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RIGHT TO MENSTRUAL HEALTH AND THE MENSTRUAL LEAVE DEBATE

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4th year
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Abstract

This paper aims to discuss the significance and necessity of providing female employees with paid menstrual leave, alongside conducting a comparative analysis of the legal position of such policies in India and other jurisdictions. Furthermore, efforts have been made to evaluate the implementation of menstrual leave in relation to programs addressing "environmental, social, and corporate governance." Additionally, research has been conducted on the current state of the commercial world in India regarding the implementation of policies concerning menstrual leave and their associated benefits. The focus of this paper is on the importance of such provisions and policies for women, as well as the ways in which the absence of these provisions and policies affects women on both a physical and emotional level. Moreover, the stigma attached to menstruation makes it difficult to discuss, and simply engaging in conversation about it is often seen as shameful and swept under the rug. This paper also highlights the bill passed in 2020, known as the "Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill, 2022," and the reasons behind its rejection by the Supreme Court of India. Furthermore, this paper addresses criticisms levelled against Section 14 of the Maternity Benefit Act of 1961 and the loopholes it contains. The question that arises is whether we are neglecting the first step of maternity, menstruation, and whether this act alone is sufficient to address the challenges faced by women in the workforce on a day-to-day basis.

Keywords: comparative analysis, paid menstrual leave, maternity benefit, physical and emotional agony.

Introduction

In ancient times, when women were revered as deities, people marvelled at the fact that they could bleed profusely without dying, highlighting the significance of menstruation. Additionally, the state of Odisha still holds a festival called "Rajo" in honour of a girl's first period, as do similar traditions elsewhere in India. The Ambubachi Mela is an annual festival celebrated in Assam at the time of the year when the goddess Kamakhya is thought to be menstruating. Millions of worshippers attend the 4-day event. Many people hold the view that both the fertile earth and women who are menstruating deserve our respect and rest. Stigma and superstitions have their roots in a time when there was less access to medical information, research, and education. Why haven't corporations adopted the Indian tradition of treating women like goddesses and giving them time off during their monthly cycle?

As a result of globalization's effects on the professional environment and work culture, workplace dynamics, such as employee retention and best practices, are continuously shifting. The new professional landscape places an emphasis on diversity, equity, and inclusion (DEI) as well as environmental, social, and corporate governance (ESG) practices. Today's businesses put in a lot of work to reflect on their past and present to improve how they serve their employees, who come from all walks of life. Many businesses have also made structural adjustments, created channels for airing grievances, and taken other measures to eliminate the potential for discrimination on the basis of gender, sexual orientation, disability, etc. Though menstruation affects every woman at some point, it has not yet been made a priority in these ground-breaking campaigns. Menstruation, or the period as it is commonly referred to, is still widely avoided due to social stigma.

Some women experience mild to severe pain and discomfort during their menstrual cycle. Changes in hormone levels also accompany this time of transition, influencing how one feels emotionally and mentally. Women may find it more challenging to perform well in a high-pressure workplace during this time. Many women experience pain during menstruation due to ovarian cysts, endometriosis, dysmenorrhea, and other conditions. Menstruation is a topic that many would rather not discuss due to the stigma attached to it. This is why "menstrual leave" remains a taboo topic in most Indian workplaces.

The fact that the percentage of women in the labour force has dropped dramatically, from 30.4% in 1990 to 19.23% in 2021, reflects the number of women who are unable to work for a variety of socioeconomic reasons, including menstruation. Girls who go to school often miss class when they have their periods to avoid the pain and discomfort they experience every month. Moreover, considering the stigma that is attached to menstruation and is considered taboo to talk about, we must consider the girls who are enrolled in colleges and must come to college despite such discomfort in order to maintain their academic records without even being able to share the same with the people around them.

Despite the foregoing data, our country still lacks legislation to regulate the issue, which in turn has a negative impact on the quality of our work. How can one function when experiencing such distress? It's possible that some individuals will wonder why women are not permitted to take time off work for illness during their monthly cycle; however, a more fundamental inquiry must be asked: is menstruation truly an illness? That question has a straightforward answer: no, it is not, and furthermore, it is a natural process that every woman goes through at some point in her life; consequently, why can't it be normalised? Additionally, while sick leave is unpaid, women should be compensated for time off during menstruation since no woman voluntarily goes through it. Women are more likely to be productive and able to concentrate on work when they are given time off during their menstrual cycle if their employers allow them to do so. For employers, it is important to present a positive image to prospective and current employees, and the creation and implementation of such accommodating policies and beneficial provisions will do just that.

Judicial Precedents Regarding Menstrual Policies in India

In the workplace or at school, employees or students may be entitled to menstrual leave if they experience pain or discomfort during their period. Policies known as "menstrual leave" allow women to miss class or work while they deal with their monthly periods. These laws are an attempt to give women the space and time they need to deal with the unique health issues that arise during menstruation. Policies allowing women to take time off work during their period are an effort to support women's health and well-being and ease the burden of menstrual symptoms like pain, cramps, and fatigue. The social and cultural stigma of menstruation is acknowledged, and this policy works to lessen it.

Changes to labour laws, especially those providing benefits to women in the workplace, have been a frequent topic of petition. Additionally, the idea of Menstrual Leave has been around since World War II, and forward-thinking nations like Japan, South Korea, Indonesia, and Taiwan have already put it into practice. Italy has also proposed legislation to guarantee women the right to take paid maternity leave. An all-female school in Kerala, India, started giving its female students menstrual leave in 1912.

Some people may view the right to paid menstrual leave as discriminatory in nature; however, we need to keep in mind that our constitution contains provisions such as Article 14, which states that equals should be treated equally or treated in the same ways. However, when it comes to a woman who is menstruating and a man, the point of difference becomes huge because the woman experiences discomfort and pain while maintaining the same amount of work pressure, whereas the man is able to continue working without interruption. Therefore, menstruating pain establishes a reasonable nexus between the classification that was made and the differentia, as well as the purpose of the provision.

Article 15 also mentions the ability to pass laws tailored specifically to the needs of women and children, so it would be reasonable to classify both Articles 14 and 15 as pertaining to the creation of gender-specific legislation. Articles 39(e) and 47 of Part IV of the DPSP (Directive Principles of State Policy) have similar goals, namely to secure nutrition and the standard of living and to improve public health, but because the DPSP is a principle given and not obligatory on the states, no laws have been formulated on the same. However, when discussing menstruation, we can interpret the same under this article, as a female needs rest and care during this time, and this should be provided to her.

Similarly, Article 42 of Part IV of the Constitution mandates that "human and just working conditions" be achieved; however, are we even close to this goal, given that one of the most prominent areas is not covered and women experiencing menstruation are not granted leaves?

Only in Bihar and Kerala do women have access to official menstrual leave policies. In the Sabarimala judgement, J. Chandrachud said, "Notions of purity and pollution, which stigmatise individuals, can have no place in a constitutional regime." The judiciary has always challenged social structures that treat women as inferior through its progressive judgements.

There were also a few bills proposed for the same adding provisions relating to menstruation but were rejected due to certain discrepancies such as the Menstrual Bill, 2017, the Women's Sexual, Reproductive, and Menstrual Rights Bill, 2018, and the recent bill that was proposed was the Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill, 2022.

Thus, there were a number of bills that were proposed in the parliament but were rejected due to certain reasons. Now the question here is whether or not the opposition's stated reasons for rejecting the bill were sufficient grounds for doing so.

The Menstrual Bill, 2017

The seriousness of the concept of menstruation and the rising demand for leave necessitated the passage of this bill to aid women in the workplace and in schools, but as is the case with every coin, there were several loopholes in the same.

The first argument against the bill was that it would have a negative impact on diversity and inclusion because women would miss four workdays per month if it is enacted.

The second argument was that modern women want to be treated with respect in the workplace and not judged based on their gender. If such a law were to be passed, it could lead to discrimination against women in the workplace and make male applicants more desirable to employers.

Indian culture has long struggled to dispel the stigma that surrounds menstruation. Legislation requiring time off from work for women experiencing menstruation will only add to the stigma and the false belief that menstruation is a disease.

In conclusion, there were many reasons to argue against enforcing the bill. Some people thought women should be allowed to work from home for one or two days during their period if their job allows it, but no more than four days in total. The majority of people believed the government should lower the cost and increase the availability of tampons and other menstrual hygiene products. Thus, the same bill was not passed.

The Women's Sexual, Reproductive and Menstrual Rights Bill, 2018

Provisions to ensure access to safe and legal abortion, comprehensive sex education, and affordable and accessible menstrual health products were included in the Women's Sexual, Reproductive, and Menstrual Rights Bill, 2018, which was proposed by Shashi Tharoor, an MP from Thiruvananthapuram.

It's tragic that so many women have to bear the agony of menstruation without seeking help because their suffering is often trivialised as "womanly troubles" and not given the attention and recognition it deserves. Some argue that women will be disadvantaged by paid maternity leave, but the law should recognise that men and women are biologically different in important ways and make allowances for this fact. Such provision is a matter of equality, which has been overlooked up until this point, and this needs to be recognised.

In addition, the law must prevent the improper use of these leaves. Even if paid leave during pregnancy is not an option, employers can still create a positive workplace for their employees. There's also the possibility of looking into remote work. To make sanitary napkins more affordable for women, the government can lower their price. It's past time for society to acknowledge the devastating effects of menstrual pain and take measures to alleviate it, whether through legislation, education, or medical advancements.

The Effects of the Right of Women to Menstrual Leave and free access to Menstrual Health Products Bill, 2022.

On February 24, 2023, the Supreme Court deemed the issue of menstrual leave for workers and students across the country to be one of policy and therefore declined to hear a PIL on the topic. This discussed the multiple "dimensions" of menstrual pain leave and how, despite menstruation being a natural process, it could discourage businesses from hiring women. Shailendra Mani Tripathi, who was represented by advocate Vishal Tiwari, had petitioned the court for a directive to be issued to the states regarding the establishment of regulations for the provision of menstrual pain leave to female students and employees. The Bench of Chief Justice D.Y. Chandrachud, Justice PS Narasimha, and Justice JB Pardiwala recommended that the petitioner seek assistance from the Union Ministry of Women and Child Development in developing a policy.

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This legislation seeks to grant female and transgender students three days of paid leave during their periods. Approximately 40% of girls miss school during their periods, and nearly 65% say it affects their daily activities in school, according to studies cited by the bill.

The plea also made a stark statement regarding the issue. Ironically, the petition claimed that no government in India has created the post of inspectors, let alone appointed such inspectors, despite a provision under section 14 of the Maternity Benefit Act, 1961, which mandates the appointment of inspectors for monitoring the implementation of provisions. It stated that the Act of 1961 acknowledged and respected the motherhood and maternity of working women through its various provisions.

According to the petition, "despite provisions to take care of women in difficult stages of her maternity, the very first stage of the maternity, the menstrual period, has been knowingly or unknowingly ignored" by society, the legislature, and other stakeholders, with the exception of a small number of organisations and State governments. Thus, let us examine the main reason behind declining the petition.

Reasons for Rejection of the aforesaid Bill:

- The application was denied by the Supreme Court on the grounds that the matter was best left to the Union government as a matter of policy. However, the PIL petitioner was given the green light by the judges to submit a formal request for a policy decision on the issue to the Union Ministry of Women and Child Development.
- Anjale Patel, a law student who spoke out during the PIL hearing, convinced the judges that mandating paid menstrual leave would have unintended consequences by discouraging businesses from hiring women.
- Patel's expressed concern is shared by many social scientists and activists. Feminists who hold this view worry that allowing women to take paid menstrual leave will discourage § employers from hiring female candidates. This is especially worrisome in light of the fact that women's labour force participation in India has fallen from 30.4% in 1990 to 19.23% in 2021, as reported by the World Bank.
- Legal representative Shailendra Mani Tripathi, who initiated the PIL, said, "For me, it felt like the right time to put forward this issue. When I took a good look around, including in my own home, I realised the patriarchal perspective and taboo surrounding menstruation had to end. This is a problem in our society as a whole, and not just for women.

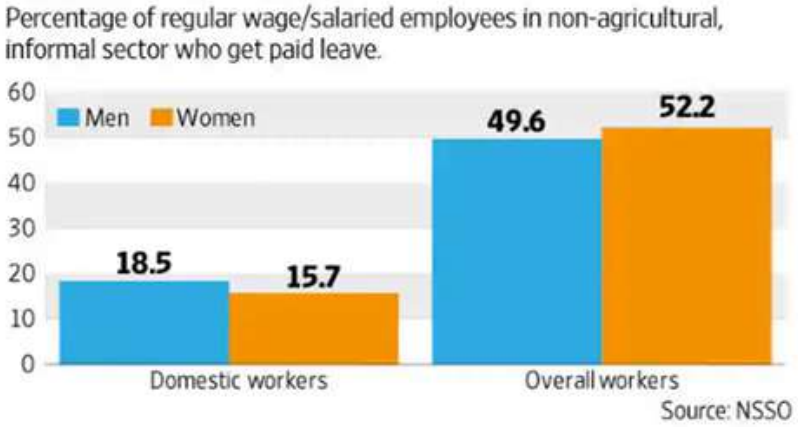
Need for Laws to Regulate Separate Menstrual Leaves

Period pain during puberty is normal and not something to be ashamed of. Those who are highly motivated and choose to work in a field that causes them such suffering should be able to take a break every month without fear of losing their job. In order to build a more gender-balanced society, we must recognize the importance of menstruation for women. If not managed properly, menstrual vaginal bleeding can have a negative impact on a woman's productivity by causing health problems and other issues. Many Indian businesses have begun to follow the practices of these countries by granting their female employees an extra day

or two off during menstruation. Women have long had their basic rights in the workplace ignored. Many businesses today follow the lead of these countries by granting their female employees a day or two off during menstruation.

During one session, Indian lawmakers shot down Congress Lok Sabha MP from Arunachal Pradesh Ninong Ering's private member's Menstruation Bill, 2017 that would have mandated two days off for women experiencing menstruation. Women still have to bear the brunt of suffering without assistance from the government or their employers because menstrual leave is not mandated by law. This motion has helped society's efforts to update outdated laws so that people of all genders, races, and sexual orientations can work safely, in addition to establishing that everyone has the right to equal opportunity and treatment.

Paid Menstrual Leave in Domestic Households



The “home office” is unlike any other setting. The private residence of an employer serves as the workplace for paid domestic workers (most women also perform domestic work without compensation or recognition of their efforts). Part-time (and sometimes live-in) domestic work is also stratified by socioeconomic status, gender, race, national origin, immigration status, and physical or mental disability.

Moreover, capitalist-patriarchal systems that determine what counts as “productive work” render domestic work as no work, resulting in no remuneration for domestic work in one's own household and little remuneration for those employed part-time. Women of colour, immigrants, the working poor, and members of other traditionally oppressed groups have traditionally done domestic work for pay around the world. Many people's conceptions of paid domestic work as dirty and unskilled contribute to the precarious conditions in which they must work. Working without breaks fits in with these ideas that make housework invisible.

As a result, domestic workers face discrimination on the job on a regular basis. When they are menstruating, it is even more hostile. Discrimination based on factors other than physical appearance, social class, or gender both forces them to leave the workforce (unpaid) and compels them to stay there (without the option of leave). Both of these stresses are founded on the absence of incentives for accommodation.

For instance, unless you are a live-in domestic worker, you probably won't have access to a bathroom in your employer's home where you can change pads. The state of women's public restrooms is dismal. Employers' explanations for denying domestic workers access to restrooms often include implicit or overt casteist bias. Toilet inequity is a valid reason why women are less likely to show up to work while they are menstruating.

Comparative Analysis of Legal Position in India with other Jurisdictions

- A Japanese law dating back to 1947 mandates that an employer grant a woman's request for leave on the days of her menstrual cycle. Many nations have followed Japan's lead and added similar laws to their own code.
- Female employees in Indonesia who experience menstrual pain are required to notify their employers and are given permission to miss work for the first two days of their period.
- In response to a request for leave, female employees in South Korea are entitled to one paid day off per month.
- Female workers in Taiwan are permitted to request up to three days of leave per year if they are unable to perform their duties during their menstrual cycle (with a limit of 1 leave in a month). If an employee needs more than three sick days, those extra days will be subtracted from their total sick leave allotment. Women are entitled to three days of paid leave during their menstrual cycles, in addition to paid sick days.
- Regardless of whether or not they have a valid medical certificate, women in Zambia are entitled to one day of leave per month.
- The State social security system in Spain will financially support women who take three to five days off work due to menstrual pain, and the country recently made history by becoming the first in Europe to make such leave mandatory for female workers.

While menstrual leave, whether paid or unpaid, is not specifically addressed in India's current labour laws, there is currently no requirement for Indian employers to provide such leave to their employees. However, interestingly, the State Government grants female employees working in connection with organizations under its purview two consecutive days of "special" leave per month, as per a notification/order issued by the Government of Bihar in 1992. The Human Resource Manual, a body formed by the State Government to implement various schemes, includes a similar provision for such leave for women workers. Additionally, in 1912, a government school in the Indian state of Kerala granted students menstrual leave during the school's annual examinations and allowed them to retake the tests at a later date.

Mr. Ninong Ering, a former Lok Sabha Member of Parliament from Arunachal Pradesh, introduced a private member's Bill in the Parliament of India, Lok Sabha in 2017 to, among other things, grant women employees of any business registered with the appropriate Government four days of paid menstruation leave per month. Additionally, the Menstruation Benefit Bill, 2017 (Bill) proposes to implement menstrual leave, other related benefits, and sets out a grievance redressal mechanism. However, the Bill was never presented to the Parliament for debate. Mr. Ering, in his capacity as a Member of the Legislative Assembly of Arunachal Pradesh, reintroduced the Bill during the 2022 Budget Session, but it was quickly withdrawn. Therefore, the law in this area has not changed as of the present.

In response to questions in the Lok Sabha about menstrual leave, the Minister of Women and Child Development stated that the Government is not currently examining any proposal to include such leaves in the Central Civil Services (Leave) Rules, 1972, and that Central Government employees are not entitled to any provisions for menstrual leave at present. However, the government has launched a number of campaigns to educate the public on the importance of menstrual hygiene and health and to expand the availability of sanitary products.

In January 2023, a Public Interest Litigation (PIL) was filed with the Supreme Court of India under the Maternity Benefit Act, 1961, requesting that all States be directed to create a policy for menstrual pain leave for female students and working women. However, the Supreme Court has already dismissed the PIL through an order dated 24-2-2023, so the petitioner should make a representation to the Union Ministry of Women and Child Development so that it can make a decision on the matter.

Implementation of Paid Menstrual Leave and it's Implications on "Environmental, Social and Corporate Governance (ESG)"

From the perspectives of workforce retention, employee welfare, and Environmental, Social, and Governance (ESG) considerations, employers have begun to realise that a substantial amount of work and effective implementation of policies and procedures are required to be undertaken beyond what is statutorily mandated. The top one thousand listed companies in India are required by SEBI Circular dated 10-5-2021 to report on their corporate social responsibility and sustainability initiatives, which include, among other things, a commitment to the promotion of inclusive growth and equitable business development. Such reporting mandates call for openness regarding aspects such as the company's gender makeup, its efforts to promote employee health and happiness, its endeavours to eliminate hazards in the workplace, its responses to the needs of marginalized communities, and its policies and practices pertaining to human rights education and awareness. Before investing or lending money, investors (especially foreign investors) and sometimes banks wish to verify a company's ESG compliance status. Organizations can advance their Diversity, Equity, and Inclusion (DEI) efforts in accordance with the required ESG guidelines by implementing policies governing menstrual leave.

India and its Progress towards Menstrual Leave

Unlike countries like Japan, South Korea, and Italy, which provide women with monthly menstrual leave, India's legislative system has been relatively slow to introduce menstruation-friendly policies such as menstrual leave in corporate firms. Bihar is the only Indian state mandating two days of paid menstrual leave for women in its Human Resources policies, a practice it has maintained since 1992. Two days of menstrual leave and improved rest facilities at work are included in the Menstruation Benefits Bill, 2018, recently introduced in the Indian Parliament but yet to receive presidential assent. While concrete legal protections may be lacking, many Indian businesses have voluntarily instituted their own menstrual leave policies.

A media company in Mumbai, announced that women will be given paid time off on the first day of their periods. Soon after, a similar policy was implemented by an integrated marketing agency. Menstrual leave has been instituted by two major Indian food delivery partners. One company announced up to 10 days of paid menstrual leave per year for all women employees, including transgenders, while the other instituted a "no questions asked" 2-day monthly time-off policy for all its women delivery partners during their menstrual cycle. Women who are partners in childbirth will not only be granted such leaves but also guaranteed a minimum wage during that time. One of the most prominent companies in the education technology industry revised its leave policy to accommodate needed time off during women's menstrual cycles. The company's updated leave policy now allows female workers to take up to 12 days off per year to deal with their periods. Women employees will receive 1 paid period leave per month, which can be taken as 1 full day or 2 half days. There are currently at least other companies that have made it a policy to provide menstruating employees with paid time off. Additionally, many businesses offer perks beyond just a paycheck, such as providing sanitary pads for a small fee on-site. Although more and more businesses are showing a progressive attitude towards the normal occurrence of menstruation, simply instituting menstrual leave may not be enough. Managers and staff need to learn how to handle these kinds of situations and help break down the taboos surrounding menstruation. Managers have a responsibility to create an environment where employees feel comfortable expressing themselves openly and honestly.

To name a few:

- Zomato
- Swiggy
- Wet & Dry
- Fly My Biz

Conclusion and Suggestions

The Constitution remains silent on the matter, yet the Supreme Court has consistently in a number of cases upheld the “Right to Health” as a guaranteed right under Article 21. Given that menstruation significantly impacts a woman's overall health and well-being, and considering it is an involuntary process exclusive to women, menstrual leave holds significant importance for females.

It's possible that the passage of the bill will have consequences opposite to those intended. While the bill may help alleviate menstrual pain for some women, it may also give rise to issues and controversy, as we have seen. The opposition's recorded suggestions won't be helpful either, as making sanitary pads more widely available isn't the root cause of women experiencing pain during menstruation.

Finding a middle ground between arguments for and against menstrual leave is necessary if we are serious about helping working women who suffer from menstrual pain.

Until prominent laws are established to regulate this matter, we can raise awareness among employers in corporations and domestic households to undertake the following actions:

- Provide breaks between work.
- Offer hot water bags to female employees who are menstruating.
- Consider allowing working from home during this period.
- Explore options to reduce working hours.
- Supply clean toiletries, including pads and tampons.

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FROM DIGITAL WARFARE TO LEGAL BATTLES A SCOPE INTO THE FUTURE OF CYBER CONFLICTS AND INTERNATIONAL LAW

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Abstract

This research paper delves into the implications of cyber conflicts on international law and the potential future developments in regulating cyber warfare. With technological advancements, cyber conflicts have become a significant challenge to the international community, and current legal frameworks are struggling to keep up.

The paper provides a comprehensive approach to defining and characterising cyber conflicts, examining relevant international agreements and academic sources such as the Tallinn Manual and the UN Group of Governmental Experts. It also analyses emerging issues in cyber conflicts, including the use of Artificial Intelligence, attacks on critical infrastructure, and the role of non-state actors, with a focus on the legal implications of these emerging threats.

The paper draws on case studies to critically evaluate different approaches to addressing cyber conflicts under international law, assessing the effectiveness of current legal frameworks and identifying gaps and areas for improvement. With its research, the paper aims to influence policy and drive progress in the field of cyber warfare regulation, ultimately making the world a safer place for all.

Introduction

Purpose of the Paper:

To give a thorough examination of how the international legal frameworks for cyberwars currently stand and to take into account anticipated future changes in this area.

Research Question

What are the current international legal frameworks for cyber conflicts, and how effective are they in addressing emerging threats and challenges, and what potential future developments are necessary to address these issues?

Methodology

The research methodology for the paper titled "Cyber Conflicts and International Law: A Scope into the Future" would involve a mixed-methods approach. The research would include both quantitative and qualitative data collection and analysis techniques.

The first phase of the study will entail an extensive literature review of academic articles, government reports, and other pertinent documents to gather information on the nature and scope of cyber conflicts, as well as the international legal frameworks that govern them.

The second phase will involve qualitative-research methods, including content-analysis and case-study analysis, to examine specific cyber conflicts and their legal implications, identifying gaps in the current legal framework and potential areas for improvement.

The third phase will use an online questionnaire to survey international legal experts' views on the effectiveness of the current legal framework for cyber conflicts and potential future developments in the field.

Finally, the theoretical framework, literature review, case studies, and survey results will be synthesised providing a comprehensive analysis of future in cyber-conflicts and international law, including implications of the research question.

Limitations of the paper

The paper addresses a broad range of topics, including the definition of cyber conflicts and future developments in international law. Due to the broad scope, it may not provide in-depth analysis on any particular aspect. The rapidly evolving nature of the field may limit the availability of information, making it challenging to draw conclusions or provide definitive answers to some research questions. Given the complexity and political nature of the topic, there is a risk of bias. Therefore, the authors must approach the subject with an open mind and critically evaluate all sources of information.

Definition and Nature of Cyber Conflicts

Defining Cyber Conflicts

Cyber conflicts refer to the use of digital technology to gain advantage or exert influence in a conflict or dispute. These conflicts are conducted by state/private entities and can range from minor cyber attacks to full-scale cyber warfare. The nature of cyber conflicts is characterised by their ability to operate on a global scale with relative anonymity, making them challenging to detect and attribute.

It can involve a variety of activities, including hacking, espionage, and the disruption of computer networks and information systems. These activities can target a wide range of entities, including governments, military organisations, corporations, and individuals. Cyber conflicts can also have significant consequences for national security, economic stability, and individual privacy.

Cyber-conflicts can be part of a wider conflict or can be standalone events, and can have significant legal implications. As technology continues to advance, the potential for cyber conflicts to become more complex and sophisticated also increases, highlighting the need for continued research and development of legal frameworks to address these challenges.

Characteristics of Cyber Conflicts

Since cyber conflict is a relatively new and rapidly evolving field that involves the use of digital technologies for offensive and defensive purposes in international relations, unlike traditional forms of conflict, which are typically characterised by direct physical violence, cyber conflict included using digital-tools for achieving strategic objectives, including espionage, sabotage, and disruption.

It is a new and evolving field that uses digital technologies for offensive and defensive purposes in international relations.

- Cyber operations can be conducted anonymously, making it hard to trace the origin of the attack and apply international law principles.
- Traditional legal frameworks based on territorial sovereignty may not be equipped to address conflicts that transcend borders and are transnational in nature.
- They move at a rapid pace, making it challenging to apply international law designed for slower conflicts.
- There is an asymmetry of resources and capabilities between parties involved in cyber conflict.
- It uses non-lethal force but can cause far-reaching effects such as economic, political, or social disruption. This may require new legal frameworks better equipped to handle its unique features.

International Legal Frameworks for Cyber Conflicts

The Tallinn Manual, the 'UN Group of Governmental Experts (UNGGE)' their relevance to International Law

The Tallinn Manual is an study which explores international law and its application on cyber activities. It provides a comprehensive and detailed analysis of the legal framework that governs cyber operations particularly how the legal concept of Jus Ad Bellum and International Humanitarian Law (IHL) apply, which acts as a reference point for understanding the legal framework for cyber operations. The manual recognises that cyberspace is a unique domain and that traditional legal frameworks may not fully capture the complexities of cyber operations. Thus, ongoing research and engagement are necessary to ensure that legal frameworks remain relevant and effective.

The UNGGE is an expert body from various states, tasked with studying as well as making recommendations on issues related with security as well as peace in cyber-space. Its reports as well as recommendations have informed international community's understanding of the legal framework that applies to cyberspace.

The UN GGE has contributed to the development of two important principles of cyber space law: the principle of state sovereignty and due diligence. It has also encouraged the creation of guidelines for accountable acts w.r.t. cyber space and has helped to raise awareness to importance of cyber space law.

However, the UN GGE has faced challenges in ensuring the participation of all states in its work, particularly those with different perspectives on the issues being addressed, resulting in a lack of agreement on issues.

Additionally, the UN GGE has been limited by its mandate, which has focused on studying peace and security regarding issues in cyber-space, and thus other important legal issues related to cyberspace, such as human rights, have not been fully addressed by the group.

While the Tallinn Manual and UN GGE have made significant contributions to the development of international law in cyberspace, ongoing dialogue and engagement are necessary to ensure that legal frameworks remain relevant and effective, particularly in the face of technological developments. The UN GGE must address challenges of ensuring the participation of all states and broaden its mandate to address other important legal issues related to cyberspace.

Other relevant International Treaties and Agreements

- "The Budapest Convention on Cybercrime", adopted in 2001, is the among the initial international treaties to speak on cyber crime and has been ratified by over 60 countries.
- "The African Union Convention on Cyber Security and Personal Data Protection", accepted in 2014 and seeks addresses cybercrime and data protection on the African continent.
- The ASEAN Convention on Cybercrime[3] was adopted in 2015 by the 10 members of the ASEAN Grouping.
- The United Nations has established various programs and initiatives to combat cybercrime, including "The Global Programme on Cybercrime" and "The UN Office on Drugs and Crime".

- WIPO Copyright Treaty (WCT): It provides protection for the rights of writers and creators of artistic and literary works in digital age, setting minimum standards for copyright protection and related rights.
- "WIPO Performances and Phonograms Treaty" (WPPT): It aims at providing protection for right of singers, audio narrators and producers of recording, setting minimum standards for their rights, including the right of reproduction, distribution, and rental.

Analysis of the Current International Law Framework

Comparison of Different Approaches to Addressing Cyber Conflicts under International Law

When comparing different approaches to addressing cyber conflicts under international law, it is important to consider the various legal frameworks that have been proposed or adopted by states and international organizations. Some approaches focus on the use of force and self-defense, while others emphasize the need for cooperation and dialogue among states. The authors have focused on the creation and interpretation of laws. As per laws concerned, the different approaches are:

1. Applying existing Law: Applying existing international law to cyber conflicts can provide some clarity on the legal obligations of states, but may not fully address the unique challenges posed by cyber operations.
2. Through new legal instruments, like creation of treaties: Developing new international legal instruments could help to fill gaps in existing law and establish new norms for state behaviour, but may be difficult to negotiate and enforce.
3. Creation of a new comprehensive legal framework, with it's own international organisation, it's own rules and enforcement force. Funded by all signatories. Like Interpol, Creating a cyber-specific legal regime could provide a comprehensive framework for cyber operations, but would require significant international cooperation and coordination.

Under all these approaches, there are some commonalities for successfully addressing cyber conflicts. They are:

1. Developing technical solutions: This approach involves developing technical solutions to prevent or mitigate cyber conflicts. These solutions could include the development of secure communication protocols or the use of encryption to protect sensitive information.
2. Strengthening international cooperation: strengthening international cooperation is essential in any approach to address cyber conflicts. This could include the development of information sharing agreements between states or the establishment of joint cyber defence teams.
3. Resource allocation: Vast amounts of resources are required to address cyber conflicts. These resources may be allocated to various activities such as developing and maintaining cybersecurity infrastructure, conducting research and development of new technologies and strategies, and training personnel to respond to cyber threats.
4. Recognition of the uniqueness of cyber-attack are a new type in the conflict that poses unique challenges to the international community.

Evaluation of the Effectiveness of Current Legal Frameworks in Addressing Cyber Conflicts

Cyber conflicts are increasingly becoming a threat to international security, with state and private entities using the new technologies and communications network to carry out attacks on critical infrastructure, steal sensitive information, and disrupt operations. In response to this threat, various legal frameworks have been developed to regulate the use of cyberspace and to hold perpetrators accountable for their actions. However, the question remains: are these legal frameworks effective in addressing cyber conflicts?

On the one hand, there have been significant developments in the legal framework surrounding cyber conflicts. For example, the Tallinn Manual 2.0, which was published in 2017 by a group of legal experts, provides guidance on how international law applies to cyber operations. The manual argues that the principles of this law, including the prohibition on the use of force, the principle of state sovereignty, and the obligation to respect human rights, apply to cyber conflicts in much the same way as they apply to traditional conflicts.

In addition, many countries have passed domestic legislation to criminalise cyber attacks and to establish procedures for investigating and prosecuting perpetrators. For example, the United States has enacted the Computer Fraud and Abuse Act, which criminalises unauthorised access to computers and networks, and the Cybersecurity Information Sharing Act, which facilitates the sharing of information about cyber threats between government agencies and the private sector.

However, despite these developments, there are still significant challenges in effectively addressing cyber conflicts through legal means, one of the main challenges is the difficulty in identifying the perpetrators of cyber attacks. The anonymity of the internet makes it easy for attackers to conceal their identities, making it difficult for law enforcement agencies to bring them to justice.

Another challenge is the non-agreement on the applicability to cuber space law conflicts. While the new Tallinn-Manual provides guidance on issue in hand, it is not binding on states, and there is still debate over how international law should be interpreted in the context of cyberspace.

Answering the question, it can be interpreted that the contemporary international cyber space law framework is inadequate to tackle the more dangerous predictions on the future developments in cyberspace (Note: This has been discussed in more detail in Section VI of the paper).

Identification of Gaps and Areas for Improvement in International Law related to Cyber Conflicts

Cyber conflicts pose a significant threat to international security, with state and non-state entities using the digital networks to accomplish attacks on critical infrastructure, steal sensitive information, and disrupt operations. In response to this threat, various legal frameworks have been developed to regulate the use of cyberspace and to hold perpetrators accountable for their actions. However, there are still significant gaps in international law when it comes to cyber conflicts.

Another gap in international-law is the lack of a multinational treaty on cyber warfare. While there have been efforts to develop such a treaty, including the proposed “UNGGE on Developments in the Field of Information and Telecommunications in the Context of International Security” progress is slow. This has left a legal vacuum in the regulation of cyber warfare, making it difficult to hold perpetrators accountable for their actions.

A third gap in international law is the difficulty in identifying the perpetrators of cyber attacks. The anonymity of the internet makes it easy for attackers to conceal their identities, making it difficult for law enforcement agencies to bring them to justice. This gap in law is specially debatable when mentioning state-sponsored cyber-attacks. In international law, there maybe a bar on use of force, but there is no clear legal framework for determining when such an attack is a use of force and how responsibility is attributed to a specific state.

A fourth gap in international law is lack of effective cooperation between nation-states on cyber security issues. While there have been efforts to establish international norms for responsible behaviour in cyberspace, like the 2015 UN GGE report on cybersecurity, there is still a lack of unity on many important issues. This lack of cooperation makes it difficult to effectively address cyber threats that cross national borders.

Finally, there is a gap in international law when it comes to the protection of critical infrastructure in cyberspace. While there are international norms and guidelines for protecting critical infrastructure, such as the 2014 NIST Cybersecurity Framework, there is no binding international treaty that requires states to protect their critical-infrastructure from such threats. This gap in international law leaves critical infrastructure vulnerable to cyber attacks, with potentially devastating consequences for national security and the global economy.

Emerging Issues in Cyber Conflicts and their Legal Implications

The legal implications of international law are substantial due to the emerging issues in cyber conflicts. Three important concerns regarding cyber conflicts are discussed here.

The Role of Private Actors in Cyber Conflicts

Non-state/ private actors, in the context of this paper are entities that are not affiliated with a government but can still have a significant impact on international relations.

It's crucial to consider the role of corporations in cyber conflicts. Defense corporations play a significant role in developing and providing cybersecurity solutions to protect against cyber-attacks. However, some corporations may also engage in offensive cyber operations, which can have significant legal and ethical implications.

Hacktivism is a type of societal activism which has evolved with the rise of the internet and digital technology. Hacktivist groups like Anonymous, LulzSec, and AntiSec also have an impact on cyber conflicts. These groups use their technical skills to promote social and political activism, including causes like freedom of expression, social justice, and government transparency. However, hacktivist activities can also pose potential risks such as unintended consequences, collateral damage, and legal repercussions.

Attacks on Critical Infrastructure and their Legal Implications

Critical infrastructure refers to vital systems and services that support a nation or region, such as banking, telecommunications, and energy distribution.

A cyber attack on these systems can have devastating consequences, as was demonstrated by the 2007 attack on Estonia, which lead to birth of "NATO Cooperative Cyber Defencee Center of Excellence (CCDCOE)" in 2008. Hostile foreign governments may use computers to target these systems, potentially resulting in grave hurt to social good. Current information-age societies are very reliant on connected systems and technology that significant harm to a nation's networked information structure could bring down or paralyse its society. It is essential to reassess how information-warfare suits into the bigger body of law governing the use of force, given the potential devastation caused by cyber-based attacks on critical infrastructure.

Following the cyberattack on Estonia, there are now fears across the globe that hostile foreign governments may use computers to target vital national or regional systems, including those that support banking, telecommunications, and energy distribution. Information warfare(IW) exercises, no matter how small scale, have the potency to "severely damage or disrupt national defence or other vital social services and result in serious harm to the public welfare," as Estonia has made abundantly clear.

Fundamental precepts of international law regarding the use of force and self-defense are put to the test by the challenges in determining the parameters of such a novel legal system. The only way to reach a compromise place that responds to the particular concerns raised by IW while upholding the integrity of Articles 2(4) and 51 of the U.N. Charter system, which together serve as the primary barrier to the spread of aggression in international relations, is to analyse the various legal frameworks that are currently in place.

The use of Artificial Intelligence in Cyber Operations

The world is witnessing a competition between nations in cyberspace, where artificial intelligence (AI)-based cyber attacks and security measures are constantly evolving. This race for security or even hegemony could lead to the militarization of cyberspace by AI, creating a dangerous situation. With the rise of AI technologies, it is not just state actors who have access to this technology. Non-state actors, such as cyber criminals, terrorist groups, or authoritarian regimes, can also use AI to carry out cyber attacks, posing a severe danger to the stableness of the foreign system.

The widespread availability of AI makes it a potent weapon in the hands of these actors. They could use AI to target various critical infrastructures, such as nuclear facilities, aviation systems, satellite communications, and other essential systems, leading to severe disruptions and damage. For instance, a cyber attack on nuclear facilities could result in a catastrophic accident, causing widespread devastation. Similarly, a cyber attack on aviation systems could cause significant disruptions in air travel, leading to economic losses and potential safety hazards.

AI can be used to create more potent malware that can evade traditional security measures, such as antivirus software or firewalls. AI-powered malware can be programmed to spread rapidly and autonomously, making it difficult to contain and control once it has infected a system. AI can also be used to carry out targeted attacks on specific individuals or organizations. AI algorithms can analyse the behaviours patterns of targeted individuals and organizations, allowing attackers to craft personalized attacks that are tailored to their victim's weaknesses and vulnerabilities. This could lead to a continuous cycle of cyber attacks and counter-attacks, escalating the conflict and causing significant damage to the affected nations.

The use of AI in cyber conflicts has the potential to create a dangerous race for security or even hegemony, eventually leading to the militarization of cyberspace by AI. The availability of AI technologies to non-state actors, such as cyber criminals, terrorist groups, or authoritarian regimes, further complicates the issue, posing a severe threat to the stability of the international system.

The Challenges of Regulating Emerging Technologies and Threats

Emerging technologies pose unique challenges in terms of global cybersecurity regulations (GCRs) and emerging risks (ERs) as they can cause significant harm with a single incident. The absence of a comprehensive GCR structure regulating these technologies could lead to the development and use of risky technologies in unregulated states or by non-state actors, thereby compromising global security. Moreover, a situation where only a few states regulate emerging technologies could put countries without regulation at an advantage, which could have severe implications for international security. There may also be a proliferation of arms race among nations for the rapid development of emerging technologies, which could compromise global security. Finally, in the absence of universal regulations, some countries may be discouraged from investing in emerging technologies if they fear that countries with weaker regulations would out compete them.

Potential Future Developments in International Law on Cyber Conflicts

The evolution of technology and the growing sophistication of cyberattacks will need to be considered in the development of international law in this field. With reference to AI, it can be used to lessen the impact of cyberattacks and increase the resilience of vital infrastructure. For instance, to watch systems and spot weaknesses before they are used against them. The potential future developments in international law on cyber conflicts will probably entail a more thorough fusion of established norms and regulations unique to cyberspace with new principles of international law.

The Need for New Legal Frameworks to Address Emerging Threats

Emerging threats such as cyber attacks, cyber espionage, and disinformation campaigns are transnational in nature and often originate from non-state actors. This poses challenges for traditional legal frameworks that rely on state-centric models of international law. New legal frameworks are needed to address these new threats and to ensure that they are consistent with existing legal norms and principles.

In order to fight cyberattacks, the Shanghai Cooperation Organization has chosen a more thorough means-based strategy. The Organization is worried about the risks presented by the plausible use of (modern information-and-communication) technologies and tools for objectives at odds with maintaining international security and stability in both the civil and military realms. An extensive psychologicaI brainwashing operation with the intention of undermining society and the state and forcing it to make decisions that benefit an opposing group is referred to as a "information war".

The Potential for Greater Cooperation Among States and International Organisations

When it comes to security of the nations or individuals of different countries or state, the best way to prevent any kind of insecurities and tragedies, is by living with cooperation and peace. Many treaties, conventions, or organisations have their main purpose as establishing peace, harmony, brotherhood and cooperation amongst all the states across the globe.

Foreign cooperation between states, international and regional bodies, and other entities is essential given the border-less and progressively complex character of cyber threats. Information and communication technologies (ICT) are widely used to, which both promote development, creativity and cooperation, and are a source of uneven threats in cyberspace. To pursue its cybersecurity goals, any entity, be it a nation or non governmental body, generally requires the support of a wide variety of international partners.

Internationally cooperation between various actors is considered to be an essential component of successful reactions to cyber threats given the present normative uncertainty regarding international law in relation to cybersecurity.

The Importance of Including Diverse Perspectives and Stakeholders in Shaping Future Legal Frameworks

The development of global cybersecurity norms requires a more inclusive and multi stakeholder approach that involves not only states but also private sector actors and civil society organizations.

Companies that provide vital infrastructure, law enforcement authorities, global institutions, electronic emergency response teams, and businesses in charge of internal and external security are a few examples of stakeholders. Importantly, the efforts of various subdomains and areas of cybersecurity expertise should be coordinated rather being seen as a fusion of different domains or isolated players.

The current state of cybersecurity norms is characterised by a lack of consensus on main problem such as the definition of cyber attacks, and the attribution of cyber attacks to specific actors.

Constructing global cybersecurity norms, including the need to balance the interests of different stakeholders, the difficulties in achieving consensus on complex issues, and the potential for norms to be circumvented by state or private entities. The development of global cybersecurity norms requires a sustained effort by all stakeholders, including states, private sector actors, and civil society organisations, to engage in a dialogue and to develop shared understandings of the risks and opportunities of cyberspace.

CONCLUSION

Key Findings

This research paper has examined the current state of international law on cyber conflicts and explored the potential future developments in this field. The key findings of this study can be summarised as follows:

1. The existing laws are not comprehensive and have loopholes which have been easily exploited.
2. There are scant laws on cyber conflicts and violations by nation states.
3. There is no enforcement mechanism for violation of cyber laws.

Policy Suggestions

Based on the findings of this research, several policy suggestions can be made to enhance international legal frameworks related to cyber conflicts and promote a more secure cyberspace. These include:

- Enhance international cooperation: Governments and international organizations should work together to establish norms and standards for responsible behavior in cyberspace. This could include greater information-sharing and collaboration on cybersecurity threats, as well as the establishment of diplomatic channels for resolving cyber conflicts.

- Develop new legal frameworks: New legal frameworks should be developed to address emerging threats in cyberspace, including the use of artificial intelligence and attacks on critical infrastructure. These frameworks should be flexible enough to adapt to rapidly evolving technologies, while also providing clear guidance on what is and is not permissible in cyberspace.

- Strengthen existing legal frameworks: The existing legal frameworks for cyber conflicts, such as the Tallinn Manual and the UN Group of Governmental Experts, should be strengthened to address gaps and inconsistencies. This could include greater clarity on the applicability of international law to cyber conflicts, as well as the development of new norms and binding standards for responsible state behaviours.

- Increase investment in cybersecurity: Governments and organizations should increase investment in cybersecurity to enhance their ability to prevent, detect, and respond to cyber threats. This could include investments in research and development, as well as the establishment of training programs to develop a skilled cybersecurity workforce.

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NEED FOR RATIFICATION OF UNCAT- COMBATING POLICE BRUTALITY IN INDIA

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Abstract

The pandemic was one of the most difficult times for the entire world. With gross human rights violations rampant and with communal violence against minority groups, the secular fabric of our nation seemed ruptured The scale and the extent of the violations was vast, uncontrolled and often, undocumented but there was a Section of society which saw the most heat, the prisoners. Prisoners are often the most overlooked people of the society due to the opaque nature of the criminal reform system in India. Worse than this is the situation of the undertrial prisoners under police or judicial custody, wherein there is no insight into their lives and the safeguard of their rights, while the verdict of their trial and by extension, their life, hangs in balance. This article intends to spark discussion on the atrocities committed by the police in India. It aims to look into the breach of trust and of service by authority which is supposed to protect its people.

Firstly, this piece begins with a brief historical background of torture laws in India. Secondly, it sheds light on how[NP1] the pandemic has further escalated custodial violence, torture by public servants and inhumane behaviour towards undertrial prisoners. Thirdly, in a descriptive analysis, it discusses India's stand on the United Nations Convention against Torture (UNCAT) while addressing an alarming need for an anti-torture law in India. Lastly, with the aid of guidelines pronounced by Supreme Court, and reports of Law Commission and of National Human Rights Commission (NHRC), it aims to suggest measures, the adoption of which, may deter the risingmalpractices by the police.

Keywords: Human Rights, Pandemic, Police brutality, Torture, UNCAT

Introduction

Police Brutality: An Overview

Colloquially, 'police brutality' refers to the harsh and inhumane treatment, often referring to the physical and material treatment, of accused persons and undertrial prisoners. According to an Amnesty International study from 1992, the most prevalent kinds of torture include intense beatings, often while the offender is hanged upside down, and is charged with electricity to shock them. People have also been crushed by large rollers, burnt, and stabbed with sharp objects. There have been reports of maiming sexual organs of victims. Rape is also a common form of torture. Apart from these, there are several other devastating methods used to obtain information from the accused. While such techniques are unlawful and are unacceptable, they are still used, ironically by the Section of the society which is supposed to protect the people i.e. the police.

Custodial abuse in India has long been a subject of debate and discussion. Cruel and humiliating treatment of accused is strictly prohibited under the provisions of the Constitution and Criminal Laws. Torture is never acceptable, whether it occurs during an inquiry, an investigation, or a trial. Active steps have also been taken by government institutions and not-for-profit organizations to curb the menace of unethical and inhumane treatment of persons in police and judicial custody.

Historical Background

The police and its functions are historical concepts, from Jivagribhs (Rig Ved) to Ugras (in the Upanishads), in our historical documents one can find the trace of policing system. With time as the police system developed, it introduced the concept of police brutality as well.

Andhra Pradesh

Andhra Pradesh is infamous for extra judicial killing and police encounters to an extent where it is deemed to be the capital of police brutality. The killing of over 2000 farmers and innocent peasants during Telangana Peasant armed struggle between 1946-51 was one such incident. The gruesome history of killings by police raised concerns. The political killings as well as of those who were considered 'unmanageable' by policemen in the name of 'encounters' tops the list. The encounter killing of journalist Ghulam Rasool who was covering these illegal deaths proved the situation of the state.

Bhagalpur Blinding, 1980

Bhagalpur, a city in Bihar saw a rampant rise in crime rates during 1980s. The incident is inscribed as the darkest chapter in history. To curb the surging crime records and instil fear in criminals, police officials injected acid into the eyes of the accused. During the span of 2 years, 33 people were blinded. A writ petition was filed in apex court in 1981 by Hingorani on behalf of all the victims. The case became the first to order compensation for human rights violations by police.

International Documents

The right to be free from torture is codified in several international human rights instruments that protect individuals from being exposed to physical and mental turmoil by acts of public servants. The prohibition of torture has also been adopted in various regional and universal human rights treaties.

United Nations Convention Against Torture (UNCAT)

The convention is an international human rights treaty under the backing of United Nations. It aims to safeguard every person from cruel and degrading treatment while in custody. It prevents harsh punishments and acts of torture which are practiced by public servants, especially towards people belonging to marginalized communities. It requires obligation of States to provide fair trial to the accused persons. The optional protocol to the convention requires public officials to work in a just and reasonable manner without committing atrocities in their jurisdiction. It encompasses certain rights and obligations –

- The right of persons to be protected from torture by the state
- The right of the State to protect individuals from torture by its agents
- The obligation of the state to prosecute torturers
- Individuals' right not to be deported or extradited to another state where they may be subjected to torture

International Bill of Rights

The Universal Declaration of Human Rights (1948), The International Covenant on Civil and Political Rights (1966) and The International Covenant on Economic Social and Cultural Rights (1966) together form the Universal Bill of Rights. These instruments are significant treaties which most States have signed and ratified. They provide a wide array of protection against violation of civil and human rights.

India's Stand on the UNCAT

The Right to life and Personal Liberty is enshrined in Indian Constitution. It protects every person from deprivation of basic rights as an individual. In line with right to life as a fundamental right, the constitution also recognizes Right against self-incrimination, protection in respect to arrest and detention, and protection in respect of conviction. The legal position of India constantly under question as regards to Anti-Torture laws. Through legislations, the parliament has justified taking stern measures to combat torture in prisons. Under the Code of Criminal Procedure, 1973, many safeguards have been provided to the accused – Right to fair trial, right to free legal aid, right to default bail, right against double jeopardy, etc have been laid down. Further, in accordance with provisions of Indian Penal Code, 1860, punishments have been prescribed against public servants who commit atrocities against arrested persons.

The Prevention of Torture Bill, 2010 was passed in the Lok Sabha to address the ongoing debate. However, after decision of Rajya Sabha's Select Committee, the bill lapsed in the parliament. India has been a signatory to UNCAT since 1997 but the ratification in parliament is still pending.

Why has India not Ratified UNCAT till Date?

India made promises on international platform in the year 1997, but even after 23 years, it has not acted upon it. Even after a quarter of the century, there is no law on national level for the same. 170 countries including Pakistan and China have ratified the convention, where India stands with minority of 25 countries with no legislation to ratify it. The main contentions behind non-fulfilment can be inconsistency between domestic laws and the clauses of UNCAT. But there exist few loopholes between legislations, which are discussed below:

Domestic Laws covering the Crux of Convention

There has been a contention that the major provisions of UNCAT have been covered under existing criminal laws of the country. There are conclusive definitions provided under IPC for 'hurt' and 'grievous hurt' but 'Torture' has not defined anywhere. However, courts included psychic torture, tiring interrogative prolixity etc in the sphere of torture.

Apart from that Section 330 and 348 of Indian Penal Code, 1860 penalizes offences that can be considered as torture (with 7 and 3 years of imprisonment respectively). Both the provisions are not dedicated for torture by public officials as such. Therefore, they fall deficient to the elements of Torture as defined under UNCAT. Section 331 and 342, however, ostensibly talks about deterring police officer on using third degree during interrogation, that may amount to torture.

Under Indian Evidence Act, 1872, the provisions of proper victim medical examination and laws circling witness protection falls short of what is a necessary requirement under convention. Though, Section 24 discusses the confession caused by threats and Section 25, talks about Confession which cannot be proved against him in court of law.

There are also few safeguards mentioned under Constitution of India, under Article 20 and 21. Article 20 gives right against conviction of offences (based on the principle of double jeopardy and self-incrimination). Article 21 can be interpreted through lens of protection from torture or right to be free from torture by state and its functionaries. The same can be extracted from the term 'Personal Liberty' as expressed in the article. Further Article 22 also provides four-fold rights surrounding conviction, like preventive detention, production before Magistrate, meet the lawyer of choice and inform grounds of arrest.

Code of Criminal Procedure, 1973, specifies various provisons to inhabit anti-torture traits.

Sections 50-56 are in tunes with Article 22. Another essential provision is under Section 176 which gives powers of magisterial inquiry on custodial deaths. Also, Section 482 talks about complaints to High Courts if magistrate fails to look into the complaints of custodial torture.

Lastly, Section 7 and 29 of Police Act, 1861 talks about suspension, penalizing of police officers who are negligent in terms of discharging their duties and violating the constitutional provisions and non-compliance of statutory guidelines.

There is a lacuna in legal provisions as well. The compensation to the victims of torture has received a minimalistic attention by courts because of void in legislative provisions. The situation is, even if the act of torture is established there is no legal obligation for compensation under law. However, in several cases like Nilabati Behera v. State of Orissa, the court has awarded compensation to victims, the concrete legal framework is still missing.

Unable or Unwilling?

India has a customary practice of passing a domestic legislation before ratifying an international convention. Although India is bound under Article 51C and 253 of Constitution to encourage settlements and respect international treaty obligations, the step towards formulation of anti-torture legislation is still absent after 23 years. However, as mentioned above there were instances in 2010, 2017 and 2018 when the domestic legislation under Prevention of Torture Bill was passed in Lok Sabha. The bill keeps lapsing due to dissolution of Lok Sabha.

There have been legislations like National Food Security Act, 2013 (Right to Food), the controversial Land Acquisition Act, 2013 passed during the same reign but Prevention of Torture Bill failed to make cut through the priorities list. It has been confirmed by then Law Minister Ashwini Kumar that standing committee prepared the draft of Anti-torture bill in 3 months but even after 11 years, there has been no action taken to pass, consider or review the same.

Most of the laws in India are introduced or borrowed by British. The laws were adopted post-independence but are in force. Since the Britishers set up the legal structure, such as policing system in India, it was found to have dominant nature with the power tipped in their favour. In a democratic set-up like India, where police are for assistance, the necessary amendments have not been passed yet. Therefore, if India chooses to ratify UNCAT, it will demand to make necessary alterations to such acts which probably too much work.

Other Reasons

According to various experts like Ajai Sahni, the convention is "political and discriminatory" in nature. He says that another scrutiny will burden the police officials and that will be reflected in exercise of their duties. Further he adds, that India will continuously be under radar for international scrutiny if it ratifies the

convention. Former CJI Deepak Gupta stated that before ratifying the UNCAT or formulating the fresh piece of legislation, the existing discrepancies must be tackled. The active laws must be rectified first before ratifying international convention.

Further, the ratification will trigger debates on Human Rights violations in Jammu Kashmir and North-East India, which might reduce India's prestige on global scale.

The entral government has time and again mentioned that they are considering the recommendations proposed by 273rd Law Commission Report but at the same time determined on the fact that minor amendments in existing domestic laws will be adequate, therefore will come in tune with Committee against Torture.

Need for ratification of UNCAT

Article 21 affirms the right against torture. According to the reports of National Campaign against Torture (NCAT), there were almost 111 people who died in police custody between April 2019 to March 2020. 18 deaths were reported on roads by police during enforcing lockdown, whereas 1,569 deaths were recorded under judicial custody.

Surge in Number of Torture Cases during COVID-19

According to United Nations Office on Drugs and Crime (UNODC), there was almost 50% drop in robbery, theft and burglary cases during Covid lockdown. At the same time, In India there was rampant rise in cases of deaths in police custody. In reports of NCAT, 50 people died by suicide due to torture by police. However, in last 10 years, 400 out of 1000 cases of custodial deaths were listed due to illness or natural deaths. This raises issue of ambiguity in answering the reasons for deaths in custody.

Tamil Nadu Custodial Deaths

Known as George Floyd incident of India, the case took place in Thoothukudi district of Tamil Nadu. The rage and wrath of policemen met with deadly consequences. The father-son duo was arrested for keeping the shop open post curfew. Jayaraj (the father), had an argument with the police petrol team a day prior to his arrest. The duo was charged under various Sections of IPC. The witnesses and localities mentioned about illness of both the accused and also said that they were bleeding while they were presented in court. Where one section of population termed it as 'revenge' by police, there is no deny in the fact that the act was sheer violation of Human Rights and the duo was robbed on their dignity.

Assam Firing, 2021

In Sipajhar district of Assam, several people were injured and three lost their lives in police firing on encroachers, on government orders. The issue faced huge public rage and court ordered judicial enquiry on same.

International Pressure

According to Asian Centr for Human Rights, a report by EU, lack of initiative by India in framing laws to prevent torture, rising cases of custodial deaths and abuse is no surprise. The Vice President of UNCAT, Claude Heller, has urged India to ratify the convention. There has been international pressure on us to not only ratify UNCAT but also to formulate the necessary domestic Anti-torture laws. While presenting Universal Periodic Review (UPR) in 2008 and after, India, time and again gave word on ratifying convention but futile.

India's submission to UN Human Rights Council have always on a positive note affirmed that India will soon ratify the treaty and legislate the domestic laws. Non-performance of the promise for past 23 years has put us in bad light on global arena.

India and Human Rights: A Silent Tussle

UNCAT provides a blueprint to assure total eradication of torture. Being a richest democracy in the world, it is a paradox that India is still out of it. The instances of torture and ill-treatment of people in custody surfaced in last couple of years. The moral need for anti-torture law exceeds legal need by colossal margin. The holistic aspect of treaty covers the investigation as well as victim welfare and rehabilitation. The inclusive legislation in a country with such a vibrant democracy will have great impact, especially with free press.
Recent cases of Police brutality are:

1. Attack by police in college campuses in Delhi, in 2019.
2. The Hyderabad Encounter, 2019
3. Vikas Dubey Encounter, 2020
4. Death of Sagar Chalavadi during lathi-charge outside SSLC center, 2020
5. Brutal beating of Dalit Family in Guna, M.P, 2020

These are some incidents which were out in public, one can only imagine the situation behind lockups. Therefore, there is a need for dedicated law to combat police brutality. One must understand that Human rights are made for people, they are inclusive and are guaranteed to people for sake for their well-being. The absence of legislature against torture is a sheer violation of our human rights. Issues of human rights is not partisan, they are not based on yes or no factor. These issues are necessary to be out for discussions and debates.

Guidelines Surrounding Police Accountability and Reforms

The role of state and non-state actors is crucial in determining the volume of cases that are filed in violation of custodial violence. Technological advances and increased social media usage also compel a need to bring anti-torture legislations. Some peculiar instances for such acts may include spread of communal violence through social media networks.

National Human Rights Commission (NHRC)

1997 Report

1. Regarding encounters, the officer-in-charge is bound to record details of the encounter in an appropriate register as soon as he receives the information of the same.
2. In cases of death and serious offences, expedited course of action should be pursued to investigate into facts and circumstances of the case
3. Independent investigation agencies like CID and CBI should be handed the task of investigating felony and organized crimes
4. For cases ending in conviction, compensation to the dependants of the deceased must be considered

2003 Report

1. As held by the Supreme Court in Lalita Kumari vs Govt. of UP, FIR must be registered by police officer for cognizable offences. The police do not have the power to conduct inquiry and then proceed with FIR.
2. The concerned Magistrate should be bound to inquire the case within 3 months of complaint.
3. The Senior Superintendent of Police must report the case to the commission before 48 hours of filing of complaint.
4. The postmortem report, inquest report, and findings of the magisterial enquiry must be reported within 3 months.

Supreme Court Guidelines

Prakash Singh vs Union of India

1. The Supreme Court directed to set up a State Security Commission.
2. The SSC would lay down directions and policies for efficient working of prisoner security.
3. The state would have no authority to interfere in police investigation and the police shall work in autonomous manner.
4. The Indian Criminal Law requires judicial magistrate to conduct every custodial death inquiry.
5. Community policing and advanced training camps must be set up for better working of police force.
6. The idea is to depart from colonial policing measures and adapt to a more democratic approach towards police reforms.
7. The constitutional framework must be maintained while executives perform their functions.

Law Commission's 273rd report (2017)

Title of the report: Implementation of "United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment" through Legislation.
Several recommendations made in respect of torture cases –

1. The definition of 'torture' expanded to a large extent to include physical and mental injuries.
2. The Commission advised the government to ratify UNCAT and provided a legal framework of anti-torture law to be considered for enactment.
3. Need to amend existing legislations (CrPC and Evidence Act) to include compensation and burden of proof.
4. Torturers be held accountable for violation and victims be provided adequate compensation.
5. Prioritize protection of victims, witnesses, and complainants in custodial violence cases.

Judicial response: Supreme Court's Attempt Towards Police Reforms

Due to lack of a particular legislation to prevent torture, many cases are registered against public servants under Section 330 and 331 of Indian Penal Code. Section 330 is the offence of "voluntarily causing hurt to extort confession, or to compel restoration of property." Section 331 deals with "voluntarily causing grievous hurt" for the purpose of extracting information. The term of imprisonment in both the offences is seven years and ten years, respectively.

1. In Francis Coralie Mullin v. Administrator, U.T. of Delhi, the Supreme Court observed "any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity." The court further noted that a violation of Article 21 cannot be held valid by procedure prescribed by law. If a law authorises procedure which leads to such torture, the test of reasonableness and non-arbitrariness would fail.
2. In the landmark decision of D.K Basu v. State of West Bengal, the Supreme Court held that "custodial violence including torture and death in lock ups strikes a blow at the rule of law." The court deliberated on powers of executives to be limited by law. The Supreme Court provided some remedies to define protection in such cases and in cases of disappearance after arrest, burden of proof shall be upon police.
3. In Rama Murthy v. State of Karnataka, the Supreme Court recognized the need for prison reforms and related issues of inmates facing ill-treatment and torture.
4. In the case of Sube Singh v. State of Haryana, Supreme Court stated various reasons for prevalence of third-degree torture during interrogation and suggested preventive measures for such unethical treatment.
5. In Nandini Satpathy v. P.L Dani, the Court looked upon different methods of torture other than the traditional physical beatings. It was held that not only bodily harm, but 1."psychological torture", "atmospheric pressure", and "environmental coercion" used in interrogation by police are illegal.
6. The Supreme Court in Mehmood Nayyar Azam v. State of Chhattisgarh dealt with atrocities against a social activist who was falsely accused in criminal cases. The police tortured him physically while in custody. The Court observed that functionaries of the state must not become lawbreakers as it would amount to contempt for law.
7. In State of M.P. v. Shyamsunder Trivedi the court pointed out that in cases of custodial death or police torture, it is difficult to expect direct evidence of the complicity of the police. The Court called deaths in police custody as the "worst kind of crimes in civilised society, governed by rule of law."

Suggestions and Conclusions

Fundamental re-evaluation of police reforms fixing police action and accountability is the need of the hour. The convention ensures safeguards to prevent torture and enhance training of law enforcement. India needs to understand that ratifying UNCAT will build inter as well as intra countries' confidence. Being a part of the system, it will lead to better international support and restructured domestic reforms to combat much required anti-torture law. There is a need for specific law that determines torture and at the same time provide provisions to address and penalise the same. Therefore,

1. Need for comprehensive bill that includes the definitive structure for the term 'torture' and defines the punishments for the same. Also, compensation scheme must be provided.
2. It should not only be seen through legislative point of view but also through lens of Human Rights.
3. State Security Commission, as instructed by Supreme Court must be established with immediate effect.
4. Police officials indulged in fake encounters must be arrested, prosecuted and punished severally.

Before law and policy reforms, the attitude of India towards human rights needs restructuring. The time stresses to uphold the rights enriched in constitution, to protect and secure lives of citizens. In order to achieve good governance and holistic legal order, there is a dire need to stop barbarism by police and take up cognizance to tackle the issue of brutality. The ratification of UNCAT will therefore, reiterate India's international commitment towards law enforcement in protection of Human Rights.

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INTERNATIONAL LAW: A BRIEF STUDY ON DEVELOPMENTS AND TRENDS IN THE CONCEPT OF UNIVERSAL JURISDICTION PERTAINING TO ITS ENFORCEMENT AND CRIMES

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Abstract

The concept of universal jurisdiction empowers nations to prosecute crimes, irrespective of where the crime has been committed and the nationality of the accused or victims of the crime. There have been constant developments & changes in the enforcement of universal jurisdiction by domestic courts. The idea of universal jurisdiction is a step to decrease the crime rate globally & provide justice to the victims of such crimes. This paper analyzes the domestic implementation of this jurisdiction through case laws and the crimes falling within the purview of universal jurisdiction. Further, in this paper, the researchers shall also look into recent trends and analyze the practical challenges the national courts face in enforcing this jurisdiction. Also, the researchers shall observe the developments in the case of crimes under this jurisdiction and conclude this paper with appropriate suggestions.

Key Words: Universal jurisdiction, States, Crimes, Challenges, Recent-trends.

Introduction

According to the idea of universal jurisdiction, a national court may file charges against an individual for grave violations of international law, such as crimes against humanity, war crimes, genocide, and torture, on the justification that such violations jeopardize the international community or order, which individual States may take action to defend. According to this principle, every state has the authority to try certain offences that are thought to be exceptionally offensive to the entire world community. Most of the states exercise this power when the offence has not taken place in their territory or the accused or victim is not their citizen.

There is a distinction between the offences that the States may choose to investigate under permissive universal jurisdiction and those that they must investigate under mandatory universal jurisdiction. This jurisdiction may be either based upon customary rule or treaty based international law. When it is specified in a treaty, it is typically required.

The enactment of national legislation (legislative universal jurisdiction) or the investigation and trial of suspected offenders are required (adjudicative universal jurisdiction) to enforce universal jurisdiction. The former is much The enactment of national legislation (legislative universal jurisdiction) or the investigation and trial of suspected offenders are required (adjudicative universal jurisdiction) to enforce universal jurisdiction. The former is much more prevalent in state practice and generally acts as the basis for an inquiry and a trial. Further, the analysis part of this research paper shall comprise of the treaties which provides the base for universal jurisdiction, domestic implementation of universal jurisdiction and crimes which fall within this jurisdiction.

Treaties on Universal Jurisdiction

As there are number of treaties pertaining to universal jurisdiction, the researchers shall provide relevant important treaties pertaining to its evolution-

Piracy was the first criminal subject of universal jurisdiction. All states were thought to be at risk from acts of piracy committed on the high seas, which is a region outside the control of states. In essence, it was up to the state that caught the pirate to prosecute the crime. Piracy was later controlled by conventional rules, including the 1958 Convention on the High Seas and the 1982 Law of the Sea Convention, despite the fact that the incrimination had a customary origin in the beginning.

The category of universal crimes was broadened following World War II with the establishment of the first international criminal tribunals in Nurenberg and Tokyo. Crimes against peace, infractions of the laws and customs of war, and crimes against humanity were listed as offences under the jurisdiction of the International Military Tribunal in Article 6 of its 1945 charter and were to carry individual responsibility. This article is now considered as part of international law.

Further, in 1948, the Convention on the Prevention and Punishment of the Crime of Genocide was adopted. The concept of Universal Jurisdiction was first codified in the 1949 Geneva Conventions on the laws of war, which mandate that states parties to prosecute or extradite persons accused of severe violations of the conventions (war crimes).

The taking of hostages, willful death, torture, or other cruel treatment are just a few examples of these serious violations. The 1949 Conventions' list was expanded in the Protocol of 1977 to include things like attacking civilian populations. In 1973, the International Convention on the Suppression and Punishment of the Crime of Apartheid was adopted.

This national legislation may occasionally be required by international treaties like the Convention Against Torture and the Inter-American Convention to Prevent and Punish Torture, which oblige States parties to adopt the laws necessary to prosecute or extradite any person who is within the State party's territorial jurisdiction and has been accused of torturing.

Further, Genocide, crimes against humanity, war crimes, and aggression are listed as the "most serious crimes of concern to the international community as a whole" in the 1998 Rome Statute for the International Criminal Court. It also states that anyone who commits a crime under the Court's purview "shall be individually responsible and liable for punishment" in accordance with the Statute. In 2002, the International Criminal Court's Statute of Rome went into effect, incriminating the crimes of genocide, crimes against humanity (this time without the need for any connection to a war), war crimes, and (without a precise definition) the crime of aggression.

Implementation of Universal Jurisdiction through Domestic Laws

Some, States have their laws for enforcing universal jurisdiction. Such domestic legislation gives national courts the authority to look into and prosecute anyone who are accused of committing such international crimes regardless of the location of the crime committed, the nationality of the victim & suspect. This kind of absorption of universal jurisdiction in domestic laws may differ from one state to another as it gets modified.

The researchers shall give a brief idea of this implementation-

The Eichmann case, determined in 1961 by the District Court of Jerusalem, serves as the starting point in discussions about universal jurisdiction as it appears in domestic courts. A 1951 Israeli law allowed for the prosecution and conviction of Eichmann for war crimes, crimes against the Jewish people, and crimes against humanity. The District Court concluded that international law actually required that every state's legislative and judicial bodies carry out its criminal interdictions and bring the offenders to trials, far from constraining nations' authority to punish such offences. The fact that the crimes were committed before Israel became a state did not stop it from acting in accordance with the universal jurisdiction of international law. Israel's local laws substantially reflected the violations that were acknowledged by international law.

New Zealand is another example of a State that provides domestic exercise of universal jurisdiction. The International Crimes and International Criminal Court Act 2000 of New Zealand defines war crimes, crimes against humanity, and genocide in accordance with the Geneva Conventions and the Rome Statute, and its section 8(1)(c) states that defendants may face trial in New Zealand for certain offences regardless of their citizenship or nationality or the place of occurrence or the presence of the defendant during the time of offence. Even Canada has its own legislation on “Crimes Against Humanity and War Crimes Act of 2000” to exercise its universal jurisdiction which is quite akin to New Zealand.

Whereas on the other hand, it differs in countries like Belgian which mentions that the victims of such grave who are non-Belgian should have resided in the country for at least three years. In case of Japan, they require the presence of accused in their territory for exercising the universal jurisdiction provided lack of any competent state which can try such case. And in this way, countries modify the implementation of universal jurisdiction according to their national laws.

It is not easy for the states to prosecute cases pertaining to universal jurisdiction, due to political relation with that particular state where the crime has been committed and apprehension of that country turning as an enemy country to it if prosecution takes place. Secondly, the extraterritorial cases call for a huge capacity of financial and human resources. States may be able to restrict the number of cases if they lack the personnel and financial resources necessary to guarantee a secure and transparent judicial process.

Investigation and prosecution of crimes committed internationally take longer than those committed domestically because the crime scene and certain witnesses are located abroad. However, protecting survivors, witnesses, and their families necessitates a significant number of resources and Potentials. Hence, these are the main aspects which act as a factor of setback for the nation states to exercise universal jurisdiction.

Hence, to escape from this obligation, states try to restrict themselves by subjecting the application of Universal jurisdiction to conditions like presence of accused in their territory or any order to be sent by the country's respective solicitor general to take up the case or lack of any other competent state to prosecute the case and other such factors as discussed above. Despite of these kind of scenarios, recent developments in this field bring a new hope to achieve the purpose of universal jurisdiction.

Recent developments & trends of universal jurisdiction can be observed in the following cases-

Case of Rohingyas

The military and civilian leadership in Myanmar were sued in Argentina's lower courts in 2021 for genocide and crimes against humanity committed against the Rohingya population since 2017. The Court instructed the legal authorities to look into the alleged genocide and crimes against humanity against the Rohingya people. But later it decided not to investigate this crime as already International criminal Court was dealing with this matter.

However, The Federal Criminal Court in Buenos Aires recently ruled on, that its federal jurisdiction must look into the suspected commission of crimes against humanity against the Rohingya community's civilian population in Myanmar between 2012 and 2017. Buenos Aires took this decision following the withdrawal of Argentina from dealing with the case.

Syria

The recent Al-Khatib trial, is a land mark case which sets a precedent for states in implementing the Universal Jurisdiction. In this case, Anwar R. was tried under "the Code of Crimes Against International Law (CCAIL) – the 2002 implementation of the Rome Statute into German criminal law". In addition to 27 murder charges and 25 assault cases, the judges also found Anwar R. guilty of crimes against humanity under Section 7 of the CCAIL. They included the restriction of liberty, rape, sexual coercion, and murdering of people. This case depicts a country's trial against a former Syrian state officer for the first time for crimes against humanity which shows the commitment towards universal jurisdiction.

Further, the case of Congo Vs. Belgium (2022) established that the ability to prosecute an official in office for actions taken in a personal capacity, even when a war crime or a crime against humanity is involved.

Public prosecutors in Sweden have accused a lady of a war crime and a significant breach of international law for allegedly enabling her twelve-year-old son to be enlisted and employed as a child soldier in Syria from the age of twelve to fifteen. It is classified as encouraging war crimes by the United Nations, and it is even addressed in international humanitarian law. The court found the women guilty of promoting war crime.

The French Court of Cassation declared on November 24, 2021, that it was unable to hear the case against Abdulhamid C., a member of the Syrian state security services, because neither Syria nor its domestic laws had recognized crimes against humanity as a crime (dual criminality). The Court of Cassation applied a stringent interpretation of the double criminality threshold given in article 689-11 of the Code of Criminal Procedure and came to the conclusion that a French judge lacks jurisdiction over crimes committed in Syria because the Syrian State neither accepted the Rome Statute nor criminalized crimes against humanity in its domestic law.

In the end, this criterion promotes impunity because it is easy for a state where war crimes or crimes against humanity are committed to refuse to ratify the Rome Statute or to not mention these crimes in its domestic legislation in order to shield its citizens from French legal jurisdiction. Along with its condition of double

double criminality, other condition of other requirements, such as the need that the suspect be a habitual resident, are also in place to restrict the use of universal jurisdiction in France.

Iraq

The prosecution of Islamic State members for alleged atrocities against the Yazidis has been carried out under the principle of universal jurisdiction for crimes committed in Iraq. On November 30, 2021, Taha Al-J, a member of the Islamic State who was 29 years old, was found guilty of genocide, as well as a crime against humanity that resulted in death, aiding and abetting a war crime against people in two cases that resulted in death. Especially noteworthy was the fact that this was the first Yazidi genocide conviction

Liberia

For crimes committed in Liberia, the use of universal jurisdiction frequently focuses on alleged violations that are said to have occurred during the First and the second Liberian Civil War.

The Swiss Federal Criminal Court found Liberian Alieu Kosiah guilty of war crimes on June 18, 2021, and he was given a 20-year prison term. Additionally, he was mandated to compensate seven complainants. It was the Switzerland's first trial under universal jurisdiction.Civitas Maxima, a Geneva-based NGO, was in charge of the case and furnished the majority of the prosecution's evidence. Due to lack of agreement with the Liberian government's officials, investigators from the Swiss Attorney General's office were unable to travel there.
Apart from these the national courts of Paris prosecuted crimes pertaining to Genocide which took place in Rawanda against Tutsi minority ethnic group. Wherein, a French-Rwandan was given a 14-year prison term for his complicity in a genocide and other crimes against humanity on December 16, 2021, by the Paris Assize Court. In other instance, The Paris Court of Justice ordered a trial for former Rwandan gendarme Philippe on September 20, 2021, for committing genocide.

Therefore, in light of these recent developments, as discussed above the following aspects are noteworthy-

The first aspect is that these instances frequently arise in domestic legal systems that follow civil law and use the inquisitorial technique of adjudication. The inquisitorial system is better in application and is suitable when it comes to the determination of crimes under the international law, even though it is commonly construed that correlation is not synonymous to causation and there are many other elements at play. As an alternative, states with civil legal systems and monist interpretations of international law tend to be more considerate of the project's overarching objectives.

Second, while organizations frequently file cases under universal jurisdiction, specialized war crimes units like the Dutch International Crimes Team, the German Central Office for Combatting War Crimes, and the French Central Office for Combatting Crimes against Humanity, Genocide, and War Crimes are also doing it occasionally. Although nations, not individuals or private groups, are required by international law to investigate and punish specific crimes, it is nevertheless important to consider how well-coordinated public and private organizations are and how much political influence these organizations are vulnerable to.

Hence, based upon above case, it can be seen that there are states which are trying to carry the spirit of universal jurisdiction, through their domestic laws and adhering to the treaties, unlike countries who restrict their duties of enforcement.

Analysis of the crimes which are subject to Universal Jurisdiction

War Crimes:

War crimes are "serious violations of customary or treaty rules belonging to the corpus of international humanitarian law." All States are able to fulfill their duty to investigate and punish those who perpetrate war crimes because of universal jurisdiction. For this principle to be effective, States must establish universal jurisdiction for war crimes in their domestic laws. The argument that war offenses are subject to universal jurisdiction is based on both treaty law and international customary law.

Treaty Law:

The four Geneva Contentions of 1949 introduced the assertion of universal jurisdiction in treaty Law to protect the war victims connected to the violations of the Conventions, which were classified as grave breaches. According to the relevant articles of the Convention, States are required to look for offenders and either prosecute them in their own tribunals or turn them over to the Other party State. Conventions provide for a mandatory universal jurisdiction. Similar duties are placed on States by other conventions connected to international humanitarian law.

Customary International Law:

While treaty law provisions only include grave breaches, Customary International Law extends to all those acts which constitute war crimes under the laws and customs of war. There are no specific grounds relying on which Customary International Law requires States to exercise jurisdiction. According to rule 157 of ICRC Customary International humanitarian law study states have the power to entrust universal jurisdiction in their national courts against war crimes.

Piracy:

Piracy refers to seizing a vessel for private gain or a related crime. It generally refers to the robbery or use of criminal force at sea. Article 101 of the United Nations Convention on the Law of the Sea (UNCLOS) defines piracy as:

"(a) any act of illegal detention, or use of violence or theft and any illegal behaviour by the personnel or passengers of a private ship or private aircraft, that are carried out for personal benefit, and directed:

(i) on the high seas, against a ship or aircraft, or against persons or property on board such ship or aircraft;
(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) few acts make a ship or an aircraft pirate and such acts include voluntarily operating such aircraft or ship after knowing the facts

(c) any purposeful incitement or of knowingly facilitating an act described in subparagraph (a) or (b)".

Under universal jurisdiction, States may search or detain a ship suspected of piracy. According to universal jurisdiction states may detain and prosecute pirates. Generally, the exercise of universal jurisdiction is discretionary in nature, and the States are free to choose the linking factor. However, International Law doesn't mandate any order of priority for linking principles. There are many reasons why piracy is subject to Universal jurisdiction. Let us discuss few reasons below:

1. The pirate and the ship will lose their nationality while practicing piracy. Once they are denationalized, any form of jurisdiction based on the nationality of the pirate cannot be applied.
2. As the pirates attack the ships on the high seas, they are considered hostis humani generis that is, enemies of all mankind. So any country can detain them and prosecute them.
3. Another reason for subjecting pirates to universal jurisdiction is the heinousness of piracy.
4. Professor Kontorovich stated that it is better to subject piracy to universal jurisdiction as piracy can potentially harm nations

Genocide:

After considering the heinousness of the crime and the necessity of tackling down genocide cases, it was included in the purview of universal jurisdiction. Examples of genocide include the Rwanda genocide, the genocide in Bosnia and Herzegovina and the genocide in Darfur. In the genocide in Darfur, almost 400000 have died because of violence, millions of people have become homeless and lakhs fled from borders. To protect the interests of millions of people and to stop further genocides, it has been included in universal jurisdiction.

Terrorism:

After the 2001 attacks on New York City and at the Pentagon in Washington, D.C, raised a challenging question of whether terrorism should be considered as an international crime or a transnational crime and also a question pertaining to the jurisdiction of the Courts has also arisen as to whether they should be subjected to International Courts or other tribunals having universal jurisdiction.
As mentioned previously four Geneva Conventions of 1949 mention the principle of universal jurisdiction. Article 49 of the First Convention reads as follows :

"Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case".

This section's scope is extended to universal jurisdiction, but it is important to note that it only applies to serious infractions. So, it can be said that terrorism is a crime to which universal jurisdiction is allowed.

Hijacking:

As previously mentioned, universal jurisdiction applies to piracy. Hijacking is considered aerial piracy, so universal jurisdiction applies to hijacking also. There are many instances of aircraft hijacking where thousands of people are held as hostages to fulfill their evil demands, which is either to release the most wanted criminals or terrorists. Both hijacking and fulfilling their demands to save people are a threat to the entire nation as no one knows the consequences after fulfilling their demands. So to prevent hijacking and to punish those who have committed hijacking, this has been included in universal jurisdiction so that every offender of this offense will receive the same punishment irrespective of their nationality.

Recent trends in Universal Jurisdiction

i. War Crime Units:
Necessary infrastructure at the national level has been strengthened and the states have understood the difficulty in conducting trials, so they established war crime units with investigators, prosecutors and designated analysts. These war crime units exist in many countries. The specialists in these units have to maintain a degree of professionalism and have to solve the case regardless of politics.

ii. After years of inaction, sexual offenses like rape, nudity, and sexual slavery are now increasingly documented and prosecuted. Despite this development, universal jurisdiction cases involving sexual assault are still rarely looked into and punished.

iii. States have understood the importance and necessity of universal jurisprudence and increased cooperation to prosecute cases.

Conclusion

The advantages of universal jurisdiction include uniform punishment to the offenders of the same crime irrespective of their nationality, offenders cannot escape to any other country to hide, and it tries to inculcate a sense of equality in the world. universal jurisdiction is applicable to those crimes which threaten the peace and security of the citizens.

With respect to the analysis of cases where universal jurisdiction has been exercised, it can be clearly understood that it's up to the States as to how would they want to modify their national laws to enforce universal jurisdiction. Countries like, New Zealand, Germany and Canada etc. are trying to implement this jurisdiction in its pure form without restricting themselves and without a conflict to their domestic laws. On the other hand, there are countries like Japan, Belgium and France which try to restrict themselves from implementing the jurisdiction subjecting it to conditions.

Thus, it can be understood that, states in-order to escape from their duty of enforcing universal jurisdiction, under the guise of modifying their laws as per universal Jurisdiction, try to restrict their enforceability by framing laws which acts as hindrance to such duty. The usage of universal jurisdiction has recently expanded outside of Western states, as evidenced by new developments which took place in Argentina and South Africa who are enforcing this jurisdiction. Hence, cases of recent geographical expansion and an increase in enforcement of universal jurisdiction indicate a possibility of flourishment of this jurisdiction in the upcoming days.

Suggestions

1. A treaty should be introduced which does not allow states to design their national laws which are grossly made to escape their duties from enforcing universal jurisdiction, thereby enforcing a monistic or unilateral legal systems globally.
2. In case of enforcement of universal jurisdiction, the onus of witness protection must lie on the country aiming to enforce such jurisdiction. Such enforcement must lie in conformity with other recognized and accepted human rights standards.
3. To help States with resources and financial needs, international human rights organizations can help the concerned court authorities of that State with the collection of evidence and identification of witnesses, was the case of Swiss Federal Prosecution Case.
4. Barriers to enforcement, especially in more serious crimes like economic offences and offences against body and sexual autonomy must be reduced and a uniform understanding of such crimes must be achieved.

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INTERNATIONAL LAW GOVERNING CYBER OPERATIONS AS A MEANS OF WARFARE: ANALYSIS OF THE ONGOING CYBER WAR BETWEEN RUSSIA AND UKRAINE

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Abstract

According to the principle of territorial sovereignty, a state enjoys complete and exclusive authority over its territory, including exercising control over cyber infrastructure and cyber activities within its borders. It is recognized that sovereignty and the international norms derived from it apply to cyber activities, just as they do in non-cyber contexts. Therefore, given the emerging global instances of cyber hostilities between conflict-affected states, it has become increasingly important to ensure the control and deterrence of inter-state cyber-attacks.

The focus of this paper is on the nature of cyber warfare and its potential impact on the internal and external affairs of a state. It examines the current international regime concerning inter-state cyber-attacks, developed over time by interpreting laws through judgments of the International Court of Justice (ICJ), decoding the Tallinn Manual, and considering specific reports released by the UN General Assembly and the UN Security Council related to cyber security.

Furthermore, the paper analyses Ukraine's efforts to secure its critical information infrastructure and data from various cyber-attacks conducted by Russia during the current Russian invasion. In its entirety, this paper addresses how existing international law can be applied to trans-border cyber conflicts, identifying states that can be held accountable, and advocates for the increasing need for reforms in the areas of critical information security between states.

Keywords: Cyber warfare, Russia-Ukraine, Information Security, International law.

Introduction

Examining the Scope of the Issue:

Presently, there seems to be an unregulated rise in the malevolent use of Information and Communication Technologies (hereinafter "ICT") to carry out cyber-attacks against the governmental cyber-infrastructure of a state. These attacks pose a severe threat to the national security of the target state. Therefore, to secure the critical data and information infrastructure of a state from any malicious cyber interference, a clear protocol must exist to deter acts of cyber-notoriety between nations, especially those embroiled in hostilities.

It is well established that the malevolent use of cyber skills can pose grave economic, political, and social risks. An additional concern is that, regarding cyber security, not all states stand on the same footing; developing countries are unequally equipped technically, politically, and legally to deal with the risks associated with cyber warfare.

There are also several situations where an attack can be directly traced back to a particular state for which the state can be held accountable. States are capable of employing hackers and providing them access to their governmental infrastructure to carry out specific operations on other states. Furthermore, they can also provide indirect financial backing. This makes it easier for the state to deny their connection to the attack if it gets detected. Such methods are prominently employed by states to avoid diplomatic repercussions and international responsibility.

As of the year 2022, there have been many incidents of cyber interferences between conflict-affected states that have demonstrated the risks associated with the wrongful use of ICT. Some of these incidents include: (a) the March 2022 cyber-espionage operation conducted by Pakistani government-linked hackers to induce malware in the system of Indian government employees; (b) an attack on a satellite broadband service malware which shut down internet services across Europe, including Ukrainian military communications at the start of the Russian invasion; (c) the charging of four Russian government employees by U.S. Department of Justice for their involvement in hacking campaigns that took place between 2012 and 2018; (d) the hacking of Palestinian individuals and organisations with the use of malware, since October 2021 by a hacking group alleged to be associated with the cyber arm of Hamas.

Various types of cyber-attacks have surfaced in the recent past; however, not all of them can be deemed violative of a target state's territorial sovereignty. Thus, certain key elements must be considered, such as attributability, state-sponsoring, and active or constructive knowledge of misuse, which could be used to hold a perpetrating state internationally responsible for their actions. Nevertheless, the standard for such accountability is high, and there is a wide gap in how different countries respond to cyber-attacks.

Understanding the International Framework Regarding Cyber-Conflicts between States

The issue of information security has been on the UN agenda since 1998 when the Russian Federation brought forth a draft resolution on this subject in the First Committee of the UN General Assembly (hereinafter "UNGA"). Subsequently, it was adopted by the UNGA as Resolution 53/70. Since then, several intergovernmental steps have been taken to address security concerns involving the use of information and communications technologies in the context of international cybersecurity.

In the year 2004, six United Nations Groups of Governmental Experts (hereinafter "UN GGE") studied the threats posed by the malicious use of ICTs in the context of international security and how these threats should be addressed globally. Four of these Groups have agreed on substantive reports with conclusions and recommendations that have been welcomed by all UN member states. The experts for these groups were appointed from around twenty-five states.

In two consecutive reports, the UN GGE confirmed that sovereignty and the international norms that flow from sovereignty apply to cyber activities, as they do in the non-cyber context. The 2013 report clarified that international law, and the UN Charter are essential for maintaining peace and stability and promoting an open, secure, peaceful, and accessible ICT environment.

It was also made clear by the UN GGE that states have jurisdiction over ICT infrastructure within their territory, and states must meet their international obligations arising from internationally wrongful acts attributable to them. Additionally, the UN GGE stated that states must not use proxies to commit internationally wrongful acts and should seek to ensure that their territories are not used by non-state actors

for the unlawful use of ICTs. Following this, the 2015 UN GGE report was prepared, which added that the misuse of ICTs may harm international peace and security, and that there are effectively two sources of such threats: (i) non-state actors and (ii) states. Essentially, the 2015 report of the UN GGE was adopted by consensus in resolution 70/237. This resolution effectively called upon member states to be guided in their use of information and communications technologies by the 2015 report of the Group of Governmental Experts.

In December 2018, through resolution 73/27, the UNGA established an Open-Ended Working Group (OEWG) for all UN member states. The Group became operational in the year 2019 and held inter-sessional consultative meetings with industry, civil society, and academia. The Group adopted a report by consensus at its final session in March 2021, wherein it had been summarized that "As the world's dependence on information and communications technologies (ICTs) continues to increase, the responsible behaviour of States in the use of ICTs has become of vital importance to the maintenance of international peace and security." The final report and the recommendations contained therein were endorsed in UNGA decision 75/564.

The 2021 UN GGE report acknowledges that, as assessed in the 2015 report, several states are developing ICT capabilities for military purposes, and the use of ICTs in future conflicts between states is becoming more likely. Malicious ICT activity by persistent threat actors, including states and other actors, can pose a significant risk to international security and stability, economic and social development, as well as the safety and well-being of individuals.

As of the present scenario, from 2020 onwards, the General Assembly, through resolution 75/240, has established a new five-year Open-Ended Working Group (OEWG) on the security of and in the use of information and communications technologies. This OEWG will meet regularly through 2025 to discuss and elaborate upon international security concerns involving ICT activities between States.

In Nicaragua v. the United States of America, the International Court of Justice (ICJ) clearly averred that the principle of respect for territorial sovereignty overlaps with the principles of the prohibition of the use of force and of non-intervention. It also recognized the customary character of the obligation to not violate the sovereignty of another state, and noted that breaches of territorial sovereignty are not always accompanied by the conventional use of force.

The final substantive report of the UNGA Open-ended Working Group on developments in the field of information and telecommunications in the context of international security concludes that there is potentially devastating security, economic, social, and humanitarian consequences of malicious ICT activities on critical infrastructure (CI) and critical information infrastructure (CII) supporting essential services to the public. It has been observed by the UN that if a cyber intrusion concerns the disabling of CI, it may be more likely to be coercive because such an attack would necessarily have a practical effect on the free will of the target state to exercise its sovereign functions exclusively and effectively over that infrastructure.

There are many international organisations and international declarations that are in acknowledgement with the assertion that existing public international laws are applicable to malicious cyber conflicts between States. These are inclusive of the NATO Wales Summit Declaration in 2014, OSCE Confidence-Building Measures to Reduce the Risks of Conflict Stemming from the Use of Information and Communication Technologies in 2016,the Tashkent Declaration of the Fifteenth Anniversary of the Shanghai Corporation Organization, the EU Council Conclusions of 20 November 2017 and, the Commonwealth Cyber Declaration of 2018.

The "Tallinn Manual on the International Law applicable to Cyber Operations"

The Tallinn Manual is the first-ever elaborate and authoritative (however, non-binding) attempt to understand how existing international law applies to cyber warfare. It is a one-of-a-kind literary work routinely referenced and relied upon by civilian and military practitioners worldwide due to the deep insight it provides toward understanding the nature and impact of cyber warfare.

1. Origin and evolution of the Manual.

The Tallinn Manual was produced by an expert team of legal scholars from around the world at the request of the NATO Cooperative Cyber Defence Centre of Excellence, headquartered in Tallinn, Estonia. Two editions of the manual have been released so far.

The first edition was published in March 2013. The scope of the first edition of the manual was to analyse cyberspace activities related to going to war and fighting wars through cyberspace. The manual represents the views of the international experts in their professional and personal capacities and is not a reflection per se of the official policy of NATO or its member states.

Subsequently, in February 2017, a follow-up edition, The Tallinn Manual 2.0, was released by the group of international experts aiming to widen the scope of the assessment criteria for the application of several international legal principles on ill-intentioned cyber operations that may not, in the conventional sense, rise to the same level as an armed attack. The NATO Cooperative Cyber Defence Centre of Excellence has explained in its statement towards expanding the scope of the manual through its second edition that states are challenged daily by malevolent cyber operations that do not rise to the level of an armed attack or occur during armed conflict. The second edition of the Tallinn project deals with the international legal framework that applies to such cyber operations. Tallinn Manual 2.0 also navigates how some general principles of international law, such as sovereignty, jurisdiction, due diligence, and the prohibition of intervention, apply in the cyber context.

2. Importance of the Manual in understanding cyber-warfare.

Rules 1-5 of the Tallinn Manual 2.0 are crucial for understanding how sovereignty relates to cyber warfare. Rule 1 of the Tallinn Manual 2.0 states that the general principle of state sovereignty applies in cyberspace. According to the experts, this rule recognizes how various aspects of cyberspace and State cyber operations are not beyond the reach of the principle of sovereignty. It is further emphasized that while no state may claim sovereignty over cyberspace per se, states may exercise their sovereign prerogatives over any cyber infrastructure located on their territory, as well as activities associated with that cyber infrastructure. [Cyberspace does not exist independently from the physical world but is instead rooted in it.

States have continuously emphasized their right to exercise control over the cyber infrastructure located in their respective territory to protect it against any trans-border interference by other states or individuals. This internal sovereignty over cyber infrastructure, persons, and cyber activities within a state's territory affords it rights such as the application of domestic laws, jurisdiction, and protection of this infrastructure from any attacks. However, alongside granting these rights, it also imposes legal obligations on states, such as the requirement to exercise due diligence to terminate harmful cyber activities emanating from the territory of a state.

The cyber infrastructure located within areas covered by the territorial sovereignty of a state is protected against interference by other states. This protection is not limited to activities amounting to an unjustified use of force, an armed attack or to a prohibited intervention. Instead, it encompasses any activity that breaches international obligations and is attributable to the State committing the breach. Thus, inter-state cyber-interference can be considered a violation of territorial sovereignty.

An important rule of cyber-warfare, as laid down in the manual, was that "a state must not conduct cyber operations that violate the sovereignty of another state." In the commentary, experts agreed that cyber operations that do not cause physical damage or loss of functionality can still violate the sovereignty of a State when they usurp the "inherently governmental functions of another State." In the case of Russia-Ukraine, Russia was seen to conduct cyber-attacks as early as 2014, aiming to destroy critical governmental infrastructure and important data of Ukraine. Most of such attacks were targeted at Ukrainian government websites, thus clearly violating cyber-ethics between states.

The experts who drafted Tallinn Manual 2.0 also recognized that providing an organized group with malware to carry out cyber-attacks against other States qualified as 'use of force,' capable of violating the target State's territorial sovereignty.

The ICJ, in its previous judgements, has held that between independent states, respect for territorial sovereignty is an essential foundation of international relations. This principle also applies to acts contrary to international law launched from cyber infrastructure that is under the exclusive control of a government.

Rules 6-7 of Tallinn Manual 2.0 discusses the principle of due diligence and states' compliance with it. Rule 6 considers the above-mentioned situation in which a state's governmental cyber-infrastructure is being used to conduct cyber-operations on another state. In such a case, attributability would still be attached to the former state. The commentary to this rule in the manual clarifies that a state breaches its due diligence obligation if it allows its territory to be used for cyber-operations with either active or constructive knowledge of the same. The latter is when the state is, in fact, unaware of the cyber-operations but objectively should have known that its territory was being used for the operation. Thus, it is the duty of the States to ensure that no illicit cyber-activities are being conducted from its cyber-apparatus.

The chapter on jurisdiction includes six rules and expert commentary. However, the most pertinent to our discussion, out of all of them, is Rule 9, which discusses territorial jurisdiction and confirms that both subjective and objective territorial jurisdiction applies to cyber activities.

The Manual then proceeds to its foremost chapter on the Law of International Responsibility. As a consequence of the breach of the due-diligence principle, the manual provides Rule 14, which is based on the customary international law principle of State Responsibility. It states that "a state bears international responsibility for a cyber-related act that is attributable to the state and that constitutes a breach of an international legal obligation." There are two prerequisites for this rule to be applied in the context of trans-border cyberattacks, which can be regarded as 'internationally wrongful acts,' given the act: (1) constitutes a breach of an international legal obligation applicable to that State; and (2) is attributable to the State under international law.

There is a vast majority of cyber operations conducted on the governmental infrastructure of a State that are directly or indirectly supported and financially backed by another State. Such state-sponsored cyberattacks are becoming a growing concern worldwide. In other instances, cyber-attacks are connected to malicious hacktivist groups or terrorist organizations that the country of origin is unable to stop from continuing on

their territory or is unable to timely inform the victim State in order to help it deflect the attack. The confidential information infrastructure of States is consistently at risk when they are subjected to such persistent cyber interferences by another State.

The Russia-Ukraine Cyber Conflict

Russia has been using cyber warfare tactics before any other country and has consistently and continuously used them in its invasions of Ukraine, starting from 2014. Distinguished from former trans-border cyber interferences, the attacks launched during the 2013-2015 conflict in Ukraine have been described as "one of the first significant, openly reported cyberattacks on civil structure" and "the first openly conceded (cyber) incidents to end in power outages".

The cyber-attacks began on December 2, 2013, after pro-EU protesters settled in the central forecourt of Kyiv known as Euromaidan (Freedom Square). They primarily consisted of Distributed Denial-of-Service (DDoS) attacks used to disrupt messages and produce confusion in support of broader information operations, primarily targeting the Ukrainian armed forces primarily targeting the Ukrainian armed forces.

In support of this military aim, Russia used cyberattacks to shut down "the messaging systems of nearly all Ukrainian forces grounded in Crimea that could pose peril to the raiding Russian armed forces".[27] NATO also reported that almost all of the DDoS attacks were "designed to undermine Ukraine's telecommunications structure to disrupt the inflow of information within the Ukrainian public security space, as well as a way to individually silence specific voices online". For illustration, Nikolas Koval, who served as the chief of Ukraine's Computer Emergency Response Team (CERT) during the conflict, stated that "the number and severity of cyberattacks against Ukraine rose in parallel with ongoing political events". The "largest and most sophisticated" cyberattacks, according to NATO, "coincided with the lethal shooting of protesters" in Kyiv's central square from February 18th to 20th, 2014[AN1] , during which "the mobile phones of opposition parliament members were flooded with SMS messages and telephone calls in an effort to prevent them from communicating and coordinating defences".

On December 23, 2015, cyberattacks against the power grid in Ukraine caused outages for close to six hours throughout the nation. These attacks were carried out through targeted emails containing malware to gain control of the Ukrainian energy company's computer network. To defend against and investigate the cyberattacks, Ukraine's Computer Emergency Response Team (CERT) reportedly received support from NATO, the United States, other governments, and private security enterprises.

Russia's most critical cyber success was the disruption of Viasat Inc's KA-SAT satellite, causing substantial damage that spread beyond Ukraine. According to a report by Microsoft,[33] Russia used hacking campaigns to support its ground campaign in Ukraine, pairing malware with missiles in several attacks, including on TV stations and government agencies. The report demonstrates Russia's persistent use of cyber weapons. Even as of now, with sufficient public knowledge, Russia continues to carry out repeated cyberattacks against Ukraine, which go unpunished under the current international regime.

Regarding the ongoing cyber-war between Russia and Ukraine, the Ukrainians proved to be better defenders this time around. At the onset of the invasion, many cyber-attacks were conducted by Russia; however, Ukraine anticipated this and was better equipped and better prepared to tackle the threat. The first major attack occurred on January 14, 2022, knocking out over 70 Ukrainian government websites, including those of the Cabinet of Ministers and the Ministries of Defence, Foreign Affairs, Education, and Science. However, in strengthening its cyber defences, Ukraine received assistance from several allies, including the EU, USA, and NATO, in the form of training, exchange of information, as well as active defence assistance. NATO, the collective security alliance, which is one of the primary reasons behind the Russian invasion of Ukraine, has been at the forefront of providing support against the cyber-attacks faced by Ukraine. Ukraine had applied to be a member of the NATO Cybersecurity Centre in 2021, and its endeavour became successful upon approval in January 2023. With this step, Ukraine became one of the five non-NATO members of the NATO Cooperative Cyber Defence Centre of Excellence.

Navigating The Way Ahead

Cyberattacks are a new form of warfare that have been steadily increasing. In 2022 alone, there have been 33 major cyber incidents around the world. These attacks range from disrupting the normal functioning of governmental agencies through DDoS attacks to the theft of information through malware. The true sources of these attacks are hard to determine, and even if someone were able to concretely determine which hacking organization was conducting the attacks, it would be a challenge to discern their true intentions. An extremely high standard of evidence would be required to hold a country accountable for a cyberattack. However, the chances of reliable evidence being found in cases of cyberattacks are incredibly low due to the high level of anonymity hackers are able to employ.

In the 2021 report, the Group also identified potential areas for future work, which included increased cooperation at the bilateral, regional, and multilateral levels to foster common understandings on existing and emerging threats and the potential risks to international peace and security posed by the malicious use of ICTs, as well as on the security of ICT-enabled infrastructure.[35] Even the 2015 OECD Recommendation on Digital Security Risk Management for Economic and Social Prosperity, which replaced OECD's 2002 guidelines, included eight high-level principles to address digital security without inhibiting economic and social prosperity. The first two principles state that (1) Awareness: all stakeholders should understand digital security risk and how to manage it, and (2) Responsibility: All stakeholders should take responsibility for the management of digital security risk. This makes it clear that internationally the aim is to encourage states not only to understand and implement cybersecurity strategies nationally but also to induce responsibility of states towards the regulation of cyber activity that emanates from their own territory.

Cyber-attacks present a new and growing challenge—one that current transnational and domestic laws are not yet completely equipped to address. The law of war offers a basis for responding only to those cyber-attacks that amount to a fortified attack or that take place in the context of an ongoing military conflict. Other existing transnational legal structures offer only embryonic or incremental protection. Domestic laws of countries, though potentially important tools for battling cyber-attacks, have not yet directly addressed the challenge, and the remedies that do exist are often confined by jurisdictional limits.

The author wholeheartedly agrees with Richard A. Clarke and Robert K. Knake, as mentioned in their book titled "Cyber War: The Next Threat to National Security and What to Do About It," that to begin filling the gaps in our law, legal reform is proposed on both domestic and transnational levels. The recommended domestic law reforms are two-fold. First, nations should add extraterritorial applicability to felonious laws concerning cyber-attacks. Second, nations should employ limited countermeasures, as applicable, to combat cyber-attacks that do not rise to the level of military attacks under the law of war. While these domestic measures will address rudiments of the problem, addressing the root of the global cyber-attack challenge will necessitate transnational results. Despite attempts to create a cyber-warfare-related treaty, no efforts so far have materialized into something concrete.

Conclusion and Suggestions

Cybersecurity issues are effectively governmental concerns related to national security, encompassing acts of cyber-warfare, illicit data gathering, hacking, etc. Only an open approach and cooperation between states, including an international standardization process, could contribute to achieving the goal of international cyber ethics. While it's important for countries to incorporate a national cybersecurity strategy, it is also crucial that cybercrimes be understood from a global perspective, given the global nature of cyber threats and the interconnected ICT infrastructures. Due to this, an international approach to cybersecurity is needed, which could also help in resolving many of the jurisdictional concerns that arise in cases of cybercrimes.

There have been many serious cases of malicious cyber activities that have caused damage to the properties and data of numerous nations. These attacks show no signs of slowing down, making it imperative to create effective cybercrime laws enforceable at both national and international levels, establish a uniform cybersecurity framework for states, and further establish organizations that support cybersecurity strategies. All of this would ideally generate the necessary knowledge and awareness towards the proper and acceptable use of ICTs and cyber skills in the present times.

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LIVING WILL: THE MODEL LAW IN INDIAN CONTEXT

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Abstract

The recent inventions in the field of Information Technology (IT) have transformed the world into a global village wherein the geographical boundaries have vanished significantly. The recent Covid-19 pandemic has proved this over a span of almost 3 years.

The revolution in IT coupled with the boom in Artificial Intelligence has enormously aided in the improvement of medical science. It has demystified various terminal diseases. Despite magnificent inventions in medical science as done in the recent times, man is still mortal and medical science is dealing with the ways/process to conquer the inevitable. A number of diseases are still terminal and cause incurable and unbearable pain along with mental and financial trauma for the victims and their family. The surety of death led to the thought of euthanasia or mercy killing. Euthanasia refers to the voluntary termination of life to get relief from suffering and also to save the family from stress and strain on all fronts.

Euthanasia is a combination of Greek words "Eu" denotes good and "Thanatos" signifies death. Conflicting opinions about death have euthanasia becoming a heavily debated issue. Where western countries are moving towards a consensus, while Asian countries are still in an argumentative stage.

According to Merriam-Webster there are 29 synonyms for euthanasia, but assisted suicide, mercy killing, physician assisted suicide are commonly interchangeable words for euthanasia.

Likewise, there are different types of euthanasia. The difference between voluntarily and non-voluntarily euthanasia is whether the consent of the patient is obtained. Administering euthanasia non-voluntarily is a criminal offence across the world. If a patient is given a lethal drug to end their life, it is categorized as active euthanasia and if life support system is withdrawn then it is characterized as passive or indirect euthanasia. Countries across the globe have approved euthanasia with varying terms.

Objective

Euthanasia is legalized in parts of Europe and western countries. However, many countries in the process of discussion on this topic while their citizens are very vocal in favor of euthanasia. Among SAARC countries, the Supreme Court of India (SCI) has also given approval for passive euthanasia in recent decisions. The proactive and liberal approach on euthanasia by a few countries is encouraging "euthanasia tourism" among euthanasia restricted countries.

This article reviews the legal accreditation of euthanasia the Netherlands, for it was the first European country approving euthanasia, followed by Canada that very recent country (March'21) issued detail guidelines for the same under "MAID" and India where the SCI has recognized passive euthanasia. India is the only one among the SAARC countries holding positive or semi-positive thoughts on Euthanasia. India faces the same juxtaposition as in legal decisions in countries like Canada. The study of euthanasia changeover in Canada may be helpful to India which is in still in nascent stage of setting up the legal system for enabling a hassle-free process for euthanasia in the country.

Countries where a majority practice Islam are against euthanasia due religious grounds because the Quran does not permit euthanasia. Indian philosophy and religions are also not encouraging of euthanasia. Medical fraternity in India is also not comfortable with Euthanasia. This article will also examine the alternatives of euthanasia with reference to prevalent practices in SAARC.A common trend observed in European countries to have a strong support from NGOs and other CSOs which provide a variety of services/ assistance to the patient and their family. A brief analysis on organizations aiding in the process of euthanasia in India and Canada is also included in this Article.

Introduction

Legal battle on Euthanasian in Canada:

Canadian Parliament passed their Criminal Code in 1892. When the code was introduced, the offences of "suicide" and "attempted suicide" attracted the criminal punishment under Section 241(b), but it was repealed in 1972. However, abetment or assisting suicide continues to be a criminal offence under "Section 241(a)" and imprisonment up to 14 years may be imposed under the code. This law is still in force.

Sue Rodriguez was resident of Victoria, British Columbia. In 1991, she was diagnosed with Amyotrophic Lateral Sclerosis (ALS), which is a rare neurological disease that primarily affects the nerve cells (neurons) responsible for controlling voluntary muscle movement. Voluntary muscles produce movements like chewing, walking, and talking. The disease is progressive and worsens over time. Rodriguez sought assisted suicide and challenged the constitutionality of Section 241 (b) of the Criminal Code in the Supreme Court of British Columbia in December 1992. She pleaded that it violates Section 7 of the Canadian Charter of Rights and Freedoms which guarantees the Right to Life, Liberty, and Security to everyone. Rodriguez lost the case and preferred an appeal on 8th March 1993 in Supreme Court of Canada. Unfortunately, the Supreme Court with a 5-4 majority ruled against her appeal on 30th September 1993, upholding that Section 241(b) provision was constitutional and did not violate the Canadian Charter of Rights and Freedoms. Rodriguez died by assisted suicide in February 1994 with the help of anonymous physician.

Physician-assisted suicide becomes legal in Canada (2015): The British Columbia Civil Liberties Association (BCCLA filed a petition in 2011, challenging the law against assisted suicide on the same grounds as Rodriguez. This time the case was on behalf of one Kay Carter (died in 2010), who suffered from degenerative spinal stenosis, and Gloria Taylor (died in 2012), who suffered from ALS. But this time the Supreme Court of British Columbia ruled in favor of the plaintiffs. The decision came in June 2012, but the Federal Government decided to appeal the ruling. The Court of Appeal for British Columbia reversed the decision in October 2013 and then the BCCLA took up the matter to the Supreme Court of Canada.

When Carter v. Canada was filed in the Supreme Court in 2014, there was a significant change in the approach and the international context had drastically changed since the Rodriguez v. British Columbia decision (1993). Till the year 1993, assisted suicide was considered as an illegal act or an offence in almost all the jurisdictions except that of Switzerland, wherein it was considered as a legal practice unless it had any mala fide intentions. In Netherlands, the act of assisted suicide was officially considered as an illegal act, however, the physicians who carried out the same, if they followed the strict guidelines and procedures, weren't prosecuted. This position had changed almost radically by the year 2014. Countries such as Netherlands, Luxembourg, and several states in the USA like the States of Oregon, Vermont, and Washington had rolled out the requisite legislations that thereby permitted the assisted suicide in certain cases.

In the backdrop of the ever-evolving approach across the world, the Supreme Court gave its verdict on 6th February 2015, unanimously (9–0) to allow physician-assisted suicide for a person who is suffering from terminal diseases with irremediable medical conditions provided that the patient has given his explicit consent for assisted suicide. The court recognized that the Criminal Code prohibition was unconstitutional because it breached the Right to Life, Liberty, and Security of the person, as enshrined in Section 7 of the Charter. The Supreme Court provided 12 months' time to frame a new law approving assisted suicide. A further extension of four months up to June'2016 was given.

Although no new law was framed but w.e.f. 6th June 2016 Physician Assisted Suicide became legal in Canada. The House of Commons passed Bill C-14 and it became law later. The Medical Assistance in Dying (MAID) Act prescribed the procedure to ensure that euthanasia is used for genuine cases only. Assisted suicide will be applicable on those patients who are above 18 years of age and suffering from terminal diseases and passing through "grievous and irremediable medical condition" that causes "enduring physical or psychological suffering that is intolerable" to the patient. Moreover, they must be in an "advanced state of irreversible decline," in which their "natural death has become reasonably foreseeable."

In February 2020, the Liberal government introduced a bill approving euthanasia which christened as "Bill C-7, which proposed to allow Medical Assistance in Dying (MAID) for those patients whose natural death was not reasonably foreseeable. Pandemic delayed the discussion in parliament and thereafter, the federal government modified some of the amendments and presented a revised version of the Bill. The same was therefore duly approved by the House of Commons and the Senate and became a validly existing law on 17 March 2021".

The previous version of the legislation had laid down the criteria for carrying out the process of the medically assisted suicide and thereby explicitly mentioned the safeguards which were to be followed in order to carry out the same in a legally acceptable and recognized manner. One of the essential conditions of MAID was that to assist the medically assisted suicide, the "natural death must become reasonably foreseeable" it means that the patient has a very few days of life. However, the latest version of the legislation removed this essential requirement and thereby making it more liberal and increasing the case specific approach. It introduced the concept of the "two-track" approach to decide whether the person's death is naturally reasonably foreseeable or not.

Having said that, the safeguards as provided in the original legislation would be applicable for the patients wherein the natural death was a reasonably foreseeable factor, however, exceptions are prescribed for such cases. Firstly, there must be a written request by the patient which is to be signed by one independent witness (previous legislation required two). Secondly, the original legislation prescribed for a reflection period of 10 (ten) days, this has been removed. The amended version of the law also removed the necessary requirement of the "final consent," to waive the requirement in cases wherein the death is reasonably foreseeable and thereby the patients provide the advance consent but might suffer from the disability to consent for the same in near future. Such amendments ensure that the patients do not intend to rush to give the consent as to course of treatment from the fear that they might not be able to give consent in the near future.

The latest amendment has also provided safeguards in cases where the natural death is not a reasonably foreseeable scenario. Such cases fall under more defined safeguards. Firstly, the amended legislation has provided for a minimum period of ninety (90) days in order to assess in case a person falls under the eligibility criteria as prescribed under MAID. The same can be reduced in case there is a foreseeability that the person might suffer from a disability to make any health- related decisions. Secondly, the mandatory assessments (at

least one of the two) must be carried out by the medical professionals who possess the requisite expertise in dealing with the medical condition of the person who is suffering and the patient to be informed that the request for the same can be withdrawn at any time. Thirdly, information should be available in the public domain relating to available counselling and support services and consultation for such a process. Lastly, there must be a conformity and consensus among the patient and the medical professionals for the process as decided to alleviate the suffering of the patient prior to implementing the provisions of the MAID.

The new legislation has also introduced the provision for the patients who wish to opt for the self-administration of a lethal substance in order to carry out the medically assisted death. In such a case, the person can arrange for a "practitioner-assisted" death and in case they suffer from a deformity to provide the consent for the same in future, they may provide the same to their medical professionals. "Dying with Dignity and "The World Federation of Right to Die Societies" are helping very actively in Canada to terminally ill patients and their families.

Euthanasia: An Indian Landscape:

Alike Canada, India has also been witnessing a heated debate across the legal community on this topic. Indian society has witnessed a large amount of prevalence of self-immolation instances right from the Vedic era where Lord Ram and Lord Krishna accepted "deh tyag" (death) by renouncing the will to leave more.

Similarly in 1960s Veer Savarkar (born in February of 1883) was an Indian politician, activist and writer. After the death of his wife in 1963, he also decided to renounce the consumption of any food, water, or medicine to attain "Atmaarpan (fast until death)" in Feb 1996. Prior to his demise, he published an article titled "Atmahatya Nahi Atmaarpan" wherein he strongly pleaded that "when someone has attained the goal of life and he is not having the capacity and capability to serve the society anymore, he need not to wait for death but better to end life in respectful manner.

Like Veer Savarkar, another renowned figure Bharat Ratna Vinoba Bhave who also renounced life voluntarily. Vinoba Bhave was well known social reformer and Ramon Magsaysay award recipient. He accepted willingly the "Samadhi Maran" as under "Jainism faith" by refusing to eat and consume any medicine. This was a voluntary act and decision towards ending life. This according to the faith is not considered as suicide but the "act of passion". This shows how the concept of voluntary act of death or in other words that as euthanasia exists in the society and as per the religious faith. Similarly, the legal system also started evolving on the topic of euthanasia with the Report 42 of Law Commission of India which was submitted in 1971. This recommended the deletion of the Section 309 of the Indian Penal Code which makes the attempt to commit suicide as a punishable offence. The subsequent part deals with the same.

In India, the trace of the origin of the right to dignified death emancipates from that of Right to Life as laid down under Article 21 of the Indian Constitution. The same is silent on right to die with dignity or euthanasia and explicit does not cover the ambit of right to die. Seven decades ago, at the time of independence, medical science was in evolving stage and a large number of diseases were unknown. The makers of the constitution could not envisage that one day society will seek the right to die with dignity also. But in a series of civil suites, High Court and Supreme Court have recognized the need of mercy killing in case of terminally ill patients.

The case wherein the debate originated on the notion of Right to Die can be seen in the case of P. Rathinam v. Union of India & another, the writ petitions in order to challenge the constitutional validity of the Section 309 of the Indian Penal Code. This section imposes punishment on anyone who attempts to commit suicide. The punishment which is imposed who attempts to commit suicide is of simple imprisonment up to one year. Supreme Court in this case, drew a parallel analogy with that of the other fundamental rights. For instance, the Right to Freedom of Speech and Expression as guaranteed under the Article 19 of the Constitution of India gives not only the right to speak but also it includes under its ambit the right not to speak; the right to live as provided under the Article 21 of the Indian Constitution gives the right not to live. Therefore, in the same manner, Section 309 of the IPC was held to be unconstitutional. This implies that the Right to Life does include under its ambit the right to die.

In "Gian Kaur v. the State of Punjab" case, Gian Kaur and her husband Mr. Harbans Singh were convicted by the trial court under the provisions of the Section 306 of the Indian Penal Code. They were sentenced to imprisonment of six years along with a fine of Rs. 2,000/- for abetment of suicide to Ms. Kulwant Kaur. Section 306 of the Indian Penal Code punishes any person who abets the commission of suicide and Section 309 punishes anyone who attempts to commit suicide. This case argued that the preceding case (P. Rathinam v. Union of India) held that the Article 21 of the Indian Constitution, includes under its ambit the right to die. Therefore, it argued that a person abetting the commission of suicide of another person is merely performing the act of assistance in the enforcement and the application of the Article 21 of the Indian Constitution. The court rejected this argument and the five-judge bench of the Supreme Court in this case overruled the P.Rathinam case. It held that the analogy stated in that case was wrong and not applicable in all circumstances. The other fundamental rights include the "the right not to…"; for instance, the analogy of right to speak is an omission, while on the other hand that of the taking a life is an act itself. Hence, the court finally upheld the constitutional validity of the Section 306 and 309 of the Indian Penal Code.

In "Aruna Ramchandra Shanbaug v. Union of India & Others", the "next friend" of Ms. Aruna Shanbaug had filed the petition before Supreme Court of India, since she was in a persistent vegetative stage and not in a condition to express or give her consent. The petition was filed to direct the hospital to stop feeding her through mechanical or artificial means and allow her to die peacefully. She has been in the Persistent Vegetative State (PVS) since she had been sexually assaulted in the year 1973. The court in this case had formulated a team of three doctors to examine her condition and submit a report about both her mental and physical condition. The court though did not allow the removal or withdrawal of the medical treatment to Ms. Shanbaug, it did discuss the issue of euthanasia in detail and permitted passive Euthanasia. The court in this case defined "passive euthanasia" as deliberate withdrawal of the treatment with deliberate intention in order to cause the death of the patient. It held that the same can be allowed or permitted only if the doctors work as per the notified medical opinion and withdraw the life supporting system only taking into consideration the "best interest" of the patient. The court also invoked the principle of "Parens Patriae" which means the parent of the nation and held that the court has the ultimate and absolute power to decide what factors constitute and fall as the "best interest" of the patient.

The recommendations of the law enforcement agencies on euthanasia can be seen in the Law Commission of India Report "Passive Euthanasia– A Relook", Report No.241, August 2012. According to this report, a green signal was recommended in India with respect to "Passive Euthanasia" which was already being recognized and considered to be valid in various jurisdictions, however the same to be subject to certain procedures and safeguards as duly laid by the 17th Law Commission of India and in the landmark case of the Aruna Shaunbaug (as mentioned above). In the authors' opinions, this should not be considered objectionable

from both the constitutional and the legal perspective. The report in its opening clearly classified that the Commission did not deal with any of the aspects related with the terms "Euthanasia" or that of the "assisted suicide" which are considered to be unlawful, but was altogether dealing with a different matter in hand i.e., "withholding life-support measures for the patients who are terminally, in all countries to be implemented uniformly, then in such a case the withdrawal is to be treated as lawful". The Commission has made it crystal clear that the withdrawal of the measures of the life support system is starkly distinct from that of the act or practice of euthanasia and that of the "assisted suicide".

The most recent case which altered the understanding of the entirety of the concept of euthanasia in India and gave a green signal to the concept of living will. In, "Common Cause v. Union of India", 2018, in this case, in the year 2005 Common Cause had approached the Supreme Court of India under the "Article 32 of the Indian Constitution", praying the following.

- Declaration that the right to die with dignity is a fundamental right as under Article 21 of the Indian Constitution.
- The Court to issue directions to the Union Government to allow or permit the terminally ill patients or that suffering from incurable diseases to execute living wills for conduction of the appropriate cause of action in case they have admitted to the hospitals.
- As an alternative prayer, it sought guidelines from the Court on this issue and the appointment of an expert committee to be comprised of doctors, lawyers and social scientists, CSOs in order to determine concept of living will in the Indian context.

Therefore, on 9th March 2018; the five judge Bench held that the "right to die with dignity is a fundamental right". It also held that the individual's right of execution of the "advance medical directive" or that of the "living will" is itself an assertion which embodies within itself the right to "bodily integrity and self-determination" which thereby does not depend upon any of the recognition or enactment of any legislation by the State. Thus, this shows the trajectory of euthanasia and how it has been interpreted and given recognition in the context of various jurisdictions at the international level with the help of the landmark cases in comparison to that of India. The timeline of India gives an insight as to how right to die evolved. It was recognized, overruled, and then again recognized. It shows that India has adopted a progressive attitude towards the concept of Euthanasia. In India, the Constitution of India and the other statutes are dynamic in nature and change with the changing needs of the society. This approach ultimately led to the recognition of the right to die and subsequently passive euthanasia in that of the Indian context which has implication for the society.

Organizations providing all types of assistance to terminally ill patients: Non-Governmental Organizations: The pillar of strength for the advancement of the society.

Non-Governmental Organizations (NGO) play a pivotal role in the society. The concept originated back in 1947 with the advent of the United Nations. For a country to progress and change the notion of ideas, they act as active catalysts. In order to promote the awareness and aid in the development of Euthanasia, they have contributed majorly to countries like Netherlands and Canada.

In Netherlands, NVVE, an NGO was founded in 1973 is proactively involved in accelerating the requisite information, education/awareness, and informed consultation about the concept of assisted suicides and euthanasia in Netherlands. Their moto is "a dignified life deserves a dignified death".

The landmark case of Dr. Postma has revolutionized the entire concept of euthanasia in Netherlands. He was charged with the offence of voluntary euthanasia and was suspended from his duties as a punishment/penalty. The public of Netherlands held the view that the task of the medical professionals is to relieve the sufferings of the patients and should be empowered to terminate the life of the patients in order to relive the sufferings. This led to the emergence of a powerful group to support the claim of Dr Postma and to evaluate the possibilities of Euthanasia. Hence, this gave emergence to the NGO or rather a closely knitted public organization, NVVE which is still actively engaged in advocating the practice of Euthanasia in Netherlands.

The NGO with the support of several lawyers, medical professionals, politicians, social activists worked together and courageously fought the legal battle for almost three decades to succeed in their objective of legalizing euthanasia. With their active involvement in the same, the Dutch Upper house thereby on 10th April 2001 passed the euthanasia bill, named Termination of Life on Request and Assisted Suicide (Review Procedures) Act. This Act entered into force on April 1, 2002.

With the passing of the legislation and the subsequent developments, the role as played by the NGO has largely diversified. Currently the NGO, NVVE is engaged and working towards imparting awareness and hosting education camps for euthanasia; guiding and assisting the general public in terms of the legalities and the formalities involved in the act of the refusal of the medical treatment; providing full legal support for the public for the formalities as involved in the execution of the advanced medical directives or that of the living will; aiding in the personal consultation and the information to the general public on the various options as available for euthanasia; publishing of literature and other such measures to increase the knowledge available on the topic.

Hence, since the time of its inception, it has played a major role. From making euthanasia legal to organizing awareness activities and providing assistance to the enforcement agencies for euthanasia, its place in the society cannot be questioned and this shows a positive example of the role as played by an NGO towards the contribution in the society.

Another instance of an NGO acting as a positive catalyst was seen in Canada. The NGO, Dying with Dignity Canada (DWDC) is engaged in advocating for dignified death since 1980 and has been working for around four decades now. Despite the revolutionized approach and outcomes of the euthanasia and the MAID in Canada, a majority of the general public is still not able to avail their legal rights to a peaceful and a dignified death which in turn results in unwanted and unreasonable suffering to the patients. The DWDC strongly advocates for the assisted dying procedures and the other alternative available end-of-life options in accordance with the Canadian Constitution and the Charter of Rights and Freedoms.

Currently, the DWDC is proactively working as an organization and is advocating the human rights of the individuals by courageously fighting and supporting the act and the procedure of the assisted dying and providing full support to the adults who are suffering from serious medical condition and with their own voluntary consent and desire wish to eliminate the same by following the process of assisted dying. They do so by providing education and by promotion of the awareness of the legislation MAID and emphasizing on “Advance Care Planning”; and finally acting as a pillar of faith and support for the medical professionals or the physicians who are evaluating and providing assistance as per the provisions of the MAID.

Therefore, the through the above-mentioned instances, it is clear that the role played by the NGO(s) in a society is an important one and their contribution towards the positive cause needs to be documented and the inspiration should be taken by other countries as well for the progress and development especially in the realm of the right to dignified death.

"The World Federation Right to Die Societies (WFRtDS)": The formulation of the "Tokyo Declaration."

WFRtDS was set up after three specific international conferences or meetings in which the countries which were a part of the "National Right-to-Die Societies" participated. The first meeting led to the formulation of the Tokyo Declaration and in the subsequent meetings, the society was formalized and from 2018, the statutes have also been adopted. The third conference which led to the formulation of the WFRtDS took place in 1980, hosted in Oxford, United Kingdom. The resolution for forming the same was unanimously adopted and followed by member countries. Many countries such as Netherlands, Australia, Japan, United States of America, and United Kingdom equally represented their claim towards supporting the legal right dignified death. The attendees of the same led to the formulation of the Tokyo Declaration, 1976.

The Declaration stated that the person's wish to dignified death and the living will essentially be respected by all the nations and be seen as an intrinsic and valuable human right. Their aim was to make the concept of living will legally enforceable. Their mission and vision was that the people of every country should work together in international cooperation and solidarity towards the achievement of the objectives of the Declaration and lead to the "establishment of a liaison center whose purpose will be an exchange of information, as well as the convening of periodically held international conferences".

Such conferences act as an umbrella organization in working in harmony towards achieving the desired objective. This Declaration, therefore, further strengthened the claim and awareness around the globe on the issue of euthanasia and the community is now working together to achieve the desired outcome.

Conclusion

Advancement in medical science defers the human death but man is still mortal. This deferment of death is a very painful solution in case of terminal disease. People across the world are advocating for the enactment of laws in favor of euthanasia to enable a clean and painless death. In the last decade, due to public pressure, a good number of countries have passed the law in its favour. From the instances of Netherlands and Canada above and the proactive role played by the NGO(s) as well, in facilitating euthanasia or physician-assisted dying is of heavy significance for the society to progress in this field. India, for instance, is following the footsteps of Canada. It is passing through a similar phase and transition in terms of legalizing the practice of euthanasia and can thereby learn and implement the same for positive results. Although the discourse around euthanasia was more prevalent in developed countries only earlier, the increasing discourse in developing countries like India is a fresh and welcomed change.

Like Canada, India has also witnessed a learning curve in the legal fraternity due to the decisions passed by the Apex Court in different cases in different periods. But now after March'18 in Common Cause vs Union of India, the Supreme Court has directed the legislature to frame the law, but has not stipulated the timelines like in Canada, delaying the process and reducing parliamentary accountability on this issue. It remains to be seen how the passing of a legislation specific to this cause will impact the Indian fabric in the future

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PANDEMIC – AN UNPRECEDENTED CALAMITY OR DEPRIVATION OF ESSENTIALS?

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Abstract

COVID-19 was an unprecedented calamity that shook the entire world. Various emergency measures were adopted to halt transmission, involving imposing lockdowns and isolation measures. Various perspectives exist regarding the proportionality, necessity, validity, and magnitude of these measures. Many claim that the steps taken during this time demonstrate that, for the first time, lawmakers prioritised health over the economy.Based on these developments, this paper explores COVID-19's human rights implications and suggests that a pandemic or any other calamity should be tackled from the viewpoint of human rights.

The paper shall focus on the right to health, which is intrinsically and principally at risk during a pandemic. It shall examine the obstacles created by the government in its attempt to deal with a health crisis, which prevents comprehensive attainment of human rights by all. In circumstances where the government's response to the COVID-19 pandemic has disproportionately harmed the enjoyment of human rights by specific groups of people, this research paper highlights the significance of taking a rights-based approach.

Keywords: COVID-19, Human Rights, Right to Life, Epidemic, Government.

Introduction

It was on 11th March, 2021 that COVID-19 was declared a Pandemic. It was a worldwide health catastrophe on a magnitude that was undetected in the past and urged a global reaction to take measures for its prevention. To protect precious lives, countries had no option other than taking salient steps. Widespread lockdowns were imposed however, they were in complete violation of freedom of movement and various other human rights. Such a measure had various other unintended consequences like failure to access the market, education, health-care facilities, water, sanitation, food, or job.

In the initial phase, the virus began affecting people's health at a significant rate, and many even fell within the ambit of the virus, thus losing their precious lives. With the rapid spread of the virus, the situation started deteriorating, necessitating governments and organizations all over the world to make radical changes in the daily lives of the people.

However, as the virus spread, human rights experts and analysts all over the world raised their concerns against the careless handling of the situation and held that if not properly managed, the situation would lead to the abuse of human rights or may even infringe them. They asked states to not to abandon or leave anybody and lay special emphasis upon their obligation under human rights law.

Every individual has a right to health. It is the responsibility of the government to provide this right to people without any exceptions. The scarcity of resources cannot justify the government's discrimination against people in different categories. Certain groups of people, such as the elderly, those affected by poverty, disabled individuals, the homeless, migrants, and LGBTQ individuals, require special support. They should be assisted, not excluded. The principles of empowerment, non-discrimination, and participation need to be followed.

The measures recommended by the World Health Organisation (WHO) were supported to defeat the pandemic. States were requested to provide resources to the needy under all arenas of public health so that proper treatment can be given to those who require it.

Right to Life includes Right to Health

As per Article 21 of the Indian Constitution, "No one shall be stripped of his or her life or personal liberty unless in accordance with the method prescribed by law." It interprets the term 'life' in a broader way, which extends beyond the mere act of inhaling and exhaling. Besides the normal intake of oxygen, there are several other factors that impact an individual's life. These involve access to healthy, i.e., pollution-free air, the right to live with human dignity, etc. In fact, it has been interpreted several times to provide relief to the oppressed.

Further, in the case of State of Punjab v. M.S. Chawla it was held that the right to life includes the right to health and clinical attention. Besides, Article 47 of the Directive Principles of State Policy (DPSP) places emphasis on the development of general health and the prohibition of dangerous pharmaceuticals. It emphasises raising the health standards of people and making efforts to improve their health and livelihood.

In this way, the scope of Article 21 has been broadened. Every person, whether a resident or a non-resident, is guaranteed the right to life and liberty under Article 21. Individual freedom is designed to include rights that are genuinely tied to an individual's life and independence, which now includes the right to health.

Further, in the case of Bandhua Mukti Morcha v. Association of India[4], it was held that though the DPSPs are unenforceable but still they hold significant value and must be appropriately implemented by the state. In this case, the court also identified the right to health to be within the scope of Article 21. Furthermore, in Paschim Banga Khet Mazdoor Samity, the Apex Court held that it is the obligation of the government to grant clinical help and work in favour of the general people.

From the above arguments, it can be established that the Right to Health is an essential part of the Right to Life. Article 21 is not restricted to the mere act of breathing but has much wider connotations. Besides, it is the responsibility of the government to ensure that everyone is provided proper health facilities and clinical assistance. There shall be no discrimination against people in granting them health assistance. In the case of those who can't afford it, the government shall make efforts to provide them provisions.

Right to Health under Universal Declaration of Human Rights (UDHR)

UDHR, as the name states, applies to people living all over the world, irrespective of the country they belong to. It talks about fundamental human rights that every nation has to follow and act as a map for achieving equality and freedom. It was adopted in response to the "atrocious and heinous act which shocked the human conscience" during WWII. For the first time, all humans were marked out as equal with respect to colour, sex, religion etc. Although it is not legally enforceable, it has been integrated into various domestic legal systems and national constitutions.

Further, Article 25 of UDHR grants everybody the right to health and well-being. It provides everyone a standard of living so that they can enjoy this right. In fact, Article 25 of UDHR when read with Article 7 ('Equality before law' – All are equal before law and no one should be discriminated on any ground) emphasizes providing healthcare facilities to all without any discrimination.

Why is it necessary to study the impact of the pandemic on Human Rights?

The authority to frame laws lies with the State, and these laws are framed for the betterment and welfare of the people. Thus, it becomes extremely important that the effectiveness of these laws is interpreted by keeping people at the centre. It helps us understand how these laws affect people, specifically the most disadvantaged ones, and what can be done to help them, both presently and in the future course.

Every country poses a challenge of a differing degree with regards to providing human rights to everyone. Public health has become an important component of human life, and the disaster has affected it to an even greater extent. The crisis has accentuated the susceptibility of society's most vulnerable and disadvantaged groups. All sections and groups of society, including children, women, migrants, refugees, the young, and the elderly, have been impacted in different ways. It is the responsibility of the government to guarantee protection to everyone.

To evade the transmission of the disease and protect the lives of the maximum number of people, state authorities must mobilize all available resources. Under this moment of crisis, decisions must be swift and quick. Moreover, it is possible that even if they are well-intentioned, they may have unforeseen adverse consequences. Most importantly, the measures taken should be proportional to the harm caused to people so that there exists a balance between the government and the people.

Challenges to right to health

The government's approach to COVID-19 reveals two issues that are particularly significant to be resolved for the successful attainment of the Right to Health under international human rights law. These are the lack of universal access to healthcare facilities and the lack of credible information about the outbreak provided to the people. As the virus spread, government officials in several nations underestimated its severity and neglected to provide crucial information to the public regarding the number of daily cases and the severity of the virus.

The situation in Mexico exemplifies this. There, President Lopez Obrador went against medical experts' advice on how to limit the COVID-19 outbreak. He told people that the virus is not deadly; in fact, it is even less dangerous than the flu, and they could go about their lives as if nothing had happened. He continued to attend rallies and engage in hugging, kissing, and shaking hands despite warnings to avoid close contact and crowds. He accused the media and the opposition of spreading fear about the virus in an attempt to destabilize his government politically. In order to convince the government regarding the severity of the issue, Mexican NGOs acquired three court judgements compelling the government to take preventive measures.

In some nations, healthcare facilities are not accessible to everyone, thus making COVID-19 testing and treatment unfeasible for them. The United States of America (US) is a good example. Though it has made testing free for all people, millions of individuals in the US lack health insurance and won't be able to access the healthcare facilities funded by the government once they are infected with the virus. The treatment and testing for these people might cost up to $35,000. In the US, uninsured people are typically those with lower incomes, and immigrants are frequently among them.

Detailed Assessment

Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) establishes the right to health. This right was further interpreted in General Comment No. 14 by the Committee on Economic, Social and Cultural Rights, which monitors the compliance of State Parties to the Covenant. The Committee stated that one of the fundamental parts of the right to health includes the availability of information, which entails the ability to seek and obtain information regarding health problems. This requirement must be met as soon as possible and includes, according to Article 12 paragraph 2(c), giving public information on controlling and avoiding epidemics.

A party to the ICESCR shall be violating the right to health of the people if policymakers withhold or intentionally misrepresent health-relevant data from the people, implying that the right to obtain information also involves the right to retain reliable information regarding health problems. Mexico is a party to the committee and had violated Article 12 during the pandemic. Similarly, India is also a signatory to the deal and failed to fulfill the required commitments. The data with respect to the number of live cases was withheld in order to prevent public outrage.

Analysis from the Lens of ICCPR

Article 26 of the International Covenant on Civil and Political Rights (ICCPR) states that the law treats everyone equally and there shall be no discrimination against people on any grounds, i.e., there shall be equality before the law. This article specifically prohibits discrimination based on internationally recognized grounds "in law or in practice in any sector controlled and protected by public authority. Discrimination on the basis of race, sex, socioeconomic origin, or other status is forbidden under international law. Article 26 entails the right of impoverished people to obtain healthcare within national laws and policies. The rights mentioned under this Article of ICCPR are very similar to the rights granted to Indian citizens under Article 14 of the Indian Constitution. It states that: “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

Besides, India is also a signatory to this treaty. It signed the treaty on 14th October 1997. Thus, it becomes all the more essential for the Indian government to prevent any kind of discrimination in granting rights to the countrymen. However, due to socioeconomic position, which frequently interacts with migrant status, a huge number of people in India do not have equitable access to government-funded health care. As a result, India is struggling to achieve the goal of equal access to treatment without discrimination under Article 26.

The Virus makes no Distinctions, but its Effects do

The COVID-19 virus was a threat to everyone, and such viruses required the need to tackle it together. Our responses should be comprehensive, equal, and global if we were to defeat the virus. If the virus impacted someone from a disadvantaged and marginalized community, it could still pose a threat to everyone.

However, the government’s response to the pandemic has led to the infringement of certain people’s fundamental rights. In this section, we shall analyse the problems of indigenous people and those with disabilities. We shall examine them in the light of the UN treaties to which India is a party.

Disabled People

More than 1 billion disabled people were at a higher threat of catching the virus and succumbing to it if infected. Prior health issues, old age, etc., were all risk factors for them. By virtue of the increased risk of infection due to congestion, they accounted for a substantial share of the overall infection cases and casualties. However, the survival of these people may not have been a top concern for officials dealing with the pandemic.

According to reports, disabled people were "avoided in health care." According to the professional group that set critical care recommendations in Italy, COVID-19 patients with the highest chance of "therapeutic success" should have been prioritised. This meant that if a disabled person was suffering from some disease that limited their probability of surviving, then they may not have been eligible for therapy.

Nonetheless, during a pandemic, the plight of disabled people should be addressed in conformity with the Convention on the Rights of Persons with Disabilities (CPRD). Article 11 of the CPRD mandates that parties to the Convention shall take all essential steps to safeguard the interests of the disabled in risky conditions. Article 10 establishes the right to life and the need to take all necessary steps to ensure its optimal realization on an equal footing by people with disabilities.

The pandemic qualified as a condition of “risky situations” in Article 11, thus making it necessary that disabled people were not ignored and their rights were not violated. In order to effectively execute the Articles mentioned in the Convention for safeguarding the rights of the disabled, the authorities had to dissuade from discriminating against them in providing services. Most importantly, India was also a party to the Convention, and this also fell under the fundamental right to Equality, which was granted to Indian Citizens under Article 14. Thus, what needed to be emphasized was treatment for all, not treatment for the privileged because the virus would anyway be passed on from non-privileged to privileged ones.

Women and Girls

Measures taken to reduce COVID-19's effects might exacerbate violence against women and girls. Quarantine laws have put women "in a substantial peril of severe violence" by compelling them to live with their perpetrators all the time. During the pandemic, available records suggested a huge rise in cases of violence against women, particularly domestic violence. According to the United Nations, emergency calls for domestic abuse by women in Argentina spiked by 25% since the shutdown began on March 20, 2020. Helplines in Singapore and Cyprus registered an increase in calls by more than 30 per cent

Shutdowns also intensified cases of gender-based violence perpetrated against girls and women by males outside the family. Juliet M., a 16-year-old Kenyan girl, is a good example of this. Juliet was abducted, held captive, and sexually assaulted by a guy for four days. He abducted Juliet because he wanted a female companionship to get through the lockdown," the offender allegedly claimed. Juliet was later, rescued by her neighbours.

In an advisory note on COVID-19, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) stated that throughout the epidemic, the state parties to the Women Convention had to safeguard women and girls against gender-based violence. Given that India is a signatory to the Women Convention, it had to take all reasonable steps to prevent and protect women from gender-based violence, as well as hold offenders responsible.

Which are the Fundamental Rights that are Violated against Covid-19?

Besides the rights that have already been discussed, there are various other rights as well that stand violated in these tough times. Interestingly, apart from the Conventions and Treaties to which India is a signatory, there are also certain Fundamental Rights that are granted to the people within the nation. These involve:

Access to Information

Article 19 (1) of the Indian Constitution provides the right to obtain information. In fact, the Committee on Economic, Social and Cultural Rights (CESCR) deems it to be an essential element of the right to health and states that "access to information regarding a nation's major public health issues, including methods of prevention and regulation," is even part of the fundamental obligations of the nation to its people. Undoubtedly, India successfully disseminated information to people regarding the severity of the disease, the harm it may pose, and the precautions that may be taken to prevent its spread.

Citizens, on the other hand, also have the right to know about potential government actions, as well as ongoing corrective efforts. The aim is that everyone gets enough time to make an informed decision for themselves. Introducing a 21-day lockdown without any preparation by giving just a four-hour notice to the people was disastrous. This was clearly against people's right of access to information and left the people in dark-vulnerable situations to look after themselves in these tough times. Many citizens were left hungry and jobless. Hundreds of thousands of migrant workers were compelled to travel long distances back to their homes. The response of the government was so negligent and thoughtless that even the Prime Minster of the country Shri Narendra Modi was obliged to apologize to the people.

Additionally, there was no proper reporting of the number of active cases; in some areas, the government was trying to underreport the cases to give an impression to the people that everything was under control. Hospitals stopped admitting people because they did not have enough stock of medicines so that everyone could be treated. The increase in the number of deaths was evident from the fact that crematoriums were completely full and could not admit further.

Right to Privacy

The right to privacy is now considered to be a fundamental right as the courts have recognized it in a number of cases as part of Article 21. However, there were still scenarios in which the government misused the virus as a pretext to disobey the rule of law. Regrettably, a confidential list compiled by the government, comprising the personal information of 722 passengers who travelled to New Delhi, was sent over Facebook and WhatsApp. Government entities were seen trying to shift the blame on each other after the breach of privacy resulted in sensitive information about travellers being made public. As a result, these people's lives became a living hell as they were bombarded with unwanted advice and even intimidations from strangers at odd hours.

Right to Free Movement

The "right to freedom of movement" within the territory of the State is protected under Article 19(d) of the India Constitution. This right can only be limited in extraordinary situations, such as to preserve public health or morality.

During the shutdown, social media in India had been full of stories about the hardship of migratory labourers. They were left with just one choice: to return to their villages as the entire market was shut down and all sources of earning revenue were lost. Apparently, they were the biggest sufferers as all their sources of income had come to a standstill. There were no transportation facilities, and they were compelled to walk back to their homes, which were hundreds of kilometres away from their place of work. Women and children were particularly distressed by the poor quality of relief camps, which provided little meals and lacked amenities, resulting in a slew of mental concerns.

Moreover, the harsh conditions had also provided a reason for police officials to demean and physically harm people. A number of individuals lost their lives due to being beaten and wounded by the police. Undoubtedly, such constraints were necessary, but they were supposed to be imposed after carefully analysing the situation and making arrangements to prevent adverse effects. The impact of the lockdown on migrant labourers is incomparable to that on other sections of society.

Conclusion

The COVID-19 pandemic was an unexpected event that struck the world in 2020. Nations were already struggling to provide proper healthcare facilities to their citizens, and the pandemic exacerbated the situation even further. Unfortunately, the pandemic was not taken seriously by political leaders, who were more concerned about their economies and elections. (As seen in the case of Mexico where the President encouraged people to continue hugging, meeting each other, going to restaurants, and enjoying themselves. In fact, he himself did not stop campaigning for the elections.)

The careless and negligent attitude of the leaders in power gave the virus an opportunity to spread, resulting in a situation that became difficult to control. Those who required medical support and care were numerous, while resources were limited. Thus, people were "prioritized" in receiving treatments, leading to the exclusion of those who were disabled, underprivileged, or had lesser chances of survival.

This exclusion violated the Right to Equality, Right to Life, and Right to Health of marginalized sections. Furthermore, various international conventions and obligations (such as the UDHR, ICCPR, ICESCR) mandate governments worldwide to treat their citizens equally and provide proper medical healthcare facilities. However, these obligations were violated, resulting in human rights violations.
Additionally, various other Fundamental Rights granted to Indian citizens by the Constitution were violated. These include the Right to Freely Move anywhere throughout the country, Right to Privacy, etc. Migrant workers were the most affected community, facing the repercussions of the Government's inactive and unprepared measures.

In conclusion, it is high time for the government to realize its obligations and take measures to amend the loss already caused. This is also a lesson for the government for times to come and an opportunity to strengthen its healthcare facilities. The government should realize by now that these obligations are not meant to be evaded or avoided but are meant to be properly followed for the benefit of the people.

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SOCIAL REALITY AND CRIMINAL PROCEDURE IN INDIA: A STUDY ON HUMAN RIGHTS OF PRISONERS.

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Introduction

Laws in India have always had an idealistic approach rather than being realistic. The art of realism is bestowed upon the shoulders of the judiciary. In the course of adjudicating cases, credit goes to the skill of decision-making by judges and the expertise of advocates for uplifting social causes related to gross human rights violations. India, following an adversarial system, has often tilted the scales towards the perpetrator rather than the victim. The social reality and human miseries become shrouded in the strict procedures of the law. The lacunae in the laws have paved the way for the violation of human rights. The flouting of laws by perpetrators or even abusers of power is frequent. Neither society is safe for victims nor is correctional administration secure for inmates. The motivation behind this article is to conduct conceptual research revolving around the active role of police and judiciary in the criminal procedure code.

This paper has three primary objectives: firstly, to comprehend the role of the police in criminal justice administration to safeguard the human rights of prisoners; secondly, to investigate instances of abuse of power by the police; and thirdly, to examine the judiciary's stance in evaluating and addressing human rights issues concerning prisoners. The study's data has been sourced from government reports, books, journals, and articles in both electronic and print media.

Keywords: Criminal Procedure, Human Rights Judges, Police and Prisoners.

On Social Reality, Human Rights and Prisoners:

Social reality refers to the shared beliefs, attitudes, values, and behaviours of individuals in a particular society or community. It encompasses the ways in which people construct and interpret their world, including the social norms, customs, and practices that shape their interactions with others. It is also believed that social reality is particularly dependent on personal or group experiences and individual or group perspectives. Furthermore, it is influenced by a variety of factors, including culture, history, economics, politics, and social structures. Social reality can vary significantly across different regions and populations. “The reality in social reality is that we belong to one world.”

Understanding social reality is crucial for social scientists, policymakers, and individuals aiming to promote social change. It can illuminate the underlying causes of social problems and inequalities, facilitating the identification of effective strategies for addressing them. Laws have always been instrumental in bringing social change.Social reality and law are intricately connected. Laws are crafted to regulate and address social problems, serving as a reflection of the values and beliefs prevalent in a society at a given time. Consequently, the laws formulated play a significant role in shaping social reality by establishing standards of behaviour and norms for both individuals and institutions. For instance, laws pertaining to marriage and family mirror societal norms and values concerning relationships and child-rearing. Similarly, laws related to employment and labour capture social attitudes towards work and economic relationships.

However, social reality can also exert influence on the enforcement and effectiveness of laws. If a law lacks risk

of perpetuating social inequalities and injustices when they fail to address underlying social realities such as discrimination, poverty, or systemic oppression. For example, the infamous Mathura Rape incident, the ensuing public response, and the impactful letter composed by Prof. Upendra Baxi and his associates underscore the necessity for evolving rape laws in response to societal changes. Similarly, the Nirbhaya Rape incident serves as another glaring example of the collective demand for legislative change voiced by the people. Therefore, it is important to understand that there is a relationship between social reality and law in general, and criminal law in particular. This understanding is crucial for creating laws that are effective in addressing social problems and promoting social justice.

Human rights law in India is influenced by international conventions and also incorporates elements of the Constitution of India. The human rights of any person generally encompass life, liberty, equality, and dignity. However, when it comes to the violation of prisoners' human rights, the reality and the implemented laws do not align. Prisoners face numerous issues, including:

- Overcrowding of prisons
- Compromised healthcare facilities
- Lack of proper education
- Inhumane treatment.

It should be noted that the human rights aspect for prisoners is not confined to the four walls of the prison but also extends to the attitude of society once they are released. It pertains to their acceptance in society upon release. A report submitted in the IIT Madras, states that “the idea of reintegration essentially encompasses working with the offenders in order to bring them back to the community, facilitate conditions to promote law-abiding behaviour and reduce the rate of recidivism. The United States of America has recognized the need for a comprehensive and elaborate mechanism for the social integration of released prisoners.”

Human rights law offers protections for prisoners, including the prohibition of torture and cruel, inhuman, and degrading treatment. However, the social reality for prisoners in many countries continues to fall short of these protections. It is important to acknowledge and address these issues to promote a just and humane society.

According to the Model Prison Manual, there are various types of prisoners, including under-trial, convicts, habitual offenders, geriatric, young, etc. This article focuses on prisoners, namely inmates in police lock-ups (arrestees/on police remand), under-trial prisoners, and convicts.

Theoretical Perspective

One theory that can link the human rights of prisoners is the social contract theory, which proposes that individuals give up some of their individual rights in exchange for protection and security from the state. Considering this theory, prisoners' human rights are protected because they are still entitled to basic human rights even though they have relinquished some of their freedoms due to incarceration.

The theory of restorative justice is another way to connect the human rights of prisoners. This theory focuses on repairing the harm caused by crime and emphasizes the importance of rehabilitating and reintegrating prisoners into society. By acknowledging the human rights of prisoners, including the right to humane teatment and rehabilitation, the principles of restorative justice can help ensure that prisoners are treated with dignity and respect.

Ultimately, linking the human rights of prisoners to broader societal principles such as the social contract theory and restorative justice can help reinforce the importance of protecting prisoners' rights and promoting a just and humane society.

Findings of the Study

Role of police in the Criminal Justice Administration in Securing the Human Rights of Prisoners:

The role of the police in the Criminal Justice Administration is significant, as they are the agency of the state responsible for securing the rights of the people. This responsibility must also include respecting the human rights of prisoners. The police are accountable for ensuring that individuals are arrested and detained in accordance with the law, and that their rights are upheld throughout the entire process.

The police have a duty to prevent torture and any other forms of ill-treatment, in addition to investigating any allegations of abuse. They must also ensure that prisoners receive adequate food, shelter, and medical care, and that they have access to legal aid and counsel as needed.

Additionally, the police have a responsibility to prevent overcrowding and ensure that prisons and detention centres are safe and secure. They must also work to prevent and address any discrimination or mistreatment based on race, gender, religion, or other factors.

Overall, the role of the police in safeguarding the human rights of prisoners is important to ensuring that prisoners are treated with dignity and respect, and that their rights are protected throughout the criminal justice process. By fulfilling these responsibilities, the police can help promote a fair and just society.

In cases of human rights violations against such prisoners, many states in India have established Police Accountability Commissions. These commissions take note of and conduct departmental inquiries into cases involving the violation of basic rights of the public by the police.

Cases of Abuse of Power by the Police:

India has witnessed numerous cases of abuse of power by the police, including instances of excessive use of force, custodial deaths, and torture.

In 2019, the alleged extrajudicial killing of four men accused of rape and murder in Hyderabad by the police ignited national outrage and raised concerns about the police's use of excessive force. The police claimed that the men were shot while trying to escape, but many human rights groups and activists criticized the encounter as staged. Section 46(3) of the Criminal Procedure Code (CrPC), 1973 explicitly states that "Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life." While some people supported the police's actions, questions arise about the legitimacy of conducting such a so-called "fake encounter" and killing the arrestee before they have been tried by a court of law. The discrepancy between social reality and legal specifications raises the question of whether their activity was lawful or morally correct.

Another concerning issue is custodial deaths, occurring when individuals die in police custody. In 2020, P Jayaraj and Bennicks died in police custody in Tamil Nadu, as a result of torture for allegedly violating the Indian government's COVID-19 lockdown rules. The incident sparked nationwide protests, leading to the suspension of the police officers involved pending investigation. Although the pandemic policy demanded immediate compliance with police directions, the dilemma persisted. The actions of the father and son duo were not so severe that the police could inflict torture, even when a crime was committed.

Torture is also a significant problem in India. Neither the Constitution nor the Indian Penal Code (IPC) 1860 or CrPC has defined what torture is. The social reality is that by not defining the word 'torture', the ambit of its explanation has been expanded by the use of precedents. One such precedent is the case of D.K. Basu which stated that “torture of a human being by another human being is essentially an instrument to impose the will of the ‘strong’ over the ‘weak’ by suffering. The word torture today has become synonymous with the darker side of human civilisation. Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice, and heavy as a stone, paralyzing as sleep, and dark as the abyss.”

The reports of police using torture to extract confessions or information from suspects are enormous even now. On 16 January 2021, Shiv Kumar, a 27-year-old Dalit and labour rights activist, was arrested by the Haryana police for protesting against the Kundli Industrial Association regarding alleged unpaid wages and worker harassment. He was released on bail on 4 March 2021. During his detention, Kumar claimed to have experienced custodial torture. “Subsequently, an inquiry report submitted by a judicial officer to the Punjab and Haryana High Court confirmed that the Haryana Police unlawfully detained Shiv Kumar and subjected him to severe torture the previous year.”

The Wire, an online newspaper, reported that “a total of 4,484 custodial deaths have been reported in the last two years, and another 233 persons were killed in alleged police encounters across India, as stated by the Minister of State for Home Affairs Nityanand Rai in Parliament.”

This type of torture is not limited to state police; there are also instances where the Central Bureau of Investigation (CBI) is accused of custodial torture. For example, an individual named Lalan Sheikh, who was accused in the arson and violence case in Bengal's Bogtui village, where at least 10 lives were lost in March 2022, was discovered deceased in a temporary CBI office. The CBI asserted that Sheikh died by suicide. However, his family members claimed that his "death resulted from the torture" inflicted upon him while in CBI custody.

Apart from these, there have been numerous cases in the past where the Supreme Court has strategically directed to deal with prisoners with care: Sunil Batra I, Sunil Batra II, Rama Murthy v. State of Karnataka (1997), and so on.

The CrPC provides a universal framework for the "investigation and prosecution" of criminal offences in India. However, there have been instances of abuse of power by the police during the investigation process, which can lead to a miscarriage of justice.

The figure given below illustrates a few instances of the same carried out by the police:

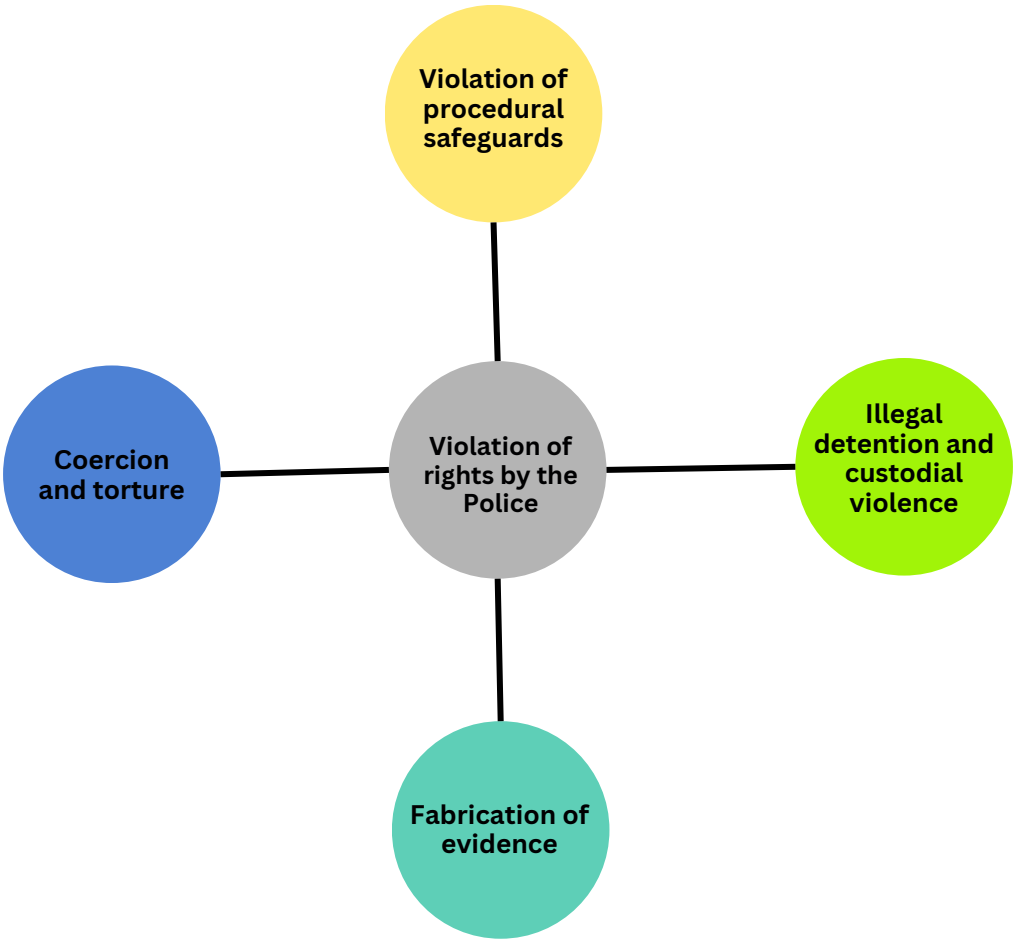

Fig. 1.1. Violation of Rights by Police

Attitude of the Judiciary in Assessing and Dealing with Human Rights Issues of Prisoners:

The attitude of the judiciary in assessing and dealing with human rights issues of prisoners in India has been mixed. On the one hand, the Indian judiciary has taken some significant steps to protect the human rights of prisoners, including recognizing the right to health, privacy, and a fair trial.

For example, in the 2017 landmark judgment in the case of K. S. Puttaswamy v. Union of India, the Supreme Court of India emphasised the right to privacy as a fundamental right, which has implications for the rights of prisoners. The Court has also issued a series of guidelines on prison reform, including the right to medical treatment, the right to free legal aid, and the right to a speedy and expeditious trial.

However, there have also been instances where the judiciary has failed to adequately address human rights issues of prisoners. In some cases, courts have been criticised for not taking sufficient notice of custodial violence and torture, and for not ensuring that prisoners are provided with adequate medical care, food, and living conditions.

Overall, while the judiciary in India has made some efforts to address human rights issues of prisoners, there is a need for greater sensitivity and accountability on the part of judges and court personnel to ensure that the rights of all individuals, including prisoners, are protected and respected. The CrPC in India provides the framework for the conduct of criminal trials in the country, and judges play a critical role in ensuring that the legal process is fair and just.

Some of the responsibilities of judges and magistrates under the CrPC include:

- Impartiality: Judges and magistrates are required to be impartial and unbiased in their conduct of criminal trials. They must ensure that both the prosecution and defence have an equal opportunity to present their case, and that the evidence is evaluated objectively. The Supreme Court can even transfer cases from one court to another if biasness is found to be present.
- Adherence to procedural safeguards: The CrPC provides for several procedural safeguards to ensure that the rights of the accused are protected. Judges and magistrates are responsible for upholding these safeguards and ensuring that they are followed during the trial.
- Fairness in sentencing: Judges and magistrates are responsible for determining the appropriate sentence for a convicted person, taking into account the nature of the offence, the circumstances of the offender, and the principles of proportionality.
- Avoiding delays: Judges and magistrates are expected to ensure that criminal trials are conducted in a timely manner and that delays are avoided as far as possible. This is important to prevent undue hardship to the accused, the victim, and witnesses.
- Ensuring effective implementation of legal provisions: Judges and magistrates are responsible for ensuring the effective implementation of legal provisions under the CrPC. This includes provisions related to plea bargaining, witness protection, and compensation for victims of crime.
- Maintaining order in the court: Judges and magistrates are responsible for maintaining order in the court and ensuring that the proceedings are conducted in a dignified and respectful manner. The judges and magistrates play a crucial role in ensuring that the legal process under the CrPC is fair and just. They must uphold the principles of impartiality, adherence to procedural safeguards, fairness in sentencing, and timeliness, while also maintaining order in the court and ensuring effective implementation of legal provisions.

Lacunae in the Criminal Procedure Code, 1973:

The Criminal Procedure Code (CrPC) in India governs the procedural aspects of criminal trials in the country. While it provides a framework for conducting criminal trials, several lacunae or gaps in the CrPC have been identified over the years, which contradict with the social reality:

Some of these include:

- Delayed trials: One of the most significant issues with the CrPC is the delay in criminal trials. This can be attributed to several factors, including a lack of judicial resources, procedural delays, and the backlog of cases in courts.
- Lack of victim participation: The CrPC does not provide for significant participation by victims in criminal trials. While the Code allows for victims to be represented by a lawyer, they have limited participation in the proceedings. An example of this is discussed in a newspaper article written by Prof. G. S. Bajpai on the importance of Victim Impact Statements in victim jurisprudence in India.

- Inadequate protection of witnesses: Witnesses in criminal trials are often subject to intimidation and threats, and there is a lack of effective witness protection provisions in the CrPC.
- Insufficient legal aid: The CrPC provides for the provision of legal aid to indigent accused persons. However, the quality and availability of legal aid are often inadequate, leading to a lack of effective representation for the accused.
- Excessive pre-trial detention: The CrPC allows for accused persons to be detained during the pre-trial stage. However, there is a lack of clarity on the maximum duration of pre-trial detention, leading to excessive detention in some cases.
- Ineffective plea bargaining: The plea-bargaining provisions in the CrPC have not been effectively utilized in practice, largely due to a lack of awareness among stakeholders and the absence of clear guidelines for the process.
- Lack of compensation for victims: While the CrPC provides for the award of compensation to victims of crime, the process of determining and awarding compensation is often slow and inadequate

These lacunae in the CrPC highlight the need for comprehensive reforms to the criminal justice system in India, with a focus on improving efficiency, protecting the rights of victims and witnesses, and ensuring access to justice for all.

Concluding remarks

Social reality differs from the legal framework, a distinction that has become more apparent post-pandemic. The human rights of prisoners in India are a significant aspect of the criminal justice administration. In recent years, there has been a growing recognition of the need to ensure that prisoners are treated with dignity and respect, and that their human rights are safeguarded throughout the criminal justice process.

One way to understand the relationship between social reality and the human rights of prisoners in India is to scrutinise the criminal procedure in the country. While the Code of Criminal Procedure includes provisions to protect the rights of accused persons, such as the right to legal representation and due process, there are concerns that these provisions are not always adhered to in practice. For example, there have been cases where individuals have been arrested without a warrant or held in custody for extended periods without trial.

The social reality in India, including poverty, discrimination, and corruption, can also have a significant impact on the human rights of prisoners. For example, individuals from marginalised communities may be more likely to be arrested and detained without trial, and may face discrimination and abuse while in custody. The probability of obtaining bail is negligible. Thanks to Section 436A of the CrPC, which specifies the maximum period for which an undertrial prisoner can be detained, there have been instances where this provision has been fruitful.

To address these issues, there is a need for greater awareness and accountability on the part of law enforcement officials and the judiciary, as well as reforms to the criminal justice system. This entails increasing access to legal representation for accused persons, improving conditions in prisons and detention centres, and tackling systemic issues such as corruption and discrimination.

Eventually, by recognising the importance of protecting the human rights of prisoners and taking steps to address the social realities that impact their rights, India can work towards building a more just and humane criminal justice system.

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SILENT SUFFERING: THE STIGMA AND REALITIES OF MARITAL RAPE IN INDIA

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Abstract

India is a cosmopolitan nation where various religions, cultures, and customs are practiced. While Muslims perceive marriage as a contractual agreement, Hindus consider it a sacrament. Other communities engage in a variety of marital rites. Consent is an essential component of marriage. However, marital rape persists as a problem in many families, yet it remains un-criminalized in India. This is largely due to the prevalent belief among Indian families that speaking out about such issues will lead to the decline of their family's prosperity. Consequently, numerous women endure this horrific torture in silence. A significant contributing factor is the dependence of most Indian women on their husbands, compelling them to tolerate severe sexual abuse. The paradoxical status of Indian women is evident in their admiration of goddesses, juxtaposed with the shame many women experience.

Marital rape must be criminalized because it ranks among the cruelest crimes that occur within the confines of a home, yet it remains unaddressed due to the absence of a specific legal framework for women to report it. This paper primarily examines the evolution of marital rape in India, the impact of personal laws on its prevalence, and proposes measures to prevent such crimes in society.

Keywords: Consent, criminalization, marital rape, personal laws, sexual intercourse

Statement of Problem

India, as one of the developing countries globally, boasts progressive laws aimed at women's upliftment. Notable instances include the apex court's rulings on the Vishaka guidelines and the triple talaq case, both of which upheld the dignity of women. However, a significant drawback exists in Exception 2 of section 375 of the Indian Penal Code (IPC), 1860, which defines “Rape.” To comprehend this drawback, it is essential to delve into the content of section 375 itself.

Verbatim, section 375 of the IPC states that A man is said to commit “rape” if he--

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:

- First. Against her will.
- Secondly. Without her consent.
- Thirdly. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

- Fourthly. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
- Fifthly. With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
- Sixthly. With or without her consent, when she is under eighteen years of age.
- Seventhly. When she is unable to communicate consent.

Explanation 1. For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2. Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1. A medical procedure or intervention shall not constitute rape.

Exception 2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape

However, a landmark judgment in the case of Independent Thought v. Union of India and Others has declared that “sexual intercourse or sexual acts by a man with his wife, the wife not being 18 years old, is not rape” Taking a purposeful stance, the Supreme Court struck down Exception 2 to Section 375 of the Indian Penal Code (IPC). It is crucial to note that this judgment has a prospective effect.

Despite such legal developments, India ranks fourth in reported rape cases, as per the National Criminal Records Bureau's annual report for 2021. According to the National Crime Records Bureau's ‘Crime in India’ 2019 report, a woman is raped every 16 minutes in India, and every four minutes, she endures cruelty at the hands of her in-laws. Disturbingly, data analysis from the National Family Health Survey (NFHS) 2015-16 reveals that approximately 99.1% of sexual violence cases go unreported. Moreover, the average Indian woman is 17 times more likely to face sexual violence from her husband than from others.

Research questions

1. What is the critical analysis of the effect of personal laws on Marital Rape in India, and why has it not been criminalized?
2. How can screening be analyzed through the lens of Section 375 of the Indian Penal Code?
3. What is the overview of the consent aspect in Marital Rape?

Objectives of the study

1. To ascertain whether India possesses a legal system that effectively addresses the concerns of its citizens regarding marital rape.
2. To scrutinize personal laws in detail to assess their impact on marital rape and identify any shortcomings they may have.
3. To investigate the status of women in India and advocate for the criminalization of marital rape in the country.

Research methodology

The approach employed for this study is a doctrinal inquiry and doctrine study to comprehend marital rape, the periodic updates in the law, and the relevant case laws. The research methodology centers on understanding how society perceives the concept of marital rape and the reasoning behind its exclusion in India. Primary sources for the research include legislation, constitutional amendments, and case laws. Books, journal articles, and websites serve as secondary sources for the research..

Introduction

Rape is derived from the Latin term “rapere”, meaning “to steal,” and when translated, it signifies an insult to a woman's modesty. The primary issue with marital rape arises when a man forces or physically assaults his wife to engage in unwanted sexual activity. India has enacted numerous laws addressing crimes against women, including rape, domestic abuse, and workplace sexual harassment. According to the legislature, marital rape would destroy the institution of marriage. Its repercussions on women who experience it include both physical effects, such as various aches resulting in injuries to private organs and potential gynecological issues, and psychological effects leading to long-term emotional anguish.

In India, when women are young, they are viewed as property and fall under the jurisdiction of their father or brother. Upon marriage, they come under their husband's custody, and as they age, their sons take control. The institution of marriage is associated with various other crimes, such as the concept of bride price prevalent in many Asian nations. Despite advancements in legislation, parents of women are still required to pay dowry. Despite these legal requirements, women are often treated as if they were property, forced into sexual activity, essentially regarded as the husband's property. As legislation has evolved, initiatives have been taken to create legal protections for women facing issues such as dowry death, domestic abuse, and cruelty.

However, the legislation has turned a blind eye to the seriousness of a crime like marital rape, an experience many women endure through either force-only rape or obsessive rape. Unfortunately, women are often reluctant to report such incidents, making it one of the crimes that frequently goes unreported. India remains one of the few nations that do not recognize husband rape as a crime. As a result, the Constitution, considered

the highest authority on lawmaking, is violated by the non-criminalization of marital rape. This violation goes against the Indian Constitution's "golden triangle," which encompasses the rights to equality and equal protection as provided in Article 14, applying the law to both citizens and non-citizens. However, it fails to shield married women from mistreatment by their spouses and violates Article 19, the right to freedom. The right to freedom of speech and expression for married women is compromised when their in-laws suppress them. Although there is protection under Section 498 IPC, dealing with cruelty, it pertains to dowry-related matters and not rape, treating women as mere instruments for procreation.

Article 21 of the Indian Constitution provides the right to life and personal liberty. In the case of K.S. Puttaswamy vs Union of India, which addresses the right to privacy as a fundamental right, it includes decisional privacy, allowing individuals to make personal decisions, especially those related to sexual or procreative matters and determination in respect of intimate relations. The aspect of women's consent for sexual intercourse is incorporated into the right to privacy, as emphasized in Karnataka v Krishnappa, where the Supreme Court highlighted that sexual violence infringes upon the right to privacy and the sanctity of a female.

In the Convention on the Elimination of Discrimination Against Women (CEDAW), the term "discrimination against women" refers to any distinction, exclusion, or restriction based on sex that impairs or nullifies women's recognition, enjoyment, or exercise of their rights. Marital rape is not confined to a territorial basis but is considered an international issue with a broader perspective. In the current legal context in the country, it is established that the husband possesses the right to engage in sexual activity with his wife, and she must either consent to fulfill his desires or submit to his will. While this assumption is made in the interest of upholding family values, it is important to note that there is also a potential risk of the wife falsely accusing her husband of rape in such a legal scenario, based on inaccurate, false, and motivated information. Engaging in intercourse with a wife whose marriage to him is void due to his previous marriage, with a spouse still living, and being aware that the initial marriage constitutes rape is a critical consideration.

The Connection of Personal Laws in Marital Rape

In India, the institution of marriage is characterized by two aspects: one that determines an individual's status in life and another that restricts their options. Unfortunately, this institution serves as a license for marital rape, with a direct connection to personal laws influencing this heinous act.

Section 9 of the Hindu Marriage Act, 1955, addresses the issue of Restitution of Conjugal Rights, stating that “when either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply by petition to the district court for restitution of conjugal rights. The court, upon being satisfied with the truth of the statements made in such a petition and finding no legal ground to deny the application, may decree restitution of conjugal rights accordingly.” However, this Section 9 poses a threat to women's sexual autonomy and individual privacy. In cases where there is an order for the spouse to return without proper justification, it empowers men to misuse it, potentially leading to forceful sexual intercourse with their wives.

The absence of an option for women to leave their husbands underscores the dominance of men over their wives, affecting the dignity of women. In the case of T Sareetha v. T Venkata Subbaiah, the Andhra Pradesh High Court highlighted that forcing sexual contact with a wife violated her bodily autonomy. This misuse often involves husbands engaging in vigorous sexual contact without consent, coercing wives into maintaining the relationship.

However, the Supreme Court of India, in Sarojrani v. Sudarshan Kumar Chadha, viewed Section 9 of the Hindu Marriage Act as a means to reconcile estranged spouses, emphasizing the sacredness of marriage. Further in Muslim law, marriage is viewed as a contract, and various types of dowers may permit husbands to engage in forcible sex. According to Muslim law, the husband has the legal right to cohabitate with his wife, and she cannot object. Once the husband provides the timely dower, the wife is obligated to obey her husband's commands, leaving her with no alternative but to engage in non-consensual sexual activity.

However, legal cases such as Abdul Latif Khan and Another v. Niyaz Ahmed Khan and Wilayat Hussain v. Allah Rakhiprovide instances where the wife can refuse to comply under specific circumstances.

The evolution of marital rape in India dates back to the Phulmoni Das rape case (Queen Empress v Hari Mohan Mukti, where the wife was a ten-year-old girl, and the husband, 30 years old, was sentenced for 12 months of hard labor. Despite efforts like the 172nd Commission Report of 2000 to modify rape laws, marital rape is not yet recognized as a crime due to concerns about interfering with marriages and reconciliation.

In the case of RIT Foundation v. Union of India, there was a split verdict on the classification of forced sex inside and outside of marriage. Justice Rajiv Shakdher in this case stated that the classification is arbitrary and unreasonable because it appears to imply that forced sex performed outside of marriage is “real rape” and that the same act performed inside of marriage is anything other than rape. The case of Nimeshbhai Bharatbhai v. State of Gujarat highlighted the unequal treatment of married and single women under the law, emphasizing the unfairness of such distinctions.

The laws governing Indians remain outdated, despite India's significant growth across various sectors and its global establishment. There exist troubling theories attempting to justify marital rape, such as the irrevocable consent defense and the notion of implied consent based on mutual agreement in marriage. According to the Utility Doctrine in Common Law by Blackstone, post-marriage, a husband and wife are considered a single entity, with the husband holding shared ownership. The argument regarding Property Rights perpetuates the view that, both before and after marriage, women are seen as the property of their father and husband, reducing them to mere possessions rather than recognizing their humanity.

The Marriage Preservation Theory contends that marriage is a crucial institution in society, and both parties are obligated to fulfill conjugal duties, including engaging in physical relationships, which can be exploited by men. A problematic standpoint is the "no/less harm" argument, asserting that non-consensual sex with a husband is preferable to non-consensual sex with a stranger. Furthermore, the privacy argument posits that prosecuting husbands for marital rape infringes upon marital privacy, creating an additional barrier for women seeking legal recourse in cases of violation of their mind and body.

Conclusion and Suggestions

Women have historically faced numerous crimes in India, including child marriage, rape, dowry deaths, cruelty, and more. Consequently, marital rape remains an exception to section 375 of the Indian Penal Code. Historically, women in India have been treated as inferiors, with a period when they were solely responsible for managing the home and dependent on their husbands for survival. Marital rape is one of the most heinous crimes, and as society develops, the law should progress by criminalizing it. However, arguments against making marital rape illegal suggest interference with marital lives and the institution of marriage itself. Consequently, personal legislation sections contradicting the law should be deemed illegal and subject to penalties. Marital rape can be proven by evidence of injuries, validated by forensic evidence. Indian laws should support married women who are considered sexual objects and inferior to their husbands. The first and most critical step in making a real difference is educating women about their rights to their bodies.

India is among the 32 countries that have not criminalized marital rape, and it is reported that nine out of every hundred males in India believe that a husband has the right to use force and engage in sexual activity with his wife, even if she doesn't want to.

Women have been denied their rights in the past, being victims of many heinous crimes that have become part of our society. The provision in section 375 of the Indian Penal Code, 1860, should be amended by considering the recommendations of the JS Verma Committee, which aims to provide quicker trials and enhanced punishment for criminals accused of committing sexual assault against women. The committee recommended the removal of the exception to marital rape, stating that marriage should not be considered irrevocable consent to sexual acts. Therefore, inquiring about whether the complainant consented to the sexual activity, the relationship between the victim and the accused should not be relevant."

The author of this paper contends that there should be no distinction made between unmarried and married women, as this exception violates human rights. Marital rape should be deemed a punishable offense, and there should be commissions and schemes to support married women who are sexually assaulted by their husbands, with compensation granted to the victims. Despite the current absence of a separate provision for marital rape in Indian law, the judiciary should function effectively by considering cases involving marital rape and providing interpretations from the victim's perspective, acknowledging both mental and physical anguish. The voices of these victims must be heard in court.

In the face of daily societal changes, perspectives must shift for laws to evolve. It is crucial to recognize that educating women is akin to educating entire families. By treating women with respect, the nation can advance in all spheres of life, and general awareness must be raised among the public. The time has come for marital rape to be recognized as a crime in India to promote gender equality.

Hence, it appears that the Marital Rape Exception violates Articles 14 (Equality before law), 15 (Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth), and 21 (Protection of life and personal liberty) of the Indian Constitution by distinguishing between married and unmarried women, denying the former equal protection under the law.

In conclusion, the author emphasizes that sex education should be incorporated into the school curriculum, with an emphasis on starting education at home to prevent the occurrence of heinous crimes in society.

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Thank you for embarking on this scholarly journey with us through the pages of our journal. As the ink dries on this final page, we extend our heartfelt gratitude to all the contributors, reviewers, and readers who have made this endeavor possible. Your dedication to the pursuit of knowledge and the advancement of legal scholarship is truly inspiring. As we close this chapter, let us carry forward the spirit of inquiry, dialogue, and collaboration that defines our academic community. Here's to the limitless possibilities that await in the pursuit of legal excellence. Until we meet again within these pages, let curiosity guide your path and may your insights continue to shape the future of law. With warmest regards, The Publication and Seminar Committee, School of Law NMIMS Navi Mumbai.

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