter of worry that indigenous knowledge is being misused and patented by others without the consensus of TK receptacles, and that rare, if somewhat, of the returns that trail is spitted with the groups where it initiated and exists. As a result of these issues, TK has risen to the highest of the global outline, flashing a animated examination about how to uphold, shield, advance, and use TK in a sustainable manner. Innovation of Traditional Knowledge Digital Library to text and digitalize TK-related data is demonstrating to be an efficient way of safeguarding TK and evading its stealing by third parties. So far as this field in concern, India is a forerunner[2].

Traditional Knowledge and Traditional Resources

Traditional knowledge refers to indigenous peoples' or local communities' long-held information, wisdom, customs, and practices. Traditional wisdom has been passed down from generation to generation in many circumstances. Stories, traditions, folklore, rituals, songs, art, and even laws are used to express some forms of traditional knowledge. Other types of traditional knowledge are frequently expressed in a variety of ways. The difference between traditional knowledge and contemporary knowledge is that, unlike the latter, TK does not differentiate between any spiritual or lucid information and spiritual knowledge, intuitions, and wisdom. It's frequently part of a cosmology, and the line between "intangible" information and actual objects is frequently blurred. Indeed, custodians of traditional knowledge frequently

[1] Traditional Knowledge and Sustainable Development, https://www.researchgate.net/publication/237374065 , (last visited on July 29 , 2022)
[2] WIPO, www.wipo.int, https://www.wipo.int/export/sites/www/meetings/en/2011/wipo_tkdl_del_11/pdf/tkdl_ (June 23, 2022, 10:30 AM)

assert that their knowledge is inextricably linked to the natural and cultural setting in which it arose, such as their traditional lands and resources, as well as their familial and community relationships[3].

Traditional knowledge, innovations, and practices about animals, plants, insects, or ecosystems can provide intriguing clues and a preliminary screen for extracting certain features of genetic resources found in nature. As a result, traditional knowledge (TK) has aided the development of new goods from genetic resources by a number of enterprises, making it important to the access and benefit-sharing (ABS) idea. While Article 15 of the Convention on Biological Diversity (CBD) does not address the issue of TK, Article 8(j) of the Biodiversity Convention necessitates each Party to:

1. Awe, stand-in, and endure knowledge, individuality, and observes of indigenous and local groups indicating traditional guidelines pertinent for the management and;
2. Use of an existing array that is acceptable;
3. Approve their broader plan with the participation and consent of indigenous and local communities (ILCs).
4. Reassure unbiased distribution of profits resulting from their use by promoting their broader submission with the sanction and involvement of those who hold such knowledge, originations, and practices;
5. The link between genetic resources and TK in the context of ABS is based on Article 8(j) of the CBD's second and third duties.

As a result, the CBD recognizes the importance of TK in modern society and recognizes that holders of such knowledge, inventions, and practices must be involved and provide their approval, subject to national laws, when those knowledge, innovations, and practices are applied more widely. States are also encouraged to share the benefits derived from the use of ILCs' knowledge, innovations, and practices fairly[4].

SUSTAINABLE DEVELOPMENT AND TRADITIONAL KNOWLEDGE:

The awareness that TK is still relevant in today's environment is growing in popularity. Traditional knowledge has been emphasized in the Stockholm Declaration, the Conventions on

[3]Traditional Knowledge and Sustainable Development, https://www.researchgate.net/publication/237374065 , (March 23, 2022, 10:30 AM)
[4]IUCN, https://www.iucn.org/sites/dev/files/import/downloads/short_paper_on_art__12 (March 23, 2022, 10:30 AM)

Bio Diversity, the World Conference on Sustainability Development papers, and a host of other international conventions and forums. The WIPO Association, the UN Labor Organization (especially Conference held 169), the Food agriculture Organization, the World Health Organization, UNESCO, the United Nations Environment Program, the United Nations Development Program, UN Commission on Human Rights, and a handful of other international bodies have all emphasized it.

The World Conference on Scientific knowledge, co-founded by UNESCO as well as the International Council for Science (ICSU), in its Proclamation on Scientific knowledge and the Use of Scientific Knowledge, emphasized the importance of traditional knowledge (TK) and the need to respect and encourage its use in a variety of human endeavors (ICSU 2002).

In June 2006, the Human Rights Council supported the UN Statement on Indigenous Peoples, recommending that the UN General Assembly adopt it. As per that, respect for indigenous knowledge, customs, and ancient traditions leads to achieving the sustainable development goals as well as successful sustainable development.

The fact that the United Nations Committee on Trade and Development (UNCTAD), which principally pacts with global fiscal subjects, has specified TK noteworthy heaviness is predominantly see-through. Meanwhile the members of UNCTAD determined to discourse the subject of the use and protection of traditional knowledge in 2000, it has reinforced work on the subject, as well as fetching together 250 specialists from 80 nations to examine the matter in October-November 2000. The book that resulted contains a number of papers on various areas of TK's role in mankind wellbeing and justifiable growth[5].

The job of TK in the traditional or principal segments of the economy is extensively acknowledged: farming and pastoralism, woodlands, piscaries, water, and natural resource-based goods like as dexterities, equipment, and housing. Considering that the majority of the worldwide people still relies on such sectors for survival and livelihood, as well as for various aspects of shelter, TK's contribution to maintaining billions of people is evident (though not necessarily recognized in most governments' policies and programs).

The purpose of TK, is progressively understandable in the subordinate and third level areas of the economy. A varied array of manufacturing items trusts on or makes use of TK in some form. Textiles, medicines, household goods, and other industries are examples of this. Health care is to varied degrees depending on TK, or a combination of TK and current knowledge, in

[5] Supra note 3.

all systems of medicine. Bestowing to World Health Organization (WHO), traditional health care systems concentrate on medicinal plants in some form or another for the bulk of the global total (up to 80% of the population in Africa).TK also contributes to the current pharmaceutical business and modern health care, according to numerous studies, and this contribution is certain to grow as persons in the western world (including westernized people in underprivileged nations) turn out to be gradually conscious of plant-based remedies. According to the WHO, 25% of current medications are derived from plants that have been used traditionally.

Services such as nutrition delivery, edification, weather prediction and cautionary and group care are still provided by traditional institutions, and in certain situations, instead contemporary administration or company establishments are witnessing the implication of this. Once Nourishment for Labor package in Nepal converted to using local technologies and networks, major food losses in the distribution chain were abridged. The minute old establishments (including the old birth attendant) were combined with contemporary communications, maternal mortality at childbirth was considerably reduced.

TK-related products and services have also made a major and continuous contribution to the trade sector, as recognized by organizations like UNCTAD.

Though considerably more recent, there is already a rising appreciation for the part that TK could take in humankind’s response to the greatest thoughtful matter it aspects today is difference in weather. The conception that societies have revised their conduct, approaches, and acquaintance arrangements to variations in their surroundings throughout hundreds and millennia is important to this conclusion. Communities alter their agriculture, forestry, fishing, and hunting and gathering practices in response to delicate or not so delicate variations in weather, intimidations from other societies or attacks, ailment and speats, and so on. Old-style arrangements seem to be motionless; hitherto they are energetic when it comes to changes. Flexibility of this kind could be a critical feature in how we as a class retort to the paraphernalia of climate alteration and TK's place in all of the aforesaid areas could deliver the choices desirable to step on the way to a further supportable way of acting with our environment. By way of a design of the leeway of this, Canadian investigators, government establishments, and indigenous peoples are cooperating on climate change research and accomplishment that syndicates TK and modern knowledge. By means of its Executive Secretary Ahmed Djoghlaf said, during the Global Professional Session on Pointers Pertinent to Indigenous Peoples, the Biodiversity Convention, and the Millennium Development Goals, parties to the CBD, are

beginning to draw attention to this issue[6].

Biopiracy of Traditional Resources and Associated Knowledge

Numerous incidents in India have been revealed in which efforts have been undertaken to wipe out indigenous knowledge due to its peaceful availability, upsetting food safety, indigenous people's maintenance, and even shifting buyer tastes. People who profit from stealing natural properties from emerging and less developed nations ornament, while others who profit from them agonize since they are paid just trivial amounts, if at all, and are not paid at all. When cosmopolitan partnerships or corporations earn from the therapeutic and farming uses of plants familiar to indigenous or native inhabitants and deny paying off such peoples, the word Biopiracy is commonly used. Alternatively, it refers to the confiscation of rights recognized by law over native bio informatics knowledge missing damages to native people who harvest such knowledge, commonly by patents. A sum of events of larceny of old Indian knowledge has been reported, most notably in plant categories such as Haldi (Turmeric), Basmati, and Neem. According to a 1999 study, the global market value of enterprises that use biological and genetic material is expected to be between $500 and 800 billion dollars. Traditional knowledge in the herbal medicine and pharmaceutical industries is expected to be worth roughly $5 trillion by 2020.

The question of prejudicial abuse of indigenous people bio resources and traditional knowledge, as well as disrespect for their unwritten laws and observes, has ascended, assuming it expressly more essential to esteem and safeguard such groups' rights over such properties. At both the national and international levels, efforts are being made to frame policies and act in order to design a protection system that does not jeopardize indigenous values, cultural heritage, or the permitted distribution of knowledge, properties, and originations over possessions that have been passed down for generations. The importance of communal sovereignty over knowledge of this kind must be featured, and each nation oblige to develop its own potentials that can only be directed by global outlines[7].

Traditional Knowledge Resource Classification (TKRC), a ground breaking controlled cataloguing arrangement for systematic prearrangement, propagation, and salvage, was developed by Dr. V.K. Gupta, Senior Consultant and Leader of India's Traditional Knowledge

[6]Supra note 3.

[7] India's Fight Against Agricultural and Medicinal Plants Biopiracy Its Implication on Food Security Traditional Rights and Knowledge Degradation, *https://www.researchgate.net/publication/330903124_* (March 23, 2022, 10:30 AM)

Digital Library (TKDL) at the Indian Council of Scientific and Industrial Research (CSIR). TKDL is a one-of-a-kind tool that helps to save the country's traditional knowledge. The World Intellectual Property Organization has ratified the TKDL that is initiated on the Global Patent Arrangements. TKDL has grown up into a catalogue with 34 million pages of ready material on 2,260,000 therapeutic preparations in diverse dialects, straddling the philological split between knowledge uttered in Sanskrit, Arabic, Persian, Urdu, and Tamil and the dialects cast-off by patent offices. They've been interpreted in English, French, German, Japanese, and Spanish, among other dialects[8].

BIOPIRACY OF TRADITIONAL KNOWLEDGE-AN OBSTACKLE TO SUSTAINABLE DEVELOPMENT[9]:

Biopiracy is the misappropriation and commercialization of indigenous populations' genetic resources and traditional knowledge. Biopirates benefit from freely available natural goods such as plants, seeds, and leaves by replicating ways utilized by local people to feed or care for themselves for generations. Pharmaceutical, cosmetic, and agri-food companies are the most common biopirates. They use biodiversity hotspots to manufacture ostensibly "new" items and use the patent system to ensure their monopoly on them. These goods are frequently influenced by techniques and information that have been passed down through generations of local communities, sometimes for thousands of years. By duplicating old procedures, these companies save money on R&D while also securing a steady stream of revenue through special viable tradition of the progressions.

The grant of patent with respect to organic elements and life arrangements weakens the notion of shared goods, which has long been the guiding principle in natural resource management. It has turned public commodities into individual belongings by co modifying them. Intellectual Property Rights (IPRs) are a western notion designed to exploit emerging nations. Among nations of this kind, knowledge was shared amid members of public and came down from cohort to cohort, finally fetching shared knowledge.

Emerging nations are being harmed by Biopiracy shared knowledge, traditional perception, and country wide inheritance, as well as posing a menace to numerous Asian and other evolving nations' economic interests. Biopiracy has also resulted in the dilemma of national sovereignty

[8] Ibid

[9] Biopiracy of Traditional Knowledge – An Obstacle to Sustainable development, http://www.macollege.in/app/webroot/uploads/publishers_file/doc_64 (March 23, 2022, 10:30 AM)

being violated once an distinct person, company, or administration from other nation observes and proceeds from the patenting of genomic properties resulting from native species and local knowledge of other sovereign states. The process of stealing traditional properties denies the concept of humanity's common inheritance, as well as the nation's independent rights to its particular resources.

As a nation India is blessed with the most diverse biological resources of the globe, which encourages foreign corporations to investigate these richer resources. In the last two decades, India has been grappling with the issue of biopiracy. The biological materials developed in India have been exported and patented in other countries. People in India have reacted strongly to the issue of biopiracy because it threatens the livelihoods of the majority of people who live in rural areas and rely heavily on agriculture and traditional knowledge.

Cases on Biopiracy:

1. **Basmati Rice:** Rice Tec, Texas, USA, patented Basmati Rice in 1997 as scented rice. Four claims of its originality were recently withdrawn in response to APEDA challenges. Rice Tec's application of the word Basmati was also opposed basing on violation of trademark and desecration of Geographical Indication. The Global Centre for Technology Assessment and the Research Foundation for Science, Technology, and Ecology, on the other hand, have paraded a litigation to undermine the use of the term Basmati to rice diversities grownup in India.
2. **Turmeric:** In the United States, a patent granted to the University of Mississippi Medical Center (for wound healing) was cancelled after CSIR filed a challenge.
3. **Neem:** A patent issued to WR. Grace & Co. in the United Kingdom and the United States Department of Agriculture was vacated after a challenge.
4. **Karela, Jamum and Brinjal:** Cromak Research Inc. has been granted a patent on palatable herbal conformations negotiating the groupings of the aforesaid to reduce sugar heights.
5. **Aswagantha:** Relive International Inc. was given a patent for Aswagantha as a supplement for healthy joints, and the patent office of the United State as well granted a dozen patents on Aswagantha-related detections.

Initiatives Taken in India for Protecting Traditional Knowledge from Biopiracy

1. **Traditional Knowledge Digital Library (TKDL)[10]:**

The TKDL is India's domestic effort ensure that patent offices around the world do not grant patents for submissions based on India's millennia-old legacy of traditional knowledge, the Council of Scientific and Industrial Research (CSIR) and the Department of AYUSH have joined forces. TKDL risen, as a result of India's hard work to have the United States Patent and Trademark Office eliminated the patent on the injury-healing competences of turmeric and the European Patent Office withdraws the patent on the antimycotic appearances of neem. Though these exertions were fruitful, they were also exceptionally costly and onerous.

The TKDL has broken down these language barriers and is filling in the gaps in TK data at the most important patent headquarters. Using digital resources and a revolutionary Conventional Knowledge Resource Classification System, the TKDL has changed and converted historical materials into 34 million Advanced 4 g sheets and interpreted them into English, French, German, Japanese, and Spanish – the leading languages of the global market (TKRC)

Thanks to the TKDL, India may now protect about 0.226 million medicinal compounds at no direct cost. Patent examiners can use the database to identify applications that clearly need not satisfy the originality criteria early on. The method of scratching a patent can be expensive and onerous in absentia of a database like the TKDL. Conflicting a patent settled by a patent office takes on usual five to seven years and cost estimated between 0.2 and 0.6 million dollars. Once it is bourgeoned this by India's 0.226 million medicinal designs, it's vibrant that shielding them without a TKDL would be prohibitively expensive.

The TKDL is an inimitable, exclusive catalogue that syndicates Ayurveda, Unani, Siddha, contemporary discipline, and current medication, as well as a diversity of knowledge systems and dialects, counting Sanskrit, Arabic, Urdu, Persian, Tamil, English, Japanese, Spanish, French, and German. It is founded on a set of 148 prior art books on Indian Classifications of Medicine that cost roughly $1,000 each. The TKDL makes these books of knowledge available to patent examiners all over the world. Sanskrit slokas can now be read by electronic means in English, French, German, Japanese, and Spanish by examiners at the EPO and other patent offices.

Each patent office that has contracted a TKDL Entree (Nondisclosure) Agreement have

[10] Supra note 2.

admission to the TKDL. Patent examiners can only utilize the TKDL for searching and examining patents under such an arrangement. The TKDL's contents may only be given to third parties for citation purposes. Non-disclosure provisions are established into the TKDL Access Agreement to protect India's interests and prevent any potential misuse.

TKDL Access Agreements have been signed by India with the EPO, as well as the patent offices of Australia, Canada, Germany, the United Kingdom, and the United States. Consultations with the patent offices of New Zealand and Japan are also ongoing, with an arrangement in attitude before now accomplished.

The TKDL has a global biopiracy watch system that allows it to keep track of patent applications for Indian medical systems. It allows for the effective detection of attempts by third parties to embezzle this knowledge by filing patent submissions with patent office all over the world. It suggests that rapid and low-cost corrective action can be performed to prevent biopiracy. Too far, India is the only country that has implemented such a system.

2. People's Biodiversity Register[11]:

It performs the following important functions:

a. To regulate access to the country's biological resources with the goal of ensuring an equitable share of benefits arising from their use, as well as associated knowledge relating to biological resources;

b. to conserve and sustainably use biological diversity;

c. To regulate access to the country's biological resources with the goal

d. of ensuring an equitable share of benefits arising from their use, as well as associated knowledge relating to biological resources;

e. Conservation and development of areas of biological diversity importance by designating them as biological diversity heritage sites;

f. protection and rehabilitation of threatened species; and

g. Involvement of state government institutions in the broad scheme of the Biological Diversity Act's implementation through the formation of committees.

[11] Biodiversity, www.hypiodiversity.gov.in, https://hpbiodiversity.gov.in/Pdf/PBR%20 (March 23, 2022, 10:30 AM)

3. Biodiversity Management Committee (BMCs)[12]:

The BMCs play the following important role:

a. The BMC's main mission is to ensure biodiversity protection, sustainable use, and equitable distribution of benefits.

b. The BMC will make it easier to create PBRs.

c. The PBRs will comprise wide-ranging statistics on the accessibility and knowledge of homegrown biological resources, their therapeutic or other usages, and any other traditional knowledge associated with them.

d. The BMC will be in charge of ensuring the protection of the knowledge recorded in the PBR, particularly in terms of regulating access to outside agencies and individuals.

Conclusion

As a member of the World Trade Organization, India's government has been forced to alter its laws to comply with the TRIPs Agreement, which allows for the patenting of biological materials and ideas. The revised Indian Patent Acts provide for more expansive interpretations of patentable innovations. They also enacted legislation to protect farmers' and community rights as a countermeasure. Foreign firms and other agents must go through national formalities in order to gather or use their natural resources. In the past, obtaining approval for the gathering of biological resources was a simple process. The situation, however, has altered. Material gathered by foreign companies or individuals may be patented to give them exclusive rights to use it. Emerging nations have become extra voiced in the global arena over the last two decades. They have begun to collaborate with one another, posing a barrier to technologically advanced nations. This would aid developing countries in their political negotiations with developed countries, as well as aid in the resolution of the bio-piracy problem[13].

Traditional Knowledge (TK) is plentiful in India, yet the country is unaware of its relevance and utility in the current economic climate. As a result, bio-piracy has been a problem for the Indians on multiple occasions. Their cultural identity revolves around traditional wisdom. Thousands of indigenous cultures have lived in India for generations, passing down wisdom from generation to generation. They have no idea how valuable their valued culture,

[12]Ibid.
[13] Supra note 9.

knowledge, traditions, medicines, and way of life are. Even they are unaware of the deadly consequences of bio-piracy. Because of the indifference and failure of Indian legislation, it is feasible. Traditional knowledge needs to be protected as a condition sine qua non for its preservation and development. Increased emphasis on commercialization raises concerns about its preservation. Biopiracy poses a significant threat to TK. The native people who live in and around the forest rely on the forest's resources for their survival. It is vital to safeguard indigenous people's knowledge and traditions in order to protect them. Countries developing a protection system must take a holistic approach, considering concerns such as equity, ethics, the environment, sustainable resource use, socioeconomic structure, and indigenous peoples' empowerment. There has been widespread exploitation of traditional knowledge without an equitable distribution of benefits, necessitating immediate changes and new enforcement measures aimed at ending this unethical practice of bio-piracy. In modern society, there needs to be a higher awareness of Intellectual Property Rights and patents, as well as native community rights. All of this has had a negative impact on the nation's cultural and ethical norms. To combat the evil of biopiracy, we must promote our basic values and concern for the well-being of others. The cultural side of this topic has received the least attention.

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