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# COOPERATION TRADE FREE AGREEMENT: INDIA COMPREHENSIVE APPROACH

*Dr. Monika Jain\**

*The majority countries which are the members of UNO take different approaches for the protection and development of Intellectual Property Rights to encourage innovations and creativity which is considered to be an important source of long-runs economic growth. The UNO plays an essential role in the development and protection of IPR with the help of the World Intellectual Property Organization which is one of the most significant and important organisations among all 16 organisations working under UNO. Based on their economic functions, intellectual property rights can be broadly categorized into, patents and copyrights which serve to bridge a gap between the social value and private value of innovations. The other trademarks can merely distinguish from their origin and quality of goods and services. In TRIPS Agreement which comprehensively prescribes minimum standards for the protection of the degree of domestic legislative discretion with the contracting member states. Signatory states are left to determine the best way of implementing the Agreement within their own legal system and practice whether with enacting or merely amending legislation. India has sought to define these standards with reference to its domestic conditions and has an efficient and effective intellectual property regime.*

**Keywords- Agreement, Trade, Policy, Investment, Economy, Restriction, Export.**

## **Introduction**

*The World Trade Center is a living symbol of man's dedication to world peace... a representation of man's belief in humanity, his need for individual dignity, his beliefs in the cooperation of men, and, through cooperation, his ability to find greatness.<sup>1</sup>*

*Minoru Yamasaki*

Indian trade policy was extremely protectionist in the years 1950-1975 such that by the end of that period, the Indian economy was virtually autarkic. India share of global merchandise trade policy as an effective instrument

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1 <http://www.brainyquote.com/quotes/keywords/cooperation.html#vauIZ0t3FrCJq89Y.99>

of economic growth with a strong emphasis on employment generation.<sup>2</sup> The policy aims at removing controls, bringing down transactions costs, and identifying key areas in order to develop India as a global hub for manufacturing, trade and services is the greater integration of the Indian economy into the world economy via the multilateral process, but also increasingly through regional trading arrangements.<sup>3</sup> In pre-1991 period, India used a number of schemes for both export promotion and import restriction. The majority of the import restriction schemes were eliminated as a consequence of the import liberalization policy introduced after 1991 duty exemption schemes which enable duty free imports of inputs required for export promotion are applicable to only a small number of items mainly on health, environmental or moral grounds.<sup>4</sup> Export restrictions are currently applicable to cattle, camels, cereals, fertilizers, groundnut oil, pulses, petroleum products etc. FDI being as beneficial for the host economy because of the direct investment it brings but also because of the possible externalities which may be generated in the form of, for example, technology transfers and spillovers.<sup>5</sup> This relationship between FDI and externalities is also closely related to the relationship between deep integration and externalities, to underline that in considering the relationship between FDI and growth, other features of the economy, such as trade policy, the legislative and regulatory framework, investments in education, and Trade policies in India regarding non-tariff barriers, services, and regulatory issues.<sup>6</sup> India is among the countries, which are in the vanguard of environmental protection. India has environmental standards for products and processes, has environmental impact assessment. The solution lies not in unilaterally banning trade, but rather in transferring technology and offering prices to developing countries for commodities,<sup>7</sup> which would not then necessitate their overexploitation their development priorities to remove the anti-export bias of existent

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2 Robert, J., and Noguera, G., 2012, *Proximity and production fragmentation*. *American Economic Review*, vol. 102, No. 3, pp. 407-411.

3 Kawai, M. and Wignaraja, G., 2011, *Asia's Free Trade Agreements: How is Business Responding?*, Cheltenham (UK), Edward Elgar

4 Bhagwati, J., Krishna, P. and Panagariya, A., 1999, *Trading Blocs: Alternative Approaches to Analyzing Preferential Trade Agreements*, MIT Press.

5 Krishna, P., "Preferential Trade Agreements and the World Trade System: A Multilateralist View", in Feenstra and Taylor editors, *Globalization in an Age of Crisis*, NBER, University of Chicago Press, 2014

6 *Reform and Manufacturing Performance: Evidence from India.* *The Economic Journal* 126(590) (2016): 1-39.

7 Panagariya, A., 2000, "Preferential Trade Liberalization: The Traditional Theory and New Developments," *Journal of Economic Literature*

policies, improve the efficiency of resource allocation as well as the competitiveness of domestic markets, Imports of capital goods, raw materials,<sup>8</sup> and components have been de-licensed, tariffs on such imports have been reduced substantially, and tariff categories have been efficient and simplified all goods can now be freely imported and exported, with the provisions of WTO. India has decided to phase out quantitative restrictions in respect of all items where such restrictions were maintained for balance of payments purposes.<sup>9</sup>

### **Objectives of Concept**

- A. Strengthen and enhance economic, trade and investment co-operation between the Parties;
- B. Progressively liberalise and promote trade in goods and services as well as create a transparent, liberal and facilitative investment regime;
- C. Explore new areas and develop appropriate measures for closer economic co-operation between the Parties; and
- D. Facilitate the more effective economic integration of the new member States and bridge the development gap among the Parties.

### **For Economic Cooperation**

The Parties agree to enter into negotiations in order to establish India Regional Trade and Investment Area (RTIA), which includes a Free Trade Area (FTA) in goods,<sup>10</sup> services and investment, and to strengthen and enhance economic cooperation through the following:

- E. Progressive elimination of tariffs and non-tariff barriers in substantially all trade in goods;
- F. Progressive liberalisation of trade in services with substantial sectoral coverage;
- G. Establishment of a liberal and competitive investment regime that facilitates and promotes investment within the India RTIA;
- H. Provision of special and differential treatment to the New Member States;

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8 Saraswat, V.K., Priya, P., and Ghosh, G., 2017, "A Note on Free Trade Agreements and their Costs," NITI Aayog, New Delhi.

9 World Trade Report, 2011, "The WTO and Preferential Trade Agreements," WTO, Geneva.

10 India-ASEAN Regional Trade and Investment Area (RTIA)2002

- I. Provision of flexibility to the Parties in the India RTIA negotiations to address their sensitive areas in the goods, services and investment sectors with such flexibilities to be negotiated and mutually agreed based on the principle of reciprocity and mutual benefits;
- J. Establishment of effective trade and investment facilitation measures, including, but not limited to, simplification of customs procedures and development of mutual recognition arrangements;
- K. Expansion of economic cooperation in areas as may be mutually agreed between the Parties that will complement the deepening of trade and investment links between the Parties and formulation of action plans and programmes in order to implement the agreed sectors/areas of co-operation; and
- L. Establishment of appropriate mechanisms for the purposes of effective implementation of this Agreement.<sup>11</sup>

## ARTICLE 6

### Areas of Economic Cooperation

1. Where appropriate, the Parties agree to strengthen their cooperation in the following areas, including, but not limited to:

#### A. Trade Facilitation:

- I. Mutual Recognition Arrangements, conformity assessment, accreditation procedures, and standards and technical regulations;
- II. Non-tariff measures;
- III. Customs cooperation;
- IV. Trade financing; and
- V. Business visa and travel facilitation.

#### B. Sectors of Cooperation:

- I. agriculture, fisheries and forestry;
- II. services: media and entertainment, health, financial, tourism, construction, business process outsourcing, environmental;
- III. mining and energy: oil and natural gas, power generation and supply;
- IV. science and technology: information and communications technology, electronic-commerce, biotechnology;
- V. transport and infrastructure: transport and communication;

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11 OECD, 2019, *FDI Stocks*, <https://data.oecd.org/fdi/fdi-stocks.htm>

- VI. manufacturing: automotive, drugs and pharmaceuticals, textiles, petrochemicals, garments, food processing, leather goods, light engineering goods, gems and jewellery processing;
- VII. human resource development: capacity building, education, technology transfer; and
- VIII. others: handicrafts, small and medium enterprises, competition policy, Mekong Basin Development, intellectual property rights, government procurement.

### **C. Trade and Investment Promotion:**

- I. fairs and exhibitions;
  - II. India weblinks; and
  - III. Business sector dialogues.
2. The Parties agree to implement capacity building programmes and technical assistance, particularly for the New Member States, in order to adjust their economic structure and expand their trade and investment with India.
  3. Parties may establish other bodies as may be necessary to coordinate and implement any economic cooperation activities undertaken pursuant to this Agreement.<sup>12</sup>

### **Cooperation Trade Measurement**

*NAFTA and GATT have about as much to do with free trade as the Patriot Act has to do with liberty.*<sup>13</sup>

**—Michael Badnarik, Libertarian Presidential candidate**

India believes that in order to make trade and environment mutually supportive, an open multilateral trading system makes possible a more efficient allocation and use of resources. This contributes to increased production and incomes, and lessens the demands on the environment. It also provides the additional resources needed for economic growth and development, and improved environmental protection. Trade measures should be applied for environmental purposes only when they address the root causes of environmental degradation so as not to result in an unjustified restriction on trade standards valid for developed countries may have unwarranted social and economic cost in developing countries.<sup>14</sup>

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12 *India-ASEAN Regional Trade and Investment Area (RTIA) 2002*

13 *Michael Badnarik, Libertarian Presidential candidate*

14 *International Trade Centre (2018). A Business Guide to the African Continental Free Trade Area Agreement. ITC, Geneva.*

- The World Trade Organization's (WTO) Committee on Trade
- United Nations Conference on Trade and Development (UNCTAD)
- Agricultural Products Export Development Authority (APEDA), New Delhi;
- Indian Institute of Plantation Management (IIPM), Bangalore;
- Bureau of Indian Standards and National Productivity Council,
- National Consumer Council.

## **Challenges**

Priority constraints to implementing effective programs in this area include:

- Lack of general awareness
- Lack of technical knowledge
- Lack of financial assistance
- Lack of infrastructure

## **Capacity-building, Education, Training and Awareness-raising**

The Government of India has been trying to create awareness towards moderation of demand and the adoption of a consumption pattern that would not leave a deleterious impact on the environment. The Government, for example, has embarked on an extensive awareness campaign through the print and television media to stress the need to save scarce water, energy, and petroleum resources. This is in conformity with the importance given by Mahatma Gandhi in his thinking on nation and character building. Programmes for policymakers, industries, and consumers designed to educate and raise their awareness for more sustainable consumption and production patterns include:

- Training and awareness programmes on Eco mark Schemes
- Training and awareness programmes on Comparative testing
- Training and awareness programmes on BIS
- General Consumer awareness.<sup>15</sup>

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<sup>15</sup> *Awareness campaign programmes to promote sustainable consumption patterns are carried out through Programmes of Quality Council of India/BIS/MOEF/CPCB/Consumer Protection Councils.*

## **Information for decision makers**

The kinds of national information available to assist both decision-makers and industry managers to plan and implement appropriate policies and programmes in this area include:

- Status
- Data
- Notifications
- Standards
- Policy documents

There is a monitoring system in place to oversee enforcement of relevant laws, regulations and standards. This is carried out by the State Pollution Control Boards (SPCB), Regional offices of SPCBs, and Regional offices of the Ministry of Environment and Forests.<sup>16</sup>

## **Research and Technologies**

Major research and pilot projects and activities are underway in the following areas:

- Life Cycle Assessment (LCA)
- Green Rating
- Statutory requirements
- General awareness
- Creating demand for sustainable projects
- Encouraging industries
- Creation of data bank on cleaner techniques
- Creating of infrastructure

## **Other technology-related issues that are being addressed, in this area are**

- Involvement for financial assistance
- Development of standards
- Capacity building
- Infrastructure awareness

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16 OECD (2019). "Accessibility and Infrastructure in Border Cities", West African Papers, No. 23, (2019), OECD Publishing, Paris.

## Cooperation

Cooperation is carried out between the Government and the World Bank, UNDP, ADB and through bilateral arrangements with a few countries in order to further activities related to promoting sustainable consumption and production patterns. In India, the Government has embarked on a macroeconomic stabilization programme since 1991 Structural reforms in the foreign trade and payments regime, the tax system, industrial policy, and the financial sector. While the Government is attempting to raise resources internally for sustainable development, the importance of international assistance cannot be minimized.<sup>17</sup>

## Trade in Services

Apart from barriers to market access for European service providers, inadequate regulation in India is another critical area. Except for a few sectors, services transactions are either over or under regulated. Financial, telecommunication, and insurance sectors, for instance are adequately regulated. However, for a large number of professional services, there is no independent sectoral regulator. This not only causes problems for domestic consumers and professionals, but also often creates barriers for Foreign Service providers.<sup>18</sup>

## Issues for Negotiation

Indian service sectors are grouped into three categories: those sectors which are substantially liberalised, and face no explicit barriers; sectors that are moderately liberalised with a few explicit barriers; and those that remain largely closed to foreign competition. Therefore, there is scope for further negotiation to open up many of the moderately liberalised and closed sectors in India.

- Telecom
- Construction
- Health
- Banking and other financial services
- Insurance
- Distribution
- Education

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17 *World Trade Report, 2011, "The WTO and Preferential Trade Agreements,"* WTO, Geneva

18 *Saraswat, V.K., Priya, P., and Ghosh, G., 2017, "A Note on Free Trade Agreements and their Costs,"* NITI Aayog, New Delhi.

- Postal and courier services
- Legal
- Accountancy

### **Possible Benefits and Costs**

- removal of stringent regulatory barriers
- FDI
- accessibility of services
- Sectoral reform programmes multiplier effect on agriculture, manufacturing and food processing sectors in the country.
- Generate employment.
- competitive advantage
- liberalization
- improve quality, efficiency and accountability
- legal and accountancy services would provide additional business opportunities
- Retail sector to improve the supply chain and infrastructure.

### **International Cooperation**

Almost all ministries of the Government of India are involved in decision-making for sustainable development. However, major participation is by the ministries of external affairs, environment and forests, agriculture, water resources, finance, industries, rural development, commerce, non-conventional energy sources, finance and the planning commission.<sup>19</sup> Coordination within the different bodies of the Government in India is mainly through consultative meetings and discussions. There are inter-ministerial and inter-departmental committees, Core Groups for coordination to formulate the optimum policy and legislation on issues concerning international cooperation/development assistance for Sustainable Development.<sup>20</sup> The trade policy components of the Indian reform process undertaken since July 1991 have been motivated by recognition of the important role that trade can play in promoting

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19 Nwankwo, C.M. and Ajibo, C.C., “Liberalizing Regional Trade Regimes Through AfCFTA: Challenges and Opportunities”, *Journal of African Law*, 64 (3), (2020), pp. 297-318.

20 WTO, 2019a, *Article XXIV of the GATT*, [https://www.wto.org/english/tratop\\_e/region\\_e/region\\_art24\\_e.htm](https://www.wto.org/english/tratop_e/region_e/region_art24_e.htm), Accessed June 1, 2019

sustained economic growth in the context of sustainable development.<sup>21</sup> The expanded scope for specializing in areas of comparative advantage is manifest in the improved growth performance of the economy. Furthermore, while exports have responded to the removal of the anti-export bias of a protectionist environment, domestic industry appears to have been stimulated by the expanded availability of imports and capital goods, and the challenge of competing in the international market place.<sup>22</sup>

- Basic human needs
- Women in development
- Support to infrastructure
- Private sector development
- Environment
- Good governance
- Developing Eco Friendly goods and technologies

The largest share is for poverty eradication, natural resource protection and capacity building in that order. The amounts are miniscule compared to the needs of the country.

- Environment Management Capacity Building Project (World Bank) (UNCTAD Project)
- Strengthening capacities for trade and environmental policy integration in India and trade environment investment (UNCTAD)
- Strengthening Research and Policy making capacity on trade and environment in development countries (UNCTAD).

India is part of SAPTA (South Asian Preferential Trade Agreement) and BIMSTEC and in these regional groupings, the question of market accessibility and trade has received due consideration.

## **Challenges for Cooperation**

Some of the major challenges for building partnership with countries which are in various stages of economic development are inadequate implementation of commitments, transfer of technology, financial constraints market access and standards. The programme areas/issues of Agenda 21 which require most immediate attention for bilateral/multi-

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21 Panagariya, A., 2000, "Preferential Trade Liberalization: The Traditional Theory and New Developments," *Journal of Economic Literature*

22 UNESCO. "World Social Science Report 2016, Challenging Inequalities: Pathways to a Just World", UNESCO Publishing, Paris, (2020).

lateral cooperation are fulfillment of obligations of transfer of technology, financial assistance, capacity building, public participation, involvement of NGOs and private sector, R&D institutions and scientific/business community major challenges in building partnerships with NGOs and private sector scientific community.

- recognizing sustainable development as a mutual goal
- lack of understanding of issues for achieving sustainable development
- Development of various tools/instruments and their implementation paucity of financial resources.

### **Trade and Production Structures and Implications for Non-Tariff Barriers, Services, and Regulatory Parts of FTA**

This part of the study provides an analysis of some of the key issues arising from a potential EU-India FTA through an examination of key diagnostic indicators for India and the EU, drawing directly on the methodology in the Sussex Framework. The central features of the Sussex Framework involve the identification of those issues which need to be borne in mind in evaluating a potential RTA, and then using appropriate indicators for such an evaluation.<sup>23</sup> In the first instance, preferential trade liberalisation involves a process of shallow integration. Shallow integration can be defined as the removal of border barriers to trade, typically tariffs and quotas. As is well known, the potential net benefits from shallow integration are inherently ambiguous. This arises because of the likelihood of both trade creation (which is welfare increasing) and trade diversion.<sup>24</sup> Trade creation arises when more efficiently produced imported goods from the new partner country replace less efficient domestically produced goods. Trade is “created” and yields welfare gains. Trade diversion occurs when sources of supply switch away from more efficient non-partner countries to less efficient partner countries.<sup>25</sup> This arises because the less efficient partner countries gain tariff-free access within the RTA and may be

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23 Itakura K. (2015). *Assessing the economic effects of the regional comprehensive economic partnership on ASEAN member states*. In Ing L. Y. (Ed.), *East Asian integration* (pp. 1–24).

24 Krishna K., Salamanca C., Suzuki Y., & Martincus C. V. (2021). *Learning to use trade agreements* (No. w29319).

25 Ray S., Mukherjee P., & Mehra M. (2016). *Upgrading in the Indian garment industry: A study of three clusters* (ADB Working Paper Series No. 43). *Asian Development Bank Institute*.

able therefore to undercut more efficient non-partner countries. Trade diversion therefore reduces welfare. The net welfare impact of an RTA will depend on the relative size of the two effects.<sup>26</sup>

- First, we detail the underlying policy environment in India, as well as identify key aspects of the Indian economy and its evolution over time.
- Secondly, we focus on existing and historical patterns of trade both by sector and by partner country and use selected indicators in order to identify the likelihood for both trade creation and trade diversion.
- Lastly, we turn to the issue of deep integration and consider qualitative and quantitative evidence which can shed light on the potential welfare gains which could arise from deeper integration.

### **Indian Trade Policy and Economic Performance**

Hence India has already entered into a number of framework agreements for preferential trade agreements. The recently concluded Comprehensive Economic Cooperation

- Agreement (CECA) with Singapore was implemented from 1<sup>st</sup> August 2005.
- Member countries of South Asian Association for Regional Cooperation (SAARC) signed the Agreement on South Asia Free Trade Area (SAFTA) in January 2004.
- A Framework Agreement on Comprehensive Economic Cooperation between ASEAN and India, a Framework Agreement for a Bangladesh, India, Myanmar, Sri Lanka and Thailand Economic Cooperation (BIMSTEC) FTA in goods, services and investment is under negotiation and an India-Thailand Framework Agreement has also been signed. Finally, India-China, India-Japan, and India-South Korea joint study groups have been established.

### **Assessing the Shallow Integration Implications**

Trade liberalization such as an FTA between the EU and India involves at the very least a process of shallow integration and may include elements of deep integration. The net benefits from shallow integration are inherently ambiguous because of the likelihood of both trade creation and trade diversion.<sup>27</sup> In addition to these effects, there may be further welfare gains arising from the induced growth and productivity effects which are

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26 Jha S. (2013). *Utility of regional trade agreements? Experience from India's regionalism*. *Foreign Trade Review*, 48(2), 233–245.

27 Shyam S. S., & Geetha R. (2011). *Stakeholders perception of Indo-ASEAN free trade agreement on Indian fisheries sector*. *Journal of Indian Fisheries Association*, 38, 1–9.

more likely to arise in the presence of deeper integration. The prospective EU-India FTA will bring about the removal of tariffs on a preferential basis, which leads to both trade creation and trade diversion.<sup>28</sup> There are two possible channels of trade creation. First, this can arise when more efficiently produced imported goods replace less efficient domestically produced goods. Thus, on the production side, trade is created and yields welfare gains.<sup>29</sup> Secondly, even assuming no changes in domestic production, a reduction in tariffs that leads to a reduction in prices will increase demand for goods which were already previously imported from the partner country. This too leads to welfare gains as consumers have access to cheaper goods than previously. Here trade is created on the consumption side.<sup>30</sup>

- Public-Private ownership
- Transparency in procurement

### **India's Current Engagements in RTAs**

*If Free Trade has been so good to our standard of living, then WHY has our largest employer gone from high union wage paying and benefits GM to low wage paying benefits skirting WalMart???*<sup>31</sup>

—Barbara Toncheff

- The India-ASEAN Agreement for Trade in Services and Agreement on Investment.<sup>32</sup>
- India- Sri Lanka Comprehensive Economic Partnership Agreement (CEPA) negotiations.<sup>33</sup>
- Joint Study Group (JSG) and Comprehensive Economic Partnership Agreement (CEPA).<sup>34</sup>

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28 Ruta M. (2017). Preferential trade agreements and global value chains: Theory, evidence, and open questions (*Policy Research Working Paper 8190*).

29 Chakraborty D., & Hazra A. K. (2005). Preferential trade agreements and India: A review of issues. (*Working Paper 48*). Rajiv Gandhi Institute for Contemporary Studies.

30 Riezman R. (1999). Can bilateral trade agreements help to induce free trade? *Canadian Journal of Economics*, 32(3), 751-766.

31 Barbara Toncheff

32 India-ASEAN Agreement signed on 26th August 2014

33 India-Sri Lanka Free Trade Agreement (ISLFTA) signed in 1998.

34 JSG, April 2003 and CEPA February 2005

- India-Thailand Comprehensive Economic Cooperation Agreement (CECA) negotiations.<sup>35</sup>
- Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) Free Trade Agreement (FTA) negotiations (as of July 2014).<sup>36</sup>
- India-Gulf Cooperation Council (GCC) Free Trade Agreement (FTA) negotiations.<sup>37</sup>
- India-SACU Preferential Trade Agreement (PTA) negotiations.<sup>38</sup>
- Second Review of India-Singapore Comprehensive Economic Cooperation Agreement (CECA).<sup>39</sup>
- Expansion of India-Chile Preferential Trade Agreement (PTA).<sup>40</sup>
- MERCOSUR Preferential Trade Agreement (PTA) Negotiations.<sup>41</sup>
- India-Pakistan Trading Arrangement.<sup>42</sup>
- India-EU Broad Based Trade and Investment Agreement (BTIA) negotiations.<sup>43</sup>
- India EFTA Broad based Trade and Investment Agreement (BTIA) Negotiations.<sup>44</sup>
- Global System of Trade Preferences (GSTP) (as of July, 2014).<sup>45</sup>
- Asia Pacific Trade Agreement (APTA) (as of July, 2014).<sup>46</sup>

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35 *India-Thailand Comprehensive Economic Cooperation Agreement (CECA) negotiations November 2001*

36 *Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) Free Trade Agreement (FTA) negotiations (as of July, 2014)*

37 *India and Gulf Cooperation Council was signed on 25th August, 2004*

38 *India-SACU Preferential Trade Agreement (PTA) negotiations signed on 26th November, 2008*

39 *India-Singapore Comprehensive Economic Cooperation Agreement (CECA) on 29th June, 2005*

40 *India-Chile Preferential Trade Agreement (PTA) on January 20, 2005*

41 *MERCOSUR Preferential Trade Agreement (PTA) Negotiations on January 25, 2004*

42 *India-Pakistan Trading Arrangement Delhi on 31 July – 1 August 2007*

43 *India-EU Broad Based Trade and Investment Agreement (BTIA) negotiations On 28th June 2007*

44 *India EFTA Broad based Trade and Investment Agreement (BTIA), 29 November 2013 in New Delhi*

45 *Global System of Trade Preferences (GSTP) on 13th April, 1988*

46 *Asia Pacific Trade Agreement (APTA) on 2000*

- India New Zealand Free Trade Agreement / Comprehensive Economic Cooperation Agreement.<sup>47</sup>
- India-Canada Comprehensive Economic Partnership Agreement (CEPA).<sup>48</sup>
- India-Australia Comprehensive Economic Cooperation Agreement (CECA).<sup>49</sup>
- India-Indonesia Comprehensive Economic Cooperation Agreement (CECA).<sup>50</sup>
- Joint Study on the India- COMESA (Common Market for East and Southern Africa) Joint Study Group Report to examine the feasibility of a Preferential Trade Agreement (PTA)/ Free Trade Agreement (FTA) between India and COMESA.<sup>51</sup>
- India-Israel Free Trade Agreement (FTA) Negotiations<sup>52</sup>
- Regional Comprehensive Economic Partnership (RCEP)<sup>53</sup>
- Framework Agreement On Cooperation For Development Between Government Of The Republic Of India And Government Of The People's Republic Of Bangladesh<sup>54</sup>

## Conclusion

Developing countries have almost brought World Trade Organization negotiations on a far-reaching liberalization of world trade to a standstill. Among other things, they oppose abolishing state aid in the food supply in the course of cutting subsidies. India is spearheading this movement.<sup>55</sup> They also acknowledged that they had a better grasp of the relevance of trade and transport facilitation and the importance of information technologies in trade transactions at both national and international levels. They expressed

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47 *India New Zealand Free Trade Agreement / Comprehensive Economic Cooperation Agreement on 21.01.2010*

48 *India-Canada Comprehensive Economic Partnership Agreement (CEPA) in November 2010*

49 *India-Australia Comprehensive Economic Cooperation Agreement (CECA) on 29.04.2011*

50 *India-Indonesia Comprehensive Economic Cooperation Agreement (CECA) on 25th January, 2011*

51 *Common Market for East and Southern Africa COMESA on 30-31st July, 2012*

52 *India-Israel Free Trade Agreement (FTA) Negotiations on 26th May, 2010*

53 *Regional Comprehensive Economic Partnership (RCEP) November 20, 2012*

54 *Agreement On Cooperation for Development Between Government Of The Republic Of India And Government Of The People's Republic Of Bangladesh*

55 *Krishna K., Salamanca C., Suzuki Y., & Martincus C. V. (2021). Learning to use trade agreements (No. w29319). National Bureau of Economic Research*

their appreciation to the use of examples of the implications for African countries in the trade negotiations.<sup>56</sup> Trade Logistics, Transport and Trade Facilitation Module introduced participants to key issues in trade logistics and in transport and trade facilitation covered several topics including environment building for trade, global transport networks and transport infrastructure and services,<sup>57</sup> and the use of information technologies in trade transactions, as a management tool for transport systems and as a core customs clearance administration structure. Special emphasis was placed on trade facilitation measures presently being negotiated at the world trade organization.<sup>58</sup>

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56 Francis S. (2020). Impact of preferential trade liberalisation on India's manufacturing sector trade performance: An analysis of India's major trade agreements

57 Das S. B., & Jagtiani R. (2015). *The regional comprehensive economic partnership: New paradigm or old wine in a new bottle?* Asian-Pacific Economic Literature, 29(2), 68–84.

58 Saraswat V. K., Priya P., & Ghosh A. (2018). A note on free trade agreements and their costs. NITI Aayog.

# A STUDY ON NEW EDUCATION POLICY – REFORMING HIGHER EDUCATION IN INDIA

**Ms. Rachita Aggarwal\* & Ms. Preeti Goel\*\***

*The impact of a nation's educational system on its economic health is now widely acknowledged. Education is a country's greatest asset. Unavoidably, a developed nation also has a high level of education. India has advanced greatly in the area of education since attaining its freedom. This study examines the significance of New Educational Policy and the necessity of reforming higher education. The data from the All-India Survey on Higher Education Institutions (AISHE) was used to calculate and analyse indicators of education development in the nation, such as the Gross Enrolment Ratio (GER), Students-Teacher Ratio, Gender Parity Index (GPI), and Expenditure on Education and Research, which are useful in improving education quality and research development. In accordance with the New Education Policy, higher education will be transformed by allocating roughly 6% of GDP to it, creating National Higher Education Commission (NHEC), National Research Foundation, and reorganising educational institutions into massive multidisciplinary universities, higher education clusters, and independent degree-awarding colleges.*

**Keywords- Student-Teacher Ratio, Higher Education Institution, New Educational Policy, Gross Enrolment Ratio, Gender Parity Index.**

## **Introduction**

India is a vibrant nation with a young population that has contributed professionals and talented workers to all the major established sectors in other nations, including the software, medical, mechanical, and engineering industries. In terms of the number of students enrolled, the Indian educational system is the third largest in the world.<sup>1</sup> Despite statistics showing a staggering increase in enrollment in schools over the past four years due to the Right to Education Act,<sup>2</sup> government initiatives,

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1 India Country Summary of Higher Education, World Bank, 2018, available at: [http://siteresources.worldbank.org/EDUCATION/Resources/278200-1121703274255/1439264-1193249163062/India\\_CountrySummary.pdf](http://siteresources.worldbank.org/EDUCATION/Resources/278200-1121703274255/1439264-1193249163062/India_CountrySummary.pdf)

2 Younis Ahmad Sheikh, Higher Education in India: Challenges and Opportunities, *Journal of Education and Practice*, 2017, Vol. 8

and private sector involvement, the country's school and higher education systems continue to struggle with insufficient funding, shortage of infrastructural facilities, low standards, insufficient study amenities, and subpar scholastic ratings for schools. Insufficient employment prospects, skill development, and value-added training at all stages are further indicators. A study on the New Education Policy (NEP) and its potential to reform higher education in India would be a comprehensive endeavor.

### **New Education Policy (NEP) and Higher Education in India**

The NEP was introduced in 2020 with the aim of overhauling the entire education system, including higher education, to address many of the challenges and problems that have been prevalent for years. Some key aspects and potential impacts of the NEP on higher education in India:

1. **Multidisciplinary Approach:** The NEP promotes a multidisciplinary approach, allowing students to choose courses across disciplines, fostering holistic learning.
2. **Flexibility and Choice:** The policy encourages flexibility in course selection, multiple entry and exit points, and credit transfer, enabling students to design their educational path.
3. **Quality Enhancement:** The NEP places a strong emphasis on raising educational standards via methods for training teachers, advancing research as well as accrediting.
4. **Research and Innovation:** India's international academic outputs is intended to be enhanced through greater resources for research and development as well as an emphasis on college-level study promotion.
5. **Autonomy for Institutions:** Greater institutional autonomy is encouraged to reduce bureaucratic interference and promote innovation and excellence.
6. **Technology Integration:** The NEP advocates for the integration of technology in education, addressing issues of digital access and promoting online and blended learning.
7. **Global Engagement:** The policy aims to internationalize higher education by promoting collaborations with foreign universities, allowing credit transfer, and attracting foreign students.
8. **Vocational Education and Skill Development:** NEP integrates vocational education and skill development into higher education, addressing the need for skilled workers in various sectors.
9. **Languages and Cultural Diversity:** The policy recognizes the importance of regional languages and cultural diversity, allowing for the preservation of local culture and knowledge.

10. **Financial Support:** The NEP seeks to provide financial support to students from disadvantaged backgrounds, reducing financial barriers to higher education.
11. **Assessment and Evaluation:** A shift towards continuous assessment, project-based learning, and reduced emphasis on high-stakes exams is a part of the NEP's reforms.
12. **Equity and Inclusivity:** The policy aims to address disparities in access by promoting higher education in underserved areas and providing support for marginalized communities.
13. **Governance and Regulation:** A new regulatory framework is envisioned to create a more transparent, accountable, and efficient system of higher education governance.

### Major Challenges and Problems in Higher Education System

The higher education system in India faces a range of challenges and problems that have been persistent over the years. These issues impact the quality, accessibility, and overall effectiveness of higher education in the country. Some of the key challenges and problems include lack of access and inclusivity, quality of education, overemphasizing on rote learning, lack of innovation and research, outdated curriculum, brain drain, lack of vocational education, etc. There are disparities in access to higher education based on socio-economic status, gender, and geographical location. There is proliferation of private educational institutions that often prioritize profit over quality education. The political influence on the administration and functioning of educational institutions has increased. The student unions and political ideologies are affecting the academic environment. There is limited emphasis on continuous assessment and project-based learning. The government funding for higher education institutions is limited. There is difficulty in attracting private investment for research and infrastructure development. Overall, the approach for higher education in India is very fragmented.

The fragmented higher education ecosystem in India today faces several significant issues, including:

- a. India's enrollment rate is disappointing when compared to other developing countries. The Gross Enrolment Ratio (GER) climbed to 27.1%, up slightly from the growth of 26.3% reported in the All-India Survey on Higher Education (AISHE) Report 2021.<sup>3</sup> In comparison to both industrialised and developing nations, the GER is quite low. The

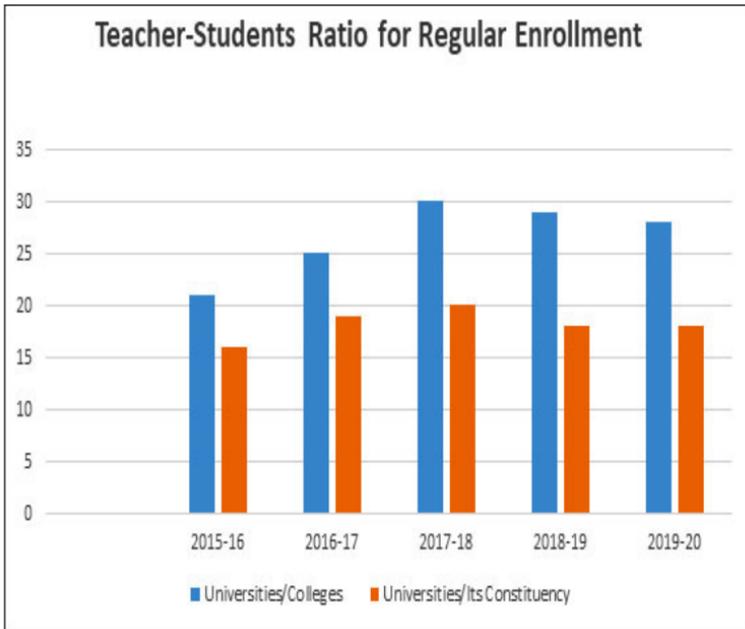
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3 *All-India Survey on Higher Education (AISHE) Report, 2020-21, available at: <https://aishe.gov.in/aishe/BlankDCF/AISHE%20Final%20Report%202020-21.pdf>*

overall number of students enrolled in higher education was 3.42 million in 2014–15, 3.74 million in 2018–19, and 3.85 million by 2019–20.<sup>4</sup> The increase rate in enrollment between 2018–19 and 2019–20 was 3.04 percent.

- b. Less focus is placed on the improvement of cognitive abilities and learning outcomes, particularly in HEIs.<sup>5</sup> Also, there is less emphasis placed on teacher effectiveness and the student-teacher ratio (PTR), which has caused confusion in the system. If regular mode enrollment is taken into account, the Pupil Teacher Ratio (PTR) for Universities and Colleges is 28, whereas the PTR for Universities and their Component Units is 18 for regular mode. The graph below shows the Pupil Teacher Ratio (PTR) across time. State-by-state PTR over the last five years for all institutions, universities, colleges, and universities and its constituent colleges that accepted enrollment through the regular mode of instruction. It is important to note that PTR for the years 2016–17 and 2017–18 shows a trend towards decline.

**Figure No. 1**



4 Vibha Sharma, *Student enrolment in higher education grew by over 11 per cent in 5 years*, *Tribune News Service*, 2022, available at: <https://www.tribuneindia.com/news/nation/student-enrolment-in-higher-education-grew-by-over-11-per-cent-in-5-years-266370>

5 Sachiko Ozawa, *Educational and economic returns to cognitive ability in low- and middle-income countries: A systematic review*, *World Development*, Vol. 149, 2022, available at: <https://doi.org/10.1016/j.worlddev.2021.105668>.

**Source:** All India Survey on Higher Education 2019-20<sup>6</sup>

- c. A strict policy that separated the disciplines, encouraged early specialisation, and streamed students into specialised fields of study was in place.
- d. Restricted access, especially for students from socially and economically underprivileged areas, and a dearth of HEIs that offer local language instruction.
- e. The majority of HEIs have constrained institutional and teacher autonomy and less academic flexibility.<sup>7</sup>
- f. Insufficient systems for formerly it-based faculty and student career management and advancement, as well as insufficient funding for it. Less than 3% of the country's GDP was spent on the education sector from 2015-16 to 2018-19.<sup>8</sup> As a result, government education plans' benchmark for public education spending was not met. Even after 70 years of independence, this resulted in inadequate accommodations, laboratory, and research facilities in higher education institutions.

**Table 1**  
**Government Expenditure on HEIs**

Year	Expenditure as % of GDP	Expenditure as % of Budget
2013-14	3.1	1.47
2014-15	2.8	1.29
2015-16	2.8	1.43
2016-17	2.8	1.47
2017-18	2.9	1.62
2018-19	3.0	1.43

**Source:** Economic Survey 2018-19<sup>9</sup>

6 *All-India Survey on Higher Education Report, 2020-21*, available at: [https://www.education.gov.in/sites/upload\\_files/mhrd/files/statistics-new/aishe\\_eng.pdf](https://www.education.gov.in/sites/upload_files/mhrd/files/statistics-new/aishe_eng.pdf)

7 *Salient Features of NEP 2020: Higher Education*, available at: [https://www.ugc.gov.in/pdfnews/5294663\\_Salient-Featuresofnep-Eng-merged.pdf](https://www.ugc.gov.in/pdfnews/5294663_Salient-Featuresofnep-Eng-merged.pdf)

8 *Mridusmita Bordoloi and Sharad Pandey, A Missed Milestone: How India has been Unable to Boost Public Education Spending to 6% of GDP, 2022*, available at: <https://accountabilityindia.in/blog/india-has-been-unable-to-boost-public-education-spending-to-6-percent-of-gdp/>

9 *State of the Economy in 2018-19: A Macro View, Economic Survey 2018-19, Vol. 2*, available at: [https://www.indiabudget.gov.in/budget2019-20/economicsurvey/doc/vol2chapter/echap01\\_vol2.pdf](https://www.indiabudget.gov.in/budget2019-20/economicsurvey/doc/vol2chapter/echap01_vol2.pdf)

- g. The majority of universities and colleges place very little emphasis on research in all areas<sup>10</sup> along with shortage of finances for cross-disciplinary research post the end of British rule and subpar research amenities further impacted the poor teacher retention percentage. Another problem in higher education institutions is the lack of qualified faculty and inadequate infrastructure. Although the government is concentrating on improving these facilities, more institutions are suffering due to a lack of funding and other resources. So, it is difficult for them to keep highly trained teachers in their institutions. The effects of inadequate infrastructure in schools and colleges are also evident in the number of students who drop out.
- h. Weak educational standards have prevented us from competing with the rest of the world. This is due to ineffective regulatory systems, poor governance, and leadership at universities and colleges.
- i. Big affiliate institutions and independent colleges also contribute to low standards in undergraduate and graduate education.

Addressing these challenges requires comprehensive reforms in the Indian higher education system, including increased funding, modernization of curriculum and teaching methods, enhanced research opportunities, and measures to improve accessibility and inclusivity. Additionally, reducing bureaucratic interference and promoting a culture of innovation and excellence are crucial for the future of higher education in India.

### **Transformation of HEIs through NEP**

NEP seeks to significantly change HEIs throughout the nation. In order to solve different issues and enhance the value, accessibility, and usefulness of higher education, it anticipates a thorough revamp of the higher education system. The New Education Policy gives students' potential for creativity more attention. It is based on the notion that education needs to encourage dispositional, social as well as moral traits in addition to cognitive ones like thinking critically and problem-solving capabilities. In order to support and foster research of the highest calibre, NEP promotes professional growth for faculty, research advancement, and the creation of a National Research Foundation. HEIs are urged to adopt a multidisciplinary approach by letting students select programmes from many fields of study. Collaboration between HEIs and foreign organisations is encouraged in order to advance global learning along with exposure. HEIs are granted greater autonomy to make decisions related to curriculum, governance,

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<sup>10</sup> David Rosowsky, *The Role of Research At Universities: Why It Matters*, *Forbes*, 2022, available at: <https://www.forbes.com/sites/davidrosowsky/2022/03/02/the-role-of-research-at-universities-why-it-matters/?sh=56103aa26bd5>

and administration. The policy emphasizes the need for reform in teacher education to produce high-quality educators. The NEP proposes a new regulatory framework for HEIs to ensure transparency, accountability, and efficiency in governance.

The successful transformation of HEIs through the NEP depends on effective implementation at the institutional and policy levels, adequate funding, and the commitment of educators, administrators, and students. Continuous monitoring and evaluation will be essential to track progress and address any challenges that arise during the transformation process.

The Indian Government's New Educational Policy (NEP) for 2020 envisions significant measures for the transformation of school and higher education in India in the following ways:

- The amount of money set aside for education will rise to 6 percentage points of GDP. The financial requirements for the growth of academic and research activities in higher education may be met by this.
- The creation of the National Research Fund (NRF) and the National Higher Educational Commission (NHEC) aid in building HEIs and equip them to address present and future challenges and goals.
- Higher education institutions may have more freedom while they design and develop the curriculum having greater emphasis on skill and value-driven learning and to provide employability programmes to participants in addition to addressing the educational requirements of their students, if they are transformed into large multidisciplinary universities, higher education clusters, and autonomous degree colleges. To draw students to higher education institutions, high-quality instruction is essential. There is a lack of qualified faculty in colleges and universities around the nation right now. Country needs 3.3 million more teachers in educational institutions to improve the teacher-student ratio, from 1:28 to an ideal 1:15.<sup>11</sup>

In order to overcome these obstacles and to deliver high-quality higher education with equity and inclusion, this strategy anticipates the re-energizing of the higher education system. **The following crucial actions are included in the policy's vision to address the aforementioned systemic challenges:**

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11 Venkatesham Akula, *Revamping Higher Education in India: A Study of New Education Policy*, Madhya Bharti, Vol. 82, 2022, available at: <https://ccets.cgg.gov.in/Uploads/files/buttonDetails/101467.pdf>

- (a) Creating large multidisciplinary universities, higher education clusters, and autonomous colleges may allow higher education institutions (HEIs) more freedom in developing their curricula and co-curricular with a stronger emphasis on skill- and value-based education as well as the ability to provide employability courses to their stakeholders in addition to meeting the educational needs of their students.
- (b) Achieving faculty and institutional autonomy for universities and the institutions they are connected with.
- (c) Redesigning the curriculum, pedagogy, assessment, and student assistance for improved learning outcomes.
- (d) It can reinforce the integrity of faculty members and institutional leadership positions through merit-based appointments and career advancement based on teaching, research, and service.
- (e) Create a National Research Foundation and fund great, peer-reviewed research as well as the growth of early-stage research in universities and colleges.
- (f) The governance of HEIs by a highly qualified independent board will increase the institutes' academic and administrative autonomy.
- (g) Control over higher education by a single regulatory body.
- (h) Through the aforementioned measures, there will be greater access, equity, and inclusion. Additionally, there will be more opportunities for outstanding public education, online learning, Open Distance Learning (ODL), and scholarships from private/philanthropic universities for disadvantaged and underprivileged students.
- (i) Implement a new curricular and pedagogical structure for education that places a strong emphasis on child care and education. The current 10+2 structure of school curricula is to be replaced by a 5+3+3+4 structure that corresponds to ages 3–8, 8–11, 11–14, and 14–18 years, with UG courses lasting 4 years rather than 3 years.<sup>12</sup>

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12 National Education Policy 2020, available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=1642061>

- (j) A National Mission for Mentoring (NMM) offers a sizable pool of exceptional senior and retired faculty—including those with the ability to teach in Indian languages—who would be eager to offer university and college teachers both short- and long-term mentoring and professional support.<sup>13</sup>
- (k) The National Educational Technology Forum (NETF), an independent forum that offers a venue for the unrestricted exchange of ideas on the use of technology, shall be established in order to improve learning, evaluation, planning, and administration in education.<sup>14</sup>

## Conclusion

It is noteworthy that the successful implementation of the NEP depends on various factors including adequate funding, commitment from educational institutions, and effective policy execution at both the state and central levels. Furthermore, addressing the challenges posed by the NEP's ambitious reforms, such as ensuring quality in a flexible system and preserving cultural diversity, will be critical.

A comprehensive study on the NEP's impact on higher education in India should involve assessing the progress made in these areas, gathering feedback from students, educators, and institutions, and analyzing the policy's effectiveness in addressing the long-standing challenges faced by the Indian higher education system. Additionally, it should consider the evolving landscape of education in India and adaptability to changing circumstances, including global events like the COVID-19 pandemic.

The institutions of higher learning in India have faced many difficulties, but there are also many chances to address these difficulties and improve it as a whole. The need for increased openness and responsibility, as well as the importance of new empirical investigations on how individuals learn, as well as the function of higher education institutions in the coming decade. India needs individuals with advanced degrees and expertise who can advance the economy of our nation. India easily transforms its situation from developing to developed since it exports exceptionally qualified employees to foreign nations. The present research intends to identify obstacles and difficulties in the higher educational system of the nation.

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13 National Mission for Mentoring (NMM) Report, NCTE, Ministry of Education, Government of India, November 2021-March 2022, available at: <https://ncte.gov.in/website/images/NMM/notice-board/Booklet%20on%20Open%20House%20Discussions.pdf>

14 National Educational Technology Forum, available at: [https://www.education.gov.in/sites/upload\\_files/mhrd/files/upload\\_document/NETF.pdf](https://www.education.gov.in/sites/upload_files/mhrd/files/upload_document/NETF.pdf)

HEIs will have additional important duties in addition to teaching and research, which they will carry out with the help of the right resources, incentives, and frameworks. The primary stakeholder in the educational system is the student. High-quality teaching and learning processes depend on a positive and active campus environment. Students will have several possibilities to participate in sports, cultural and arts clubs, eco-clubs, activity clubs, community service initiatives, and other activities in order to achieve this. There must be counseling programmes for managing stress and emotional adjustments in every educational institution.

The caliber and commitment of a faculty member is yet another crucial element in the success of a higher education institution. Many efforts have been implemented over the past 60 years, all of which understand and acknowledge the importance of faculty and their limitations in attaining the objectives of higher education. Faculty motivation in terms of teaching, service, and research in HEIs, however, remains far below the required level despite these many advancements in the prestige of the academic profession. To guarantee that every faculty member is content, enthusiastic, engaged, and motivated to advance the students, institution, and profession of their own, it is important to address the numerous issues that contribute to low faculty motivation levels and poor teaching quality.

# IMPACT OF E-BUSINESS AND E-GOVERNANCE IN DEVELOPING INDIA

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*In this competitive world electronic needs are generating at a high speed. Electronic business and Electronic Governance are the two topics which are interlinked and interdependent and booming in this electronic world. As E-Business is generating at a high speed due to lack of time and can reach global market instantly. E-Business methods enable companies to link their internal and external data processing systems more efficiently and flexibly, to work more closely with suppliers and partners, and to better satisfy the needs and expectations of their customers. The internet is a public through way. Firms use more private and hence more secure networks for more effective and efficient management of their internal functions. That is the basic reason E-Governance is innovated by E-Business. An integral aspect of decision making in business is the analysis, evaluation and application of information about customer, competitors and environmental factors. To make effective sales, managers need to collect adequate information about what is happening and what might happen in future. Good and timely information is a valuable tool because it reduces uncertainty and risk associated with decision making.*

**KEY WORDS: E-Business, Sales Management, Customer Service and E-Governance.**

## **Introduction**

India is on its way to becoming the largest e-commerce economy in the world. The business of e-commerce, or e-business is growing at a very fast pace, facilitated by cashless online payment methods. With the advantage of a fast-growing GDP, an increasing spending capacity, ease of doing business, and healthy competition in the consumer market, e-business is at an all-time high. And this will keep growing, the way India's economy is progressing. The recent image of German Foreign Minister making PayTm payment while shopping in Chamdni Chowk is proof of the dynamic

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e-economy that is India. In these times it is very important to be able to regulate e-commerce and to streamline e-governance. This paper will look into the e-governance aspect of this form of commercial activity.

## Defining E-Business and E-Governance

**Electronic business** commonly referred to as “**business**” or “**e-business**”, or an internet business, may be defined as the application of information and communication technologies (ICT) in support of all the activities of business. Commerce constitutes the exchange of products and services between businesses, groups and individuals and can be seen as one of the essential activities of any business. Electronic commerce focuses on the use of ICT to enable the external activities and relationships of the business with individuals, groups and other businesses. Hence, E-business may be defined as the conduct of industry, trade, and commerce using the computer networks. The term “e-business” was coined by IBM’s marketing and Internet teams in 1996.<sup>1</sup>

E-business involves business processes spanning the entire value chain: electronic purchasing and supply chain management, processing orders electronically, handling customer service, and cooperating with business partners. Special technical standards for e-business facilitate the exchange of data between companies. E-business software solutions allow the integration of intra and inter firm business processes. E-business can be conducted using the Web, the Internet, intranets, extranets, or some combination of these.

Basically, electronic commerce (EC) is the process of buying, transferring, or exchanging products, services, and/or information via computer networks, including the internet. EC can also be beneficial from many perspectives including business process, service, learning, collaborative, community. EC is often confused with e-business.

Several dimension and factors influence the definition of e-Governance. The word “electronic” in the term e-Governance implies technology driven governance. E-Governance is the application of Information and Communication Technology (ICT) for delivering government services, exchange of information communication transactions, integration of various stand-alone systems and services between Government-to-Citizens (G2C), Government-to-Business (G2B), Government-to-Government (G2G) as well as back office processes and interactions within the entire government frame work. Through the

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1 Andam, Zorayda Ruth B., “Chapter 1”, *E-commerce and e-business*, e-ASEAN Task Force, 2003 available at: [https://digitallibrary.un.org/record/524541/files/61164\\_Ecommerce%2520and%2520E%2520Business.pdf](https://digitallibrary.un.org/record/524541/files/61164_Ecommerce%2520and%2520E%2520Business.pdf)

e-Governance, the government services will be made available to the citizens in a convenient, efficient and transparent manner. The three main target groups that can be distinguished in governance concepts are Government, citizens and businesses/interest groups. In e-Governance there are no distinct boundaries.<sup>2</sup>

Generally four basic models are available-Government to Customer (Citizen), Government to Employees, Government to Government and Government to Business.

### **Difference between E-Governance and E-Government**

Both the terms are treated to be the same; however, there is some difference between the two. “E-government” is the use of the ICTs in public administrations- combined with organizational change and new skills- to improve public services and democratic processes and to strengthen support to public”. The problem in this definition to be congruent with the definition of e-governance is that there is no provision for governance of ICTs. As a matter of fact, the governance of ICTs requires most probably a substantial increase in regulation and policy- making capabilities, with all the expertise and opinion-shaping processes among the various social stakeholders of these concerns. So, the perspective of the e-governance is “the use of the technologies that both help governing and have to be governed”<sup>3</sup>

E-Governance is the future; many countries are looking forward to for a corruption free government. E-government is one-way communication protocol whereas E-governance is two-way communication protocol. The essence of E-governance is to reach the beneficiary and ensure that the services intended to reach the desired individual has been met with. There should be an auto-response system to support the essence of E-governance, whereby the Government realizes the efficacy of its governance. E-governance is by the governed, for the governed and of the governed.<sup>4</sup>

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2 Larry Freed, (2010),”Annual E-Commerce Report, ForeSeeResults”, Available at: [http://www.a-nei.org/blog/wpcontent/uploads/2010/02/ACSI\\_Ecommerce\\_2010.pdf](http://www.a-nei.org/blog/wpcontent/uploads/2010/02/ACSI_Ecommerce_2010.pdf)

3 Agarwal, Devendra et al, “E-Commerce: True Indian Picture”, *Journal of Advance in Information Technology*, Vol. 3, No. 4, 2012

4 Starting a Business (2012),“Small Businesses and E-Commerce in India”, Available at: <http://smallbusinessindia.intuit.in/starting-business/small-businesses-e-commerce-india/>

Establishing the identity of the end beneficiary is a true challenge in all citizen-centric services. Statistical information published by governments and world bodies do not always reveal the facts. Best form of E-governance cuts down on unwanted interference of too many layers while delivering governmental services. It depends on good infrastructural setup with the support of local processes and parameters for governments to reach their citizens or end beneficiaries. Budget for planning, development and growth can be derived from well laid out E-governance systems.

## **Need for E-Commerce and E-Governance**

While much has been written of the economic advantages of Internet-enabled commerce, there is also evidence that some aspects of the internet such as maps and location-aware services may serve to reinforce economic inequality and the digital divide. Electronic commerce may be responsible for consolidation and the decline of mom-and-pop, brick and mortar businesses resulting in increases in income inequality.<sup>5</sup>

### **1. Security**

E-Business systems naturally have greater security risks than traditional business systems, therefore it is important for e-business systems to be fully protected against these risks. A far greater number of people have access to e-businesses through the internet than would have access to a traditional business. Customers, suppliers, employees, and numerous other people use any particular e-business system daily and expect their confidential information to stay secure. Hackers are one of the great threats to the security of e-businesses. Some common security concerns for e-Businesses include keeping business and customer information private and confidential, authenticity of data, and data integrity. Some of the methods of protecting e-business security and keeping information secure include physical security measures as well as data storage, data transmission, anti-virus software, firewalls, and encryption to list a few.

### **2. Privacy and confidentiality**

Confidentiality is the extent to which businesses makes personal information available to other businesses and individuals. With any business, confidential information must remain secure and only be accessible to the intended recipient. However, this becomes even more difficult when dealing with e-businesses specifically. To keep such

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5 Rastogi, Rajiv, "India Country Report on E-Commerce Initiatives", Director Department of Information Technology, Ministry of Communication and Information Technology India available at: [http://www.unescap.org/tidpublicationpart\\_three2261\\_ind.pdf](http://www.unescap.org/tidpublicationpart_three2261_ind.pdf)

information secure means protecting any electronic records and files from unauthorized access, as well as ensuring safe transmission and data storage of such information. Tools such as encryption and firewalls manage this specific concern within e-business.

### **3. Authenticity**

E-business transactions pose greater challenges for establishing authenticity due to the ease with which electronic information may be altered and copied. Both parties in an e-business transaction want to have the assurance that the other party is who they claim to be, especially when a customer places an order and then submits a payment electronically. One common way to ensure this is to limit access to a network or trusted parties by using a virtual private network (VPN) technology. The establishment of authenticity is even greater when a combination of techniques are used, and such techniques involve checking “something you know” (i.e. password or PIN), “something you need” (i.e. credit card), or “something you are” (i.e. digital signatures or voice recognition methods). Many times in e-business, however, “something you are” is pretty strongly verified by checking the purchaser’s “something you have” (i.e. credit card) and “something you know” (i.e. card number).<sup>6</sup>

### **4. Data integrity**

Data integrity answers the question “Can the information be changed or corrupted in any way?” This leads to the assurance that the message received is identical to the message sent. A business needs to be confident that data is not changed in transit, whether deliberately or by accident. To help with data integrity, firewalls protect stored data against unauthorized access, while simply backing up data allows recovery should the data or equipment be damaged.

### **5. Non-repudiation**

This concern deals with the existence of proof in a transaction. A business must have assurance that the receiving party or purchaser cannot deny that a transaction has occurred, and this means having sufficient evidence to prove the transaction. One way to address non-repudiation is using digital signatures. A digital signature not only ensures that a message or document has been electronically signed by the person, but since a digital signature can only be created by one person, it also ensures that this person cannot later deny that they provided their signature.

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6 Khan, Abdul Gaffar, “Electronic Commerce: A Study on Benefits and Challenges in an Emerging Economy”, *Global Journal of Management and Business Research*, Vol. 16, Iss.1, 2016

## **6. Access control**

When certain electronic resources and information is limited to only a few authorized individuals, a business and its customers must have the assurance that no one else can access the systems or information. Fortunately, there are a variety of techniques to address this concern including firewalls, access privileges, user identification and authentication techniques (such as passwords and digital certificates), Virtual Private Networks (VPN), and much more.

## **7. Availability**

This concern is specifically pertinent to a business' customers as certain information must be available when customers need it. Messages must be delivered in a reliable and timely fashion, and information must be stored and retrieved as required. Because availability of service is important for all e-business websites, steps must be taken to prevent disruption of service by events such as power outages and damage to physical infrastructure. Examples to address this include data backup, fire-suppression systems, Uninterrupted Power Supply (UPS) systems, virus protection, as well as making sure that there is sufficient capacity to handle the demands posed by heavy network traffic.

## **8. Common security measures**

Many different forms of security exist for e-businesses. Some general security guidelines include areas in physical security, data storage, data transmission, application development, and system administration.

## **9. Physical security**

Despite e-business being business done online, there are still physical security measures that can be taken to protect the business as a whole. Even though business is done online, the building that houses the servers and computers must be protected and have limited access to employees and other persons. For example, this room should only allow authorized users to enter, and should ensure that “windows, dropped ceilings, large air ducts, and raised floors” do not allow easy access to unauthorized persons. Preferably these important items would be kept in an air-conditioned room without any windows.

Protecting against the environment is equally important in physical security as protecting against unauthorized users. The room may protect the equipment against flooding by keeping all equipment raised off of the floor. In addition, the room should contain a fire extinguisher in case of fire. The organization should have a fire plan in case this situation arises.

In addition to keeping the servers and computers safe, physical security of confidential information is important. This includes client information such as credit card numbers, checks, phone numbers, etc. It also includes any of the organization's private information. Locking physical and electronic copies of this data in a drawer or cabinet is one additional measure of security. Doors and windows leading into this area should also be securely locked. Only employees that need to use this information as part of their job should be given keys.

Important information can also be kept secure by keeping backups of files and updating them on a regular basis. It is best to keep these backups in a separate secure location in case there is a natural disaster or breach of security at the main location.

"Failover sites" can be built in case there is a problem with the main location. This site should be just like the main location in terms of hardware, software, and security features. This site can be used in case of fire or natural disaster at the original site. It is also important to test the "failover site" to ensure it will actually work if the need arises.<sup>7</sup>

State of the art security systems, such as the one used at Tidepoint's headquarters, might include access control, alarm systems, and closed-circuit television. One form of access control is face (or another feature) recognition systems. This allows only authorized personnel to enter, and also serves the purpose of convenience for employees who don't have to carry keys or cards. Cameras can also be placed throughout the building and at all points of entry. Alarm systems also serve as an added measure of protection against theft.<sup>8</sup>

## 10. Data storage

Storing data in a secure manner is very important to all businesses, but especially to e-businesses where most of the data is stored in an electronic manner. Data that is confidential should not be stored on the e-business' server, but instead moved to another physical machine to be stored. If possible this machine should not be directly connected to the internet, and should also be stored in a safe location. The information should be stored in an encrypted format.

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7 Wang, Yidan, "Research on E-commerce Platform of Online Shopping Consumers", *Advances in Economics, Business and Management Research*, Vol 203, 2021

8 Shweta Sharma, Sugandha Mittal, "Prospects of E-Commerce in India", Available at: [http://www.rimtengg.com/iscet/proceedings/pdfs/adv\\_nw\\_tech/43.pdf](http://www.rimtengg.com/iscet/proceedings/pdfs/adv_nw_tech/43.pdf)

Any highly sensitive information should not be stored if it is possible. If it does need to be stored, it should be kept on only a few reliable machines to prevent easy access. Extra security measures should be taken to protect this information (such as private keys) if possible. Additionally, information should only be kept for a short period of time, and once it is no longer necessary it should be deleted to prevent it from falling into the wrong hands. Similarly, backups and copies of information should be kept secure with the same security measures as the original information. Once a backup is no longer needed, it should be carefully but thoroughly destroyed.

## **11. Data transmission and application development**

- a) All sensitive information being transmitted should be encrypted. Businesses can opt to refuse clients who can't accept this level of encryption. Confidential and sensitive information should also never be sent through e-mail. If it must be, then it should also be encrypted.
- b) Transferring and displaying secure information should be kept to a minimum. This can be done by never displaying a full credit card number for example. Only a few of the numbers may be shown, and changes to this information can be done without displaying the full number. It should also be impossible to retrieve this information online.
- c) Source code should also be kept in a secure location. It should not be visible to the public.
- d) Applications and changes should be tested before they are placed online for reliability and compatibility.

## **12. System administration**

Security on default operating systems should be increased immediately. Patches and software updates should be applied in a timely manner. All system configuration changes should be kept in a log and promptly updated.

System administrators should keep watch for suspicious activity within the business by inspecting log files and researching repeated logon failures. They can also audit their e-business system and look for any holes in the security measures. It is important to make sure plans for security are in place but also to test the security measures to make sure they actually work. With the use of social engineering, the wrong people can get a hold of confidential information. To protect against this, staff can be made aware of social engineering and trained to properly deal with sensitive information.

E-businesses may use passwords for employee logons, accessing secure information, or by customers. Passwords should be made impossible to guess. They should consist of both letters and numbers, and be at least seven to eight digits long. They should not contain any names, birth dates, etc. Passwords should be changed frequently and should be unique each time. Only the password's user should know the password and it should never be written down or stored anywhere. Users should also be locked out of the system after a certain number of failed logon attempts to prevent guessing of passwords.

### **13. Security solutions**

When it comes to security solutions, there are some main goals that are to be met. These goals are data integrity, strong authentication, and privacy.

### **14. Access and data integrity**

There are several different ways to prevent access to the data that is kept online. One way is to use anti-virus software. This is something that most people use to protect their networks regardless of the data they have. E-businesses should use this because they can then be sure that the information sent and received to their system is clean. A second way to protect the data is to use firewalls and network protection. A firewall is used to restrict access to private networks, as well as public networks that a company may use. The firewall also has the ability to log attempts into the network and provide warnings as it is happening. They are very beneficial to keep third-parties out of the network. Businesses that use Wi-Fi need to consider different forms of protection because these networks are easier for someone to access. They should look into protected access, virtual private networks, or internet protocol security. Another option they have is an intrusion detection system. This system alerts when there are possible intrusions. Some companies set up traps or "hot spots" to attract people and are then able to know when someone is trying to hack into that area.<sup>9</sup>

### **15. Encryption**

Encryption, which is actually a part of cryptography, involves transforming texts or messages into a code which is unreadable. These messages have to be decrypted in order to be understandable or usable for someone. There is a key that identifies the data to a certain person or company. With public key encryption, there are actually two keys used.

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<sup>9</sup> Kumar Dhananjay, Senthilkumar, "Effectiveness of E-Marketing in the success of Digital Entrepreneurship: A Conceptual Model", *JETIR*, May 2019, Volume 6, Issue 5, 2019

One is public and one is private. The public one is used for encryption, and the private for decryption. The level of the actual encryption can be adjusted and should be based on the information. The key can be just a simple slide of letters or a completely random mix-up of letters. This is relatively easy to implement because there is software that a company can purchase. A company needs to be sure that their keys are registered with a certificate authority.

## **16. Digital certificates**

The point of a digital certificate is to identify the owner of a document. This way the receiver knows that it is an authentic document. Companies can use these certificates in several different ways. They can be used as a replacement for user names and passwords. Each employee can be given these to access the documents that they need from wherever they are. These certificates also use encryption. They are a little more complicated than normal encryption however. They actually used important information within the code. They do this in order to assure authenticity of the documents as well as confidentiality and data integrity which always accompany encryption. Digital certificates are not commonly used because they are confusing for people to implement. There can be complications when using different browsers, which means they need to use multiple certificates. The process is being adjusted so that it is easier to use.

## **17. Digital signatures**

A final way to secure information online would be to use a digital signature. If a document has a digital signature on it, no one else is able to edit the information without being detected. That way if it is edited, it may be adjusted for reliability after the fact. In order to use a digital signature, one must use a combination of cryptography and a message digest. A message digest is used to give the document a unique value. That value is then encrypted with the sender's private key.<sup>10</sup>

## **The Information Technology Act, 2000**

As early as the middle of 1997, Dell computers reported orders of a million dollars a day. By early 1999, projected E-commerce revenues for business wherein the billions of dollars and the stocks of companies deemed most adept at E-commerce were skyrocketing. Although many so-called dotcom retailers disappeared in the economic shakeout of 2000, Web retailing

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10 Rajon, S A Ahsan, Nahid, Abdullah-Al, Arif, Abu, "A Generic Framework for Implementing Electronic Commerce in developing Countries", *IJCIT*, Online, Vol.1 Iss. 2, 2011

at sites such as Amazon.com, CDNow.com, and Comp data online.com continues to grow. International Data Corp (IDC) estimates the value of global E-commerce in 2000 at US\$350.38 billion. This is projected to climb to as high as US\$7.14 trillion by 2007. IDC also predicts an increase in Asia's percentage share in worldwide e-commerce revenue from 5% in 2000 to 18% in 2007. Asia-Pacific e-commerce revenues are projected to increase from \$76.8 billion at year-end of 2001 to \$438.5 billion by the end of 2007.<sup>11</sup> Fig. 1, shows the growth of E-commerce in India over last few years.

## Challenges

While we have a lot of advantages of E-commerce, we have a major disadvantage of reduced privacy. In order to better understand the impact of data mining on privacy, consider the following example of its potential application in the telecommunication industry. A cellular phone service provider has the technological ability to determine the location of any switched on cell phone in its coverage area.

The cell phone service provider collects information about all its subscribers during the sale of a contract. Typical subscriber information that would be collected may include the following:<sup>12</sup>

- Age
- Occupation.
- Income
- Banking Details

The ability of the cell phone service provider to track the location of the cell phone, and therefore its owner, might yield the following information:

- The route typically traveled to and from work by the subscriber.
- Whether the subscriber travels during business hours, or spends most of the day in the office.
- Which shopping centers the subscriber visits over weekends or after hours. cell phone service provider could make use of the collected information to position its own advertising billboards more strategically, or to situate its different branches at the correct shopping centers. At the same time however, the organization might decide to

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11 Yue, Hongqiang, "Research on E-Commerce Data Standard System in the Era of Digital Economy From the Perspective of Organizational Psychology", DOI: <https://doi.org/10.3389/fpsyg.2022.900698>

12 Ahmad, Vasim, Ghai, Divya Negi, "Challenges and Prospects of E-commerce – A Review (2015-2022)", IJFANS, Vol. 11, Iss. 11, 2022.

benefit from this knowledge by selling it off to other organizations. The information could for instance be sold to other organizations who also want to be able to position their billboard more effectively, or a fast food chain could send out advertising messages to subscribers as soon as they come into close proximity of one of their outlets. One potential application of the above information could be the use of the information by marketers selling billboard advertising on the side of the road.<sup>13</sup>

Knowing the age, income and occupation of the people who travel a specific route could improve the effectiveness of such marketing campaigns even further. This example highlights an interesting application of data mining, but it also shows the potential threats that data mining pose to privacy. The main areas of concern with regard to data mining and privacy are therefore found in the followings:<sup>14</sup>

- What kind of information do you collect about your customer?
- Who is ultimately in control of that information?

It is up to the organization employing data mining to ensure that their actions result in neither of the negative effects, namely, incurring legal liability or obtaining bad press as a result of privacy violations associated with their data mining effort. Awareness project aimed at applying data mining to commercial databases for information on potential terrorists, due to a lack of consideration that was shown for privacy issues. The consumers might for instance be aware of the fact that collected information about them is used for billing purposes, but that they did not necessarily implicitly agree to allow the organization to use the data in a data mining scenario, thereby exceeding the original intent of the data collection. To this end it is important to pay particular attention to how the data used in data mining was obtained in the first place, and whether it's used could result in a violation of privacy.

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13 Rajput, Vidhu, E-Business and E-Governance: "A case study of web portal Punarbhava and accessibility features", *International Journal of Educational Planning & Administration*, Vol 7 Iss. 1, 2017

14 Santos, Vasco, Augusto, Tatiana, et al, "E-Commerce: Issues, Opportunities, Challenges, and Trends", DOI: 10.4018/978-1-6684-5523-4.ch012

## Compensation for Computer Frauds

Consisting of sections 43 to 47 of the Information Technology Act, 2000, provides provisions for compensation for the loss arising out from computer frauds and provision for making appeals against such compensation. Section 43 deals with penalty for damage to computer, computer system etc. by any of the following methods.<sup>15</sup>

1. Securing access to the computer, computer system, or computer network.
2. Downloading or extracting any data, computer database, or information from such computer system or those stored in any removable storage medium.
3. Introducing any computer contaminant or computer virus into any computer, computer system or network.
4. Damaging any computer, computer system, or network or any computer data, database or program.
5. Disrupting any computer, computer system and network.
6. Denying access to any person authorized to access any computer, computer system, or network.
7. Providing assistance to any person to access any computer, computer system, or network in contravention of any provision of this act or its rules.
8. Changing the services availed of by any person to the account of another person by tampering with or manipulating any computer, computer system or network.

Section 46 confers power to adjudicated contravention under this Act to an officer not below the rank of a director to the government of India or an equivalent officer of a state government. The adjudicating officer shall hold an enquiry in the prescribed manner after giving reasonable opportunity of being heard and, thereafter, impose penalty where required.

Section 47 provides that while deciding upon the quantum of compensation the adjudicating officer shall have due regard to the amount of gain of unfair advantage and the amount of loss caused to any person as well as the respective nature of default.

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15 For a more detailed discussion please see : Aashit Shah, Parveen Nagree, et. al., "Legal Issues in E-Commerce," available at: [http://www.nishithdesai.comResearch-PapersLegal\\_issues\\_ecom.pdf](http://www.nishithdesai.comResearch-PapersLegal_issues_ecom.pdf)

## **Conclusion**

E-Commerce has unleashed yet another revolution, which is changing the way businesses buy and sell products and services-Commerce is the future of shopping. Thus, it would be apt to quote “The future is here. It’s just not widely distributed yet”-William Gibson. With the deployment of 3G and 4G wireless communication technologies, the Internet economy will continue to grow robustly? These technologies will prove to be a catalyst in the growth of E-commerce and internet users would buy more products and buy more frequently online; both new and established companies will reap profits online. Information technology leads to enhancement of customer service which can give customer control over all aspects of their interaction with a company through a user-friendly website.

# OPINION POLLS: CHANGING THE WAVES OF ELECTION CAMPAIGN

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## Abstract

*There is a need to demonstrate in context of the present scenario of how opinion polls intend to sense the nerve of the people and know what the public opinion is. Opinion polls are mainly being used for assessing the public view on the prevailing electoral atmosphere and the popularity of the players fighting in it. Since times immemorial, vox populi or the voice of the people has been given immense importance and without doubt, public opinion is the basis of the assertions of any democracy. Going by the claims of opinion polls, they do reflect a lot of what people think and might translate into actions. However, whether all opinion polls are accurate and truly representative of the population that has been surveyed is questionable. Unlike any other event or media report, opinion polls too tend to influence both –people and leaders. Focus should be on making and showcasing ‘informed’ opinion rather than twisting and forming an ‘inclined’ opinion. Political parties clearly seem divided on the proposition of EC to ban opinion polls. After all, their credibility is the first thing in question. And if the influence is being talked about, then media reportage is equally effective in swaying the public opinion.*

**Key Words: Democracy, Opinion polls, Exit polls, public opinion, Election commission, Media**

## Introduction

As the name suggests, opinion polls intend to sense the nerve of the people and know what the public opinion is. In context of the present scenario, opinion polls are mainly being used for assessing the public view on the prevailing electoral atmosphere and the popularity of the players fighting in it. Since times immemorial, vox populi or the voice of the people has been given immense importance and without doubt, public opinion is the basis of the assertions of any democracy. Going by the claims of opinion polls, they do reflect a lot of what people think and might translate into actions.

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Polls are a tool for measuring the opinions and beliefs of a population on a given topic, without providing explanations for why individuals hold those beliefs or how to change their minds. This information can be valuable in promoting cross-cultural understanding by allowing people to express their own views, rather than relying solely on the perspectives of leaders and politicians. It gives an opportunity to common people to access the media.

Political parties clearly seem divided on the proposition of EC to ban opinion polls. Those with winning prospects support them while the opponents give the reason of skewed criteria and unwanted influence on the voters. Politicians often deny the use of opinion polls, arguing that they provide inaccurate information. Many politicians claim that they can read the political pulse of the people through meetings with constituents and to see their response in rallies. However, the problem is relying entirely on these meetings and rallies are unlikely to get an accurate picture of public opinion. The types of people who attend rallies are different than the public at large. It is the public after all that elects the politicians. Therefore, the debates, discussions and fights on whether these polls should be banned or not is useless as the politicians also need it.

However, whether all opinion polls are accurate and truly representative of the population that has been surveyed is questionable. If the opinion polls are conducted in a fair manner and the criteria adopted are in sync with the actual ideologies of the people, they can boast of having given voice to the large numbers with the effect. It cannot be ignored that unlike any media report, opinion polls too tend to influence the mass and leaders equally. It reflects the idea and concept of the majority and minority thinking. Such effects could change the course of action and generate different responses.

Thus, instead of the result the method has to be looked into. If the ways of conducting an opinion poll are accurate, unbiased and democratic in nature, the results should also be accepted in a matter-of-fact manner. Influences are unavoidable and change is unpredictable. Here is where in media's role comes into light. Focus should be on making and showcasing 'informed' opinion rather than twisting and forming an 'inclined' opinion.

If the influence is being talked about, then media reportage is equally effective in swaying the public opinion. Opinion polls are not the sole factor in contributing to the change in people's mindsets.<sup>1</sup>

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1 E.J. Dionne, Jr. and Thomas E. Mann, "Polling and Public Opinion" available at <https://www.brookings.edu/articles/polling-public-opinion-the-good-the-bad-and-the-ugly/>

## Opinion Polls<sup>2</sup> and Constitution of India

The Indian Constitution guarantees the right to freedom of speech and expression under Article 19(1)(a), which allows individuals to express themselves freely. While the freedom of the press is not explicitly mentioned in Article 19, it is widely recognized that freedom of expression encompasses this right. However, reasonable restrictions may be imposed in the interest of public order, state security, decency, or morality.

Section 126 of the Representation of the People Act, 1951, as amended, prohibits public meetings or campaigning in a constituency for 48 hours before the conclusion of polling. This includes convening, holding, attending, joining or addressing any public meeting or procession related to an election (126 (1)(a)), as well as propagating election-related material to the public through musical concerts, theatrical performances, or other forms of entertainment.

The government of India was directed by Election Commission (EC) to enact a legislation to ban the release of opinion poll results after the announcement of elections. This is because most political parties are against opinion polls and believe that they can influence voters unfairly. It had previously banned opinion polls from being released in the 48 hours leading up to an election, but this was not enough to satisfy the political parties. The EC now believes that a complete ban on opinion polls is necessary to ensure that elections are fair and impartial. The EC has stated that the publication of opinion polls can influence voters in a number of ways. For example, it can discourage people from voting if they believe that their preferred candidate is not going to win. It can also lead to voters making their decision based on the polls, rather than on their own research and understanding of the issues. The EC believes that the right to freedom of speech does not extend to the publication of opinion polls. This is because the polls can have a significant impact on the outcome of an election, and they can also undermine the fairness of the process.

The government is currently considering the EC's request, and it is not yet clear whether a law banning opinion polls will be enacted. However, the EC is hopeful that the government will take action to protect the integrity of elections in India.

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2 An occasion when people are asked questions to discover what they think about a subject available at <https://dictionary.cambridge.org/dictionary/english/opinion-poll> retrieved on 14 December 2022

## Guidelines by Election Commission of India<sup>3</sup>

In 1998, the ECI prohibited the release of opinion poll results 48 hours prior to the commencement of voting and until the polls closed. Organizations or agencies that conducted and released the results of an opinion poll before the blackout were required to provide information about the survey's sample size, geographic spread, margin of error, methodology, and the organization itself.

During the 1999 election, many media outlets disregarded the ECI's ban on publishing opinion poll results and were subsequently prosecuted. The Supreme Court of India later ruled that the ECI's guidelines exceeded its authority under Article 324 of the Indian Constitution and questioned the feasibility of such a ban, given the presence of international and online media in India. The ECI's guidelines were subsequently withdrawn, and no new legislation has been passed.

When the Election Commission has withdrawn the ban with the orders of the Supreme Court of India then what makes it so disturbing that it has asked for the opinion of the political parties. While most political parties have spoken out against opinion polls, the Election Commission has once again asked the government to enact a law banning their release after the notification of elections. In a democratic setup, it would be more appropriate for the Election Commission to seek the opinion of the people rather than just political parties.

If the Election Commission is so responsible to have fair and free election then why is it asking for political parties to give their opinion, rather it should ask the people for their response and reaction regarding public opinion. As forceful legislations and the discretion of a group in isolation is not acceptable in a democratic setup.

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- 3 Organizations or agencies conducting opinion polls are free to do so at any time, except the period mentioned in clause (ii), during the run up to the polls for the aforesaid general elections to the House of the People and State Legislative Assemblies mentioned above.
- The results of any opinion polls conducted during this period cannot be published, publicized, or disseminated in any way, through any print or electronic media.
  - The same restrictions apply to exit polls, which cannot be published, publicized, or disseminated from 07:00 hours on February 16, 1998 to half an hour after the closing of polls in all states and union territories, except three parliamentary constituencies in Jammu and Kashmir.
  - Organizations or agencies conducting opinion polls or exit polls must indicate the sample size of the electorate covered by the polls, the geographic spread of the survey, the methodology used, the likely percentage of errors, the professional background and experience of the organization, and the key professionals involved in the conduct and analysis of the poll.

## **Guidelines<sup>4</sup> by the Press Council of India on ‘Pre-poll’ and ‘Exit-Polls’ Survey**

The Press Council of India has considered the publication of pre-poll surveys and their potential impact on elections. The Council advises newspapers to be cautious about allowing their platform to be used for distortions and manipulations of the electoral process. The Press Council requests that newspapers abide by this guideline and refrain from publishing exit-poll surveys until all polls have been completed.

### **Political and Ethical Issues Related to Opinion Polls**

Opinions are not the true facts; it is actually a collection of data that reflects what people say they are thinking. On the other hand, it is also true that in a democracy, opinions translate into votes and thus power. The collection of opinions has been proven to be a powerful tool that changes behaviors. The election reporting and coverage among news channels and print media has always been extensive. The reports are equally useful for public as well as political parties, often forcing them to alter their strategies.

In India the opinion polls sometimes create threat to the political parties, as the situation here is quite different. The election process involves very large number of national and regional parties and it becomes quite difficult to predict that the elections are personality based or issue based. Voter’s mood appears to be more easily swayed here. The political parties keep splitting and regrouping in different formations; old parties are broken up and new are created. All this causes voters to shift often with wide margins as in the recent Assembly Elections at Delhi where a new party emerged and captured a major amount of seats. There are very few fixed seats where the negative opinion of any political party does not make any major changes. But these threats are not mere allow any political parties to give their force opinion on banning the public opinion polls. Political parties have expressed differing views on the proposal to restrict opinion polls in the run-up to elections. With the rise of multiple news channels, opinion and exit polls have become a contentious issue, with media outlets supporting their use and political parties and the Election Commission opposing them.

Most political parties in India conduct their own surveys to gauge public opinion and develop strategies for their electoral campaigns. The question of whether or not to ban opinion polls is a complex one, and

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4 Guidelines issued by the Press Council of India available at <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2021/mar/doc202131701.pdf> retrieved on 15 Dec 2022

different parties have different views on the matter. Some argue that opinion polls, like newspaper editorials, articles by journalists, political speeches, and advertisements, can influence voting behavior and should therefore be regulated. Others believe that opinion polls are a valuable tool for understanding public opinion and should not be banned. Ultimately, the decision on whether or not to ban opinion polls is up to the government and the Election Commission, who must weigh the potential benefits and drawbacks of such a ban. The parties who expect less number of votes in the elections are seem to be more prone to curb the opinion polls and its publications.

### **Tactical Voting<sup>5</sup> & its Contradictions**

Tactical voting refers to a voter's decision to adjust their vote based on the expected outcome of an election. Some political parties claim that opinion polls can influence or change the perspective of voters before an election. They argue that the results of opinion polls aired on TV can influence voters to change their minds.

From a normative perspective, voting for a party based on its chances of winning or its ability to limit the power of another party is criticized because it is not seen as a genuine expression of the voter's own preferences. Instead, it is seen as a strategic decision that is motivated by a desire to achieve a particular outcome, rather than to support a particular party or candidate.

Tactical voting is not only detrimental to democracy. It is important for voters to have access to information about the polls so that they can make informed decisions about who to vote for. However, it is also important to be aware of the potential for political parties to use unpublished polls to their advantage. For example, a political party might use unpublished polls to target their campaign efforts in areas where they are doing poorly. They might also use the polls to develop negative ads or attack strategies against their opponents. It is important for voters to be aware of these potential biases when interpreting poll results. They should also be critical of the methods used by pollsters and the way that the polls are reported.

Ultimately, it is up to each individual voter to decide how much weight to give to poll results. However, it is important to have access to this information so that voters can make informed decisions about who to vote for.

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5 Stephen D. Fisher, "Definition and Measurement of Tactical Voting: The Role of Rational Choice" Vol. 34, No. 1 (Jan., 2004), *British Journal of Political Science* pp. 152-166

## **Credibility of the Opinion Polls**

There are controversies regarding the ownership of the organizations who conduct opinion polls and it cannot be ignored that few newspapers and news channels are being biased to different political parties. It is difficult to tell the difference between a fair poll and a false one, especially if the poll is not conducted by a reputable organization. There are many ways to influence poll results, and some of these methods are unethical. It is important to be aware of these potential biases when interpreting poll results. It is also important to look for polls that are conducted by reputable organizations and that use sound methodology.

Even a well-designed poll that is administered ethically may not provide so effective information. This is because polls are only a snapshot of public opinion at a particular point in time. Public opinion can change quickly, and polls may not be able to keep up with these changes. Ultimately, it is up to each individual to decide how much weight to give to poll results. However, it is important to be aware of the potential biases and limitations of polls so that you can make informed decisions.

Opinion polls in India have not lived up to the highest standards of professionalism. The problem is not that opinion poll predictions are inaccurate. Rather it is considered to be quite interesting. All forms of polls have become a great source of information and of course a discussion for all levels from newsroom to office to living rooms. It is also recognized that exit polls and post poll surveys have proven to be better and more accurate than pre polls. The real problem with opinion polls raises few major issues firstly, their non transparency and non-professionalism and secondly, there is very little understanding among the common people or even media persons about the effects of the polls and lastly, the non sharing attitude of the polling agencies and the media organizations about the basic methodological details of the polls.

### **Role of Media: Need Focus on 'Informed' Opinion Rather Than 'Inclined' Opinion**

In a democratic system, the media serves as a conduit between politicians and the general public, disseminating information and reflecting authentic public opinion. Many polling organizations are controlled by the media, which determines the timing, methodology, topics, analysis, and publication of surveys. News organizations typically provide information

about the date of interviews, data collection methods, sample size, and overall sampling error. However, if a survey report is based primarily on a subset of the total sample, the complete wording of relevant questions and the percentages used to draw conclusions should also be disclosed. The media also has a responsibility to report on the limitations of polls. Polls are not perfect, and they can be influenced by a number of factors. The media should make sure to highlight these limitations so that voters can understand the limitations of poll results. There are few areas of criticism regarding the same:

- a) Polls are generally used for TRP purpose or the competitions between the newspapers and news channels. The trend within the news organizations is to discuss who is ahead on election fight or who has made gains or losses. Only the superficial information is being given the in depth analyses of the political processes are generally not covered or discussed.
- b) The practice of paid news is another area of concern which focuses on impartial reporting. Almost every other day all the papers and channels publish opinion polls so it becomes difficult to differentiate between the tampered one or the one which are covered with high standard of professionalism and authenticity.
- c) It is quite evident that most media organizations tend to avoid providing their readers and viewers about the necessary data to assess the authenticity, quality and validity of the results. It is also difficult for common people to understand the margin of errors, and technical information about the target group.
- d) One of the criticisms against the media is that they promote the polls to such a level of accuracy that the polls become regular topics for news stories. It cannot be denied that there are controversies that media publish opinion polls when they correspond to their own wishes of the election and hold it when they contradict them.
- e) Media houses spend huge amounts on agencies executing poll surveys for them. Media houses focus more on news creating rather than news reporting if they are involved in the sponsorship of polls.
  - Evaluation of the technical aspect as well as interpretation of the polls is more problematic for common people as it depends on how well the media describe and interpret the ingredients of opinion polls. The media needs to play a non-judgmental role

and have to be elaborative about the important details without keeping the constraint of time and space so that it cannot create misinterpretation among the readers and viewers.

- The more information media will provide about the methodology the better people will be able to understand and judge it, after all it is the common people who will judge according to their knowledge, experience and understanding.
- The information about the real issues and problems cover very less space and time to discussions and debates. For the sake of competition, TRPs and to run 24X7 news channels, more focus is given on the debates and discussions where big personalities shout and put allegations on each other in an half an hour show which comes out with almost negligible results and programmes like who will become Chief Minister or Prime Minister rather than basic reporting on issues and problems of common people. The result is media persons are left with superficial understanding of national, regional issues and people's concerns which further creates illusion in the journalistic proficiency and the complete process becomes inclined rather than informed.

## **Conclusion**

Those with winning prospects support them while the opponents give the reason of skewed criteria and unwanted influence on the voters. Instead of banning the opinion polls the EC should lay down certain strategic guidelines which would monitor the conduct and authenticity of such polls. After all, their credibility is the first thing in question. And if the influence is being talked about, then media reportage is equally effective in swaying the public opinion. Opinion polls are not the sole factor in contributing to the change in people's mindsets.

Thus, instead of the result the method has to be looked into. If the ways of conducting an opinion poll are accurate, unbiased and democratic in nature, the results should also be accepted in a matter-of-fact manner. Influences are unavoidable and change is unpredictable. The existence of several polls provides the stimulus of competition and thus encourages developments in opinion poll methodology.

Here is where in media's role comes into light. Focus should be on making and showcasing 'informed' opinion rather than twisting and forming an 'inclined' opinion. The media which conduct opinion polls should provide information with regard to the population that was

sampled, method of interview, sample size, details of the questions addressed and the percentages upon which conclusions are based. Then only criticism and skepticism with regard to the accuracy of survey results can be addressed. But in a democratic setup no group can be so authoritative to curb this kind of public information, opinion and freedom of speech and expression.

# MAJOR OFFENCES AGAINST CHILDREN: AN OVERVIEW UNDER THE INDIAN PENAL CODE 1860

*Dr. Deepa Kaushik\**

*Mr. Kapil Singh\*\**

*Offenses committed against children encompass a wide range of physical and emotional abuse, neglect, and exploitation. These heinous acts even extend to child pornography and the trafficking of minors for sexual purposes. Both the Indian Penal Code and an array of specialized protective and preventive laws, both at the national and local levels, explicitly address offenses where children are the victims. The age of the child varies according to the definition given in the applicable Acts but the age of the Child has been defined to be below eighteen years as per the Juvenile Justice (Care and Protection of children) Act, 2000. Therefore, an offence committed on a victim under the age of eighteen years is considered as the crime against the children. Children, considered as valuable assets of a nation, inherently possess the right to life, well-being, and access to healthcare, proper nutrition, shelter, and protection from conflicts, neglect, exploitation, abuse, and injustice. They represent our future, making it essential to uphold their right to grow and thrive. As the stability and prospects of a society are intrinsically tied to its children, contingent upon the state's planning for their welfare, it's vital to consider children as an integral part of the societal fabric rather than isolating them during specific developmental stages. A foundational principle is to always remember the saying, "Let children be children."*

**Keywords- Child Abuse, Juvenile Justice, Right to Education, POCSO**

## **Introduction**

India holds the position of being the second most populated country globally, with nearly 41% of its population being under the age of eighteen. Unfortunately, a significant number of these minors have fallen prey to instances of sexual abuse. In many cases, these young individuals are unaware of their victimization, driven by fear to not report the abuse, or coerced into silence through threats. Despite India's commitment to protecting its children from any form of sexual exploitation, as demonstrated by its signing of the Convention on the Rights of the

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Child, the prevalence of such cases continues to rise. In a disheartening revelation, the National Crime Bureau's report on September 29, 2019, indicated a 4.5% surge in crimes against children in 2019 compared to the preceding year. The report additionally noted a concerning 18.9% uptick in the registration of cases under the Protection of Children from Sexual Offences (POCSO) Act of 2012.

It is a sad reality that most crimes against children come from their immediate circle, and many of these go unnoticed due to various reasons such as embarrassment, fear of police, family respect, economic conditions, etc. Sexual abuse can have long-term effects on the child, including psychological stress, emotional problems, behavioral issues, and abnormal sexual behavior. It is important for parents and caregivers to be vigilant and take necessary steps to protect children from such abuse. It is also important for society as a whole to raise awareness about this issue and work towards creating a safer environment for children.

### **Definition of Child**

In common parlance or general comprehension, a "child" denotes a person who lacks the ability to support themselves. The determination of who qualifies as a child is guided by the provisions outlined in various Acts exclusively concerned with children. To put it another way, the classification of an individual as a child hinges on their age and the specific circumstances they are placed within. Age stands as the sole determinant in establishing one's child status. Within India, several legislations revolve around defining the age of a child, such as:

1. Juvenile justice Act, 2000, now replaced by the Juvenile Justice (Care and Protection of Children) Act, 2015.
2. POCSO Act, 2012
3. RTE Act, 2009
4. The Prevention of Immoral Traffic Act, 1956.
5. The Factories act, 1948.
6. The Child labor (Prohibition and Regulation) Act, 1986.
7. Convention on the Rights of child adopted by the general assembly of united nation, 1989.

According to Section 2(a) of Immoral traffic prevention Act 1956, "a child is a person who has not completed the age sixteen years".<sup>1</sup>

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1 *Immoral traffic prevention Act 1956 § 2(a) NO. 104, Acts of Parliament, 1956 (India)*

According to Section 2(c) of Factories Act, 1948, “child means a person who has not completed fifteen years of age”.<sup>2</sup>

As per the Convention on the rights of the child, “child means a person male or female who is below eighteen year of age.”

### **Causes of offence against children**

Justice V.R. Krishna Iyer has stated, “*The Hallmark of culture and advance of civilization consists in the fulfillment of our obligation to the young generation by opening up all opportunities for every child to unfold its personality and rise to full stature- physical, mental and spiritual. It is the birth right of every child to demand justice from whole world.*”

- Lack of awareness and care by parents:
- Poverty
- Corrupt government officials.
- Society
- Internet
- Effective strength of law enforcement agencies.

**Table No. 1**

**The following are the data has been released by the National Crime Record Bureau<sup>3</sup> Crime against Children (2017-19)**

S. No.	State/Union territory	2017	2018	2019	Percentage state-wise to All India (2019)
1.	Andhra Pradesh	2397	2672	2524	1.7
2.	Bihar	5386	7340	9320	6.3
3.	Madhya Pradesh	19038	18992	19028	12.8
4.	Maharashtra	16918	18892	19592	13.2
5.	Goa	196	182	167	0.1
6.	Gujarat	3955	4929	4685	3.2
7.	Haryana	4169	4869	5119	3.5
8.	Uttar Pradesh	19145	19936	18943	12.8
9.	Delhi	7852	8246	7783	5.3

<sup>2</sup> Factories Act, 1948§ 2(c) NO.63, Acts of Parliament, 1948 (India)

<sup>3</sup> National crime records bureau data: available at <https://ncrb.gov.in/en/crime-india-2019-0> retrieved on 21December 2022

10.	Punjab	2133	2308	2625	1.8
11.	Rajasthan	5180	5150	7385	5.0

## Crime against Children

Both children and women have fallen victim to criminal offenses. The crimes perpetrated against children are not confined to any specific gender or age group. This is primarily because children often lack the capacity to comprehend the nature of the offenses committed against them, making them vulnerable targets for offenders. The innate innocence typically associated with children makes them particularly susceptible to offenders. Crimes against children encompass not only physical abuse but also emotional maltreatment, neglect, and exploitation. Perpetrators of child-related crimes often include relatives, caretakers, and other acquaintance who may face charges. Individuals such as school officials, medical professionals, and law enforcement officers are obligated to report any indications of child abuse or exploitation. Society witnesses various types of offenses committed against children, some of which are:

### 1. Cruelty

Child cruelty was largely misunderstood in Indian society. Simply put, there was a prevailing notion that unless guardians adopted a strict and authoritarian approach towards children, they would not learn discipline. Apart from parents, educational institutions also held the belief that physical punishment was the only means to instill discipline in children. Consequently, cruelty towards children became normalized.

In more recent times, the incidence of child cruelty within educational institutions has decreased thanks to stringent legislative measures. However, addressing domestic abuse of children remains a challenge, primarily because children themselves are often unaware of their rights

### 2. Kidnapping and Abduction

Kidnapping is often used interchangeably with abduction to describe a similar purpose, yet there is a subtle distinction between these two. Kidnapping involves removing of a minor child from the custody of their parents or guardians. On the other hand, abduction typically entails forcibly transporting an adult individual against their will. In cases of kidnapping, the consent of the abducted minor holds no significance. On the other hand, in instances of abduction, the consent of the person(major) abducted may serve as a valid defense for the accused against criminal liability.<sup>4</sup>

<sup>4</sup> Indian Penal Code, 1860, § 359, NO.45, Acts of Parliament, 1860 (India)

### 3. Begging

The significant factors contributing to desperate actions like child begging, a prevalent and severe issue in our nation, are poverty and lack of education. Child begging has inflicted profound harm upon countless children, robbing them of their childhoods and subjecting them to lives of servitude.<sup>5</sup>

Moreover, it's evident that children from economically disadvantaged backgrounds are at a higher risk of abuse due to parental poverty. This dire circumstance coerces them into begging in order to supplement their family's income. Adding to the complexity are certain criminal networks that not only exploit and mistreat these children but also expose them to drug use as a means of sedation. Additionally, children with disabilities are often coerced into begging, as their presence invokes sympathy among the general populace. Tragically, they are subjected to physical abuse and mutilation for this very purpose.

Begging today is a result of the complex socio-economic disorganization and breakdown of the joint family system. Factors that are responsible for begging are poverty, destitution, famine, drought and disaster, whether manmade or natural leading to migration, homelessness etc. Which are pushing people into begging

#### **The following are few important causes of begging:**

- a. Economic causes
- b. Social cause.
- c. Natural calamities.
- d. Religious causes.

### 4. Sale and Procurement

The buying and selling of children is a pressing and concerning matter in today's era. Once abducted, children are traded through networks of human trafficking and exploited for various purposes, including:

- For the purpose of employing in the beggary.
- To coerce them towards illegal marriage or illicit relationship.
- To force them to indulge in the child prostitution.
- To hire them for domestic help.

### 5. Other Offences

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5 Arkadyuti Sarkar, "Offences against Children" available at <https://blog.ipleaders.in/offences-against-children/> retrieved on 20 Aug 2022

### **a. Child Pornography**

Child pornography entails the manipulation or coercion of a minor to engage in sexually explicit actions, which are then recorded. These actions might involve luring a young individual with financial incentives or other methods. Child pornography is universally prohibited, and regulations mandate explicit content involving minors to be expeditiously removed from pornographic websites worldwide. The extent of the problem is difficult to document but numerous investigations suggest trafficking in minors for sexual abuse like pornography is very common. The poverty ridden girls and teenage children are becoming the victims of pornography in the internet. The Pandemic year 2020 not only brought the physical ailments but also increased the child pornography industry in India.<sup>6</sup>

### **b. Child Prostitution**

Among all forms of child abuse, child prostitution stands out as the most egregious. This dark practice has escalated to the scale of a multibillion-dollar industry, treating children as mere commodities for trade, purchase, and sale. Child prostitution inflicts severe harm on children, leading to their dehumanization across social, physical, and emotional dimensions. Moreover, it strips these children of their fundamental rights to a wholesome and normal life. In spite of this realization, various repressive policy and regulatory measures on prostitution, the situation is deteriorating and the number of child prostitutes are rapidly increasing in India. The following are the common causes of the child prostitution.

- Poverty.
- Money.
- Child trafficking.
- Orphans.

### **c. Child Molestation and Rape**

Rape and child molestation involve sexual interactions between an individual who is below the age of consent and someone who is not. Currently, molestation and rape do not discriminate based on gender. Any

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6 *“It has been observed that, there has been increase of 200 percent in the demand for the violent child pornographic material in the internet which is both the alarming and disappointing one”* Marchi, N. C., Fara, L., Gross, L., Ornell, F., Diehl, A., & Paim Kessler, F. H. (2021). Problematic consumption of online pornography during the COVID-19 pandemic: Clinical recommendations. *Trends in Psychiatry and Psychotherapy*, 43(3), 159-166. <https://doi.org/10.47626/2237-6089-2020>

child, regardless of their gender, can become a victim of sexual molestation or rape. Perpetrators of these offenses could include family members, friends, school teachers, household staff, and others.

In most cases, a child lacks the understanding and maturity to fully comprehend the gravity and repercussions of such acts. Alternatively, they might remain silent due to threats from the perpetrators. There are instances where families advise children to keep such incidents hidden in order to safeguard the family's reputation. In recent times, the number of sexual offenses against children has been on the rise, with a significant portion of cases going unreported.

### **Remedies under Indian Penal Code**

Children worldwide are universally seen as among the most susceptible and guileless recipients of societal crimes. Two vital legislations aimed at protecting children's rights and ensuring their security are the POCSO Act of 2012 and the Juvenile Justice Act of 2000. Meanwhile, the Indian Penal Code of 1860 identifies a range of offenses perpetrated against children and stipulates the corresponding punishments for their commission. These offenses encompass homicide, feticides, kidnapping, sexual acts etc.

- **Hurt and Grievous Hurt:** The hurt is defined under the Section 319 of IPC, which states that "whoever causes the bodily pain, disease or infirmity to any person is said to be hurt." There are three ingredients of hurt:
  - a. Bodily pain
  - b. Disease
  - c. Infirmity etc.

The act which neither intended to cause the death nor the grievous hurt to the person may be the hurt even though it results in death. The accused will be guilty under this Section if the injury was caused not the serious one. Whoever causes hurt to the child with the intention or with the knowledge that it likely to cause the hurt to the child then it is said to be voluntary causing hurt. The person who causes the hurt may be liable for the imprisonment of one year, or with fine up to one thousand rupees or both.

**Grievous Hurt** is defined under the Section 320<sup>7</sup> of Indian Penal Code. The Section designates eight kinds of grievous hurt and provide the punishment in each of the case.

Any person whose voluntarily grievous hurt to the child then he or she may be punished under the Section 325 of Indian Penal Code, for the term which may extend to seven years, and shall also liable for the fine. The major ingredients which requires the person to be held liable under the voluntary grievous hurt are follows:

- a. The accused must cause the hurt to the child.
- b. The hurt must be the grievous one as specified in Section 320 of IPC.
- c. The hurt must be caused voluntarily one.

#### • **Abetment of Suicide**

Section 305 of the Indian Penal Code, deals with “*abetment of suicide of child, below the age of eighteen years, or an insane person, or a person in the state of intoxication, or an idiot, commits the suicide, whoever abets the commission of such suicide, then such person shall be punishable with death or imprisonment for life, or the imprisonment of not exceeding ten years and shall also liable for fine.*”

The Section only applies when the person abetted to commit suicide as the result of instigation to a child. The conviction of the accused is possible only when the prosecution proved, the three component of suicide that is:

- a. The commission of suicide has done by the deceased.
- b. Mental State of the Accused at the time of commission of the crime.
- c. The third and the most important components of Abetment of Suicide is Instigation done by the accused for the purpose of committing the suicide.

India holds one of the world’s highest youth suicide rates, primarily attributed to limited economic, social, and emotional support. Factors include intense academic pressure, urbanization, social and workplace stress, and weakening support systems. Family value conflicts also

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<sup>7</sup> The kinds of grievous hurt are:

- a. Emasculation {Deprivation of masculine vigor of a male person}
- b. Permanent deprivation of the sight of either eye.
- c. Permanent deprivation of the hearing of either ear.
- d. Deprivation of any member or joint.
- e. Destruction or permanent impairing of the power of any member or joint.
- f. Permanent disfiguration of the head or face.
- g. Fracture or dislocation of a bone or tooth.
- h. And the hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

contribute significantly to the issue. In traditional households, there is often limited support for matters such as financial independence, marriage age, rehabilitation, and caring for the elderly.

**Factors that are commonly responsible for suicide among the teenagers are follows:**

- a. Depression, trauma, and stress-related disorders can increase the risk of suicide in teenagers.
- b. A previous suicide attempt by the teenager also increases the likelihood of another suicide attempt.
- c. A family history of depression can also be significant and concerning, as can a history of domestic violence, child abuse, and neglect.
- d. Sense of hopelessness and worthlessness that often accompany the depression.
- e. Mental illness is also found in the LGBT community due to the discrimination made by them which cause the low self- esteem and negative sexual and gender identity abuse and neglect. Which is also another factor which increase the suicide rate in teenager.

• **Attempt to Commit Murder**

The Section 307<sup>8</sup> of Indian penal Code states that, “whoever does any act with the intention or the knowledge that the act which he or she is doing likely to cause the death of that person, then the offender would be held liable under this Section and shall be punishable for the period which may extend to ten years and shall also liable to pay the fine, and if the hurt is caused to any person by the offender then he or she shall be liable either to imprisonment for life or such punishment which is mentioned under this Act.”

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8 To attract the provision of Section 307, the following components are necessary to prove in the court that are follows;

- a. An attempted was made to cause the death of the child.
- b. The action was carried out with the intention of causing the death of the child or with the intention of inflicting bodily injury upon them.
  - The accused knew that it likely to cause the death of the child.
  - That it was sufficient done in the ordinary course of nature which would likely to cause the death.
- c. That the accused attempted to cause the death of the child by doing an act which he known to him as imminently dangerous one that will probability cause the death of the child.

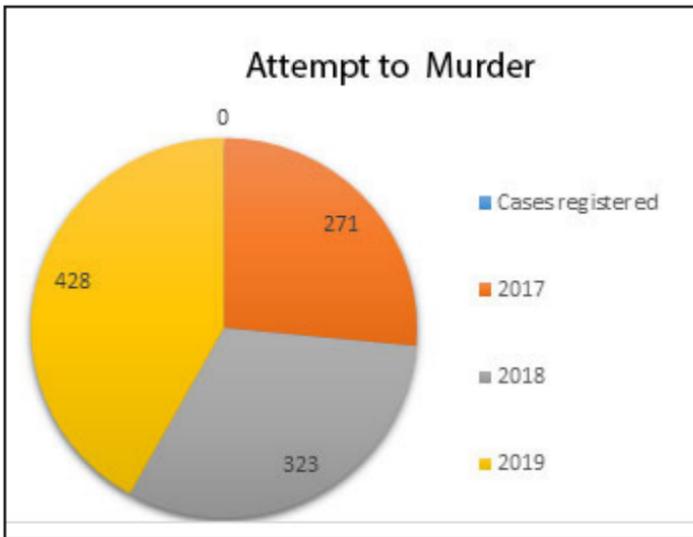
\* To constitute attempt, there should be a proof of some expressed act and also the evidence of Mens rea which will be made the accused liable under this act. So the burden of proving the case lies on the prosecution which need to prove by him which as follows:

- a. The Actus Reus means the action taken by the accused, which is legally identified as constituting the commission of the offense.
- b. The Mens Rea, means that he has the intention of causing the death of the person, if the offence has committed.

According to the report which has been published by the National Crime Record Bureau<sup>9</sup> which says, that a total number of 428 cases of attempt to commit murder against the children has been registered in India during the year 2019. Bihar has registered 199 cases which is highest one among the states, followed up by Maharashtra (51 cases) and Madhya Pradesh (49 cases), which have been accounted to be the majority of such cases in India. The crime rate of all over the India was 0.1 percent, while the highest number of cases of attempt to murder were registered in Bihar (0.4 percent) and Madhya Pradesh (0.2 percent).

The total number of cases which have been registered during the year 2019 is much higher than the previous years which has been shown in the pie chart.<sup>10</sup>

Figure No. 1



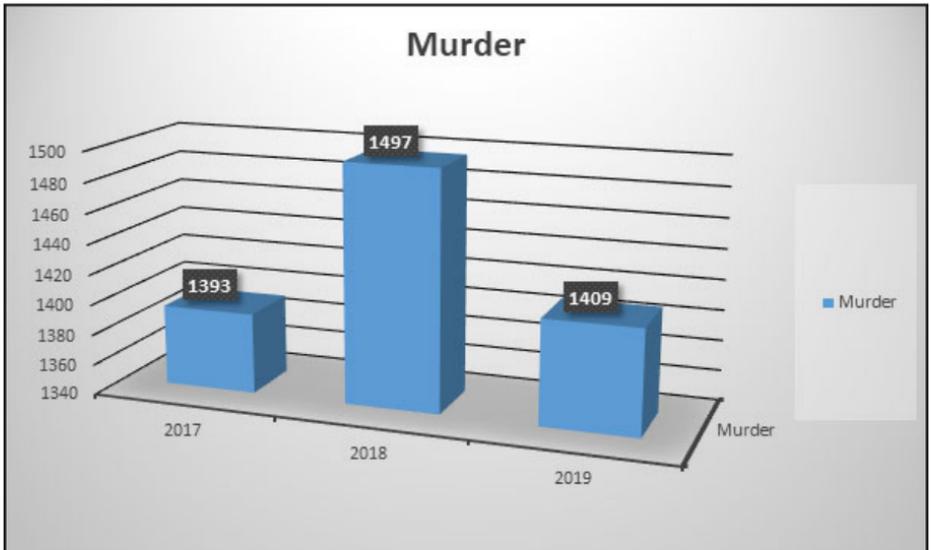
9 National Crime Records Bureau Data available at <https://ncrb.gov.in/en/crime-india-2019-0>, retrieved on 22 September 2022

10 *ibid*

- **Murder<sup>11</sup>**

According to the report which was published by the National Crime Record Bureau states that a total number of 1409 cases of Murder against the children have been registered in India during the year 2019. Uttar Pradesh has registered 271 cases which is highest one among the states, followed up by Maharashtra (149 cases) and Madhya Pradesh (145 cases), which have been accounted to be the majority of such cases in India. The crime rate of all over the India was 0.3 percent. The total number of cases which has been registered during the year 2019 as compared to previous years have been shown in the graph.<sup>12</sup>

**Figure No. 2**



## **Conclusion**

Children all throughout the world are subjected to unspeakable violence, putting their lives in danger. This abhorrent treatment takes occurred in a variety of locations, including the streets, schools, workplaces, and

11 *Murder is defined under Section 300 of Indian Penal Code, is the species of the offense of the culpable homicide. Any person who commits Murders will be punishable with the death penalty or imprisonment which may extend to life and shall also liable to the fine as prescribed by the court. Murder is the Aggravated form of Culpable Homicide<sup>11</sup>. The Section tells the circumstances when the culpable homicide turns into the murder which is punishable under Section 302 of IPC and the exception<sup>11</sup> depicts when an offence is not the murder but is the culpable homicide not amounting to murder.*

12 *National Crime Records Bureau Data available at <https://ncrb.gov.in/en/crime-india-2019-0> retrieved on 28 September 2022*

institutions. Shockingly, those entrusted with safeguarding children—their teachers, employers, guardians, as well as police and armed forces—often betray their responsibilities. The range of violence against children encompasses torture, physical abuse, sexual violence, and even murder. Such crimes may appear distant to those who are concerned, prompting people to disregard the matter owing to a lack of personal proximity. These testimonies, however, serve as horrific reminders of the prevalent and terrifying nature of child abuse, which may happen dangerously close to home.

- Poverty often becomes the underlying cause pushing individuals towards criminal paths. The lack of education and poverty lead parents to be unaware of their children's rights. It becomes imperative for both the government and various non-governmental organizations to educate parents about child rights through camps and programs conducted in rural areas.
- The government should allocate resources towards law enforcement and establish explicit legal prohibitions against violence targeted at children. These laws should be effectively enforced.
- To safeguard children from harmful influences, the strict application and execution of laws are necessary.
- Promoting social awareness and strengthening legislation is crucial for curbing violence, sexual abuse, and exploitation of children. It is essential to take proactive measures to eliminate these issues.

To conclude, it can be stated that the children by their nature, are always innocent. Taking the advantage of their innocence, some people try to exploit them, torture them and deprive them of their basic human rights. To fulfil some illegal and nasty intentions, people can go to any extent as discussed above and thereby spoil the lives of such tender aged children. In spite of various provision in the Indian Penal Code, 1860 to protect children and various verdicts of the judiciary, still there is a rise in number of offences against the children. Until and unless we the people of India wake up and protect our own children, nothing can be done to the children because the law alone cannot change the society unless all its stakeholders fulfil their obligations.

# A SOCIO-LEGAL STUDY ON ACID ATTACK ON WOMEN IN INDIA

**Ms. Preeti Goel\***

*Acid attack on women is a deep-rooted social evil worldwide. It is the most terrible form of cruelty against women. In the present scenario, it has become an issue of conversation at every platform. The aim of the doer is not to let the victim die but to leave the victim in a pitiable condition. The physical injuries may heal over time, but the scars left continue to affect them physically, mentally as well as emotionally, affecting their whole personality. This study focuses on the motives behind these acid attacks, the problems faced by such victims, and the different measures to curb this evil. To curb this social evil, which is actually humiliating the Human Rights, many social reformers, lawyers, judges, etc. have come forward. A great deal of work has just been distributed that manages the different parts of the brutal demonstration of throwing acid on women. Many laws and restrictions have come up to prevent this shameful act. But in spite of the current laws and many corrective measures like restricting the sale of acid over counter, this terrible wrongdoing has been on the rise in India. This paper studies the various aspects of this crime and recognizes the areas that need additional research. This paper contends that the current legal provisions have lacked in providing sufficient restrictive measures to tackle the wickedness of this social evil and recommends some amendments in the current legal system to eradicate the sinful act of acid attacks on women in India.*

**Keywords: Acid attack, social evil, Human Rights, legal provisions, amendments.**

## **Introduction**

Acid attack, also referred as acid violence or acid assault, has risen as a severe brutal demonstration that shows the magnitude of the progressing violent incidents and human rights infringement. This crime is a deliberate act of brutality wherein the acid is poured or thrown on the face or other body portions of the person in question. This terrible act of acid attack can be seen in numerous nations; however, it is increasingly predominant in nations like Cambodia, Pakistan, Bangladesh, and India. The acid assault can be submitted against any individual with no difference being made on any basis, viz. religion, sex, or age. However, the 226<sup>th</sup> Report of Law

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Commission and also the Justice Verma Committee Report<sup>1</sup> concedes that the horrifying crime of acid attacks has a particular gender dimension in India. The target of the attackers is usually the young females with the intent of damaging victim's face. Some of the most common types of the acids that the attackers use include hydrochloric acid, sulphuric acid, and nitric acid. The main reasons behind commission of the brutal act of acid throwing are many, namely rejection of love or marriage proposals, refusal to pay dowry, rejection of sexual advances, property or family dispute or marital disputes like refusal to give divorce. Acid attacks results into severe physical, psychological and socio-economic consequences and makes the life of the victim worse than death. The trauma of not being able to recognize oneself in the mirror, the agony of lost beauty exacerbates the extreme physical pain which the victim is experiencing. Since, in most of the cases, the attack leaves the victims handicapped, even after recovery from physical pain, the victims become dependent for everyday activities which act as an additional trauma to both the family members as well as the victim. Acid attacks perpetuate gender inequality and discrimination.<sup>2</sup>

Acid violence survivors face marginalization from society after the attack. Additionally, acid violence tends to create fear amongst women in society, as some women may feel that they might get attacked, if they failed to conform to traditional subordinate gender roles.<sup>3</sup> In order to emancipate and empower women in the society, it is this fear which the law is supposed to address. Deterrence by means of strict laws dealing with crimes against women is one way of addressing the issue. However, prior to 2013, there was no specific provision in law punishing acid attacks as an offence per se.<sup>4</sup> The amendment in 2013 inserted various sections

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1 This Report was submitted by Justice Verma Committee on Amendments to Criminal Law. This Committee was constituted by Government of India Notification No. SO (3003)E, dated December 23, 2012 with Justice J.S. Verma (retd.) as the Chairman and Justice Leila Seth (retd) and Gopal Subramaniam as members.

2 Report by Avon Global Center for Women and Justice at Cornell Law School, The Committee on International Human Rights of the new York City Bar Association, the Cornell Law School International Human Rights and Virtue Foundation, "Combating Acid Violence in Bangladesh, India and Cambodia," Page 10 available at <http://www.asfi.in/images/Combating-Acid-Violence-Report.pdf> (visited on September 11, 2017).

3 *Ibid.*

4 The perpetrators were tried under section 326 of the Indian Penal Code which penalizes voluntarily causing grievous hurt.

to the Indian Penal Code,<sup>5</sup> the Criminal Procedure Code<sup>6</sup> and the Indian Evidence Act<sup>7</sup> in order to tackle the menace of acid attacks. However, not much change has been witnessed in the incidents of acid attacks.

Acid attack is a complex and multi-dimensional problem that makes it very difficult for the survivors to return to normalcy. This paper is an attempt to review the literatures on acid attack and identify the gaps in their coverage. The paper also analyses the data made available by the National Crime Records Bureau,<sup>8</sup> the legislative amendment, the judicial response to acid attacks and endeavors to suggest changes in the legal machinery in order to curb the menace of acid attacks.

## Literature Review

The violence of acid attack is not just a human rights or legal question; but is a medical emergency as well. **Rabindra Nath Karmakar** authored book '*Forensic Medicine and Toxicology: Theory, Oral & Practical*' (2006)<sup>9</sup> is a book written prior to the Criminal Law (Amendment) Act 2013. Along with the medical factors; this book beautifully narrates India's legal stand on acid attack prior to 2013.

There is another literature that focuses on a comparative study on the reasons and motives behind acid attack cases in four different countries. '*It was Like Burning in Hell*' (2009)<sup>10</sup> is **Jane Welsh**, Department of Anthropology, University of North Carolina, Chapel Hill authored master's thesis. This work is a comparative exploration of motives and causes of acid attack violence in countries like Bangladesh, Pakistan, India and Cambodia. Exploring the major factors that contributes to the violence of acid throwing, several high-profile cases in Cambodia, Bangladesh and India are also been referred by the young author. This comparative work also highlights the role played by government as well as non-governmental organisations in supporting the victims and their families. However, the author further views that the initiatives of these organisations are insufficient to address the financial difficulties that victims undergo at

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5 Hereinafter IPC

6 Hereinafter Cr.P.C.

7 Hereinafter Evidence Act

8 Hereinafter NCRB

9 Kamakar, Rabindra Nath, (2006), *Forensic Medicine and Toxicology: Theory, Oral & Practical*, Academic Publishers, 1st. ed.

10 Welsh, Jane, (2009), "IT WAS LIKE BURNING IN HELL", A thesis submitted to the faculty of the University of North Carolina, available at <https://cdr.lib.unc.edu/indexablecontent/uuid:e472922a-b4a3-47a4-82e5-661dd7a966c5>.

the time of treatment. The success story of NGOs advocating for social, medical and legal reforms is quite impressive, but there is still a long way to go.

Another literature reviewed is the 226th Report of the Law Commission of India on *'The Inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a Law for Compensation for Victims of Crime'* (2009). The 226th Report of the Law Commission of India not only looks into the technicalities of legal provisions, but at the same time effectively deals with the consequences and after care necessary for the rehabilitation of the victim.

Parvathi Menon and Sanjay Vashistha authored *'Vitriolage & India - The Modern Weapon of Revenge'* (2013) is a well written piece of article that covers almost all aspects of the brutal violence of acid throwing as a weapon of revenge.<sup>11</sup> Starting with the tragic incident of Laxmi's life the authors proceed to highlight a few relevant statistics on the issue. Moving to the legal scenario with respect to acid attack, the authors highlight India's obligation under the 1993 *Declaration on the Elimination of Violence against Women*. This article comprehensively deals with India's legal stand on acid violence pre and post *Criminal Law (Amendment) Act of 2013*.

Another report reviewed by the researcher is the *'Report of the Committee on Amendments to Criminal Law'* (2013). Reviewing this literature is significant as the outcry of public after the Delhi gang rape case and the resulting outcome in the form of Justice Verma Committee Report are the only reasons behind declaring acid attacks as a standalone offence in India. The Verma Committee Report mentions acid attacks as the most heinous form of violence. Referring to the 226th Report of the Law Commission of India, Verma Committee admits that though acid attacks can be committed against any man or woman; it has a specific gender dimension in India. Acknowledging the research already done by the Law Commission of India in its 226th Report; the Verma Committee proposes and succeeds to bring the long-awaited amendments to Criminal Law.

There is another literature that looks into the effectiveness of the laws that addresses the crime of acid attack. Kundan Srivastava authored article *'Weak Laws against Acid Attacks on Women in India - Shameful state for Women Organization'* (2014) the author in this article shows that the laws regulating

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11 Menon Parvathi and Vashishtha Sanjay, (2013), *Vitriolage & India - The Modern Weapon of Revenge*, International Journal of Humanities and Social Science Invention, Volume 2 Issue 10, available at [http://www.ijhssi.org/papers/v2\(10\)/Version-2/A0210020109.pdf](http://www.ijhssi.org/papers/v2(10)/Version-2/A0210020109.pdf).

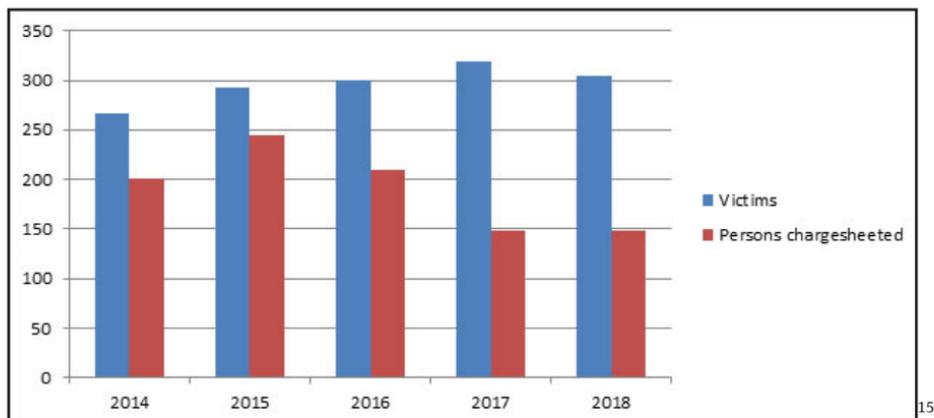
the crime of acid attack are weak and the situation is further complicated by poor implementation of legal provisions and guidelines issued by the Courts.

### Growing Numbers of Acid Attacks on Women in India – A Dark Reality

National crime records bureau reported 45 cases of acid attacks in 2014. In 2015, 249 cases were reported from all over India, out of which 61 cases were reported from Uttar Pradesh.<sup>12</sup> [2] Compared to women throughout the world, women in India are at higher risk of being victims of acid attacks, 72% of reported acid attacks in India have involved women. In India, about 350 cases are legally reported per year, while separate research conducted by an organization Acid Survivors Foundation India, estimated approximately 500–1000 cases per year in India, excluding unreported incidents.<sup>13</sup>

India Today Data Intelligence Unit (DIU) has found that between 2014 and 2018, there have been 1,483 victims of acid attacks in the country. This is according to data released by National Crime Records Bureau.<sup>14</sup>

It was observed that while number of acid attacks have been rising in the country, but the number of people chargesheeted for crimes has gone down. This can be better understood with the help of following data analysis of number of acid attack victims and number of people chargesheeted for crime between the year 2014 and 2018.



12 National Crime Records Bureau. Ministry of Home Affairs. Crime in India 2015 Statistics. Chapter(1):(22).

13 Patel M. A desire to disfigure: Acid attack in India. Int J Criminal Social Theory 2014;7:1-11.

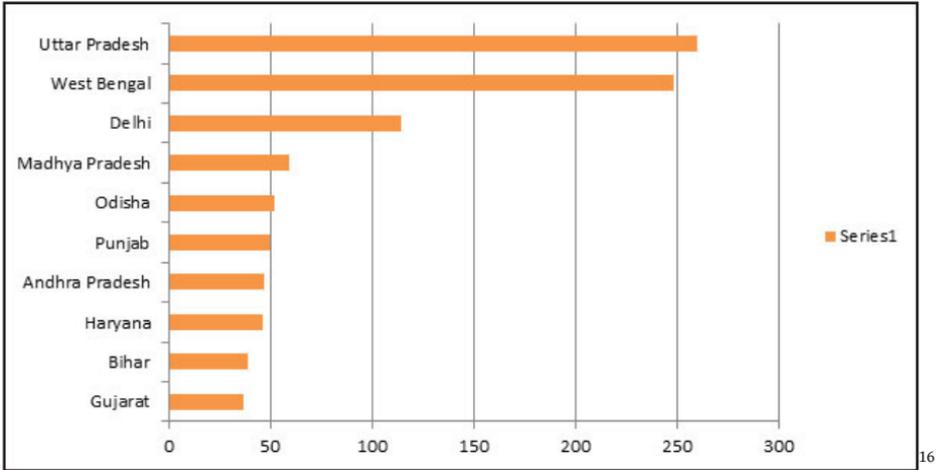
14 <https://www.indiatoday.in/diu/story/india-saw-almost-1-500-acid-attacks-in-five-years-1636109-2020-01-12>

15 Source: National Crime Records Bureau

As per the data provided by National Crime Records Bureau, the year 2017 witnessed the highest number of acid attacks in these five years at 309, with 319 victims. But while 2017 was followed by 2018, unfortunately, the legal process shows a serious backlog for both years.

A total of 623 victims fell prey to the acid attacks in 2017 and 2018, but data shows that only 149 people were charge-sheeted in each year. This is almost or less than half the number of incidents in each year. The lowest number of victims was reported in 2014, with 201 people charge-sheeted.

The following analysis shows the 10 most toxic states in India with the highest number of acid attack victims from 2014 to 2018.



Analyzing the data State wise in India, Uttar Pradesh, West Bengal and Delhi have been consistently ranking among the 10 worst states in terms of acid attacks from 2014 to 2018. These three states alone make up 42 percent of the victims of acid attacks in India during these five years.

In terms of convictions, there is a lot to be asked as well. The year 2015 saw the highest number of cases that went for trial - 734. At first glance, the conviction rate of 45.4 percent looks better than other crimes against women. But out of the 734 cases that went for trial, only 33 were completed.

The conviction rate is calculated as the percentage of cases convicted over trials completed. In 2016 and 2017, the conviction rate saw a decline with a total of 25 cases convicted out of 67 which completed trial, while a

16 Source: National Crime Records Bureau

total of 849 cases were sent for trial in these two years. The year 2018 saw an upturn in conviction rate with a figure as high as 61 percent, but out of 523 cases which went for trial, only 19 ended in conviction.<sup>17</sup>

## Legislative Measures

The issue of dealing with acid attacks has been taken on priority basis by the Government of India and several steps have been taken in order to prevent the incidents as well as to provide for treatment and compensation to the victims of such attacks. The Criminal Law (Amendment) Act 2013 inserted Sections 326A and 326B<sup>18</sup> to the IPC and sections 357B and 357C<sup>19</sup> of Cr.P.C in order to curb the menace of acid attacks in India in an effective manner. The Amendment made the offence of throwing acid or an attempt thereof, as cognizable and non-bailable in nature, triable by the Court of Session. The amendment mandated the hospitals to provide first aid to the victims and the state was mandated to provide compensation to the victim in addition to the fine paid to the victim. Under Section 357A<sup>20</sup> of the Code of Criminal Procedure, 1973, every State is mandated to establish a Victim Compensation Fund. These funds are used to compensate the victims of crime. The compensation is given in accordance with the Schemes every state has adopted.

The Honorable Supreme Court of India in *Laxmi v. Union of India*<sup>21</sup> laid down guidelines for sale of acid along with directions to the concerned State Government/Union Territory that the acid attack victims shall be paid compensation of at least Rs. three lakhs as the aftercare and rehabilitation cost. Of this amount, a sum of Rs. 1 lakh was directed to be paid to such victim within 15 days of occurrence of such incident (or being brought to the notice of the State Government/ Union Territory). The balance sum of 2 lakhs was directed to be paid as expeditiously as possible and positively within two months thereafter. The Chief Secretaries of the States and the Administrators of the Union Territories were directed to ensure compliance of the above direction.

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17 <https://www.indiatoday.in/diu/story/india-saw-almost-1-500-acid-attacks-in-five-years-1636109-2020-01-12>

18 Refer Section 326-A and 326-B of IPC

19 Refer Section 357-B and 357-C of Cr.P.C

20 Refer Section 357-A of Cr.P.C-Victim compensation scheme Clause (1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. 357A inserted by Act 5 of 2009, s. 28 (w.e.f. 31-12-2009).

21 (2014) 4 SCC 427

## Preventive Measures

Ministry of Home Affairs issued an advisory dated 30th August, 2013 on measures to be taken to prevent acid attacks on people and for treatment and rehabilitation of survivors.<sup>22</sup> The directions included-

- i. Banning over the counter sale of acid/corrosives unless the seller maintains a logbook/register recording the sale of acid with the details of the buyer and the quantity of the acid being sold.
- ii. Sale only to persons above 18 years of age on production of valid Photo ID proof.
- iii. Recording the reason/purpose for procuring acid in the logbook by the seller.
- iv. Declaration of all stocks of acid by the seller with the concerned Sub-Divisional Magistrate (SDM) within 15 days.
- v. Imposition of a fine up to Rs.50,000/- on any person who commits breach of any of the above directions by the concerned SDM.
- vi. Educational institutions, research laboratories, hospitals, Government Departments and the departments of Public Sector Undertakings, who are required to keep and store acid/corrosive, shall also maintain a register of usage of acid and the same shall be filed with the concerned SDM.
- vii. Identifying a person to be made accountable for the possession and safe keeping of acid in their premises. The acid shall be stored under the supervision of such person whose responsibility shall be to compulsory check students/personnel leaving the laboratories or place of storage, where acid is used.

The Ministry further issued another advisory dated 20.04.2015 to all State Government and Union territories pressing the need of fast tracking of the criminal justice process in order to deter the perpetrators of such heinous crimes.<sup>23</sup> In the said advisory, the concerned States/UT were requested to take proactive measures to expedite investigation and trial of the acid attack cases to bring them under a definite timeframe.

## Conclusion and Suggestions

Several laws and schemes have been laid by our lawmakers and our government, such as restriction of sales of acid, harsher punishment for the perpetrators, free access to healthcare facilities to acid attack victims,

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22 Advisory available at [http://mha.nic.in/sites/upload\\_files/mha/files/AdvisoryAfterSupremeCourtOrderInLaxmCase\\_Short.pdf](http://mha.nic.in/sites/upload_files/mha/files/AdvisoryAfterSupremeCourtOrderInLaxmCase_Short.pdf). (visited on April 20, 2020).

23 <sup>18</sup>Advisory available at [http://mha.nic.in/sites/upload\\_files/mha/files/AdvisoryAcidAttackWomen\\_220415.pdf](http://mha.nic.in/sites/upload_files/mha/files/AdvisoryAcidAttackWomen_220415.pdf). (visited on April 20, 2020).

etc. Laws have been made to relieve the victim with financial help in the form of compensation. Uttar Pradesh government came ahead to help these victims a little more as they launch a scheme named Rani Laxmi Bai Mahila Samman Kosh Yojana which helps the victims by not only giving the compensation but also provide free treatment without cost limits. This scheme also offers compensation to the dependants of the victims who died. As of today, all the States and Union Territories have notified the Victim Compensation Scheme.<sup>24</sup> However, since there is no centrally maintained record of disbursement of funds by States/UT's, it is difficult to assess, how far the schemes have been helpful in assisting the acid attack victims.

Even after all the legislative steps, judicial directions, and advisories taken in order to curb the threat of acid attack, the numbers of incidents have not declined. It is important to note here that in the absence of prompt investigation and trial of the acid attack cases, it is only the quantum of punishment which can be of deterrence. This is not sufficient to add the requisite deterrent value to the offence. There is a pressing need to amend the law further in order to enhance the punishment to minimum of fourteen years which may extend up to life imprisonment. It should also be kept in mind that attempt to throw acid should be equally as heinous as throwing acid and needs to be checked because it is by mere luck that the victim of attempt is saved from the attack. The difference between punishment of offence of acid attack and attempt should be done away with. Both should be dealt in one section with similar punishment of minimum fourteen years up to life imprisonment. We need to strengthen the implementation of the rules and regulations imposed.

In this regard, we should also focus upon the prevention of such incidents. Several measures, such as strengthen the NGOs, electronic, print, and social media campaigns, should be adapted to change the orthodox sociocultural norms, which are justifying the violence against women. This demands the role of each one of us. If we see over-the-counter sale of acid, we should complain the authorities, and authorities need to take strict action. Prevention is always better than cure.

Until a sufficient deterrent value is created in the society against this heinous offence, the menace of acid attack would not be curbed. We should all come together and root out this evil of acid attack from our country.

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24 Report dated August 10, 2016 by Live Law, "All the States/Union Territories have notified victim compensation scheme" available at <http://www.livelaw.in/statesunionterritories-notified-victim-compensation-scheme/>. (visited on April 25, 2020).

# DIGITAL INDIA AS A CATALYST IN THE LIFE OF VISUALLY IMPAIRED

**Dr. Gulshan Gupta\***

*This paper provides an inside vision of difficulties and challenges towards empowering visually disabled people digital as the life is becoming easier due to the digitalization. The study also enlightens the inadequacies of the provided resources as well as the shortcomings of the performing authorities. Notwithstanding with efforts of government of India to promote digitalization in India for people with visually impaired are in large part of the country remain excluded from becoming digital citizen. The space and opportunities accessibility remains a biggest challenge for majority of people with visual impairment all across the country. In various institutions and places, the opportunities to handle the digital media are scarce and also in technical control upon the technology, there is still a lot to be done. In a major study done wherein so many people with visual impairment were interviewed on what are the scopes, opportunities and challenges of digitalization and to become digital citizens of India. The overwhelming points that were put together by those people said that 'people with visual impairment are still struggling to connect with the digital society. They are confronting with so many problems in becoming digital. The points they shared like negligence of digitalization in public transport system, no tactile support system on railways, bus stops and other public places, ignorance of disabled friendly examination patterns and higher studies systems and problems in using new technologies emerging day by day in digital world. The study recommends that during the policy making and implementation of the policy, machinery should also focus on the capabilities of the visually disabled people so that the facilities could become accessible for visually challenged people too.*

**Keywords-** Digital India, Visual Impairment, Digital Empowerment, Digital Transformation, Media Literacy.

## **Introduction:**

According to S S Badrinath, world-famous ophthalmologist and founder of Iconic Sankara Nethralaya of Chennai, every third blind person in the world is an Indian.<sup>1</sup>

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1 Vivek Deshpande, "45 million visually-challenged people are still from India" Indian Express, September 1, 2014, <http://indianexpress.com/article/cities/mumbai/45-million-visually-challenged-people-are-still-from-india/>

Today in the contemporary world all forms and tools of communications are towards coin the major digital changes. Hence, the digitalization can play an important role towards making visually impaired people's life easier.

There is a gap in understanding the challenges and benefits that visually impaired people perceived about the digital India. The focused group and face to face interview study was conducted to describe the challenges people with visually impairment are facing. Now, the question raises that are digital instruments and platforms useful and friendly for visually impaired people too or only designed for non-disabled people.

Jacqueline P. Candido argues in his research that there is a lot to be done to know and experience the perspectives and views of visually challenged persons about online learning. To achieve this objective, he supports qualitative methods to identify the challenges being faced by the people with visual impairment towards digital learning.<sup>2</sup>

There is a vast difference between visually impaired people and normal sighted people in understanding digital world. It is significant to experience and apprehend the challenges people facing who are visually impaired towards becoming digital citizen of India. This study was conducted to learn the understandings and perceptions of visually impaired people about digital empowerment.

India has provided equal rights to her citizens. The Persons with Disabilities Act (1955) specially emphasizes on the rights of equal opportunities, protection of rights and full participation of the persons with disabilities.<sup>3</sup> But when we consider the digital world, we often forget people who are visually challenged. Most of the visually challenged people remain excluded from the digitalization process.

### **Objectives of the Study**

The study was conducted to achieve the following objectives:

1. To identify and describe the barriers and challenges in Digital India.
2. To know the animus of visually impaired people towards digitalization.
3. To know how digitalization act as catalyst for visually impaired people.

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2 Candido, J. (2008). Visual Impairment in a visual medium: Perspectives of online learners with visual impairments. PhD Thesis, Drexel University at <https://idea.library.drexel.edu/islandora/object/idea%3A2932/datastream/OBJ/view> accessed on April 2, 2017.

3 PWD (Equal Opportunities, protection of Rights , and Full Participants) Act, 1955, [http://newsonair.nic.in/PWD\\_Act.pdf](http://newsonair.nic.in/PWD_Act.pdf)

4. To find out important aspects which are indistinct or less focused and should be included in the policy and implementation framework of digital India.

## **Review of Literature**

The focus of this study is to penetrate the ways that people with vision impairments in India experience the digital transformation.

This study has been conducted among the visually impaired people to know how they connect themselves with the rest of the world in the digital era.

George, A. (2016) says, parents often do not know how to deal with a blind child, school teachers also unaware of tackling a vision impaired student.

The study reveals that how far digitalization helps to the visually impaired people to confront the daily challenges and difficulties in life. It requires more attention to enhance the living standard. A less focus is being given to disabled people in the aspect of media literacy (Weigand M. et al. 2013).

This is a challenging task for government machinery and organizations working in the field to train and empower a large number of disabled populations in digital world and fill the digital gap between visually disabled people and people with normal sight.

## **Methodology**

The focus group interview technique is implied as a methodology. An open-ended questionnaire as a research tool was used for the research, because on a structured questionnaire, respondents may respond with one line answer so it was important to talk with them in a participatory manner including personal and objective based issues.

## **Population of the Study**

Interviews were done by asking questions to visually impaired persons living in Delhi. All of them were from different parts of the country, staying in Delhi for working and study purpose.

## **Sample of the Study**

Total one hundred and ten (110) visually impaired people living in Delhi were interviewed. In the sample population all were male. 85 persons (80%) of 25 to 35 age groups were studying in different streams and colleges and 25 people or 20% of the sample population of 35 to 65 age groups were involved in jobs or services.

## **Selection of the Subject**

To know the gaps in performing the digitalization for disabled and to fulfill those inadequacies, it is important to identify the “Challenges in path of visually impaired people towards becoming Digital Citizen of the Country”.

As the interviews and participatory work with visually impaired people carried out, the researcher recognized that rigorous research is required to lay bare the challenges and difficulties being faced by visually impaired people in daily life even after getting things digital. The system and the machinery working for disabled, require systematic changes through proper study on needs and requirements of disabled friendly digital resources.

## **Qualitative Data Analysis**

The data in this research is descriptive. It is important to remember the objectives and goals of the study during analysis of the data. Content analysis is a method through which researcher filter the volume of data in a systematic manner.<sup>4</sup>

The gathered data was sorted into the topic. For these open-ended questions were asked to the respondents to collect the views and perceptions of the participants on the topic.

## **Findings of the Study**

Persons with visual impairment can play with mobile, laptop and other electronic gadgets but the deal is that there must be talking software or in technical terms we called screen reader software. Many of the respondents said they can type on computer or laptop as well as on typewriter. One respondent said, “I learned these things myself with the help of friends in hostel or in college. I tracked my cut-off list on internet for admission in Delhi University. Today my dependency has been reduced upon the scribe. Now I myself type my assignment on computer, fill my form online but still there is dependency on scribe during the time of written examination. In the digital era we should adopt the online examination pattern, which would be transparent as well as disabled friendly.”

In the yearbook MILID (2015) Vedabhyas Kundu (p.287-298) says “Visually challenged young people can get opportunities as radio jockeys and radio journalists. With assistive technologies and new software, they can get opportunities as web content writer”.

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4 Maxwell, Joseph (2005). *Qualitative Research Design: An interactive approach* (2nd Ed.)

It was opined by participants that “It seems that the development work is being served for non-disabled only. Because at most of the places and situations disabled people are unable to access the digital resources like vending machine is not visually impaired friendly. Visually impaired people cannot access that machine because how they will come to know that what product is there and at what cost. Second, at metro stations if we placed the Metro Yatri card or entered the token in the machine, how we will come to know that now the door is open and we can pass from it. Third, visually impaired people who are not able to use android mobiles, for them there must be talking software in keypad mobile phones. Fourth, visually impaired students cannot easily search OPAC that is online public access catalogue without someone’s help because in all these situations the machines or computers are not equipped with interactive voice response (IVR) technique”.

For all of us, to reach new heights support from family members is must. Not only financial support but moral support too. Without their support a child, especially who is visually impaired cannot grow in the manner that makes him/her gentle. There are many examples of blind students living in Ashrams or Hostels even after having home in the same city or place. “They could not grow in that environment because they do not get parents’ care. In the digital era, no one else would buy the digital devices for them. If they will not have these devices how they will become digital friendly.”

Many of the Principals do not allow our children to get enrolled in their schools. They claim their list of reasons that they are not able to provide special teachers and attention on visually impaired students. Our children could not get admission even in the government school that is in front of our Ashram, just across the road side. Now they go to Govt. Boys Senior Secondary School, Prashant Vihar, Rohini Sector 14, Delhi which is 8 to 10 KMs ahead from Ashram situated at Mangol Puri, Delhi. The reason behind getting admission in that school is because the Principal of that School is himself blind and he understands the meaning of being blind and their difficulties.

In an article published in IMI by George Abraham<sup>5</sup> says “if Government officials and policy makers themselves are unaware, then how can one expect the common man to be enlightened. Parents more often than

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5 Abraham, G. (2016). Empowering the Visually Impaired: Opportunities and Challenges. IMI Konnect Volume 5 (6) 2016, Social Entrepreneurship (Winter Special Issue), 6-9.  
<https://imi-k.edu.in/images/IMIData/pdf/KonnectWinterSpl16WebVersion.pdf>  
accessed on April 2, 2017

not do not know how to deal with a blind child. Schools do not have an understanding of how they could handle a blind student. Corporates do not know how to deploy employees who are blind.”<sup>6</sup>

“With the help of digitalization many countries (developed or developing countries) are making visually impaired people’s life easier. In our country still the basic main challenge we are facing is poor public transport. Only few areas are being digitalized by the government from where money can be generated and voters can be approached. There is less focus on making public interest infrastructure digital. Can we think of digital transport system everywhere and all the time?

Where we have Screen reader software, those devices are easily accessible. All books are not online but still with the help of software like JAWS (Job access with speech), we understand the subjects through audio format. In the digital era, the time is coming for us also. If we get training into it, we will become independent with the help of digitalization.” (Respondent 6, Group interview 3, April 3, 2017, Evening)

Due to digitalization, the people with disabilities can also have equal livelihood as that of persons without any disability. They can live a self-governing life (Williamson, et al., 2001).

“Indian Government is running a training program on how to do digital transactions. Ministry of Youth and Sports Affairs is conducting this training program across the country but it seems that this training program is only for sighted people. If once we also got trained, we would be able to do digital transactions ourselves. Our dependency on ATMs will be reduced. We also want to make e-payments but we are not aware of these applications. It seems that the process of digitalization is still not disabled friendly in India. According to him, most digital or electronic resources are designed for non-disabled users. If it is so then how blind people will be trained in doing digital transactions?”

Through mobile phones we can make e-payments by using some applications like Paytm, BHIM App and SBI Buddy because there is screen reader software in our mobiles. But we cannot access the ATMs. In most of the ATMs we always afraid of being cheated by others because talking system or interactive response system (IVT) doesn’t work in many ATMs and at the mean time we have to share our ATM passwords with our caretakers. The primary challenge we face in digital era is that if any ATM

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6 *ibid*

at a time become out of service, then it remains out of order for a month or longer. Bank doesn't concern for repair those out of order Machines in a time frame."

We are looking for payment through thumb impression but how we will come to know that how much rupees have been deducted from our account after giving thumb impression on pay machine. Second, people want to make digital payments in exact amount of their bills. For example, if we give 100 rupees for an item of rupees 99/- but most of the times against the charge of Rs Ninety-nine the merchant did not return one rupee. IVR<sup>7</sup> system must be there in payment making machines otherwise always there will be some chance of cheating with blind people.

"In politics, there is a concept of vote bank. Every party has their particular followers. We are also in large number of populations as the citizen of this country having voting right. In this manner, we also can be a vote bank for any party. To attach this large number of vote bank authorities should pay attention on our requirements i.e., in public transport there are many taxi services getting booked on phone but it is very costly, everyone cannot afford for them. There should be a digital system at all bus stands which could announce the bus numbers, routes and timings of the buses just like Delhi Metro. There must be tactile based floors at bus stands, footpaths and on road crossing pathways. It will help blind like me to become independent in today's fast life." My dependency has been reduced upon the scribe. Now I myself type my assignment on computer, fill my form online, but still there is dependency on scribe during the time of written examination. He opines that in the digital era can we adopt the online examination pattern, which would be transparent as well as disabled friendly. Weigand mentioned that not much attention has been paid towards information and media literacy suitable for disabled and specifically for visually challenged individuals.<sup>8</sup>

### **Discussion on the findings of the study**

It was common opinion of all one hundred and ten (110) respondents that digitalization acts as a catalyst in their life but today accessible and inclusive platforms and services are needed in every sector. Our public transport system should be digitalized and there should be visually challenged friendly traffic signals, for example beep sound in traffic signals for VI people.

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7 Interactive Voice Response

8 Monika Weigand, Johannes Zylka and Wolfgang Muller "Media Competencies in the Context of Visually Impaired People" Communication in Computer and Information Science October, 2013

The Prime Minister of India in his speech during launching the National Digital Literacy Mission, (Jharkhand, August, 2014) said “a digital revolution is about to begin. My vision of ‘Digital’ India encompasses a time when the common man is able to track the government’s work from his mobile phone”.<sup>9</sup>

The study reflects that visually impaired people are encountering great challenges towards digital living. Maximum of them can use mobile for using social media tools i.e. WhatsApp and Facebook. Some of digitally literate visually impaired people are using online applications for e-transactions. But on the other hand many people are there who are not familiar with the day-by-day changes happening in the digital world.

The study reveals the important aspect of the digitalization process that most application designers are still unaware of challenges and needs of blinds. Due to high development cost and low business market, they do not design their product for visually challenged population.

Nowadays, the world without electronic and digital things is like living alone on the planet. Findings of the study reveal that buying electronic equipments has become more expensive. A person from poor background cannot afford to buy an expensive digital or electronic gadget.<sup>10</sup> However, the government has provided mobile phones to disabled people (Divyangs), but Users say, after a time period of one or two years this gadget started being hanged up. Second, what they will do of those devices unless until they are not trained enough to make use of those digital resources and software applications.

If someone want to know about the beneficial schemes that is planned and launched by the government of India for visually disabled people how they will come to know. There is no awareness on what is the path has to be followed for digital training. Less number of training points is also a challenge in this path.

Most of the times and places blind people have to be depend on others for knowing the bus number. Many times, bus driver doesn’t stop the bus at the place fixed for the bus stop but speed up the bus after seeing the blind with a stick. All are in hurry; some people do help in crossing the roads, some ignores because they are also connected with digital life. They spend

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9 PM Narendra Modi , “Digital Revolution is about to begin” August 21, 2014

10 Experts Say the ‘New Normal’ in 2025 Will Be Far More Tech-Driven, Presenting More Big Challenges, Pew Research Center Feb 18, 2021

more time on online social platforms. They are also connected with these digital gadgets but there is a limit for them because not all the gadgets are disabled friendly, especially in the case of blinds.

## **Conclusion and Recommendations**

The study indicates that when everyone is living digital life, disabled people also try their best to use digital resources for their betterment. But there are some hurdles before them, which set their limits in doing so. In conclusion of the study the suggested recommendations to makeup these challenges and scope of further research in future:

1. The digital resources are reducing dependency on others but still not all the digital devices are disabled friendly. We can design digital applications and devices for disabled users with disabled (especially visually challenged) friendly features. Identifying these features is another case of study.
2. Even after the applications and digital devices are being designed for disabled especially for the blinds it is important to train them too.
3. Easy reach to the resources, especially in rural areas. Many times, these people remain unaware of the schemes that government launches for them. If they will come to know about those schemes, they would be encouraged and will try to reach to the resources if available nearby.
4. Need of strict actions and follow-up programs as there is less focus towards digitalized public transportation system. Even at many stages implement machinery fails in quality and design check of the work done by the contractor.
5. Need to make traffic signal system disabled friendly. So far, we do not have beep sound in traffic signals even at many places in cities like Delhi.
6. Create tactile technique-based pathways on roads, bus stands and other public places.
7. Digital literacy programs are not running in effective manner. Use of JAWS and Interactive Voice Response (IVR) technique in maximum digital resources even in keypad mobile phones because illiterate and poor people especially from rural India are not able to use digital devices without these basic softwares. Even in certain programs or

services like \*99# to check account transactions in mobile phones. The major limitation of digitalization is absence of IVR technique in the software or digital services for visually challenged users.

8. Increase training programs in promoting digital literacy among visually impaired people.
9. If digitalization occurs in examination too, dependency on scribes and bribe culture for getting good scribes will be reduced.

# INSIDER TRADING IS LEGAL IN INDIA? A CRITICAL STUDY

**Ms. Kashni\***

*Law and morality have an intertwined relationship and certainly a rather tricky one. The foundation of law essentially rests upon the Ethics and values laid down as per societal standards and cultural norms which define what is acceptable and what is not. With time, as the societies progress into a more civilized and systematic scheme of things, the nature of crimes being committed also changes. The driving force behind criminalizing them however, still remains to be ethics and morality. The debate around insider trading has been a similar one. While the ones committing it have been defending it as just a perk of being in a particular kind of profession, the ones at the opposite end have been relentlessly questioning its ethical foundations and impact on the market. It has been argued that the extent of the unfairness is virtually criminal, and hence calls for a similar legal consequence. The latter view has successfully found its place as insider trading has been regarded as an illegal activity almost worldwide starting with the USA in 1934.<sup>1</sup> However, like any other law this too has exceptions and in effect gives certain legal kinds of trading by insiders. This paper seeks to explore the meaning, origin and kinds of insider trading under the India law and undertake a critical analysis of the same.*

**Keywords- Insider, Unpublished Price Sensitive Information, Connected Person, Capital Market, securities, Trading, Ethics, Code of Conduct, Trading Plan.**

## **Introduction**

The onset of the concept of Capital markets<sup>2</sup> and trading in securities can be traced back to the 1600s in Amsterdam, where the Dutch East India Company was the world's first company to trade publicly wherein it issued stocks to raise capital. This over several decades, gradually developed into

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1 USA was the first country to formally enact a legislation to regulate insider trading through the Securities and Exchange Act, 1934.

2 The Capital Market is a market for financial investments that are direct or indirect claims to capital. It is wider than the Securities Market and embraces all forms of lending and borrowing, whether or not evidenced by the creation of a negotiable financial instrument. The 'Securities Market' is a sub-set of the capital market.

a more complex system that constitutes the present securities market.<sup>3</sup> Stock exchanges, intermediaries, and companies are the key players. So, it was only obvious that when the boom of the stock market arrived, the people involved in it on a daily basis had the opportunity to exploit the benefits the most. With scarcely available information and expertise, not only was this new marketplace that was giving unprecedented returns and wealth, inaccessible to the common people but was also largely unregulated for the longest period of time. It almost became like a place of fascination- which was fortified by a wall of secrecy and deprivation of knowledge to the general public. While those *inside* the fort were drenched in wealth, those *outside* were mere spectators- left to figure out their way into this fort which seemed to have at best, only a few peep-holes.

The result was that the key players in the market were the “Kings” who continuously indulged in manipulating the market- which is otherwise based on an idea of *Laissez Faire*<sup>4</sup> - to suit to their own whims and fancies. It was never mentioned if these practices were “unfair”, and were rather looked upon as ‘perks and benefits’ of being in the securities trading business. There was thus a creation of two classes (privileged knowledge being the divisive factor)-i.e. - the “insiders” and the “outsiders”. It was only after the great crash of the American stock market in 1929, that attention was directed towards unfair trade practices being carried out by Directors, promoters and key managerial personnel – the most prominent being insider trading. Since it was the influential “Haves” who were the target here, they opposed this notion of such practices being unfair and justified them as being perks of the job. It was famously described by the Sunday Times (1973, UK) as “*the crime of being something in the city*”.

## Historical Background

The battle of making insider trading an illegal activity was a long one, especially around the debates about its ethicality. It was in 1934 that the first attempt was ever made to declare insider trading as an offence in law by the government of the United States. This trend soon spread over other nations, though reluctantly. In 1940s India first time encountered with insider trading. The Thomas Committee Report in 1948 under the chairmanship of P.J. Thomas, cited instances of directors, agents, officers, auditors possessing strategic information regarding economic conditions

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3 Inyoung Hwang, *A Brief History of the Stock Market*, available at:<https://www.sofi.com/learn/content/history-of-the-stock-market/> (Last visited on 10 May 2022).

4 *A philosophy or practice characterized by a usually deliberate abstention from direction or interference especially with individual freedom of choice and action* [available at: <https://www.merriam-webster.com/dictionary/laissez-faire;> (Last visited on 10 May 2022)]

of the company regarding the size of the dividends to be declared, or of the issue of bonus shares or the awaiting conclusion of a favorable contract prior to public disclosure.<sup>5</sup>

In 1952, Bhabha committee also recommended to put obligation on the directors to disclose their sale/purchase of shares in a separate register to be maintained by the company. After observing the recommendations made by the committee, Sections 307 and 308 were incorporated in the Companies Act of 1956. Where Section 307 provided for maintenance of a register by the companies to record the directors' shareholdings in the company and Section 308 prescribed the duty of the directors and persons deemed to be the directors to make disclosure of their shareholdings in the company, subsequently Manager of the company were also included in such section to make the requisite disclosure as per Companies Amendment Act, 1960.

In 1978, the *Sacher Committee* also pointed out in its report that more stringent laws shall be made to gain information about the transactions where one party gained undue advantage of the transaction who could possibly be in possession of price sensitive information.

The *Patel Committee* in 1986, headed by G. S. Patel gave a suitable definition of 'Insider Trading' in their Report providing that management of the company who are dealing in shares of such company on basis of 'undisclosed price sensitive information' not available to others. It was also recommended to *amend* the Securities Contract (Regulation) Act ("SCRA"), 1956 in order to allow the exchanges to make stringent policies to curb insider trading.

Further in 1989 *Abid Hussain Committee* recommended to cover the offence of Insider Trading under civil and criminal laws and also suggested for stricter regulation by SEBI to restrain the unfair practice of Insider Trading.

Eventually, in the view of requirement to establish proper and stringent laws to deal with the offenders of unfair practice in financial market in 1992 a statutory body<sup>6</sup> was put in place called the 'Securities and Exchange Board of India', which under its statutory powers<sup>7</sup> formed

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5 Thomas, P.J., *Report on the Regulation of the Stock Exchanges in India. Securities and Exchange Board of India, (1948), Para 63. Page 68, available at: <http://www.mca.gov.in/MinistryV2/library.html> (Last visited on 10 May 2022).*

6 *The Securities and Exchange Board of India Act, 1992, No. 15.*

7 *Ibid* Section 30.

guidelines on prohibition of insider trading in the same year.<sup>8</sup> This underwent significant changes under the 2002 Amendment,<sup>9</sup> and were ultimately replaced and repealed by the Regulations of 2015<sup>10</sup> - which too have been subject to amendments from time to time.<sup>11</sup> However, complexities around implementations of these are still immense, which SEBI in its Annual Report of 2020-21<sup>12</sup> plans to overcome through effective leverage of technological advancements and policy decisions.<sup>13</sup>

## Definitions and Meaning

The term 'Insider Trading' is almost self-explanatory. In general parlance, trading by insiders means the act of buying and selling of securities by any employee, director or key managerial personnel of a company or any other person, using some 'confidential information' which is only in their possession, to the disadvantage of the other investors, (albeit the uninformed general public). This confidential information is a material piece of information that has the power of influencing the market price of the securities of that company.

On the basis of the above the following elements can be highlighted:

- i. Access to confidential information that has power to impact the price of the securities.
- ii. Use of such information to trade in securities by persons who have access to such information.
- iii. Non-communication of this private information to other investors (general public) who are not in possession of it.
- iv. Non access of any confidential information to these other investors.
- v. Undue enrichment of the former at the cost of the latter's interest.
- vi. Unequal distribution of crucial information which is instrumental in making informed decisions about strategic trading of securities.
- vii. Unfair advantage to one group over the other.
- viii. Loss of faith of the other group in the stock market due to their unfair losses.

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8 *Securities and Exchange Board of India (Insider Trading) Regulations, 1992*

9 *Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2002*

10 *Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015*

11 2018, 2019, 2020, 2021.

12 *SEBI Annual Report 2020-2021.*

13 *Roopanshi Sachar & Dr. M. Afzal Wani, Regulation of Insider Trading In India: Dissecting The Difficulties And Solutions Ahead JCIL Vol. 2 Issue 11.*

The above-said definition is a loose explanation of what constitutes *insider trading*. While the term “insider trading” has not per se been defined under the law, however, the 2015 Regulations put an explicit bar on:

- i. Communication and procurement of unpublished price sensitive information by and from insiders;<sup>14</sup> and
- ii. Trading in securities listed or proposed to be listed by insiders while in possession of unpublished price sensitive information.<sup>15</sup>

In order to give a clear idea of what the above constitutes- the regulations have defined the technical jargons such as- ‘insider’, ‘connected person’, ‘trading’, ‘unpublished price sensitive information’ and also explaining what kind of activities are included within the realm of insider trading.<sup>16</sup> It is only when one reads the concerned regulations prohibiting certain acts, in conjunction with these regulations, that they can achieve clarity of the ambit of the crime.

Thus, before going over to look at the formal Regulations, it is pertinent to reproduce these definitions beforehand:

- i. An “insider”<sup>17</sup> means any person who is:
  - a. A connected person; or
  - b. A person in possession of unpublished price sensitive information
- ii. The 2015 Regulation gives a wide meaning to the term “connected person”<sup>18</sup>. The intention is to include any person who is likely to have access to or possession of unpublished price sensitive information by virtue of their connection with the company. This connection could be direct (such as being associated in professional capacity of employee, consultant, advisor, director, etc.) or indirect (such as immediate family members or other relations of the aforementioned persons).

The definition is divided into two clauses; the first part states:

*“(i) any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position*

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14 *Infra* note 11 at Regulation 3.

15 *Infra* note 11 at Regulation 4.

16 *Infra* note 11 at Chapter 3.

17 *Infra* note 11 at Regulation 2(1)(g).

18 *Infra* note 11 at Regulation 2(1)(d).

including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.”

The scope of this clause is quite wide and covers almost every scenario in which a person could either be said to be connected with a company or might be reasonably expected to have access to undisclosed information (UPSI). It is however a point of criticism that the time period of “six months” is arbitrary and has no reasonable basis.<sup>19</sup>

The second clause is a deeming provision wherein certain category or classes or persons are presumed to be connected persons under law. This legal fiction is however a rebuttable presumption. It reads as follows:

“... (ii) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established -

- (a) an immediate relative<sup>20</sup> of connected persons specified in clause (i); or
- (b) a holding company or associate company or subsidiary company; or
- (c) an intermediary as specified in section 12 of the Act or an employee or director thereof; or
- (d) an investment company, trustee company, asset management company or an employee or director thereof; or
- (e) an official of a stock exchange or of clearing house or corporation; or
- (f) a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or
- (g) a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act, 2013; or
- (h) an official or an employee of a self-regulatory organization recognised or authorized by the Board; or
- (i) a banker of the company; or

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19 *Infra* note 14.

20 *Infra* note 11 at Regulation 2(1)(f), “immediate relative” means “...a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities”;

(j) a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent. of the holding or interest;”

iii. "Unpublished price sensitive information"<sup>21</sup> (UPSI) means-

“...any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: - (i) financial results; (ii) dividends; (iii) change in capital structure; (iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions; (v) changes in key managerial personnel”

iv. “Trading in Securities”<sup>22</sup> means and includes:

“...Subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any security of the Company and “trade” shall be construed accordingly”

### **Rationale behind illegality of insider trading**

The Securities and Exchange Board Act, 1992 (hereinafter referred to as the “1992 Act”) prohibits insider trading under Section 12A clause (d) and (e) and penalises the same under Section 15G with a penalty of minimum 10 lacs to maximum 25 crores or three times the profit made by such insider trading- whichever is higher. It also casts a duty upon SEBI<sup>23</sup> to ensure prohibition of insider trading under Section 11(2)(g) of the 1992 Act. It is quite apparent that the Indian law discourages insider trading and treats it as an illegal activity through imposition of serious penalties.

But what is the reason behind it? The first and foremost argument in favour of criminalising insider trading is the ethical questionability of it. The foundational premise of insider trading is an unfair advantage of one over another vis-à-vis some consequent benefit of the former, at the cost of the latter, by virtue of that unfair advantage.<sup>24</sup> This disrupts the level playing field<sup>25</sup> that is essential element of a healthy competitive market

21 *Infra* note 11 at Regulation 2(1)(n).

22 *Infra* note 11 at Regulation 2(1)(l).

23 *The Securities and Exchange Board of India.*

24 *Abhirami B. and Arya Kuttan, Insider Trading Laws In India - Pertinence And Problems, 4 IJLDAI 5, 443, 443-4639 (Sep 2018).*

25 *Ayan Roy, Insider Trading in India (June 4, 2010) available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1620386](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1620386) (Last visited on 3 April, 2022).*

space. Another point of contention is that insider trading is a threat to a free economy (*laissez faire*). This is because it is often used as a tool to manipulate market forces which are otherwise supposed to act independently on the basis of demand and supply factors without intervention from the state or undue influence of powerful market participants.<sup>26</sup> This infects the entire system with a biased tilt, favouring the manipulator- either to make illegitimate gains or evade legitimate losses. The third argument is a consequence of the above actions-i.e. loss of faith of outsider investors in the market and thereby a disinterest in investing in the same. This is a major hit to the existence of the market as without investors there would be no marketplace to begin with. Studies have even shown that insider trading has deep causal connections with market crashes.<sup>27</sup>

### Legal forms of insider trading

Contrary to popular belief, insider trading can also be legal in certain circumstances. Although often referred to with a negative and criminal connotation, it also has a legal form, that is devised to allow “insider” corporate participants to indulge in their personal and official trading activities, without compromising the ethical and moral standards of operations. The reason behind this, as stated by the Securities Appellate Tribunal (SAT), is that the insider trading jurisprudence is not founded on the concept of ‘disclose or abstain’, i.e., that an insider in possession of UPSI cannot trade in a company’s stocks until he reveals the UPSI.<sup>28</sup> The SEBI Regulations of 2015 carve out a few exceptions to the general prohibition on trading by insiders which gives us the legal form of insider trading. These exceptions are by way of systematic and time bound disclosures that are to be mandatorily made beforehand. These are discussed as below:

Regulation 3 aims to protect ‘unpublished price sensitive information’ in connection to any company or securities (whether listed or proposed to be listed). It prohibits both the communication and procurement of it, to or by any person (including other insiders) except for three purposes namely:<sup>29</sup>

- i. In furtherance of legitimate purposes; or
- ii. Performance of duties; or

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26 Baishali Das, *Insider Trading Law in India LATEST LAWS (2018)*, available at: <https://www.latestlaws.com/wp-content/uploads/2018/09/Insider-Trading-Law-in-India-By-Baishali-Das.pdf> (Last visited on 10 April, 2022).

27 M. Anil Kumar, *An Empirical Analysis of Legal Insider Trading in India (July, 2018)*,

28 Rakesh Aggarwal vs SEBI Before SAT 2004, SCL 351.

29 *Infra note 11 at Regulation 3(1)*.

### iii. Discharge of legal obligations

The regulation further explains that “*legitimate purposes*”<sup>30</sup> would include sharing of information in the ordinary course of business with auditors, legal advisors, customers, collaborators, etc.<sup>31</sup> In addition to this the Board of Directors of a listed company have to formulate a policy as part of “*Code of Fair Disclosures and Conduct*”, as to what would constitute “*legitimate purpose*” for their company under Regulation 8.<sup>32</sup> Any person who receives unpublished price sensitive information under these exceptions shall also be deemed to be an insider.<sup>33</sup>

There is another exception regarding sharing of UPSI in circumstances that entail an obligation to make an open offer under the takeover regulations where the Board of Directors of the listed company is of the opinion that doing so is in the best interest of the company. In case of transactions that do not require such an obligation but the Board of Directors still think that such a communication would be in the best interest of the company, the regulations allow for the sharing of the UPSI, provided that that such information is made generally available at least two trading days prior to the proposed transaction and covers all material details.<sup>34</sup>

The marginal note of Regulation 4 reads “*Trading when in possession of unpublished price sensitive information*”. Since any person who is in possession of UPSI is an insider, this provision points towards “insider trading”. It states that- “*no insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information.*”<sup>35</sup> An interesting point to note here is that the explanation to this clause clarifies that when any person in possession of UPSI trades in securities, it would be presumed that his trade was influenced by his

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30 “*Legitimate Purpose*” shall include “*..sharing of unpublished price sensitive information in ordinary course of business by an Insider with partners, collaborators/lenders, customers, suppliers, merchant bankers, legal advisors, auditors, insolvency professionals or other advisors or consultants provided that such sharing has not been carried out to evade or circumvent the prohibitions of these regulations.*”

31 *Infra* note 11 at Clause 2 of Regulation 3.

32 *Infra* note 11 at Clause 2A of Regulation 3.

33 *Infra* note 11 at Clause 2B of Regulation 3.

34 *Infra* note 11 at Clause 3 of Regulation 3.

35 *Infra* note 11 at Clause 1 of Regulation 4.

knowledge of that UPSI. Thus, existence of mens rea stands presumed. It is however a rebuttable presumption, as the subsequent clauses list the following defences for such insider:<sup>36</sup>

- i. It was an off- market transaction between two insiders having possession of the same UPSI and both parties made an informed decision. The UPSI should not have been obtained in violation of regulation 3 but at the same time should also not fall under clause (3) of the same regulation. Such a trade has to be reported to the company within two working days, which shall further notify the same to the stock exchange within two trading days from the receipt of such information.
- ii. That the transaction was through a “block deal window mechanism” between two persons in possession of the same UPSI and both the parties made an informed decision. The UPSI should not have been obtained in violation of regulation 3 but at the same time should also not fall under clause (3) of the same regulation.
- iii. The transaction had been carried out under a regulatory or statutory obligation to carry out a bona fide transaction.
- iv. The transaction was carried out by the person pursuant to the exercise of stock options.
- v. For non- individual insiders:
  - a. The individuals who were in possession of the UPSI were different from the persons taking the trading decisions and the latter were not in possession of the UPSI at the time of decision making; and
  - b. Appropriate and adequate arrangements were put in place to make sure that:
    - These regulations are not violated.
    - No UPSI was communicated by the insider individuals to the trade related decision- making individuals.
    - There is no evidence of the breach of the above-said arrangements.
- vi. The trades were in consonance with the Trading Plans set up as per Regulation 5.

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<sup>36</sup> *Infra note 11 at Proviso to Clause 1 of Regulation 4.*

In case of connected persons, the regulations presume that they were in possession of UPSI and the onus of proving the contrary is on them. However, in other cases, there is no such presumption and the burden of proving that the person in question had certain UPSI is on the Board of Directors.<sup>37</sup>

The last ground of defence stated above mentions about a “Trading plan”. A trading plan is a pre-decided strategy to execute certain trades in future. This concept has been brought into picture to enable lawful trading in securities people who might be perpetually in possession of UPSI. The rationale behind disclosure of a pre- decided plan is to give credibility to their actions which are now in consonance with something already decided in the past, even before the UPSI came into their possession, and hence cannot be said to be influenced by the UPSI obtained afterwards. The irrevocable nature of the plan coupled with the mandate of its public disclosure after due approval from concerned authorities, virtually leaves no room for any deviance from it, and creates accountability towards the general public as well.<sup>38</sup>

The idea behind such a provision is do refrain from imposing a blanket ban on insiders from indulging into an kind of personal trade as well. This is because the offence of insider trading has been brought into light to maintain parity of knowledge and opportunity between investors of all kind; banning a certain group merely because they possess privileged information would amount to an extreme step and be unfair. What can be done is to develop a mechanism to keep a check on people who possess such information and regulate their trading behaviour so as to ensure lawful and healthy market exchanges for all. A balance has to be created between the interests of both “insiders” and “outsiders”, where no one’s interest is forwarded at the cost of another’s. The execution of a trading plan aims to achieve something on those lines.

An insider is entitled to formulate a trading plan and submit it to a compliance officer for approval and public disclosure. Thereafter, trades may be carried out in their behalf according to such plan.<sup>39</sup> The following things have to be kept in mind that a trading plan shall:<sup>40</sup>

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37 *Infra note 11 at Clause (2) of Regulation 4.*

38 *Bali, Reema. Insider Trading In India - Rules Till Now, International Journal of Research -GRANTHAALAYAH. 8. (2020) 49-53. available at:10.29121/granthaalayah.v8.i9.2020.1072. (Last visited on 10 April 2022).*

39 *Infra note 11 at Clause 1 of Regulation 5.*

40 *Infra note 11 at Clause 2 of Regulation 5.*

- (i) Not entail commencement of trading on behalf of the insider earlier than six months from the public disclosure of the plan;
- (ii) not entail trading for the period between the twentieth trading day prior to the last day of any financial period for which results are required to be announced by the issuer of the securities and the second trading day after the disclosure of such financial results;
- (iii) entail trading for a period of not less than twelve months;
- (iv) not entail overlap of any period for which another trading plan is already in existence;
- (v) set out either the value of trades to be effected or the number of securities to be traded along with the nature of the trade and the intervals at, or dates on which such trades shall be effected; and
- (vi) not entail trading in securities for market abuse.

After a trading plan has been presented to the compliance officer, it shall be assessed for any potential violations of the regulations, and thereafter approve and monitor the implementation of the plan. Also, upon approval, the compliance officer shall intimate the trading plan to the stock exchanges on which the securities are listed.<sup>41</sup> A trading plan once approved shall be irrevocable and no deviation from it shall be allowed whatsoever. However, in case the UPSI, which was in possession of the insider at the time of formulating the plan, has still not become public at the time of commencement of implementation of the plan, then such an implementation shall be postponed till the needful disclosure is made.<sup>42</sup>

## Case Studies

### **Hindustan Lever limited (HLL) v. SEBI**

The case of *Hindustan Lever limited (HLL) v. SEBI*, was one of the earliest cases of insider trading brought before SEBI. In this case the transaction under scrutiny was the purchase of 8 lakh shares of Brooke Bond Lipton India Limited (BBLIL) by Hindustan Lever limited (HLL) from Unit Trust of India (UTI) on March 25, 1996. This purchase attracted suspicion as it was just two weeks before the merger of these two companies. Upon investigation by SEBI it was found that these two companies were subsidiaries of the same parent company in London. Thus, it could be reasonably presumed that the Directors already knew about the said merger and were “insiders” as per the 1992 Regulations. The matter went into appeal before SAT which though concurred with SEBI that the information regarding the merge was

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41 *Infra note 11 at Clause 5 of Regulation 5.*

42 *Infra note 11 at Clause 4 of Regulation 5.*

price sensitive, but did not agree that it was “unpublished”. After this case SEBI made an amendment to the 1992 regulations and added and defined the word ‘unpublished’. This was the origin for the definition of the term ‘Unpublished Price Sensitive Information’ in India.

### **Dilip Pendse vs. SEBI<sup>43</sup>**

In this case Dilip Pendse was the managing director of Tata finance Ltd. Nish Kalpa, which was a wholly owned subsidiary of Tata finance Ltd. (also a listed company) had incurred a huge loss of 80 crores which would definitely affect the profits of Tata finance Ltd. Before this information could be disclosed to the general public on 30th April, 2001, Dilip Pendse gave this information to his wife who sold almost 3 lakh shares of Tata finance Ltd. which were in her name as well as in the name of companies controlled by her kith and kins. SEBI found Dilip Pendse guilty of insider trading, due to which he was removed as the Chief of TATA Finance Ltd. and had to face imprisonment of two years as well. This decision was however reversed by the Securities Appellate Tribunal due to lack of proper evidences against Mr. Pendse.

### **Rakesh Agarwal vs SEBI<sup>44</sup>**

This case was prominent with respect to the principle of mens rea vis-à-vis insider trading. The facts of the case were that ABS Industries Ltd. had entered into an acquisition deal with Bayer AG, a German company, which had agreed to purchase 51% shares of the former company. Mr. Rakesh Agarwal was the Managing Director (and negotiator) of ABS Industries Ltd. had sold a significant portion of his shares in this co. which he owned through his brother-in-law Mr. I.P. Kedia. SEBI took cognizance of this transaction and held Mr. Aggarwal liable for insider trading, citing the reasons that mens rea was not relevant to be guilty of the said offence and any kind of trade in securities while in possession of UPSI is enough for establishing culpability. However, this order of SEBI was reversed by SAT in appeal, stating that mens rea, though not expressly stated to be an element in the Regulations, is an essential point of consideration, as without that, the entire purpose and policy behind such regulations will be defeated and that a literal interpretation would be contrary to the intended spirit of the regulations. As per SAT, since Mr. Rakesh Aggarwal had been acting in the best interest of the company at the time of entering into the trade, there was absence of a mala fide intention to make wrongful profits, and therefore, did not attract liability.

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43 *Dilip Pendse vs SEBI in SAT. Appeal No.62 of 2017.*

44 *Before SAT 2004, SCL 351.*

## **Infosys employee's insider trading Case<sup>45</sup>**

During an investigation around July 2020 by SEBI, there were few entities (Capital One, Tesora Capital etc.) that were found to be involved in trading in the scrips of Infosys (“INFY”), while in the possession of the UPSI. The scrip was in the Future and Option segment and is a part of SENSEX and NIFTY. SEBI in its order has impounded the illegal gains as mentioned above and further restricted the entities from accessing the securities market till further orders. The matter is pending before SEBI.

### **Conclusion**

The legislative attempt of the Securities and Exchange Board of India has been commendable in terms of striking a good balance of interests amongst various kinds of investors. The intervention of the judiciary from time to time has helped refine and improve upon these laws. To answer the question that whether insider trading is legal in India- the answer would be a ‘no’. The nature of laws has made it amply clear. The legal aspect of insider trading is only the one where the law has tried to eliminate the scope of unfair advantage in form of public disclosures at every step. The transparency seeks to uphold the spirit of healthy market practices and a fair play for all.

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<sup>45</sup> *Before SAT 2020, SCL 1001.*

# SEXUAL HARASSMENT OF WOMEN AT WORKPLACE

*Dr. Sangeeta Malik\**

## **Abstract:**

*Sexual harassment against women in professional settings is a pervasive and deeply concerning issue that transcends geographical and cultural boundaries. This summary offers an insight into the intricacies and consequences of this problem. It involves unwanted advances, comments, or behavior that create an atmosphere of fear, hostility, or discomfort for women, infringing not only on their fundamental human rights but also hindering gender equality and professional development.*

*This abstract explores the multifaceted nature of workplace sexual harassment, analyzing its adverse effects on the physical and psychological well-being of victims, along with its detrimental impacts on organizations, such as reduced productivity and increased legal liabilities. It underscores the importance of robust policies and preventive measures in addressing this issue, emphasizing the responsibility of employers and organizations in establishing safe, inclusive, and harassment-free work environments.*

*The summary also discusses the evolution of legal frameworks and increased societal awareness regarding this problem, leading to greater reporting and a better understanding of the significance of combating sexual harassment. In conclusion, this abstract emphasizes the pressing need for proactive strategies to combat workplace sexual harassment, foster respectful workplaces, and promote gender equality. The combined efforts of individuals, organizations, and governments are crucial in eradicating this issue and ensuring that all women can work in an environment free from fear, intimidation, and discrimination.*

**Keywords:** workplace harassment, consequences, policies, preventive measures, legal framework.

## **Introduction**

Sexual harassment is a form of misconduct characterized by unwelcome actions of a sexual nature. It is a pervasive issue worldwide, affecting individuals in both developed and developing countries, as well as in underdeveloped nations. These transgressions disproportionately target women, constituting a global problem that adversely affects both genders.

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Despite efforts to prevent and address such transgressions, they persist, particularly targeting women, frequently perceived as the most marginalized individuals in society, are subjected to a wider range of gender-based crimes, encompassing female feticide, human trafficking, stalking, sexual abuse, and the most serious of all, rape. These offenses constitute a form of harassment an individual (be it an applicant or an employee) based on their sex is a violation of the law.

Harassment encompasses various forms, including " Sexual harassment," encompassing unwelcome sexual propositions, solicitations for sexual favors, and other verbal or physical actions behaviors with a sexual connotation. Sexual harassment encompasses any undesirable sexual conduct designed to make an individual feel offended, humiliated, or intimidated.

Sexual harassment can manifest in physical, verbal, or written forms. The key element is the "unwelcome" nature of the behavior. Unpleasantness doesn't necessarily equate to "involuntary." A victim might, in some instances, consent to or tolerate certain actions, even if they find them inappropriate and disagreeable. Therefore, sexual behavior is regarded as unwanted when the individual experiencing it finds it undesirable. Whether someone embraces advances such as a date proposal, sexually suggestive comments, or jokes depends on the specific context.

Defining sexual harassment in the workplace presents a challenge because it encompasses a spectrum of behaviors, often making it difficult for victims to articulate their experiences. Diverse initiatives have been undertaken on both domestic and global scales to tackle this issue, but there's no single, universally accepted definition that comprehensively covers all prohibited behaviors.

According to international standards, sexual harassment<sup>1</sup> is defined as 'violence against women and discriminatory treatment,' offering a broader perspective compared to national laws, which typically address unlawful behavior more generally. A common definition states that sexual harassment encompasses 'unwanted sexual advances and other verbal or physical actions of a sexual nature that contribute to a hostile or offensive work environment.'

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1 Hand Book on Sexual Harassment of Women at Workplace Prevention, Prohibition and Redressal Act, 2013, (2015), Ministry of Women & Child Development, Govt of India

Sexual Harassment of Women At Workplace (Prevention, Prohibition and Redressal) Act(the SH Act),2013, Sources from Website on Ministry of Women and Child Development, Government of India

In the case of India, the Supreme Court has defined sexual harassment as any unwelcome sexually oriented behavior, whether explicit or implied, including physical advances, requests for sexual favors, sexually suggestive remarks, the display of pornography, or any other unwelcome physical, verbal, or non-verbal actions with a sexual connotation

The crucial aspect in these definitions is the term "unwelcome." Conduct or actions that are unwanted or uninvited are what's prohibited. Although a sexual or romantic relationship between willing parties within the workplace may cause discomfort among observers or violate workplace policies, it doesn't necessarily constitute sexual harassment.

Sexual harassment of women in the workplace is a pressing issue and a significant problem affecting various aspects of women's lives. Incidents of this nature are frequently reported, emphasizing their status as "social problems." It is an escalating concern, prompting efforts to combat it through the implementation of new policies and measures. The definition of sexual harassment can vary from person to person and from one jurisdiction to another. In essence, sexual harassment can be described as any unwanted or inappropriate sexual conduct.

Sexual harassment impacts women across the spectrum in different ways. Lewd comments, physical contact, catcalls, and intrusive stares are sadly common experiences for many women, often to the extent that such behavior is dismissed as routine. Even women in the workforce are not exempt from these encounters. In particular, proactive women who challenge traditional gender roles and venture into male-dominated fields within a patriarchal society often encounter backlash. Sexual harassment in the workplace serves as an extension of the pervasive violence that exists in daily life, characterized by discrimination and exploitation. It thrives in an environment characterized by persistent threats, fear, and the potential for retaliation. Fear often assumes a central role in cases of sexual harassment, as it is not primarily rooted in physical attraction but rather the exertion of power. Many instances of sexual harassment occur in situations where one individual holds authority or control over another, particularly in cases where women pursue non-traditional roles such as police officers, factory workers, business executives, or other positions traditionally dominated by men.

A common observation is the reluctance of victims to report workplace sexual harassment. This reluctance is rooted in various fears, including the fear of retaliation from superiors or concerned authorities, the fear of social stigma and guilt, the fear of job loss or demotion, the fear of damaging

one's professional reputation, and the fear of becoming unemployable. In some cases, women may lack awareness of what constitutes sexual harassment, leading them to refrain from reporting it.

This issue is a daily concern in nearly every country, where female workers often struggle with a lack of security in their workplaces. Many countries have enacted legal measures aimed at protecting women from sexual harassment in the workplace. However, sexual harassment is not confined to workplaces; it is also a significant issue in educational institutions like schools, colleges, and universities. The incidence of such incidents is increasing. Surveys conducted on college campuses reveal that a significant percentage of respondents report experiencing sexual harassment, with estimates ranging from 40 to 70 percent. It's important to note that only a small fraction of campus harassment cases involve professors demanding sexual favors in exchange for favorable grades; instead, the majority of instances involve interactions between male and female students.

### **Harassment Within the Same Gender<sup>2</sup>**

Sexual harassment is typically associated with making unwelcome advances towards a colleague of the same gender. In some cases, instances of sexual harassment may involve a male employee targeting a female employee or vice versa, particularly when gender differences are evident. However, it's crucial to acknowledge that sexual harassment can also occur between employees of the same gender. This implies that a male employee might engage in sexual harassment towards another male colleague, or a female employee may engage in harassment against another female employee. This particular form of harassment, known as "Same-Sex Sexual Harassment," may not be as prevalent as other forms, but it does occur and should not be disregarded. Instances of same-sex harassment must be addressed with equal seriousness and diligence.

# The Supreme Judicial Court of Massachusetts, in the case of *Melnychenko v. 84 Lumber Company*, determined that state law prohibits same-sex sexual harassment, regardless of the sexual orientation of the individuals involved.

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2 *DEVURUPA RAKSHIT, Sexual Harassment Is Covered By POSH Act: Calcutta HC* <https://www.theswaddle.com/same-gender-sexual-harassment-is-covered-by-posh-act-calcutta-hc>, JAN 19, 2021

# Additionally, the Supreme Court ruled in *Oracle v. Sundowner Offshore Services*,<sup>3</sup> Inc that Title VII prohibits sexual harassment even when both the harasser and the victim share the same gender

Sexual harassment encompasses a wide range of behaviors, which may include:

1. Engaging in sexual self-touching or rubbing in the presence of another person.
2. Real or attempted rape or sexual assault.
3. Unwanted and deliberate physical contact, such as touching, leaning, cornering, or pinching.
4. Unwanted sexual teasing, jokes, comments, or inquiries.
5. Whistling in someone's direction.
6. Producing kissing sounds, howling, or smacking lips.
7. Inappropriate touching of an employee's clothing, hair, or body.

There's a prevalent misconception that workplace sexual harassment is confined to situations involving male superiors and female employees. In reality, sexual harassment can occur among any co-workers and in various configurations, including:

1. Subordinates may harass their superiors.
2. Women can sexually harass men.
3. Harassment within the same gender, wherein men can harass other men, and women can harass other women.
4. Perpetrators can encompass supervisors, colleagues, or individuals who are not employees, such as customers, vendors, and supplier

Industries and Areas Susceptible to Sexual Harassment: Sexual harassment is a persistent and worldwide concern that transcends various boundaries. Its prevalence is not confined to scenarios where bosses exploit their subordinates; rather, it extends to a wide range of settings.

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3 *Nicholas Canaday, ONCALE v. SUNDOWNER OFFSHORE SERVICES, INC., ET AL. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT No. 96-568. Argued December 3, 1997-Decided March 4,1998*  
<https://supreme.justia.com/cases/federal/us/523/75/>

Perpetrators of sexual harassment can be found in both the private and public sectors, as well as external parties, are involved. The affected sectors include a range of organizations, such as businesses, educational institutions, healthcare facilities, universities, and other workplaces where female employees are employed .

Many instances of sexual harassment go unreported, with victims often not invoking the Vishaka Guidelines to seek redress. In several cases, the courts have absolved employers of liability, asserting that the employers cannot be held accountable for instances of sexual harassment.

The reluctance to report cases of sexual harassment stems from an inability to speak openly before employers or office superiors, resulting in many unreported incidents. Women who do come forward often experience a sense of guilt rather than anger, influenced by societal attitudes toward sexual issues and their apprehension about achieving justice.

### **Historical Context of the Issue**

The issue of sexual harassment against women is not a recent development; it has been an enduring and persistent concern throughout history. It has consistently been a topic of societal discussion, affecting various aspects of life.

Sexual harassment has deep historical roots, reflecting the historical dominance of men in society. It has consistently discouraged women from actively participating in economic and social progress, casting a negative shadow on their lives. This distressing and offensive experience can manifest in various settings, whether in the workplace, educational institutions, or even within households.

According to reports from civil society, approximately 70% of women have encountered incidents of sexual harassment, underscoring the widespread nature of this issue.

The problem of workplace sexual harassment gained significant attention in India starting from the early 1980s. During this period, the Forum Against Oppression of Women took a strong stance against the sexual harassment of nurses in both public and private hospitals, with those responsible including doctors, patients, male relatives, and other staff members. This problem extended to educational institutions, involving teachers, colleagues, principals, and students, sparking outrage among women activists and social workers. They made collective efforts to raise awareness about these cases and address sexual harassment in various workplace settings.

An exemplar of such advocacy can be seen in Women's Voice, a non-governmental organization in Goa, which galvanized public sentiment against a Chief Minister accused of harassing his secretary. They coordinated protests and public displays, eventually prompting the Chief Minister to step down.

In 1990, as a result of this incident, the identical women's group lodged a Public Interest Litigation (PIL)<sup>4</sup> seeking revisions to antiquated rape statutes, which had previously defined rape in a narrow manner.

In a ground breaking decision in 1997, the Supreme Court of India, marking a historic milestone in the nation's legal history, officially acknowledged workplace sexual harassment as a breach of human rights and a personal injury suffered by the women affected .

The landmark case of **Vishaka and others Vs. The state of Rajasthan**<sup>5</sup> established directives for the prevention and resolution of complaints from women experiencing sexual harassment in the workplace. The guidelines mandated that employers ensure a safe and welcoming environment for women.

In another instance, a female employee at a Hyderabad-based company faced sexual harassment from her supervisor. Subsequently, an employee from the company's head office conducted an investigation into the case. The inquiry report substantiated the allegations. However, in the end, the complainant was stigmatized as a troublemaker and requested to resign, while the accused was allowed to retain his position. The complainant received no compensation.

From these examples, it becomes evident that women frequently reported such incidents, but the outcomes were consistently unfavorable. The lack of appropriate action, inadequately constituted committees, and biased judgments were prevalent in these cases.

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4 Suresh Kumar Koushal and another, IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO.10972 OF 2013, <https://main.sci.gov.in/jonew/judis/41070.pdf>

5 Vishakha and others v State of Rajasthan (1997) <http://articles.economictimes.indiatimes.com/keyword/sexual-harassment>

# Vishaka Guidelines against Sexual Harassment at Workplace Guidelines and norms laid down by the Hon'ble Supreme Court in Vishaka and Others Vs. State of Rajasthan and Others(JT 1997 (7) SC 384), [http://www.curaj.ac.in/PDF/anti sexual harrassment cell/VishakaGuidelines.pdf](http://www.curaj.ac.in/PDF/anti%20sexual%20harrassment%20cell/VishakaGuidelines.pdf)

favor of the complainant. Nonetheless, the wrongdoer faced no severe repercussions. In essence, it is clear that the application of the guidelines for redressal lacked impartiality. The way they operated was biased, and only a limited number of women were able to successfully utilize the guidelines to create a more gender-equitable and secure workplace.

Several notable workplace sexual harassment complaints that gained national attention were submitted by

1. Rupan Deo Bajaj, an IAS officer in Chandigarh, filed a complaint against 'Super Cop' K.P.S. Gill.
2. An advocate linked with the All India Democratic Women's Association registered a grievance against the Environment Minister in Dehradun.
3. An airline stewardess submitted a complaint against her coworker, Mahesh Kumar Lala, in Mumbai.

The Scenario Before the Implementation of Vishakha Guidelines Before the introduction of the Vishakha guidelines, women were required to address workplace sexual harassment issues by filing complaints under Sections 354 and 509 of the Indian Penal Code.

Sexual harassment remains a pressing and ongoing concern that demands priority and effective measures to combat it. Governments, employers, employees, and women's organizations have all been actively engaged in eradicating this problem from society.

Preventing sexual harassment is a shared objective, as prevention serves as the primary step toward eliminating or eradicating any harmful issue from society. Legislation plays a pivotal role in enabling governments and organizations to achieve this objective to formulate strategies and policies for addressing the issue.

Sexual harassment is universally recognized as a form of violence against women. The global community has recognized in its treaties and documents that women's freedom from sexual harassment is a fundamental human right. Various legal mechanisms have been utilized to prevent and respond to this problem, with a focus on protecting life and liberty.

Before the Vishakha judgment in India, there was no dedicated legislation addressing this issue. The Vishakha judgment was a response inspired by the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). Additionally, the Constitution of India contains fundamental provisions, including rights such as the right to life and liberty, freedom from discrimination, and the liberty to pursue any trade, profession, or occupation.

Vishaka Guidelines for Addressing Sexual Harassment in the Workplace These guidelines and regulations were established by the honorable Supreme Court in the case of Vishaka and others vs. State of Rajasthan and others.

It is essential and rational for employers within workplaces and other responsible entities or institutions to adhere to specific guidelines for the prevention of sexual harassment against women.

Responsibilities of Employers and Authorities in Workplaces and Institutions: Employers or individuals in positions of authority within workplaces or institutions have an obligation to actively prevent or discourage incidents of sexual harassment and establish procedures for the resolution, mediation, or legal pursuit of sexual harassment cases through appropriate measures..

Preventive Measures All employers or individuals overseeing workplaces, Whether operating in the public or private sector, it is imperative for organizations to implement effective measures for the prevention of sexual harassment. These measures should encompass, among others, the following actions:

- a. Clearly and explicitly notifying, publishing, and effectively disseminating a prohibition concerning workplace sexual harassment.
- b. Ensuring that government regulations and codes of conduct for public sector organizations encompass provisions that prohibit sexual harassment and stipulate appropriate penalties for violators.
- c. For private employers, taking steps to include the stated prohibitions in the standing orders regulated under the Industrial Employment (Standing Orders) Act, 1946.
- d. Creating conducive working conditions concerning tasks, leisure, health, and hygiene to eliminate any hostile environment for women in the workplace, ensuring that no female employee has legitimate cause to perceive that she is being subjected to unjust treatment in relation to her employment

## **Legal Proceedings**

In situations where such conduct qualifies as a distinct offense under the Indian Penal Code (IPC) or any other applicable law, it is the employer's responsibility to initiate the appropriate legal actions by filing a complaint with the relevant authorities. Notably, the employer must guarantee the protection of victims and witnesses from retaliation or discrimination while addressing sexual harassment complaints..

**Disciplinary Measures** If such behavior qualifies as misconduct within the realm of employment, as outlined in the relevant service regulations, the employer should instigate the appropriate disciplinary actions as prescribed by those regulations.

**Complaint Mechanism** is irrespective of whether the conduct under consideration constitutes a legal violation or a service contract breach. In order to comply with regulations, it is of utmost importance to establish an effective grievance resolution system within the employer's organization to address complaints lodged by victims. This system should ensure the swift and timely redressal of complaints.

**Internal Grievance Redressal Committee:**

- The aforementioned grievance resolution system should be adequately equipped with essential components such as a dispute resolution committee, a qualified counselor, and supplementary support services, all while guaranteeing the preservation of confidentiality when necessary.
- The committee responsible for handling complaints should be led by a female chairperson, with no less than half of its members being women. Furthermore, to ensure impartiality and reduce the potential for undue influence from higher authorities, this committee should include a third party, which could be an NGO or another organization with experience in addressing sexual harassment.
- The complaints committee is mandated to submit an annual report to the relevant government department, outlining the received complaints and the actions taken in response.
- Employers and individuals in positions of authority are also obligated to provide reports on their adherence to the aforementioned guidelines, including reports from the complaints committee, to the government department.
- **Employee Engagement:** Employees should be actively encouraged to voice concerns regarding sexual harassment during workers' meetings and other appropriate forums, with these issues being proactively discussed in employer-employee meetings

**Promoting Awareness** To enhance awareness of female employees' rights, it is essential to prominently display the guidelines (and any pertinent legislation on the subject) suitably.

- **Addressing Third-Party Harassment:** In cases where sexual harassment results from the actions or negligence of third parties or external entities, the employer and the accountable person are required to take all essential and reasonable actions to support the affected individual and put preventive measures in place.
- Both central and state governments are encouraged to consider the adoption of suitable measures, which may involve potential legislation, to ensure that private sector employers also conform to the principles laid out in this directive.
- It is essential to emphasize that these guidelines do not compromise any rights afforded under the Protection of Human Rights Act of 1993.

### **Post Vishakha Scenario**

India lacked any specific legislation until the Bill for safeguarding women from Sexual Harassment was introduced in Parliament in the year 2005.<sup>6</sup> After a significant interval of ten years, in 2010, the Bill reemerged in the Lok Sabha with certain revisions compared to its previous version. The updated Bill introduced a specific definition of 'sexual harassment' and established a mechanism for addressing such issues through either an 'internal Complaints Committee' within the workplace or a 'Local Complaints Committee' at the district level. An intricate challenge revolved around the appropriate actions to be taken in cases of false and malicious charges or complaints. To address this concern, in June 2011, the Parliamentary Standing Committee issued recommendations regarding unfounded and harmful allegations. Consequently, the latest iteration of the Bill retained provisions for taking action against baseless and malicious accusations by the ICC or the Local Committee, as outlined in section 14.

According to section 13 of the Bill, there are two stages of inquiry. The first stage involves submitting a report to the Disciplinary Committee (DC) once the charges are established and proven. The DC then proceeds to take action in line with the service rules. This process is time-consuming, requiring the victim to present evidence again and undergo cross-examination, which can be mentally taxing. The situation may differ in the private sector concerning the second stage of the inquiry. These stages or practices are perceived as conflicting with the principles upheld by the Constitution of the Internal Complaints Committee (ICC).

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6 **Kaushiki**, An overview of the Sexual Harassment Bill passed by Parliament. [https://prsindia.org › sexual\\_harassment\\_bill](https://prsindia.org › sexual_harassment_bill), March 6, 2013  
[https://sansad.in › rsnew › Press\\_ReleaseFile](https://sansad.in › rsnew › Press_ReleaseFile)

In this context, the Supreme Court, in the case of Medha Kotwal, clarified that the committee's report is final, and the disciplinary committee holds the authority to impose penalties and conduct a subsequent inquiry.

Prior to the enactment of the new Act in 2013, the issue of sexual harassment was governed by the guidelines set forth in the Vishakha case in 1997. The main goal of the Act was to implement policies and establish safe working environments for women.

The existing Indian Legislation on Sexual Harassment Against Women To gain a comprehensive grasp of the legal framework concerning workplace sexual harassment of women, it is imperative to revisit the groundbreaking Supreme Court judgment in the Vishakha case. This case marked the first instance where a definition of 'sexual harassment' was formalized. It also acknowledged 'sexual harassment in the workplace' as a breach of human rights and introduced comprehensive guidelines.

Despite the Vishakha judgment being in place for nearly a decade, little progress was made in implementing its guidelines. Only a handful of women were able to successfully navigate the processes aimed at creating gender-equitable and inclusive workplaces. The majority of public and private organizations failed to adhere to the guidelines, which encompassed the establishment of complaint mechanisms and the necessary adjustments to service rules.

After several controversies and delays, a significant development emerged as in 2013, the Indian legislature enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act. This law is designed to protect women in the workplace from sexual harassment and create a framework for addressing such issues for addressing complaints on this issue.

### **Critiques and Criticisms:**

Similar to many other laws, this Act has faced extensive criticism from women's rights activists and various non-governmental organizations (NGOs). The internal committee established in accordance with this Act possesses the power to levy a financial penalty based on the perpetrator's income and financial stability. This approach is seen as discriminatory and perpetuates inequality among different segments of society. For instance, an individual with a lower income would face a reduced fine compared to someone with a higher income, which is considered unfair.

Additional criticisms involve the Act's exclusion of agricultural workers and the armed forces, where men hold a dominant presence. Inquiries within the armed forces are conducted in closed environments, a practice

that should be reconsidered. Including women in the armed forces under the purview of the Act is seen as necessary since there are no interests or strategic considerations are compromised when safeguarding them from sexual harassment in the workplace .

Some argue that the Act exhibits gender bias rather than gender neutrality, categorizing it as a discriminatory legislation that offers protection exclusively to women while neglecting men as potential victims of workplace sexual harassment. Recent studies and surveys conducted over the past few years have highlighted women's involvement in sexual harassment cases in workplaces, indicating that gender dynamics in many Indian cities are shifting towards greater gender neutrality.

According to these studies, the realities of investigations in practical settings often differ from the legislators' envisioned scenarios. Additionally, the Act lacks the mechanisms required to address situations in which men are subjected to sexual harassment.

Another disputed element of this Act is the extensive possibility for false accusations. Numerous individuals exploit the Act for personal advantage, leading to baseless claims and unwarranted legal conflicts. When a case is presented to the complaint committee, it not only harms the falsely accused individual's reputation but also impacts their family. Nonetheless, it's crucial to recognize that the Act signifies a substantial advancement in the endeavor to safeguard women from sexual harassment in the workplace

### **Unfounded Complaints and their Ramifications**

As per the provisions of the Act, if a complaint is proven to have been made with malicious intent, it will lead to consequences under Section 14.<sup>7</sup> In cases of false complaints supported If forged documents are involved, the organization's service regulations will be enforced, resulting in strict action being taken. One drawback of this provision is that in some instances, there may not be sufficient evidence to substantiate the complaint. This may result in frivolous complaints, potentially leading to the imposition of penalties on women making malicious and baseless complaints, which contradicts the fundamental purpose of the Act.

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7 Melissa Louise, Essay on Sexual Harrassment, Preventing Sexual Harassment (BNA Communications, Inc.) SDC IP .73 1992 manual. Aug 25, 2019, Virtual legal Assistance, <https://indiankanoon.org/doc/>

The cancellation of an organization or entity's registration results in a twofold punishment, as revoking the license can inflict additional harm on the business and innocent employees within that establishment. Hence, it would be more appropriate to impose or specify a fine in such cases.

Ultimately, if it is established that someone has filed an untrue complaint, the Internal Complaints Committee (ICC) will apply the identical penalty to the individual who made the false complaint, as specified in Rule 10 of the Regulations.

### **Internal Complaints Committee And Local Complaints Committee<sup>8</sup>**

Every workplace is mandated to set up an Internal Complaints Committee (ICC) with a senior-level female employee as its leader. The committee's contact details and the names of its members should be prominently displayed within the workplace.

The committee should consist of at least two members chosen from among employees who are passionately dedicated to women's issues and have a background in social work experience or a strong legal background, must form part of the committee. Additionally, one committee member should represent an NGO or a similar association. At least half of the committee's membership should be women. In situations where organizations have fewer than ten employees and do not have a complaints committee, the respective Government is required to establish a Local Complaints Committee in each district.

### **Regarding Complaint Filings:**

Complaints should be presented in written form within a three-month period following the incident. In cases of a series of incidents, the report should be filed within three months of the last occurrence. An extension of up to three additional months may be granted under valid circumstances.

Upon the complainant's request, the committee can explore reconciliation through mediation before initiating a formal inquiry. If the woman is physically or mentally incapable, deceased, or facing other circumstances, the legal heir is eligible to file a complaint on her behalf

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<sup>8</sup> Govt. Of India, **Protect your company against sexual harassment complaints**  
<https://elearnposh.com/local-complaints-committee>

During the inquiry process, the complainant has the option to request a transfer, either for herself or the respondent, a three-month leave, or other forms of relief. The inquiry should be completed within a prescribed timeframe from the complaint date, and failure to do so will result in penalties.

### **From a worldwide standpoint**

Sexual harassment of women is not limited to India or a handful of nations. It is a worldwide issue. It transcends borders, affecting developed, developing, and underdeveloped nations alike. While stringent laws and measures have been implemented to address offenders engaging in such behavior, the prevalence of sexual harassment against women shows no significant decline. Every day, new cases of women being sexually harassed come to light.

A recent survey reveals that a significant proportion of female Members of the Israeli Parliament have encountered sexual harassment. Specifically, the research indicates that at least 28 out of the 32 female members of the Israeli Parliament have experienced sexual harassment or assault, with two of the incidents occurring within the Knesset building.

A recent study conducted by the International Labor Rights Fund (ILRF) has identified that female workers employed in export processing industries in Kenya, where goods are produced for the US market, endure severe sexual abuse at the hands of their employers and supervisors."

The study findings indicate that:

1. More than 90 percent of all survey participants have encountered or witnessed incidents of sexual harassment in their workplaces. Seventy percent of the male respondents surveyed considered sexual harassment of female workers to be a customary and acceptable behavior.
2. Sixty-six percent of the female respondents believed that workplace sexual harassment significantly contributes to the transmission of HIV/AIDS.
3. Nearly 95% of women who had encountered workplace sexual harassment refrained from reporting the matter out of apprehension of potential consequences, such as losing their job or facing demotion

In China, approximately 80% of employed women encounter sexual harassment<sup>9</sup> during their careers. In Germany, a 1998 survey revealed that 93% of employed women had encountered sexual harassment.<sup>10</sup> Approximately 60% of nurses in Australia reported incidents of sexual harassment.<sup>11</sup> In Hong Kong, the Equal Opportunities Commission (EOC) has received a significant number of complaints in recent years related to sexual harassment. In the United States, over 50% of women in the workforce have experienced sexual harassment. In Canada, 51% of women have reported at least one instance of sexual violence. In Singapore, close to 50% of women have been subjected to sexual harassment.

**India and the Challenge of Sexual Harassment:** In India, sexual harassment infringes upon women's fundamental rights as enshrined in Articles 14 and 21 of the Indian Constitution.

India has now enacted a dedicated law to combat sexual harassment of women in the workplace, which will be further discussed. In addition to these legislative measures, other statutes aimed at preventing sexual harassment include the Indian Penal Code, along with provisions provided by Acts such as the Indecent Representation of Women (Prohibition) Act of 1987, the Industrial Disputes Act of 1947, and the Factories Act of 1948. It is imperative to recognize the Protection of Human Rights Act 1993, as it acknowledges that women's rights are indeed human rights and should be safeguarded at all costs.

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9 CATHERINE LAI, **Over 80% of female journalists in China have experienced workplace sexual harassment, poll by journalist shows**, <https://hongkongfp.com/2018/03/07/80-female-journalists-china-experienced-workplace-sexual-harassment-poll-journalist-s>, 31 MARCH 2020

10 Rhitu Chatterjee, **A New Survey Finds 81 Percent Of Women Have Experienced Sexual Harassment**, [https://www.google.com/search?q=In+Germany%2C+a+1998+survey+revealed+that+93%25+of+employed+women+had+encountered+sexual+harassment&rlz=1C1SQJL\\_enIN907IN907&oq=In+Germany%2C+a+1998+survey+revealed+that+93%25+of+employed+women+had+encountered+sexual+harassment&gs\\_lcrp=EgZjaHJvbWUyBggAEEUYOTIGCAEQRRhA0gEJMjY0MmowajE1qAIAAsAIA&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=In+Germany%2C+a+1998+survey+revealed+that+93%25+of+employed+women+had+encountered+sexual+harassment&rlz=1C1SQJL_enIN907IN907&oq=In+Germany%2C+a+1998+survey+revealed+that+93%25+of+employed+women+had+encountered+sexual+harassment&gs_lcrp=EgZjaHJvbWUyBggAEEUYOTIGCAEQRRhA0gEJMjY0MmowajE1qAIAAsAIA&sourceid=chrome&ie=UTF-8), FEBRUARY 21, 2018

11 J Madison , R Gates, **Australian registered nurses and sex-based harassment in the health care industry**, [https://www.google.com/search?q=Approximately+60%25+of+nurses+in+Australia+reported+incidents+of+sexual+harassment.&rlz=1C1SQJL\\_enIN907IN907&oq=Approximately+60%25+of+nurses+in+Australia+reported+incidents+of+sexual+harassment.&gs\\_lcrp=EgZjaHJvbWUyBggAEEUYOdIBCTI0NDZqMGoxNagCALACAA&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=Approximately+60%25+of+nurses+in+Australia+reported+incidents+of+sexual+harassment.&rlz=1C1SQJL_enIN907IN907&oq=Approximately+60%25+of+nurses+in+Australia+reported+incidents+of+sexual+harassment.&gs_lcrp=EgZjaHJvbWUyBggAEEUYOdIBCTI0NDZqMGoxNagCALACAA&sourceid=chrome&ie=UTF-8), DOI: 10.1071/ah960014

Apart from these statutory remedies, victims of sexual harassment have the option to seek redress through Civil Courts for tortious actions, addressing issues such as mental distress, physical harassment, emotional distress, and loss of employment

Sexual harassment takes on various forms, which can be broadly classified into two primary categories:

1. Quid pro quo, where a woman encounters sexual harassment in exchange for work-related benefits.
2. Hostile working environment, in which a positive work environment free from sexual harassment is mandated, and employers are responsible for ensuring such an atmosphere."

### Dispelling Myths and Misconceptions Surrounding Sexual Harassment

**Myth:** Only women can be victims of harassment, and only men can be perpetrators

**Fact:** Harassment can affect anyone, irrespective of their gender, as either a victim or an offender. **Myth:** Sexual harassment is incited by an individual's behavior or clothing.

**Fact:** Sexual harassment is not prompted by a person's actions or attire but is An exhibition of hostility and dominance rooted in gender or sexual orientation differences. No one invites sexual harassment.

**Myth:** Ignoring the issue of sexual harassment and stalking will make it disappear.

**Fact:** Typically, harassers are persistent and do not cease their actions on their own. They often have multiple targets. If the victim ignores the behavior, The harasser may misconstrue it as consent or endorsement.

**Myth:** The harasser might perceive it as consent or approval.

**Fact:** The prevalence of sexual harassment is increasing globally. It is far from being a rare event; such incidents occur every day. While some victims take decisive action against the harasser, others may go unnoticed or choose not to report it.

### Conclusion and Recommendations

Addressing this issue requires collective efforts at various levels: government, organizations, and individuals. Blame should not be placed on anyone; instead, confronting the issue is crucial. At the organizational level, employers can establish a safe and harassment-free environment by enacting internal policies and regulations. This institutional commitment to safety can enhance productivity by ensuring a sense of security among

employees. Providing training programs, workshops, and educational initiatives on sexual harassment prevention can help mitigate such situations.

Organizations must demonstrate their dedication to this matter by taking all issues seriously and promptly investigating them. This sends a message to all employees that the employer is dedicated to protecting the rights of female staff members and fostering a positive work environment. Preventive measures, such as installing CCTV surveillance in the workplace, can be beneficial. Employers should hold regular meetings with employees to understand their concerns and ensure a safe working environment. From the government perspective, significant steps have been taken by enacting laws to combat the social issue of sexual harassment. The critical aspect is the effective implementation of these laws. Empowering women through education and awareness programs is essential to help them recognize and assert their fundamental rights. The government should strive for gender equality and ensure that women's interests are protected.

The media can play a pivotal role in eradicating this societal problem through the dissemination of information via movies, news, commercials, and television programs. These forms of media are available to the broader audience and have the potential to alter people's perspectives. Debates, talk shows, and media platforms can also contribute to this transformation.

If women's groups or employees become aware of if any such harassment occurs, it should be promptly reported to the complaint committee, which is bound to maintain absolute confidentiality. It is crucial for every female employee to acknowledge that it is the legal obligation of the employer to ensure a secure working environment for women. Similarly, all male employees should be aware that such incidents can have adverse effects on a woman's health, confidence, and job performance, potentially driving her to leave her employment.

Above all, there should be social acceptance of this issue. Women should not hesitate to voice their concerns and grievances. They should be encouraged to assert themselves and voice their concerns. Increased public involvement in raising awareness programs is essential, and the public should take on a more active role in governance.

## **Reforming the Law:**

One drawback of this Act is its omission of men from its coverage, which raises concerns about fairness. The Act should be amended to include men, enabling them to bring their concerns or complaints to the Internal Complaint Committee or District Committee. This modification would foster parity between men and women in the workplace.

## **Recent cases of Sexual harassment**

### **Sexual harassment of neighbours**

**Type of Outcome- Queensland Civil and Administrative Tribunal Decision**

**Contravention- Sexual Harassment**

**Outcome-Upheld**

**Compensation- Respondent ordered not to commit further contraventions of the Anti-Discrimination Act 1991**

**Year- 2022**

### **Summary**

Two men who were in a same-sex relationship lodged a complaint about experiencing sexual harassment from a female neighbor.

The complaint was substantially about:

- The neighbour calling out Kill the fags and then loudly playing a gangster rap song containing the words Kill that faggot; and
- The respondent played the gangster rap song loudly whenever one of the men were in the garden; and
- On another occasion when the men were on a morning walk, the respondent yelled Go away faggots and you are going to perve in the neighbourhood.

The tribunal confirmed the occurrence of these incidents and then assessed whether they met the criteria for sexual harassment. The tribunal emphasized that the prohibition against sexual harassment in the Anti-Discrimination Act 1991 (the Act) is not limited to specific domains and can encompass all aspects of life

The tribunal found that the use of the term faggot about homosexual men would obviously cause offense and that the comments and deliberate playing of lyrics repeating the term was easily found to be offensive.

The tribunal determined that the remarks and the music played carried a sexual undertone and were intended to insult and demean the men. The tribunal also stated that within the context of sexuality, the term used is derogatory, and a reasonable person would expect that such behavior would be offensive to the men.

Consequently, the tribunal concluded that the actions amounted to sexual harassment, which is proscribed by the Act.

The men did not specify, specify, or quantify any harm resulting from the sexual harassment, and the tribunal observed that the neighbor had changed her place of residence, while the men had engaged in retaliatory actions. Given the significant animosity between the parties, the tribunal found that requesting an apology would be insincere and, therefore, it was not appropriate to order either a private or public apology.<sup>12</sup>

### **Man sexually harassed in an administrative role**

**Type of outcome- Conciliation, Contravention- Sexual harassment, Outcome- Financial compensation Confidentiality clause, Compensation-\$70,000, Year-2020-21**

#### **Summary**

The complainant commenced his employment in an administrative role and alleged that during the interview, there were comments made, including remarks like 'we've never had a male receptionist before' and 'that it would be very unusual.' After starting work, he claimed that inappropriate comments were made, such as 'My husband is jealous you are working here because you're male' and 'I'm too old for you.' On the second day of work, the individual respondent reportedly showed him a sexually explicit video on her mobile phone, and when he attempted to avert his gaze, she moved the phone in front of his face.

Throughout the following weeks of his employment, he stated that he received numerous sexualized images on his phone from the individual respondent, faced comments about his body, and was asked to choose a stripper for the individual respondent's husband's birthday party. He was also invited to attend a work function where the individual respondent hugged him and wrapped her leg around his leg. Several other invitations to events outside of working hours were extended to him, which he declined. Subsequently, after he reported the sexual harassment to his employer and took sick leave due to stress and anxiety, his employment was terminated.

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<sup>12</sup> *Fitz-Gibbon & Park v Liu* [2022] QCAT 259 (12 July 2022)

The respondents denied sexual harassment had occurred and alleged the complainant was involved in the ongoing jokes and banter.

The complaint was settled with a compensation of \$70,000 and a confidentiality agreement.

### **3. Sexual harassment in work**

**Type of Outcome- Conciliation, Contravention- Sexual Harassment, Outcome- Compensation**

**Written apology, Compensation-\$15,000**

### **4. Sexual harassment**

**Summary:** A woman filed a complaint of enduring sexual harassment from her manager during her tenure at a club, spanning several years. Her allegations included incidents of unwarranted touching of her breasts, lewd behavior, and making sexually suggestive comments about her body. She claimed to have reported these incidents to the management on multiple occasions, but her complaints were purportedly ignored. Furthermore, she argued that despite her greater experience, she was passed over for promotions in favor of less-experienced male colleagues, which ultimately led to her resignation.

The manager and the employer contested the accusations, contending that her work performance had declined over the course of her employment. The matter was amicably resolved through conciliation, with both the employer and the manager collectively paying \$15,000 in compensation to the complainant. Additionally, both respondents issued written apologies for any discomfort or offense the complainant may have endured.

**Type of outcome- Conciliation, Contravention- Sexual harassment, Outcome- Complaint withdrawn against individual respondent  
Grievance and investigation procedures reviewed**

**Workplace anti-discrimination training, Compensation- Nil**

**Summary:** A male individual filed a complaint of sexual harassment against a male supervisor and his employer, a government authority. The complainant also claimed that he faced difficulties when attempting to utilize the organization's complaint resolution mechanisms.

During a conciliation conference, the allegations were discussed, and misunderstandings were clarified, resulting in the complainant withdrawing his complaint against his supervisor. The complainant was able to share his experiences with the respondents, leading to an agreement. This agreement included the employer's commitment to

evaluate and improve their complaint and investigation procedures by introducing easily accessible quick reference summaries and flow charts for effective utilization. Furthermore, the employer pledged to enhance training and awareness regarding appropriate workplace conduct, which would encompass comprehensive anti-discrimination and sexual harassment complaint procedures.

**There was no financial settlement sought.**

## **5. Sexual harassment**

**Type of outcome- Conciliation, Contravention- Sexual harassment, Outcome- Warnings issued to individual respondents, Workplace anti-discrimination training ,Zero tolerance of sexual harassment, Apologies by individual respondents**

### **Summary**

A man alleged that he had experienced sexual harassment at his workplace, involving incidents such as a co-worker exposing his anus, inserting a splintered piece of timber between his legs, and running a finger down between his buttocks. This behavior was accompanied by consistent use of obscene names when he objected. The man reported that several young male colleagues had experienced similar mistreatment, leading some to resign and even one attempting suicide. When he brought the issue to the attention of his foreman, he was advised to overlook the behavior. Although management was aware of the situation, no action had been taken.

During a conference, the accused individuals acknowledged their actions, explaining that they intended it as humor to create a more relaxed work environment. Senior managers claimed they were unaware of these incidents since the foremen had not reported them. The company acknowledged the challenge of retaining young male employees but attributed it to their lack of interest in the work.

In response to these admissions, the company issued a formal and final warning to the individuals involved, committed to providing sexual harassment and discrimination training for all staff, and pledged to prevent such behavior in the future. The complaint was resolved, and the complainant expressed satisfaction with the company's commitment and the apologies extended by the individuals involved.

## **6. Sexual harassment in education**

**Type of outcome- Conciliation, Contravention-Sexual harassment, Outcome- Compensation**

**Written apology, Compensation-\$60,000**

### **Summary:**

A woman lodged a complaint with the Commission, accusing her boss and academic mentor of sexually harassing her. The alleged harassment had persisted for a two-year period. The accused individual held a position of authority as her academic mentor and boss, given that she was his student. In the later stages of the harassment, the woman also mentioned incidents of stalking, such as stalking her and lingering near her place of residence. The respondents denied the allegations, asserting that the relationship had been consensual and free from any sexual harassment.

Through a conciliation process, the matter was resolved with an agreement to pay \$60,000 for pain and suffering, along with a written apology from the individual respondent. One of the two respondents resolved the issue by paying \$5,000. Both parties expressed great satisfaction with the resolution of the dispute.

### **Recent cases of 2023**

#### **1. Supreme Court Makes Absolute Interim Anticipatory Bail Granted To Congress Leader BV Srinivas in Sexual Harassment Case.**

The Supreme Court of India has, on Friday, extended anticipatory bail to BV Srinivas, the president of the Indian Youth Congress (IYC), in a sexual harassment case. The court has upheld the May 2023 order that initially granted him pre-arrest bail as a temporary measure. Srinivas had filed a special leave petition challenging the Gauhati denial of his pre-arrest bail request by the High Court. The case pertains to a First Information Report (FIR) filed in Assam based on a sexual harassment complaint made by a former party member. In May, the court had provided interim anticipatory bail to Srinivas.

#### **2. No Sexual Flavour In Touching Student's Shoulder To Restrain Her From Copying In Exam: Calcutta HC Quashes CAT Order Dismissing School Teacher**

The Circuit Bench of the Calcutta High Court in Port Blair has invalidated the decisions of the Disciplinary Authority, Appellate Authority, and the Central Administrative Tribunal (CAT) regarding the dismissal of a middle school teacher. The teacher, referred to as the "petitioner," was accused by

a Class 8 student in 2009 of outraging her modesty by physically touching her back. This incident had caused unrest among the students. The division bench, consisting of Justices Suvra Ghosh and Subhendu Samanta, determined that the teacher's actions, aimed at preventing the student from cheating during an exam, did not demonstrate any sexual intent

### **3. Can't Grant Anticipatory Bail To Rape Accused Merely Because He Was Aged Only 18 Yrs When Alleged Offence Was Committed: Kerala High Court**

The Kerala High Court has dismissed the request for anticipatory bail made by an individual accused of raping his disabled cousin sister. The basis for seeking anticipatory bail was that he was only 18 years old at the time when the alleged offense occurred

### **4. Karnataka High Court Refuses To Quash Abetment Of Suicide Case Against Three For Allegedly Teasing Colleague Over Sexual Orientation**

Recently, the Karnataka High Court refused to dismiss the criminal proceedings initiated against three employees of Lifestyle International Private Limited. They were accused of ridiculing their colleague about his sexual orientation, which is thought to have contributed to his decision to end his own life. The petition filed by Malathy S B, Deputy General Manager of Lifestyle International Private Limited, was rejected by Justice M Nagaprasanna, presiding as a single judge.

### **5. Women Lawyers Face Sexist Behaviour From Male Colleagues' : Indira Jaising Requests CJI To Frame Guidelines.**

Indira Jaising, a Senior Advocate, has written a letter to Chief Justice of India DY Chandrachud, highlighting the issue of sexist behavior commonly experienced by female lawyers in the legal profession. She points out that women lawyers not only encounter micro-aggressions but have also been asked by male colleagues to maintain a low profile in court, despite assertiveness being an admired trait among prominent male lawyers in the country. She urges for the creation of a handbook addressing gender stereotyping, specifically focusing on how male colleagues should interact with their female counterparts

# वैकल्पिक विवाद समाधान और न्याय

सोना खुराना\*

भारत के आजाद होते ही भारत के विद्वानों ने विचार किया कि देश को चलाने के लिए नियम और कानून कि आवश्यकता होगी और तुरंत ही कानून बनाने की तयारी करदी और नियम कानून का उलंघन करने वाले को दंड और पीडित को न्याय मिले। डॉक्टर बाबा साहेब अंबेडकर और अन्य लोगों विद्वानों द्वारा तयार किए गए भारतिय, संविधान में इस बात का स्पष्ट उल्लेख है कि मारत के सभी लोगों को न्याय पाने का अधिकार है और न्याय। सभी का हक है, यह प्रयास किया जाए कि भारत के किसी भी व्यक्ति के साथ अन्याय ना हो फिर चाहे वह किसी भी जाति, धर्म, मत, मजहब का क्यों ना हो।

हमारे भारतीय संविधान के द्वारा न्याय व्यवस्था का सही प्रकार से पालन हो सके, इसके लिए अदालत की व्यवस्था की गई है।

न्याय पाने के भी अनेक तरिके हैं जिस में से एक वार्ता और चर्चा के माध्यम से एक अनुकूल समाध्यान पर पहुँचने के द्वारा पक्षों के बीच विवादों और असहमति को हल करने के की एक तकनीक है। यह विवाद समाधान के पारंपरिक तरीकों के अलावा एक वैकल्पिक तंत्र स्थापित करने का प्रयास है। वैकल्पिक विवाद समाधान एक विवाद को हल करने के तरीकों को संदर्भित करता है, जो न्यायालयों में मुकदेबाजी के विकल्प हैं। इस प्रकार की वैकल्पिक विवाद समाधान प्रक्रिया में, विवादों में शामिल दोनों पक्ष इस व्यक्ति का चयन करते हैं जो सर्वसम्मति से उनके विवादों को सुनेगा और हनका समाधान करेगा। भारत में एडीआर भारत के संविधान के तहत अनुच्छेद 14<sup>1</sup> और अनुच्छेद 14<sup>2</sup> के आधार पर स्थापित किया गया है।

पर वैकल्पिक विवाद समाधान का इतिहास कैसे हुआ यह शुरू, क्योंकि यह माना जाता है कि वर्तमान न्यायपालिका प्रणाली अत्यंत महंगी और विलंघित है। विवाद के पक्षकारों को न्याय के लिए लंबे समय तक इंतजार करना पड़ता है, इसी वजह से न्याय प्रणाली को मजबूत करने के लिए वैकल्पिक उपायों को जन्म दिया। वैकल्पिक उपाय सस्ता और त्वरित न्याय प्रदान करता है जिसके कारण विवादित पक्षों द्वारा अपने विवादों को समाधान किया जाता है कर तंत्र को प्राथमिकता भी दी जा रही है। नागरिक प्रक्रिया संहिता 1908 की धारा 89 लोगों को वह अवसर प्रदान करती है,<sup>2</sup> यदि न्यायालय को लगता है कि अदालत के बाहर समझौते के तत्व मौजूद हैं तो अदालत संभावित निपटान की शर्तें तैयार करती है और ए.डी. आर से निपटने वाले अधिनियम, 1997 (लोक अदालत प्रणाली की स्थापना) मध्यस्थता और सुलह अधिनियम 1996 वैकल्पिक विवाद समाधान को, पंचायत, समझौता, मध्यस्थता, लोक आदालत और वार्ता द्वारा वीत किया जा सकता है। वैकल्पिक विवाद समाधान न्याय प्रणाली को मजबूत करने का बहुत जरूरी हिस्सा है जिसको और महत्वलता ही जानी चाहिए। न्याय प्रणाली पर देशवासियों को यकीन बनाने के लिए और बनाए रखने के लिए। आधुनिक न्याय प्रणाली आधुनिक माध्यम।

**विकल्प विवाद समाधान (ए.डी.आर.) से संबंधित कई मामले हैं। यहां कुछ प्रमुख मामले हैं:**

\* विधि छात्र, महाराजा अग्रसेन इंस्टीट्यूट ऑफ मैनेजमेंट स्टडीस

1 अनुच्छेद 14, भारत का संविधान

2 नागरिक प्रक्रिया संहिता 1908

## 1. सेंट्रोस्ट्रेड मिनरल्स एंड मेटल इंक. बनाम हिंदुस्तान कॉपर लिमिटेड (2020)<sup>3</sup>

इस मामले में, प्रतियोगी पक्षों के बीच हुए एक समझौते से विवाद उत्पन्न हुआ था जिसमें कॉपर कंसंट्रेट की बिक्री की गई थी। अपीलेंट ने एक एर्बिट्रेशन क्लॉज का स्वरूप, जिसमें एक दो-स्तरीय एर्बिट्रेशन प्रक्रिया शामिल थी, जारी किया। इस समझौते में उल्लिखित था कि पहले स्तर का एर्बिट्रेशन भारत में संपन्न होगा और फिर पीड़ित पक्ष लंदन में आंतरराष्ट्रीय चेम्बर ऑफ कॉमर्स (आईसीसी) में अपील कर सकता है। भारत में हुए एर्बिट्रेशन ने शून्य पुरस्कार दिया। इसके बाद, इसे आईसीसी लंदन में अपील किया गया। पुरस्कार को पास करने से पहले ही प्रतिवादी ने राजस्थान हाईकोर्ट में एर्बिट्रेशन क्लॉज को चुनौती दी, जिसके परिणामस्वरूप प्रतिवादी के पक्ष में एक अड इंटरिम रोक दिया गया; हालांकि, इसे सुप्रीम कोर्ट ने रद्द किया। इस प्रकार सुप्रीम कोर्ट ने एर्बिट्रेशन प्रक्रिया के जारी रखने की अनुमति दी। अंत में, आईसीसी के एर्बिट्रेटर के पक्ष में पुरस्कार पास किया गया। प्रतिवादी ने इसके प्रवर्तन की आपत्ति की।

कई मुकदमों के बाद, मामला सुप्रीम कोर्ट के सामने आया, और उठाया गया प्रश्न था, भारत में दो-स्तरीय एर्बिट्रेशन प्रक्रिया की कानूनीता क्या है और क्या आईसीसी की अपील को कानूनी रूप से प्रवर्तित किया जा सकता है?

तीन न्यायाधीशों की बेंच ने यह निर्णय लिया कि भारत के कानून के अनुसार, दो-स्तरीय एर्बिट्रेशन प्रक्रिया स्वीकृत और मान्य है। पक्षों को ऐसे समझौते में प्रवेश करने का स्वतंत्रता है जो गैर-कानूनी अपील प्रदान करता है ताकि अदालत के द्वारा कम हस्तक्षेप हो और वे अदालती प्रक्रिया से बच सकें। प्रतिवादी ने यह दावा किया कि पुरस्कार को एर्बिट्रेशन अधिनियम की धारा 48 के खिलाफ ठहराया गया था, और उन्हें अपना मामला प्रस्तुत करने का और मामले की समर्थन में दस्तावेज़ प्रस्तुत करने के लिए पर्याप्त समय नहीं मिला था। इस प्रकार अदालत ने यह खोजा कि लिब्यून के समक्ष मौजूद होने और उनके समर्थन में उनके साक्षात्कार के लिए आग्रह किए जाने के बावजूद, पुरस्कार पारित करने के समय प्रतिवादी ने अपनी प्रतिक्रिया प्रस्तुत करने के लिए अतिरिक्त समय मांगा। इस प्रकार, प्रतिवादी पक्ष ने इन अवसरों का उपयोग नहीं किया। इसलिए, अदालत ने यह खोजा कि प्रतिवादी ने समयसीमा का पालन नहीं किया और न्याय के मौलिक सिद्धांत के खिलाफ गया और उसने यह ठाना कि विदेशी पुरस्कार को भारत में पूर्ति किया जा सकता है।

## 2. आवितेल पोस्ट स्टुडियोज़ लिमिटेड और अन्य बनाम एचएसबीसी पीआई होल्डिंग्स (मॉरीशस) लिमिटेड और अन्य (2020)<sup>4</sup>

इस मामले में, आवितेल और एचएसबीसी ने दो समझौतों में प्रवेश किया, शेयर सब्सक्रिप्शन अग्रीमेंट के माध्यम से, जिसके अंतर्गत एचएसबीसी ने आवितेल में 7.80% हिस्सेदारी प्राप्त करने के लिए 60 मिलियन अमेरिकी डॉलर निवेश किया, और शेयरहोल्डर्स एग्रीमेंट ("एसएचए")। उनमें से दोनों में एर्बिट्रेशन<sup>5</sup> की प्रावधान होती थी। इन बीच एक विवाद उत्पन्न हुआ; एचएसबीसी ने दावा किया कि आवितेल के प्रमोटर्स ने ब्रिटिश ब्रॉडकास्टिंग कॉर्पोरेशन के साथ एक लाभकारी समझौते को समाप्त करने के कगार पर हैं, और इसलिए, इसने आवितेल में निवेश किया। हालांकि, एचएसबीसी ने पाया कि ऐसा कोई समझौता नहीं है और एचएसबीसी द्वारा निवेश किए गए 51 मिलियन अमेरिकी डॉलर पहले ही आवितेल के प्रमोटर्स की हिस्सेदारी

3 सेंट्रोस्ट्रेड मिनरल्स एंड मेटल इंक. बनाम हिंदुस्तान कॉपर लिमिटेड 2020 SCC Online SC 479

4 आवितेल पोस्ट स्टुडियोज़ लिमिटेड और अन्य बनाम एचएसबीसी पीआई होल्डिंग्स (मॉरीशस) लिमिटेड और अन्य, 2020 SCC online SC656

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वाली कंपनियों में बहा दिए गए थे। इस पर, एचएसबीसी ने एर्बिट्रेशन क्लॉज का उपयोग किया, और एक पुरस्कार एचएसबीसी के पक्ष में हुआ जिसमें इसका दावा सही ठहराया गया। मामला फिर सुप्रीम कोर्ट में ले जाया गया। एचएसबीसी ने धारा 9 के तहत एक पिटीशन दाखिल किया, जिसमें वह अमेरिकी डॉलर 60 मिलियन के पूरे दावे राशि के जमा का आदेश मांगा।

पुरस्कार की पूर्ति की आवश्यकता को चुनौती देते हुए, आवितेल ने यह दावा किया कि भारतीय कानून के तहत जारी जुर्म के विषय पर विवाद, जैसे कि जालसाजी और प्रतिनायक, एर्बिट्रेशन नहीं हैं और इसलिए अंत में पुरस्कार अमान्य बना देगा। दूसरी ओर, एचएसबीसी ने यह दावा किया कि गंभीर धाराओं की अपनाई जा सकती है यदि भ्रांति के गंभीर आरोप एर्बिट्रेशन क्लॉज को दूर करेंगे।

इस प्रकार सुप्रीम कोर्ट ने यह परीक्षण तय किया कि जब भ्रांति का गंभीर आरोप होगा तो अर्बिट्रेशन का उपयोग कब होगा:

- (1) क्या यह याचिका पूरे समझौते और, ऊपर सबसे, एर्बिट्रेशन के समझौते को भी प्रभावित करके उसे अमान्य बना देती है, या
- (2) क्या धाराओं का आरोप प्रतिस्थानीय क्षेत्र में कोई प्रभाव नहीं डालता, जिसमें पक्षों के आंतरिक कार्यों को छूने का प्रयास होता है और जो सार्वजनिक क्षेत्र में कोई प्रभाव नहीं होता।

यदि मामले इस ऊपर दी गई परीक्षण की आवश्यकता को पूरा नहीं करते हैं, तो वे एर्बिट्रेशन हैं। इसलिए, सुप्रीम कोर्ट ने यह ठाना कि वर्तमान मामला एक नागरिक मामला है और उसे भारत में पुरस्कार की पूर्ति के लिए 60 मिलियन अमेरिकी डॉलर को अलग रखने का समर्थन किया।

### 3. भारत सरकार बनाम वेदांत लिमिटेड और अन्य (2020)<sup>6</sup>

इस मामले में, भारत सरकार ने केयरन इंडिया लिमिटेड के साथ एक प्रोडक्शन शेयरिंग एग्रीमेंट ("पीएससी") करने के लिए प्रवेश किया था (जिसे बाद में वेदांत ने प्राप्त किया) रव्वा गैस और ऑयल फ़िल्ड में पेट्रोलियम संसाधनों का अन्वेषण और विकसन करने के लिए। विवाद पीएससी के तहत उल्लिखित विकास लागत के प्रावधान से उत्पन्न हुआ, जिसमें उत्तराधिकारी को हक है। इस प्रावधान के बारे में बात थी जो आधार विकास लागत की थी। उत्तराधिकारी ने आधार विकास लागत उठाई, जो यात्रात्मक रूप से सीमित किए जाने वाले राशि से अधिक थी। उत्तराधिकारी ने भारत सरकार से यह मांग की कि उन्हें पीएससी के तहत उठाई गई लागत को पुनः प्राप्त करने के लिए सीमा में वृद्धि की जाए।

इस पर, उन्होंने मामले को मलेशियाई ट्रिब्यूनल को संदर्भित किया, और एक पुरस्कार पास हुआ जिसमें यह कहा गया कि आधार विकास लागत को अदालत द्वारा चुकता किया जाना चाहिए था जिसकी लागत 2000-2009 के अनुबंध के लिए उठाई गई थी। अपील की प्रक्रिया के बाद, मामला अंत में दिल्ली हाईकोर्ट पहुँचा। उत्तराधिकारी ने धारा 47, धारा 49 के साथ, एर्बिट्रेशन और सुलह अधिनियम,<sup>7</sup> 1996 के तहत पूर्ति के लिए आवेदन दाखिल किया। भारत सरकार ने पुरस्कार की समर्थन को नकारा करते हुए एक आवेदन दाखिल किया जिसमें यह दावा किया गया कि पुरस्कार भारत की सार्वजनिक नीति के खिलाफ था और एर्बिट्रेशन को प्रस्तुत करने के क्षेत्र के बाहर के मामले शामिल थे। दिल्ली हाईकोर्ट ने सरकार की आपत्तियों

6 भारत सरकार बनाम वेदांत लिमिटेड और अन्य (2020), SCC online Del 1426

7 एर्बिट्रेशन और सुलह अधिनियम

को खारिज किया और उत्तराधिकारी द्वारा दाखिल की गई देरी के आवेदन को स्वीकृत किया। इसके बाद, हाईकोर्ट ने पुरस्कार को पूर्ति करने के लिए निर्देशित किया। इस पर, आपीलेन्ट ने सुप्रीम कोर्ट के सामने यह आपत्ति दर्ज की।

सुप्रीम कोर्ट ने यह ठाना कि याचिका की पूर्ति समय सीमा के तहत की गई थी जैसा कि 1963 के सीमा अधिनियम की धारा 137 में निर्धारित किया गया था। यदि कोई विलंब हो, तो इसे क्षमा करने के लिए पर्याप्त कारण हैं।

सुप्रीम कोर्ट ने दोहराया कि पुरस्कार की गलतियों को धारा 48 के तहत सुधारने या पुरस्कार के योग्यता की समीक्षा करने के लिए न्यायिक अदालत से सहमति नहीं होगी। इस प्रकार, अदालत विदेशी पुरस्कार पर न्यायिक प्रभुत्व का अभ्यास नहीं कर सकती है। अदालत ने यह भी कहा कि यह आपीलकर्ता ने साबित करने में विफल रहा है कि यह न्याय के मौलिक धाराओं के खिलाफ था, क्योंकि पहली बात, यह आपीलकर्ता ने साबित नहीं किया कि उप-प्रक्रियात्मक प्रक्रिया के उल्लंघन की पुष्टि की गई और उसने साबित नहीं किया कि यह भारत की सार्वजनिक नीति का उल्लंघन कर रहा था। इसलिए, सुप्रीम कोर्ट ने दिल्ली हाईकोर्ट के निर्णय को समर्थन दिया।

#### 4. भारत एल्युमीनियम कंपनी बनाम काइजर एल्युमीनियम टेक्निकल सर्विसेज इंक I, (2012)<sup>8</sup>

भातिया इंटरनेशनल और वेंचर ग्लोबल इंजीनियरिंग के महत्वपूर्ण मामलों में, सुप्रीम कोर्ट ने कहा था कि आर्बिट्रेशन और कंसिलिएशन एक्ट, 1996 के भाग I<sup>9</sup> ने आर्बिट्रेशन अवार्ड के संबंध में प्रक्रियाएँ, पुरस्कृति, अंतरिम सहायता, और अपील की प्रावधानों स्थापित की थीं और कहा था कि इसका अनुप्रयोग सभी भारतीय आर्बिट्रेशनों पर होगा, जब तक पुलक्रित या स्पष्ट सहमति के द्वारा पूरी या किसी भी प्रावधान को बाहर कर दिया जाए। सुप्रीम कोर्ट ने कहा कि भाग I और भाग II के बीच में एक स्पष्ट विभाजन है जो पूरी तरह से विभिन्न क्षेत्रों में लागू होते हैं और कोई भी ओवरलैपिंग प्रावधान नहीं है।

इस मामले में न्यायालय ने एक 'सीट' और 'वेन्यू' के बीच एक अंतर खींचा। आर्बिट्रेशन समझौता एक विदेशी देश को आर्बिट्रेशन की सीट/स्थान के रूप में नामित करता है और इसे आर्बिट्रेशन प्रक्रिया को नियंत्रित करने वाला कानून चुनता है। न्यायालय ने यह भी स्पष्ट किया कि आर्बिट्रेशन की सीट के रूप में दूसरे देश का चयन करना निर्वाचन करता है कि उस देश के आर्बिट्रेशनों के प्रबंधन और निगरानी से संबंधित कानून को प्रक्रियाओं पर लागू होगा। इसलिए, यह समझा जा सकता है कि भाग I केवल उन आर्बिट्रेशनों पर लागू होता है जिनकी सीट/स्थान भारत में है।

न्यायालय ने भातिया इंटरनेशनल केस में की गई टिप्पणियों से असहमति जताई और अधिक धारात्मक रूप से अधिनिर्णय किया कि अधिनिर्णित कृत्य के लॉजिकल निर्माण के आधार पर, जब आर्बिट्रेशन की सीट भारत के बाहर होती है, तब भारतीय न्यायालयों को इंटरिम उपाय प्रदान करने की शक्ति नहीं है। इसलिए, धारा 36 के अंतर्गत धारित पुरस्कृत अवार्ड से पहले के आर्बिट्रल प्रक्रियाएँ केवल उन आर्बिट्रेशनों से संबंधित हो सकती हैं जो भारत में होते हैं। न्यायालय ने यह भी कहा कि विदेश संबंधित अंतरराष्ट्रीय वाणिज्यिक आर्बिट्रेशन में, भारत में न तो आर्बिट्रेशन द्वारा और न ही किसी याचिका द्वारा अंतरिम सहायता के लिए कोई आवेदन स्वीकृत होगा।

8 भारत एल्युमीनियम कंपनी बनाम काइजर एल्युमीनियम टेक्निकल सर्विसेज इंक I, (2012) 9 SCC 552

9 आर्बिट्रेशन और कंसिलिएशन एक्ट, 1996

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