

VOLUME VIII

ISSUE - III (Jul - Sept 2022)



# QUEST

A Quarterly Journal of the Students  
published by the Indian Institute of Legal  
Studies



## INDIAN INSTITUTE OF LEGAL STUDIES

UG & Post Graduate Advanced Research Studies in Law  
Approved under Section 2(f) & 12B of the UGC Act, 1956  
Accredited by NAAC

Affiliated to the University of North Bengal

Recognized by the Bar Council of India, New Delhi

Dagapur, Siliguri, P.O.- Salbari, P.S.- Matigara, Dist.- Darjeeling, West Bengal 734002, India

Telephone: 0353-2960665 / 2960668

Mobile No.: +91 97755- 09999; E-mail: iils.siliguri@gmail.com

Webpage: www.iilsindia.com/quest-editorial-board

Design: koseliarts@gmail.com  
Print Media: dpplprint@gmail.com

VOLUME VIII

ISSUE – III (Jul – Sept 2022)

# QUEST

THE STUDENT JOURNAL  
(2022)

A Quarterly Journal of the Students published by the  
Indian Institute of Legal Studies



## INDIAN INSTITUTE OF LEGAL STUDIES

UG & Post Graduate Advanced Research Studies in Law  
Approved under Section 2(f) & 12B of the UGC Act, 1956

Accredited By NAAC

Affiliated to the University of North Bengal

Recognized by the Bar Council of India

Dagapur, Siliguri, P.O.-Salbari, P.S.- Matigara, Dist.- Darjeeling, West Bengal- 734002, India

Telephone: 0353-2960665/ 2960668

Mobile No.: +91- 97755- 09999; E-mail: iils.siliguri@gmail.com

Webpage: [www.iilsindia.com/quest-editorial-board](http://www.iilsindia.com/quest-editorial-board)

Website: [www.iilsindia.com](http://www.iilsindia.com)

# **QUEST EDITORIAL BOARD**

## **PATRON-IN-CHIEF**

**Prof. (Dr.) Ganesh Ji Tiwari**

*Principal*

*Indian Institute of Legal Studies, Siliguri*

## **EDITOR-IN-CHIEF**

**Subhradeep Das**

*BBA LL. B*

## **SENIOR EDITORS**

**Arkaprava Bhattacharya**

*5<sup>th</sup> Year, BBA LL. B (H)*

**Purna Mitra**

*2<sup>nd</sup> Year, LL. M*

## **ASSOCIATE EDITORS**

**Devansh Agarwal**

*2<sup>nd</sup> Year, LL. B*

**Sneha Das**

*4<sup>th</sup> Year, BA LL. B (H)*

**Shruti Garg**

*4<sup>th</sup> Year, B. Com LL. B (H)*

**Tanisha Agarwal**

*4<sup>th</sup> Year, BBA LL. B (H)*

## **FACULTY ADVISORS**

**Mr. Sanjay Bhattacharjee**

*Registrar*

*Indian Institute of Legal Studies*

**Ms. Shruti Ghosh**

*Asst. Prof. of English*

*Convenor, QUEST Editorial Board*

**Mrs. Trishala Chettri**

*Asst. Prof. of Law*

**Mrs. Sahansheela Sharma**

*Asst. Prof. of Law*

## MESSAGE

### FROM PRINCIPAL'S DESK



Big thanks to the Quest Editorial Board and its contributors for giving their valuable time. I believe this edition will enrich the reader's knowledge. I would also like to thank the students who, through various mediums, have presented their ideas, views, emotions and expressions. I believe they are going to be the flag bearers of the legal fraternity in India. I would also like to thank and congratulate to all the editors and the contributors of this edition. I am sure, that the readers will be enhancing their knowledge base with this edition of Quest.

Thank You

**Prof. (Dr.) Ganesh Ji Tiwari**

Principal,  
Indian Institute of Legal Studies

## MESSAGE

### FROM REGISTRAR'S DESK



“No thief, however skillful, can rob one of knowledge, and that is why knowledge is the best and safest treasure to acquire.”

**L. Frank Baum**

I am grateful to the Quest Editorial Board and its contributors for encouraging us to complete the journal which will help the readers in many ways. Every edition brings new challenges as well as new opportunities for the contributors.

I believe this journey of Quest has been a cause of reflection, full of unlearning old habits and adopting new ones. The journey was challenging but it was worth it. I hope this opportunity not only helped the students to sharpen their minds but also to represent the principles of Indian Institute of Legal Studies.

I would also like to thank and congratulate the entire Board who helped

in putting together this journal.

This journal will positively help us to rekindle the inner student in us.

We assure to give our best efforts in making this journal a grand success.

Thank You

A handwritten signature in black ink, appearing to be 'SJB', with a horizontal line underneath it.

**Shri Sanjay Bhattacharjee**  
Registrar,  
Indian Institute of Legal Studies

## EDITORIAL MESSAGE

### FROM EDITOR-IN-CHIEF

Dear readers,

We hope you are doing well!

Albert Szent-Gyorgyi rightly said “*Research is seeing what everybody else has seen and thinking what nobody else has thought*”. It gives us immense joy and satisfaction to introduce our very own student journal ‘QUEST’.

The objective of this journal is to promote, develop and enhance the research skills of creative minds. We are proud of our contributors who present you with write-ups dealing with various legal issues, and engage other disciplines with law. Further, this journal gives a platform to showcase talent, and also it stokes curiosity and improves the way one expresses.

A lot of effort has gone into the making of this issue. Amidst the hectic schedule of semesters, examinations, assignments, and internships, we tend to lose track of all the simple things we are capable of. Often, we tend to procrastinate and lose grip over things that could make a proud moment for us and give a sense of satisfaction.

We hope you enjoy reading this issue as much as we have enjoyed making it!



# CONTENTS

## LONG ARTICLES

- 1. An Analysis of Cyber Laws with respect to Women and its Importance in the 21<sup>st</sup> Century... .. 11 – 27**

*By Bijita Poddar, Student of BA LL. B (H), Semester – III*

## SHORT ARTICLES

- 1. Transnational Organized Crime in Globalized World: A Socio-Legal Perspective... .. 29 – 42**

*By Dipayan Dutta, Student of B.B.A. LL.B. (H), Semester – IX*

- 2. The Transgender Community in India: With special reference to a Trans-child’s Right to be Adopted... .. 43 – 53**

*By Md Kaif, Student of BA LL. B (H), Semester – III*

- 3. Sexual Harassment at Workplace and its Implications... .. 54 – 65**

*By Parthiv Chakraborty, Student of BA LL. B (H), Semester – V*

- 4. COVID-19: The Vicious Cycle of Economic Depression and Human Depression with special reference to India... .. 66 – 79**

*By Devapriya Saha, Student of BA LL. B (H), Semester – V*



# LONG ARTICLE



# AN ANALYSIS OF CYBER LAWS WITH RESPECT TO WOMEN AND ITS IMPORTANCE IN THE 21<sup>ST</sup> CENTURY

-Bijita Poddar<sup>1</sup>

---

## ABSTRACT

*The daily increase of the cyber-crimes in the society in general has created immense disturbances and has taken a toll on mental health too. The crimes committed through inter-networked information technology such as trafficking in pornography, illegal stealing of identities, violation of one's privacy have created unnecessary inconvenience in the society as a whole now. Cyber-crime, especially through the internet, has grown in importance and efficiency because computers have become the main object for commerce, entertainment, essential information and government. To hold up such inconveniences, there was an introduction of a space known as cyber law – the law governing cyberspace. In this article, the concerned topics would be the brief introduction of cyber law, the various causes and consequences of cybercrime, the growing importance of cyber-crime in India, and a lot more.*

**KEYWORDS:** *Cyber Crimes, Women, IT Act, Inter-networked, Technology.*

---

<sup>1</sup> Student of BA. LL. B (H), Semester III, Indian Institute of Legal Studies, Siliguri, bijitapoddar@gmail.com

# 1. INTRODUCTION

Cyber law cannot be designated as a distinct legal framework. It is the blend or a combination of contract, privacy laws, intellectual property, and data protection. The importance of computers and networked sites which are taking over everyday phases of one's life, and the increase of crime rates resulted in a need for strong cyber law protection. The span of new generation crimes started after the advent of the Information Technology Act, 2000.<sup>2</sup> The devices linked with computers, the sites connected with important data, computer technology, software, these all can be said to be the target and medium of such crimes. In commerce, monetary transactions and information security is supervised by cyber laws. The Indian Penal Code, 1860<sup>3</sup> had already stated the traditional criminal activities like forgery, defamation, mischief, etc., which is included under cyberspace. There is a dire need for strong cyber laws to prevent cybercrimes, in addition, the effects of the same will percolate various domains of law, inter alia, intellectual property, data protection, and data privacy.

## 2. EVOLUTION OF CYBER LAW IN INDIA

When it comes to the history of cyber laws in India, the Information Technology Act, 2000 provides its potentiality. It came into force on October 17<sup>th</sup>, 2000.<sup>4</sup> The main motive of the Act is to ease filing of

---

<sup>2</sup> The Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

<sup>3</sup> The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).

<sup>4</sup> The Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

electronic records with the government, and to provide legal recognition to electronic commerce.<sup>5</sup>

On 30th January, 1997 there was a resolution of the General Assembly of the United Nations. The said Act was an outcome of it. The resolution, in general, adopted the model law on electronic commerce which was based on international trade laws. It was said that all the states should give equal consideration to the said model law in continuation of enacting new laws. The resolution recommended considering the uniformity, which would be observed in laws of various cyber nations and other based storage of information.<sup>6</sup>

The Department of Electronics (DOE) drafted the bill in July 1998. Nevertheless, it could only be introduced in the House on December 16<sup>th</sup>, 1999 where there was a gap of almost one and half years. New IT ministry was formed in the process. After the bill was introduced in the house, there was a huge demand from its members and it was referred to the 42-member Parliamentary Standing Committee.

One such suggestion which overlapped other suggestions was that the cyber cafe owner must maintain a register to record all the names and the address of the individuals visiting the cafe and the website they went through, although the same was dropped and not taken into consideration

---

<sup>5</sup> *Id.*

<sup>6</sup> UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, [https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic\\_commerce](https://uncitral.un.org/en/texts/ecommerce/modellaw/electronic_commerce) (last visited Sep. 25, 2022).

in its final draft by the IT ministry.<sup>7</sup>

### **3. CONCEPT OF CYBER CRIME**

The crimes that are performed through computer and telecommunication technology can be termed as cybercrimes. Here, the computer is a medium for an object or subject. The availability of mobile phones and internet have changed the generation to modern life however, there is a wide range of vulnerable threats which may result in financial loss or damage to our reputation.

There are two main types of cyber-crimes:

- Criminal activity that *uses* computers as a source to expand viruses, illegal images, hunting privacy, etc.
- Criminal activity that *targets* computers. The malware viruses can be an example to it.

### **4. CYBER CRIMES AGAINST WOMEN**

For nefarious purposes in today's world, information technology has become a medium. Its targets may include governments, organizations, institutions and specific people as well. Cybercrimes approach in various forms in India as well as in other countries. The crimes mentioned below are the most prevalent among all forms of cybercrimes.

---

<sup>7</sup> Hardik Mishra, *Cyber Law in India- Meaning, Introduction, History, Need, Important Terms and Amendments*, DESIRE (Sep. 26, 2022, 9:29 PM), <https://legaldesire.com/cyber-law-in-india-meaning-introduction-history-need-important-terms-and-amendments/>.

## **4.1. Hacking**

The purpose of hacking is to gain access to another computer system based on technology without the main owner's consent. The term hacking simply means breaking into. The hackers after gaining an access to the device or site steal important information that can be termed as data. There can be a variety of reasons for hacking such as data destruction, harm for personal purposes, gaining privacy, harming the whole computer system. In this process, unlawful duplication of IP addresses can be faked by the hacker as a result.

## **4.2. Cyber Complications**

The attacks against the computer-based networks are unlawful, and the information included therein are revealed. As a result, it harms and creates issues for the government and its citizens hence, the terrors created in cyberspace are known as cyber complications.

## **4.3. Malicious Software**

This is an internet root program that is basically used to obtain information in an unlawful manner and to steal important data. It damages and causes the software to malfunction.

## **4.4. Cyber Stalking**

Through online mediums and gadgets when a person follows someone and harasses him or her or threatens a person on a daily

basis by looking up to his daily activities intentionally can be said as cyber stalking. It is a criminal offence to harass someone. The stalker uses media such as chat rooms, emails, social media platforms. Majority of victims are women. Cyber stalkers were formally charged under Section 509 of the Indian Penal Code, 1860<sup>8</sup> due to absence of punishment under the Information Technology Act, 2000.<sup>9</sup> But, after the Information Technology Act's amendment in 2008,<sup>10</sup> cyber stalkers can be given a penalty under Section 66A of the Information Technology Act, 2000,<sup>11</sup> where the person will be charged with fine and imprisonment which may extend to 3 years.

#### **4.5. Cyber Pornography**

Cyber pornography can be defined as the incentive of sexual related content or other kind of erotic action and behavior through various forms of cyber space or internet. It is the function of generating and displaying those contents which are obscene on the internet networked platforms. It transposes and sexually exploits the children and women intentionally to threaten them for personal purpose and maybe for any other reason. Their pornographic images and other privacy contents get uploaded in

---

<sup>8</sup> The Indian Penal Code, 1860, § 509, No. 45, Acts of Parliament, 1860 (India).

<sup>9</sup> The Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

<sup>10</sup> The Information Technology (Amendment) Act, 2008, No. 10, Acts of Parliament, 2009 (India).

<sup>11</sup> The Information Technology Act, 2000, § 66A, No. 21, Acts of Parliament, 2000 (India).



purpose. This hampers their respect in the society.

#### **4.6. Forgery**

When there is any duplication of documents, money transactions, revenue stamps, signatures of an individual forgery get uprooted. This duplication is also done to harm an institution as a whole or an individual.

#### **4.7. Identity Theft**

Identity theft can be termed as a crime in which there is a false creation of identity in order to steal money from bank accounts. This indulges an individual to gather such a number of transactions which they will never return, and as a result it makes the bank suffer. This not only occurs in banks and reputed institutions, but can also occur in small companies, resulting in its huge loss.

## **5. OFFENCES AND PENALTIES**

### **5.1. Under Indian Penal Code, 1860<sup>12</sup>**

The offences and penalties prescribed under it are as follows:

- **Section 292<sup>13</sup>**

This provision states that if there has been a sale of obscene

---

<sup>12</sup> The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).

<sup>13</sup> The Indian Penal Code, 1860, § 292, No. 45, Acts of Parliament, 1860 (India).

materials without the main owner's consent, and the culprit earns with this process then it is considered as an illegal crime. The way through which it is digitally forwarded leads to the governance of this provision rightfully. The penalty here extends up to 2 years of imprisonment and fine amounting to 2000 rupees, and if the same person repeats the crime again, then the punishment may extend up to 5 years of imprisonment and fine of rupees 5000.

- **Section 354C**<sup>14</sup>

This section can be applied when someone takes or publishes videos or pictures of private parts of any female without her consent. There can be a new term 'voyeurism' used here yet it specifically is related with this provision as watching this kind of videos is considered as a crime. There are some of the elements which are important but are not included here, for instance Section 292 of Indian Penal Code, 1860<sup>15</sup> that can be replaced by section 66E of the Information Technology Act, 2000<sup>16</sup> since both are of the same nature. The person involved for the very first time is punishable- imprisonment for 3 years and in case if he repeats the same then the imprisonment gets extended up to

---

<sup>14</sup> The Indian Penal Code, 1860, § 354C, No. 45, Acts of Parliament, 1860 (India).

<sup>15</sup> The Indian Penal Code, 1860, § 292, No. 45, Acts of Parliament, 1860 (India).

<sup>16</sup> The Information Technology Act, 2000, § 66E, No. 21, Acts of Parliament, 2000 (India).

5 years and the inclusion fine is natural.

- **Section 499**<sup>17</sup>

According to this provision, anybody who makes any imputation about any lady with the aim to damage their reputation is considered to be defaming that person and is subject to punishment under this.

- **Section 500**<sup>18</sup>

According to this provision, anyone who disparages any woman faces a penalty of simple imprisonment for a time that may reach two years, a fine or a combination of the two.

- **Section 503**<sup>19</sup>

Whoever threatens a woman when doing so endangers her reputation or property with the goal to make that person act in a way for which he is not legally obligated or to refrain from acting in a way for which he should act. For this cybercrime, they are subject to fines and penalties.

---

<sup>17</sup> The Indian Penal Code, 1860, § 499, No. 45, Acts of Parliament, 1860 (India).

<sup>18</sup> The Indian Penal Code, 1860, § 500, No. 45, Acts of Parliament, 1860 (India).

<sup>19</sup> The Indian Penal Code, 1860, § 503, No. 45, Acts of Parliament, 1860 (India).

- **Section 509**<sup>20</sup>

Any phrase, movement or action intended to offend a woman's modesty. Anyone who uses online platforms to say anything that invades the privacy of a woman is subject to simple imprisonment for duration up to one year, fines or both.

## **5.2. Under Information Technology Act, 2000**<sup>21</sup>

The offences and penalties, related to cyberspace, are supervised in Chapter XI of the said Act. As the Indian law has nullified any definition to the term cybercrime, not just this, the Indian Penal Code, 1860<sup>22</sup> has no penalties related to the crimes happening in the cyber world even after its 2008 amendment in the Information Technology Act, 2000.<sup>23</sup>

The list of such penalties under the Statute are as follows:

- **Section 66E**<sup>24</sup>

This provision states that whoever violates a woman's privacy by purposefully or deliberately taking, publishing, or transmitting a photograph of her private parts without

---

<sup>20</sup> The Indian Penal Code, 1860, § 509, No. 45, Acts of Parliament, 1860 (India).

<sup>21</sup> The Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

<sup>22</sup> The Indian Penal Code, 1860, § 509, No. 45, Acts of Parliament, 1860 (India).

<sup>23</sup> The Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

<sup>24</sup> The Information Technology Act, 2000, § 66E, No. 21, Acts of Parliament, 2000 (India).

getting her permission might face up to three years of prison and fines up to five lakh rupees.

- **Section 66F**<sup>25</sup>

It deals with cyber terrorism. It states that whoever commits or conspires to perpetrate cyber terrorism against women shall be punished with imprisonment, which may possibly result in life imprisonment.

- **Section 67**<sup>26</sup>

This provision states that whoever publishes or transmits any content of a female that is lascivious to the prurient interest online, if it has the effect of corrupting people who are inclined to keep an illegal journal, or it has any other negative effects.

- **Section 67A**<sup>27</sup>

It deals with publishing or transmitting unwanted materials, like on first conviction, anyone who distributes or encourages the publication of any electronic content that comprises sexually explicit act faces a sentence of up to 5 years in jail and fine up to 10 lakh rupees.

---

<sup>25</sup> The Information Technology Act, 2000, § 66F, No. 21, Acts of Parliament, 2000 (India).

<sup>26</sup> The Information Technology Act, 2000, § 67, No. 21, Acts of Parliament, 2000 (India).

<sup>27</sup> The Information Technology Act, 2000, § 67A, No. 21, Acts of Parliament, 2000 (India).

## 6. CASE LAWS RELATED TO CYBERCRIMES

One of the first cases, concerning cybercrime, to be reported was *Manish Kathuria v. and Others v. State of Punjab and Others*.<sup>28</sup> In this case, for a few days the defendant chatted with the petitioner while stalking her and using profane language. The petitioner was much aggravated by the defendant's sharing of her personal information on several chat groups. As a result, he was found guilty under Section 509 of the Indian Penal Code, 1860,<sup>29</sup> for violating a woman's modesty.

In the case of *Anil Kumar Srivastava v. Additional Director Medical Health Family Welfare and Others*,<sup>30</sup> the petitioner forged a duplicate sign of Additional without his consent, and himself filed a case against Additional with false allegations. Lastly, the Court held him liable under Sections 465 and 471 of the Indian Penal Code, 1860.<sup>31</sup>

In another case of *Gagan Harsh Sharma and Another v. The State of Maharashtra and Another*,<sup>32</sup> the Bombay High Court stated that the Sections those are non-bailable and non-compoundable in nature in the Indian Penal Code, 1860 viz., Sections 42 and 408,<sup>33</sup> and Sections 43, 65 and 66 of the Information Technology Act, 2000<sup>34</sup> are bailable and

---

<sup>28</sup> *Manish Kathuria and Others v. State of Punjab and Others*, (2017) 4 SCC 441.

<sup>29</sup> The Indian Penal Code, 1860, § 509, No. 45, Acts of Parliament, 1860 (India).

<sup>30</sup> *Anil Kumar Srivastava v. Additional Director Medical Health Family Welfare and Others*, 2005 (3) ESC 1917.

<sup>31</sup> The Indian Penal Code, 1860, § 465 & 471, No. 45, Acts of Parliament, 1860 (India).

<sup>32</sup> *Gagan Harsh Sharma and Another v. The State of Maharashtra and Another*, 2019 Cri.LJ 1398.

<sup>33</sup> The Indian Penal Code, 1860, § 42 & 408, No. 45, Acts of Parliament, 1860 (India).

<sup>34</sup> The Information Technology Act, 2000, § 43, 65 & 66, No. 21, Acts of Parliament, 2000

compoundable, creating disturbances and conflicts between the two. Another famous case involving cybercrime against women is the case of *Jayanta Kumar Singh v. The State of Orissa and Others*.<sup>35</sup> In this case, the accused sent nude messages to a woman and posted her images on a porn website. The victim went to the Court before she was outraged. The Court found the defendant guilty under Section 67A of the Information Technology Act, 2000.<sup>36</sup>

## **7. STATISTICAL DATA OF CYBER CRIMES AGAINST WOMEN<sup>37</sup>**

The increasing rate of cybercrimes based on inter-networked technology has gone up by 18.4 percent since 2019. But in significance to that, women are targeted more than others in this scenario which has risen its percentage up to 28 as per the data released by the National Crime Records Bureau. Cybercrime incidents that were reported recently are around 52,974 in 2021 of which 10,730 (that covers up to 20.2 percent) were the cases of crimes against women or females. Already it is known by the fact that there can be various intentions that have caught some light for such behaviours, the instances like cyber-stalking and blackmail, defamation, morphing, etc., is

---

(India).

<sup>35</sup> *Jayanta Kumar Singh v. The State of Orissa and Others*, W.P. (C) No. 8898 of 2010.

<sup>36</sup> The Information Technology Act, 2000, § 67A, No. 21, Acts of Parliament, 2000 (India).

<sup>37</sup> Anoushka Sawhney, *Cybercrime Against Women Up 28% Since 2019, Karnataka's Share Highest: NCRB*, BUSINESS STANDARD (Aug. 30, 2022, 11:28 PM), [https://www.business-standard.com/article/current-affairs/cybercrime-against-women-up-28-since-2019-national-crime-records-bureau-122083001139\\_1.html](https://www.business-standard.com/article/current-affairs/cybercrime-against-women-up-28-since-2019-national-crime-records-bureau-122083001139_1.html).

dangerously increasing.

If we calculate the cybercrime against women at state level, then the top 5 states would be Telangana accounted as the highest with 10,303 cases, followed by Uttar Pradesh with 8,829 cases, then Karnataka with 8,136 cases, Maharashtra with 5,562 cases and lastly Assam with 4,484 cases. In that case, Delhi reported 356 other new offences.

The average percentage of cases in pending trials was 87 percent in 2021, as compared to 94.9 percent in 2019. There has been a point drop to this. Now, this can be taken as a positive note but changes are to be made in further years.

## **8. PREVENTIVE MEASURES TO CURB CYBER CRIMES**

There are certain ways to combat the major forms of web fraud, which have been developed plus it has been assigned by public authorities and agencies. The very first line to combat the online consumers from becoming fools and victims is good education. Platforms like government websites, certain videos, brochures, etc., have led the way by the private sector institutes so well that it notifies and aware everyone before they become a victim to it. The introduction of anti-phishing sites has created a significant system through which the internet users can report phishing sites and block them in hand. The international consumer protection and enforcement network (ICPEN) and other authorities from OECD have launched certain campaigns every year to spread awareness related to cybercrimes and its



consequent preventions. Cybercrimes against women include morphed pictures, publishing and transferring documents, etc.

List of preventive measures to be taken for the welfare of women: -

- A proper structural informative education should be provided related to those crimes against the women.
- As it is related to the crimes happening through internet platforms so cyber literacy is must to remove these vulnerable practices.
- Use of such specific kinds of passwords which cannot be hacked easily and to keep on changing those passwords for safety purposes.
- Avoid visiting any website or URL until you are thoroughly informed about it.
- Watch out for unrelated messages coming from unknown sources, it must be fraudulent and harmful for women mainly.
- Should be cautioned of not replying to emails that seek personal information.
- Avoid clicking on unfamiliar links or downloading any such unfamiliar programmes.
- Lastly, to keep up with internet law and their regulations.

## **9. THE FUTURE OF THE CYBER LAW: A CRITICAL ANALYSIS**

At present, people are aware of the cyber laws around the world. Different countries have realized the need and procedure for the implementation of cyber laws. It has been a provocation before the Courts to evolve cyber jurisprudence compatible with our constitutional guarantees and therefore, cyber laws would further need new kinds of development in the Courts.

Time has changed, technology and cyberspace is moving forward. The year 2022 is on the verge of an end. With the history in the background related to the economic, political and other developments in the year 2022, new securities are getting researched in India. Anything to be done very accurately related to cybercrime in today's world is quite difficult which was discussed in research. However, based on the security as per date we can see new directions in the upcoming years.

The year 2023 is going to uphold new legal regimes and cyber security laws which would help to protect, preserve and even increase cyber security in the context of internet-networked technology, computers, software and all other communicating devices. Still there are many undiscovered things that need to be regulated due to the misuse of social media and to provide certain effective remedies for the social media victims.

## **10. CONCLUSION & SUGGESTIONS**

It can be concluded that the way cyber law is constantly evolving, it will look up with more integrity in security for women. Cyber law has different

experiences among different nations so it is a constant evolving process. The constantly evolving process has brought up many new challenges for the female section. But there are effective cyber laws that guarantee women a safe digital space. With respect thereof, different countries like the United States and the Western Countries were the first to adopt their personal legislations by understanding the consequences of their existing laws on cybercrimes. In this process, the countries that are on the verge of ‘developing’ such as India, Malaysia, Pakistan and Philippines have gradually followed its footsteps and have taken on cyber law initiatives.

There are some people who have not yet faced the consequences and mental instability, resulting from cybercrime, who could be considered at risk. Based on research, it has been identified that the age range of the hackers stays between 16 years to 42 years old.<sup>38</sup> They have such capability that even though they stay three continents away from the victim still no one can identify them, they are so advanced. Fortunately, the Constitution of India protects various rights of women and the same protection should be mentioned for them in the cyber world henceforth.

Crimes do not always materialize behind the computer (internet-networked technology) but can also get executed through the computer itself. Therefore, it can be rightly said that the crimes through technology vary.

---

<sup>38</sup> ZIPPPIA THE CAREER EXPERT, <https://www.zipppia.com/hacker-jobs/demographics/> (last visited Sep. 29, 2022).



# **SHORT ARTICLE**



# TRANSNATIONAL ORGANIZED CRIME IN GLOBALIZED WORLD: A SOCIO-LEGAL PERSPECTIVE

-Dipayan Dutta<sup>39</sup>

---

## ABSTRACT

*Transnational organized crime is often defined as the conduct that is illegal and holds the ability to violate the laws of more than an individual nation while it is operating, be it in terms of planning or execution of the crime; or its consequences. There has been a rise in transnational organized crimes since the 1990s after the Cold War ended. With the rapid growth of privatization, liberalization and globalization, putting into consideration the word “crime”, we discover that crimes have grown by the level of standards and boundaries, both within the aspects of National and International Laws.*

**KEYWORDS:** Cross Border Gang Groups, Indian Constitution, Indian Penal Code, LPG Policy, Criminology.

---

<sup>39</sup> Student of BBA. LL.B. (H), Semester IX, Indian Institute of Legal Studies, Siliguri, duttadipayan619@gmail.com.

# 1. INTRODUCTION

Transnational organized crime is often used in terms of criminology and law enforcement. The concept of these crimes dates back to the 1900s when the United Nations applied the term to specific criminal activities and practices outside the jurisdiction of any particular country.<sup>40</sup> Transnational organized crime (TOC) not only poses a serious and growing threat of severe impact on national and international security, but also other security parameters by destroying the public, public health, democratic institutions, and the status quo economic stability around the world. The basic goal of these organized criminals in a country is to obtain profits such as weapons and ammunition, economy, or currency. In India, it is commonly observed that transnational organized crime aims to gain profit.<sup>41</sup> To date, there is no adequate definition to construct the internationally accepted concept of transnational organized crime. Records of these crimes have proven to be unlawful acts, committed by several groups with common interests and desires, a pattern that constitutes an illegal group referred to in Section 144 of the Indian Penal Code.<sup>42</sup> Cross-border crime includes criminal activities such as smuggling, trafficking,

---

<sup>40</sup> Nafiu Ahmed, *Transnational Organized Crimes (Tocs)-Causes Effects and Challenges*, 3(1) APJABSS 357, 2017, [https://apiar.org.au/wp-content/uploads/2017/02/35\\_APJABSS\\_DS\\_FEB\\_1001\\_Social\\_Sciences-357-366.pdf](https://apiar.org.au/wp-content/uploads/2017/02/35_APJABSS_DS_FEB_1001_Social_Sciences-357-366.pdf).

<sup>41</sup> NATIONAL SECURITY COUNCIL, *Transnational Organized Crime: A Growing Threat to National and International Security*, <https://obamawhitehouse.archives.gov/administration/eop/nsc/transnational-crime/threat> (last visited Sept. 10, 2022).

<sup>42</sup> The Indian Penal Code, 1860, § 144, No. 45, Acts of Parliament, 1860 (India).

drugs and nuclear explosions. In our country, these heinous crimes are often caused by the negligence of state agencies. The level of corruption and the wide array of political parties contribute to these types of crimes. One of the best cities to fight transnational organized crime is Mumbai, and in the history of India this city has always been a center of warring gangsters.<sup>43</sup>

Taking into consistent several records and studies, India has been spotted with three major cross-border gang groups:

- a. Chotta Rajan Gang
- b. Daoud Ibrahim Gang
- c. Babloo Shrivastava Gang

All these gangs are connected.<sup>44</sup> Daoud Ibrahim's gang was one of the biggest and most dangerous mafia groups with extensive networks across the country. This gang has been around since 1983 and has indulged in crimes like drugs, guns, contract killings, smuggling and ammunition trafficking. The Chotta Rajan Gang was then part of the same mafia gang but was separated and relocated in the 1990s.<sup>45</sup> Even this gang was no

---

<sup>43</sup> Sumita Sarkar & Arvind Tiwari, *Combating Organised Crime: A Case Study of Mumbai City* (Aug 22, 2022, 09:50 AM),

<https://www.satp.org/satporgtp/publication/faultlines/volume12/article5.htm>.

<sup>44</sup> Shankar P. Singh, *Virtual Library Transnational Organized Crime: The Indian Perspective*, Annual Report for 2000 OJP GOVERNMENT (Sept. 12, 2022, 8:30 PM),

[https://www.ojp.gov/ncjrs/virtual-library/abstracts/transnational-organized-crime-indian-perspective-unafei-](https://www.ojp.gov/ncjrs/virtual-library/abstracts/transnational-organized-crime-indian-perspective-unafei-annual#:~:text=The%20three%20major%20transnational%20organized,both%20developing%20and%20developed%20countries)

[annual#:~:text=The%20three%20major%20transnational%20organized,both%20developing%20and%20developed%20countries](https://www.ojp.gov/ncjrs/virtual-library/abstracts/transnational-organized-crime-indian-perspective-unafei-annual#:~:text=The%20three%20major%20transnational%20organized,both%20developing%20and%20developed%20countries).

<sup>45</sup> Dr. Gary K Busch, *Organised Crime and International Politics in Asia* (Aug. 22, 10:20 AM), <http://www.indiandefencereview.com/spotlights/organised-crime-and-international->

different, as it was involved in criminal activities such as hit-and-run, drug dealing, and smuggling. The Babloo Shrivastava Gang engaged in kidnapping and contract killings.<sup>46</sup> In general, cross-border crime in India includes criminal activities such as murder and drug trafficking, and is a very sensitive and serious issue from the perspective of economic security. Our country is rich in chemicals like acetic anhydride, which is used in the manufacture of heroin, and in certain areas like Madhya Pradesh and Uttar Pradesh, illegal opium production is thriving.<sup>47</sup> It can therefore, be concluded that transnational organized crime includes multiple criminal activities that provide an explanation for the damage to a country's reputation, the security of its citizens, and its relations with other countries.

## **2. CATEGORIES OF TRANSNATIONAL ORGANIZED CRIMES**

Transnational organized crime affects not only the country in which it occurs but also neighboring countries with good relations. There are several common types of crimes that put society at risk:

### **2.1. Smuggling**

Smuggling is a major social and economic crime, when organized crime operates on a national or international scale. This is mainly

---

politics-in-asia/2/.

<sup>46</sup> Om Prakash Srivastava @ Babloo v. State of U.P. and Anr. (2016) CRIMINAL MISC. WRIT PETITION No. – 6363 of 2016.

<sup>47</sup> Pushpita Das, *Drug Trafficking in India: A Case for Border Security*, IDSA Occasional Paper No. 24, [https://idsa.in/system/files/OP\\_DrugTraffickinginIndia.pdf](https://idsa.in/system/files/OP_DrugTraffickinginIndia.pdf).



governed by the provisions of the Customs Act of 1962.<sup>48</sup> The fact that products or drugs that are illegal in our country's territory or highly taxed are chosen to be smuggled to continue their trade demonstrates that selling and maintaining this trade harbors long-term benefits. With the policy change, most of the items smuggled are guns and jewelry, specific fabrics, or drugs.

## **2.2. Murder and Kidnapping Contract**

The law governing aspects of contract killing and kidnapping is the *Indian Penal Code*.<sup>49</sup> Contract killing means killing any person for money on a contract basis. This is common among very influential figures, i.e., public speakers or political leaders; they can also be actors or VIPs. Likewise, kidnapping includes cases in which people pay someone to be abducted, act against the consent of the victim, and the motive of the abduction is to gain benefit- equity or monetary.

## **2.3. Money laundering**

Money laundering is one of the most serious crimes that has severely affected a country's economy in several ways. This offence is regulated in the Law on Anti-Money Laundering Act 2002 in our country.<sup>50</sup> Money laundering is generated from illegal money from various criminal activities like drug trafficking,

---

<sup>48</sup> The Customs Act, 1962, § 121, No. 52, Acts of Parliament, 1962 (India).

<sup>49</sup> The Indian Penal Code, 1860, § 302, 359-374, No. 45, Acts of Parliament, 1860 (India).

<sup>50</sup> Prevention of Money Laundering Act, 2002, No. 15, Acts of Parliament, 2002 (India).

human trafficking, etc. This money is then misappropriated to make it appear as it was obtained from a legitimate source.

## **2.4. Trafficking of drugs**

Drugs are popular among young people. Its trafficking is another major crime that threatens the country's youngest population and eventually the workforce. It has serious repercussions on mental and physical health. The most important reason for the highest rate of drug trafficking is attributed to the geography and location of our country. Drug trafficking has ruined the lives of some young people due to addiction and has also facilitated many unemployed people to buy and supply drugs to traffickers and consumers.

## **2.5. Trafficking**

According to *Article 23 of the Constitution of India*, human trafficking is expressly prohibited.<sup>51</sup> Some laws prohibit trade. Trafficking in persons also goes against fundamental rights and fundamental human rights<sup>52</sup>. No one should be deprived of their human rights and human trafficking is a potential threat of human rights violations. Human trafficking is one of the largest and most heinous organized crimes, it includes the trafficking of women and children, especially for prostitution, labor, and more.

---

<sup>51</sup> INDIA CONST. art. 23.

<sup>52</sup> BRITANICA, <https://www.britannica.com/topic/organized-crime>, (last visited Sept. 15, 2022).

## 2.6. Prostitution

India's flesh trade has flourished throughout the ages. The sex and prostitution trade are seen as a highly profitable business in the underworld, the human flesh trade is a category of human, mainly female trafficking, and the underworld gangs and mafias are the organizers of this trafficking crime. They transport young children and girls throughout the country and abroad, sell these victims and make it next to impossible to reach their families, friends, and loved ones, minimizing the risk of being rescued by the state. According to the Health Organization of India, Mumbai has over 10 million prostitutes trafficked in moderate amounts.<sup>53</sup>

## 3. LAWS GOVERNING TRANSNATIONAL ORGANIZED CRIMES IN INDIA

India has been successful in enforcing several laws and regulations after its independence from the British Raj, even though to date there are no specific laws related to the activities of transnational organized crimes<sup>54</sup>. However, there are certain provisions to put regulatory control over these criminal activities.

---

<sup>53</sup> Neeta Lal, *India's Child-Trafficking Nightmare Deepens in the Pandemic* (Aug. 27, 2022), [https://www.globalasia.org/v16no1/feature/indias-child-trafficking-nightmare-deepens-in-the-pandemic\\_neeta-lal](https://www.globalasia.org/v16no1/feature/indias-child-trafficking-nightmare-deepens-in-the-pandemic_neeta-lal).

<sup>54</sup> By Arunima Pati and Rajeswari Nanda, *Transnational Organized Crimes: India; A Battleground* (2020), LEGAL BITES (Sept. 20, 2022, 6:45 PM), <https://www.legalbites.in/transnational-organized-crimes-india>.

Laws have been provided in the *Indian Penal Code*:

- a. Section 120-B states the punishment an individual shall receive upon committing criminal conspiracy, and penalties for conspiracy crimes are dealt with in this section.<sup>55</sup> It is divided into two parts.
  - i)The first part indicates offences punishable by death, life imprisonment or imprisonment for not less than two years. If the code of offence does not state a penalty, the person is considered the same as the person who facilitated or contributed to the crime.
  - ii) Part 2 states that the person involved in the conspiracy will be sentenced to six months imprisonment, a fine, or both. If the planned conspiracy fails, the person faces fine.
- b. Section 395 speaks about punishment with either life imprisonment or rigorous imprisonment upon committing Dacoity. A person who commits a crime of breach of trust shall be sentenced to 1 year [life imprisonment] or heavy imprisonment of not more than 10 years and a fine.<sup>56</sup>
- c. Section 400 of the Indian Penal Code has stated the criminalization of the word “gang”, at any time after the enactment of this law, anyone who belongs to a group organized for habitual fornication shall be punished with a severe sentence of life or not exceeding 10 years, as well as a fine, and
- d. Section 364A has established punishment for the kidnapping. According to Section 364A of the Indian Penal Code, any person who abducts or

---

<sup>55</sup> The Indian Penal Code, 1860, § 120-B, No. 45, Acts of Parliament, 1860 (India).

<sup>56</sup> The Indian Penal Code, 1860, § 395, No. 45, Acts of Parliament, 1860 (India).

abducts a person or detains a person after such abduction and threatens that person with death or harm, or by his actions, does not A person may be killed or injured to compel a government, a foreign country, an international intergovernmental organization, or any other person to do or not to do something If, or if such acts cause injury or death to a person, or paying a ransom, it is punishable by death or life imprisonment and a fine.<sup>57</sup>

Additionally, there are provisions like *Foreign Exchange Regulation Act, 1956* and the *Immoral Traffic (Prevention) Act, 1973*. These are the acts under the Constitution of India that imposes regulatory control over these criminal offences. The *National Security Act, 1980* also empowered the Central Government and the State Government to enforce detention upon the anti-nationalists, mafias and gangs.

Also, some laws are enacted by the state governments of our country like the *Uttar Pradesh Control of Organized Crimes Act, 2017*<sup>58</sup> and the *Maharashtra Control of Organized Crimes Act, 1999*.<sup>59</sup> These laws are enacted with the review to control the activities of the organized crimes and the organizers i.e., mafias who get involved in smuggling, human trafficking, illegal mining, etc. There are laws like the *Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986*<sup>60</sup> that look

---

<sup>57</sup> The Indian Penal Code, 1860, § 364A, No. 45, Acts of Parliament, 1860 (India).

<sup>58</sup> Uttar Pradesh Control of Organized Crimes Act, 2017, Acts of Uttar Pradesh State Legislature, 2017 (India).

<sup>59</sup> Maharashtra Control of Organized Crimes Act, 1999, No. 30, Acts of Maharashtra State Legislature, 1999 (India).

<sup>60</sup> Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, No. 07, Acts of

after the same objectives mentioned above.

## **4. FACTORS THAT FACILITATE THE INCREASE OF TOCs**

Organized crime has existed in India in some form or another. However, such crime has assumed its lethal form within the current times due to various political and socio-economic factors, also because of advancements in science and technology.<sup>61</sup> The most important factors which facilitate to increase in Transnational organized crimes in India are:

### **4.1. Globalization**

Globalization has led to a significant increase in transport-related organized crime such as human trafficking, drug trafficking, smuggling, and concealment in India. Beyond these social problems are the consequences of the expansion and transformation of state power. One of the many ways that globalization affects transnational organized crimes is through its criminalizing potential, as the simplified process of crossing borders has created new opportunities for criminals. Telecommunications as part of globalization has evolved significantly over the last decade. Technology has enabled people in India to talk to people from different parts of the world and

---

Uttar Pradesh State Legislature, 1986 (India).

<sup>61</sup>Ce Dr. Sumanta Bhattacharya, *Organized crime a major crisis in India and its impact on the internal security of India*, 105 (2021) INT. J MULTIDICIP 103, 2021, [https://www.researchgate.net/publication/356443965\\_Organized\\_crime\\_a\\_major\\_crisis\\_in\\_India\\_and\\_its\\_impact\\_on\\_the\\_internal\\_security\\_of\\_India](https://www.researchgate.net/publication/356443965_Organized_crime_a_major_crisis_in_India_and_its_impact_on_the_internal_security_of_India).

vice versa. However, it has also played a key role in increasing the ability to organize and effectively manage transport organized crime activities in India to help evade law enforcement investigations.

## **4.2. Corruption**

Corruption in India has taken place in multiple kinds- direct or indirect. Their onset is often attributed to the opportunistic nature of previous leaders who have wanted great things for the country. Corruption in particular is the result of links between politicians, bureaucrats and criminals. Interestingly, it's gotten to the point where bribes are being taken to get the right stuff, not just the bad stuff. And that seems to be the proper way to behave in that country. Therefore, as long as a person has the money to bribe the authorities, it is easy for them to participate in criminal activities such as drug and human trafficking, as well as smuggling other illegal goods. The criminals get benefits such as tax-free trade and their activities are always high priced, giving individuals a lot of profit. As a result, funds are usually available to bribe authorities, and these crimes are on the rise in India.

## **4.3. Geo-Strategic Location**

Being centrally located in India offers many advantages and disadvantages for business operations. The country has a very large Indian Ocean coastline in the south, bordered by Pakistan to the west, and Nepal and China to the north and east. This has several advantages as the coast provides sea routes to the state and supports

maritime trade and large-scale fishing. In addition, neighboring nation China has many modernization advantages that help improve technology.

However, the coast also contributes to the prevalence of transnational organized crime, as most illegal commodities such as drugs are shipped into the country by sea. Smuggling goods through Indian ports is relatively easy due to high levels of corruption in the public and security sectors. Given that water transport can transport an infinite amount of goods, most criminals prefer this type of transport. In addition, being a neighboring country like Pakistan also contributes to the rise of transnational organized crime. The latter suffers from the same problems as India.

#### **4.4. Poverty and lack of education**

Poverty rates allow most Indians to earn money in other ways to supplement their income. Most of them are willing to participate in crime which offers a better and easier way to make tax-free money. Additionally, it is usually expensive to run a legal business in India as capital is required to keep the business running and is not available to poor families. The fact that individuals can make significant sums of money simply by joining transnational organized crime groups often drives most poor individuals into illegal activities. Since India's independence, lack of education has been a problem. Although the country has made significant progress in enrollment and access to primary education in recent years, the number of early dropouts is



significantly higher and learning levels remain low. This usually results in hiring by criminal gangs and demanding upkeep. Transnational Organized crimes groups provide alternative employment opportunities for these uneducated people, leading to further increases in criminal activity.

## **5. CONCLUSION**

The above discussion clarifies the concept of organized crime. The ultimate intention of criminals is not to harm anyone, but to make a profit, and to cause some kind of injury. Some common characteristics of these crimes are also mentioned above. Such crimes come in many forms, including drug trafficking, human trafficking, cover-ups, and contract killings. There are various central and state laws designed to regulate and curb organized crime. Despite the existence of various laws, states have failed to curb these crimes significantly.

This is often due to a variety of challenges facing states such as lack of proper enforcement, lack of resources, slow court proceedings, difficulty gathering evidence, etc. Given these circumstances, the government must enact several laws specific to organized crime and establish diplomatic relations with other countries. Because many of these crimes are transnational.

Consistent with world population growth, global poverty levels, and globalization, all factors have influenced transnational criminal activity around the world. Various types of transnational crime spread from one

border to another, affecting multiple countries. Consequently, globalization has accelerated transnational criminal processes and harm has become the focus. As a result, states, as international organizations, are the actors of international relations, and play a very important and central role in combating transnational crime to fulfill their functions of protecting the lives and territories of their citizens. Mutual legal cooperation between nations is therefore essential in the age of globalization. At present, no country can stand alone to counter such actions. International judicial cooperation can have an effective impact on states. They must commit to an agreement bilaterally or multilaterally. However, the most important step is for states to ratify them into national law first.

# THE TRANSGENDER COMMUNITY IN INDIA: WITH SPECIAL REFERNCE TO TRANSCILD’S RIGHT TO BE ADOPTED

-Md Kaif<sup>62</sup>

---

## ABSTRACT

*After the judgment of NALSA v Union of India, transgender or third gender has been recognized in India and their rights were protected under the new enactment, the Transgender Persons (Protection of Right), 2019. In this way somehow transgender people were recognized but were not given equal rights. The transgender community has been ostracized since time immemorial, in certain cases, even their families refuse to acknowledge them as a part of the family and often close their doors on them forever. It is true that the aforementioned legislation has shone a ray of light on the transgender community but their basic rights continue being denied to them due to the numerous loopholes in the Act.*

*The ambiguously worded provisions of the Act give the impression that the parents of a transgender person can choose between raising their child or*

---

<sup>62</sup> Student of BA LL. B (H), Semester III, Indian Institute of Legal Studies, Siliguri, m.kkhalipur@gmail.com.

*not. This article aims to analyze how the Indian personal laws have conveniently excluded the transgender community from their ambit. In addition, the article also highlights how the Transgender Persons (Protection of Right), 2019 has failed to attain its set purpose to the fullest.*

**KEYWORDS:** Transgender, Child, Residence, Rights, and Gender.

# 1. INTRODUCTION

Transgender people are a part of our Indian society and culture from the very beginning. In ancient times they were considered a common part of society. People had much liberal mentality compared to the present time. In Mahabharata, there were four stories, focusing on the transgender or alternative sexuality.<sup>63</sup> The story of 'Shikhandi', 'Bangashwana', 'Budh Gruha' and 'Sudyumna ila' deals with the transgender characters. 'Shikhandi' is a major character in the Mahabharata.<sup>64</sup> She was born in the house of the king of Panchal or Dhruvad but was brought up just like a son.<sup>65</sup> The whole society considered her a king. After marrying a woman Shikhandi acquires male genitalia with the help of a Yaksh.<sup>66</sup> At the battle ground when Bhishma was denied to fight with Shikhandi because he was born in a woman's body at this point Lord Krishna justifies his place in the battle, because he was now a man not a woman. So, Bhishma needed to recognise his male status<sup>67</sup>. Also, in Tulsidas Ramayan, Ramrajya has been mentioned which says that “any man, any transgender, any woman, any living being as long as they give up deceit and come to me with love for

---

<sup>63</sup>Trina Maitra and Nandini Shaha, *Gender-Bending in the Mahabharata: Questioning Fixed Notions of Gender-Identity*, ASHVAMEGHA, (Sept. 6, 2022, 3:30 PM), <https://ashvamegh.net/gender-bending-mahabharata-notion-identity/>.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Shiva Prakash Srinivasan & Sruti Chandrasekaran, *Transsexualism in Hindu Mythology*, IJEM, (Sept. 17, 2022, 3:13 PM),

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7539026/#:~:text=In%20Mahabharata%2C%20after%20being%20abducted,her%20sex%20to%20become%20Shikhandi.>

all, they are dearest to me”.<sup>68</sup> Patanjali claimed in 200 BC that three grammatical genders in Sanskrit language are derived from three natural genders.<sup>69</sup> Therefore, the demand for the rights of the transgender is not a western concept rather they have been part of our society for a very long time.

Many authors during the Vedic period, acknowledged the existence of the third gender but it was during the British Raj that society took a rather irrationally stern approach towards them. The third gender and other people of non-norm conforming sexual orientations faced the harshest brunt of penal laws. This continued being their reality until fairly recent times.

## **2. TRANSCILDRN’S RIGHT OF BEING ADOPTED**

Trans people are disregarded by birth in our country. In most of the cases when a trans-child is born in a family, their biological parents refuse to accept them. The new born child loses his parental identity. The Transgender Person (Protection of Rights) Act, 2019 does not strictly

---

<sup>68</sup> BUSINESS STANDARD, [https://www.business-standard.com/article/news-ians/lgbt-rights-were-accepted-in-ancient-india-section-377-must-be-repealed-amish-tripathi-117090300250\\_1.html](https://www.business-standard.com/article/news-ians/lgbt-rights-were-accepted-in-ancient-india-section-377-must-be-repealed-amish-tripathi-117090300250_1.html) (last visited Sept. 25, 2022).

<sup>69</sup> TRIUMPH IAS, <https://triumphias.com/blog/transgender-community-in-india-historical-evolution/#:~:text=Indian%20linguist%20Patanjali%E2%80%99s%20work%20on%20Sanskrit%20grammar%2C%20the,addition%20to%20a%20feminine%20category%20of%20unmasculine%20males%29> (last visited Oct. 1, 2022).

provides provisions for parents to keep their child into their house.<sup>70</sup> Parents have an option to keep or not to keep their children in their house. This kind of discrimination is possible due to the various personal laws. According to Section 7 of the Hindu Adoption and Maintenance Act, 1956 which elucidates the ‘capacity’ of a male Hindu to adopt a child as requiring him to be of sound mind and not a minor, on meeting the stated prerequisites any male Hindu has the capacity to take a “son or a daughter in adoption”.<sup>71</sup> Section 8 of the Hindu Adoption and Maintenance Act, 1956 states the same requisites for a female Hindu to adopt a son or a daughter as mentioned in Section 7 of the Act for a male Hindu.<sup>72</sup> Adoption under The Hindu Adoption and Maintenance Act, 1956 is only for ‘Son’ and ‘Daughter’; it means any biologically male-child and female-child can be adopted.<sup>73</sup> There is no mention of a trans-child or an inter-sex child’s adoption, excluding them completely from the ambit of the Hindu Adoption and Maintenance Act, 1956. It should also be noted that the legislation only provides the necessary prerequisites for a Hindu ‘male’ and a Hindu ‘female’ for adopting, and does not consider the other gender eligible for adopting. Generally, laws are framed with the objective of attaining an equal and just society, but the mentioned legislation preaches the contrary.

---

<sup>70</sup> Ankana Bal, *The Transgender Person (Protection of Right) Act, 2019: A Critical Analysis*, IJLMH 1069, 1072-1073 (2020), <https://www.ijlmh.com/wp-content/uploads/The-Transgender-Persons-Protection-of-Rights-Act-2019-A-Critical-Analysis.pdf>.

<sup>71</sup> *Id.*

<sup>72</sup> Hindu Adoption and Maintenance Act, 1956, § 7, No. 78, Acts of Parliament, 1956 (India).

<sup>73</sup> *Id.*

### 3. RIGHTS OF TRANSGENDER UNDER THE TRANSGENDER PERSON (PROTECTION OF RIGHTS) ACT, 2019

The concept of ‘transgender’ continues to elude many. In the case of *National Legal Services Authority v. Union of India*,<sup>74</sup> The Hon’ble Supreme Court of India held that gender identity does not refer to biological characteristics but to the “innate perception of one’s gender”.<sup>75</sup> A transgender person is the one whose gender does not match the gender assigned to them at birth. The judgment held that if a person feels that he or she does not truly recognize with the gender identity given to them at birth, and on declaring so, they shall be considered as ‘transgender’. This judgment demanded immediate action on the part of the Government who then implemented the Transgender Persons (Protection of Rights) Act, 2019.<sup>76</sup> This Act was passed in the Lok Sabha on Aug 05, 2019 and passed in the Rajya Sabha on November 26, 2019.<sup>77</sup>

The Act has made for prohibition against discrimination, against the transgender person, including denial of service of unfair treatment in relation to:<sup>78</sup>

1. Education,

---

<sup>74</sup> *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

<sup>75</sup> *Id.*

<sup>76</sup> Transgender Persons (Protection of Rights) Act, 2019, No. 40, Acts of Parliament, 2019 (India).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*



2. Employment,
3. Healthcare, access to, or enjoyment of goods, facilities, opportunities available in the public,
4. Right to movement,
5. Right to reside, rent, otherwise occupy properties,
6. Opportunity to hold public or private office, and
7. Access to a government or private establishment.

The provisions contained in this act provides various rights that are common and basic rights for a human being, but also a discrimination is seen between cis-gender person and transgender.<sup>79</sup>

### **3.1. Right to Residence**

The 'right of residence' mentions that every transgender person has the right to reside and be included in their household and if the immediate family is unable to take care of the person, the person may be placed in a rehabilitation center on the orders of a competent Court.<sup>80</sup> The provision provides enough room for the abuse of the 'right to residence' of a trans-child or minor transgender person because it lays down that in the event of their "immediate family" failing to take care of them, they can be placed in rehabilitation center. The predicament of these children is

---

<sup>79</sup> PRS LEGISLATIVE RESEARCH, [https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill2019#:~:text=Prohibition%20against%20discrimination%3A%20The%20Bill,public%3B%20\(v\)%20right%20to,\(last visited Sept. 21, 2022\).](https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill2019#:~:text=Prohibition%20against%20discrimination%3A%20The%20Bill,public%3B%20(v)%20right%20to,(last%20visited%20Sept.%2021,%202022).)

<sup>80</sup> Transgender Persons (Protection of Rights) Act, 2019, § 12, No. 40, Acts of Parliament, 2019 (India).

amplified when they are sent to rehabilitation centers due to the societal stigma attached to the concept of ‘rehabilitation centers. The Transgender Person (Protection of Right) Act, 2019 sheds light upon the fact that law is unable to protect a person’s right just because of the person’s different sexual orientation.

### **3.2. Certificate of Identity of a Trans Person**

A transgender person may make an application to the District Magistrate for a certificate of identity, including the gender as a transgender.<sup>81</sup>

A received certificate may be obtained only if the individual undergoes the surgery, to change their gender as male to female.<sup>82</sup> Again, this provision of the Act violates the judgment of Supreme Court in the case of *National Legal Services Authority v. Union of India*<sup>83</sup> that a person has the right to declare their sexual orientation and that there is no need of a medical examination for the same. The question that surfaces is why should any person need an identity card solely in proof of their sexual orientation?

### **3.3. Offenses and Penalties**

In the Transgender Person (Protection of Right) Act, 2019 for sexual abuse or any physical or sexual violence, removal from

---

<sup>81</sup> Transgender Persons (Protection of Rights) Act, 2019, § 5, No. 40, Acts of Parliament, 2019 (India).

<sup>82</sup> Transgender Persons (Protection of Rights) Act, 2019, § 6, No. 40, Acts of Parliament, 2019 (India).

<sup>83</sup> *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

house, denial to use any public places the punishment is just for six months to two years of imprisonment and fine.<sup>84</sup> For biological women the punishment of assaults is one year to five years' imprisonment under Section 354 of Indian Penal code, 1860 and Section 354B of IPC, 1860 provides punishment in case of assault or use of criminal force to a woman with an intention to disrobe her.<sup>85</sup> These aspects of the legislation reflect the trans-phobic attitude that is prevalent within the so-called "mainstream population of the society".

## 4. CONCLUSION

The Parliament is tasked with the duty of framing laws that stand for the welfare of the transgender community but it seems that the laws are rigged with biases. The archaic laws continue to operate, disregarding the very existence of the transgender community. Several amendments were made to the laws from time to time but all of them have failed to adequately address the plight of this overlooked community. They have been excluded from mainstream society on the account of them being minorities.

The transgender community in India is subjected to mental agony to this date. In Tripura a transgender person alleged that the police stripped them

---

<sup>84</sup> Transgender Person (Protection of Rights) Act, 2019, No. 40, Acts of Parliament, 2019 (India).

<sup>85</sup> Amay Bajai, *Crimes Against Women-A Legal Perspective*, INDIAN NATIONAL BAR ASSOCIATION (Sep. 17, 2022, 4:15 PM), <https://www.indianbarassociation.org/crimes-against-women-a-legal-perspective>.

to prove their gender identity. The transgender person said that on their way back from a party organized at the hotel in Agartala, they were stopped by police and then taken into custody. It is obvious that there are many more transgender people in India who have not disclosed their identity due to social stigmas and fear of discrimination. They were officially declared as the “third gender” in 2014. These people usually transform their attire in a womanly fashion and loiter on the streets and trains begging around. They are deprived of basic health facilities which lead them to get affected by STIs and other severe serious health issues. Their employment rate is too low because they do not get employment opportunities in the government sector or the private sectors. Most of them are denied education opportunities. Therefore, they earn their livelihood by dancing, singing and begging on the road. They mostly come under Scheduled Caste and Scheduled Tribe category which is declared as the backward class in India. The transgender community in India are forced to become sex workers and are often abused during the course of their work. In the recent years, the government has taken a few initiatives to provide a level-playing field for the transgender community but the full effect of these steps is yet to be felt.

When mother nature does not differentiate between cisgender and transgender persons, who are we to construct such differences? It is not their fault to be a minority gender. The 4.8 lakh transgender persons in India are the beauty of India and a very important part of our culture and society. Now, this is the time to make laws for their necessity. It's time

to change old laws or amend them. It's time not only to change the ancient laws but to also alter our mindset.

# SEXUAL HARASSMENT AT WORKPLACE AND ITS IMPLICATIONS

-Parthiv Chakraborty<sup>86</sup>

---

## ABSTRACT

*Sexual harassment is one of the most widely prevalent crimes against women. However, we believe that it is the least understood, as in like all other crimes, for the ambit and boundaries thereof are unclear to those who perpetrate it and to those who are victims to it. Nevertheless, the paper aims to look into the penal and constitutional aspects of the same while reading into the important judgments for clarity and referring to international treaties India has been a part of. In the end, however, problems with the act and solutions to it have been suggested so that the Act and the provisions thereof can be implemented insofar as practicable and beneficial to those in dire need of the same.*

**KEYWORDS:** Sexual harassment, women, workplace, Indian Constitution, and Indian Penal Code.

---

<sup>86</sup> Student of BA LL. B (H), Semester V, Indian Institute of Legal Studies, Siliguri, parthivchty@gmail.com.

# 1. INTRODUCTION

Sexual harassment ranges from comments with a sexual undertone to asking for sexual favors in return of promotion and promises. The margin between agreement to do sexual favors and non-compliance of the same is subtle yet therein lies the charge of sexual harassment. Although the aspects of facts extend far beyond imagination, from agreeing to sexual favors and subsequent promotions and then complaining against the one who asked for it in the first place, the aspects of law are clear and codification is tight. Yet the problem lies in the implementation which we shall examine later. Violative of article 14,15,19 (1) (a) & (g) and 21 of the Indian Constitution, sexual harassment restricts a woman from attaining her full potential. Although it is not just a crime of which only women are subjected to, for men can be subjected to it as well, it is primarily considered a crime against women.

It has been a few decades now that women have stepped foot outside the comforts of their house and thus providing them with an atmosphere suitable to working should be a matter of concern. Furthermore, with the advent of liberalization and industrialization which has in turn opened spaces for employment for women, the influx of skilled and semi-skilled women workers has never been as high as it is now and thereby, their security is a must.

## 2. SEXUAL HARASSMENT AND THE INDIAN CONSTITUTION

Article 14,<sup>87</sup> prohibits the state from denying any person, *equality before law and equal protection of laws* within the territory of India and if read in conjunction with the article thereafter, prohibits discrimination on the grounds as has been enlisted below.

It is a primary duty of every government to protect its citizenry, especially, its women and children and failure to do so, would lead to dissatisfaction for women are the pillars of every nation. Thus, no person can be denied equal protection of laws and equality before law and no one can be discriminated upon unless the matter calls for a *reasonable classification* based on *intelligible differentia* and *rational nexus* like the cases of scheduled castes, tribes and other backward classes among others.

Article 15,<sup>88</sup> as has been mentioned above, prohibits discrimination on the grounds of religion, race, sex, place of birth. However, it explicitly mentions the power of the state in providing special provisions for women and children.

Yet, there cannot be any classification based on the grounds above if they are arbitrary, restrictive, unreasonable and unintelligent and if they violate the *reasonability principle* laid down by the Supreme Court.

---

<sup>87</sup> INDIA CONST. art. 14.

<sup>88</sup> INDIA CONST. art. 15, cl. 1 & 3.



Article 19,<sup>89</sup> talks of various freedoms as enlisted therein. However, pertinent to the case would be the freedom of speech and expression and also the freedom to carry put trade and occupation as is desired for by the citizens.

Although this right is subject to restrictions of morality, decency among others, sexual harassment infringes upon the right of a victim to freely express herself in such a situation of trauma and anxiety and if done at the workplace, it creates a sense of insecurity in her preventing her from pursuing her profession of choice.

Article 21,<sup>90</sup> is perhaps the most important article, wherein, no person's right to life and liberty could be exhausted except according to a *procedure established by law*.

Victims of sexual harassment at workplace prevent the proper realization of this fundamental right in the sense that their right to live and also to work with dignity are violated.

Thus, the fundamental rights enumerated above are essential to the life of a working woman and stand violated if they face sexual harassment at their workplace.

---

<sup>89</sup> INDIA CONST. art. 19 cl. a & g.

<sup>90</sup> INDIA CONST. art. 21.

### 3. SEXUAL HARASSMENT AND IPC

Section 354 of IPC,<sup>91</sup> deals with outraging of modesty of a woman, intentionally or with the knowledge that any such use of criminal force would be likely to outrage the same.

The Supreme Court held, in several of its cases, that the modesty of a woman is her sex.<sup>92</sup> It must also be comprehended that intention is the gist of the offence and whether a person had any intention to infringe upon the modesty of a woman depends upon the facts of the case.

Punishment for an offence under Section 354 extends to five years along with a fine and imprisonment for not less than one year.<sup>93</sup>

Along with Section 354, Section 354A has been inserted by the Criminal Amendment Act of 2013, which specifically talks about sexual harassment.<sup>94</sup>

In most cases where the women are sexually harassed at their workplace, it is the ICC or the other committees mentioned under the act that they resort to and in most of the cases, the problems are duly addressed through mean of settlement and compensation and subsequent punishment as is necessary.

However, in cases of gross violation wherein remedy under the act would not be viable, FIR under Section 354 along with 354A can be filed as

---

<sup>91</sup> The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).

<sup>92</sup> State of Punjab v. Major Singh, AIR 1976 SC 63.

<sup>93</sup> The Indian Penal Code, 1860, § 354, No. 45, Acts of Parliament, 1860 (India).

<sup>94</sup> The Indian Penal Code, 1860, § 354A, No. 45, Acts of Parliament, 1860 (India).

well.

This is what a woman, working or otherwise, could resort to if she intends to take a penal action against the offender and file a criminal complaint against the same. Likewise, several offences in connection thereof, have been laid down in the sections thereafter which deal with distinct offences.

The offence of sexual offence is defined under Section 354A as under: “(i) physical contact and advances involving unwelcome and explicit sexual overtures; or, (ii) a demand or request for sexual favors; or, (iii) showing pornography against the will of a woman; or, (iv) making sexually colored remarks, shall be guilty of the offence of sexual harassment.”<sup>95</sup>

It is to be noted here that since the identification of sexual harassment is difficult, “unwelcome and explicit overtures” is essential to be understood, for not every physical contact but only those are to be deemed as offences which involve unwelcome advances.

Punishment for sexual advances is that of imprisonment for three years or fine or both combined.<sup>96</sup> Punishment for sexually colored remarks is that of imprisonment extending to one year or with fine or with both.<sup>97</sup>

Section 354B<sup>98</sup> reads as assault with intent to disrobe or compelling a woman to be naked. Punishment is that of, here, imprisonment extending

---

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> The Indian Penal Code, 1860, § 354B, No. 45, Acts of Parliament, 1860 (India).

to seven years and not less than three years and shall be liable for a fine.<sup>99</sup> Section 354C<sup>100</sup> is read as punishing a person, whoever watches or captures a woman engaged in any private act under circumstances when she would usually not expect to be observed, for a period of less than one year but which may extend to three years as well along with a fine.

Section 354D<sup>101</sup> talks about stalking and defines it as repeated fostering of connection and monitoring despite an explicit indication of disinterest for the same. However, such monitoring for the detection of crime or in pursuance of law or under circumstances reasonable and justified, such an act would not be considered as stalking.<sup>102</sup>

It is hereby to be noted that all these offences mentioned above are in relation to a woman at a workplace and have been inserted specifically to provide a remedy to a woman who would want to resort to a criminal action against her alleged offender.

However, it is pertinent to mention that not often women go forward with a criminal case in relation to harassment faced at workplace and rather seek remedy in the act itself unless the behavior meted out has been too gross and the nature thereof is grievous in its bearing.

---

<sup>99</sup> *Id.*

<sup>100</sup> The Indian Penal Code, 1860, § 354B, No. 45, Acts of Parliament, 1860 (India).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

## 4. THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was passed sixteen years after the judgment of *Vishaka v State of Rajasthan*.<sup>103</sup> The judgement has been instrumental in laying down the basis on which the structure of sexual harassment has been laid down. The case was raised after the incident of gang rape of a social worker after which activists and NGOs filed a writ petition.

The Supreme Court increased the ambit of fundamental rights further by reading into them international covenants and treaties signed by India. Clauses from “Convention on the Elimination of all forms of Discrimination against Women”,<sup>104</sup> ratified on June 25, 1993,<sup>105</sup> were read into Article 21,<sup>106</sup> thereof, talked about elimination of discrimination against employed women and ensuring equality between men and women in terms of rights, security and protection along with safe, humane conditions of work atmosphere.

Article 24 of the “Convention on the Elimination of all forms of

---

<sup>103</sup> *Vishaka & Ors vs State of Rajasthan & Ors*, (1997) 6 SCC 241.

<sup>104</sup> UNITED NATIONS HUMAN RIGHTS, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women> (last visited Apr. 22, 2022).

<sup>105</sup> *Id.*

<sup>106</sup> *Supra* note 87.

Discrimination against Women”,<sup>107</sup> urged the states to adopt necessary means and undertake useful methods at the national level for the full and effective realizations of the rights that were recognized in the Convention.<sup>108</sup>

As is evident, a liberal construction of the Indian Constitution would in itself be in consonance with the articles mentioned above and the dual force of our Constitution and international conventions make it necessary to deal with the vice of harassment in general and at workplace in particular.

Emphasis was also laid on ‘The Fourth World Conference on Women’ in Beijing where the India made a commitment to formulate national policies on women.<sup>109</sup>

Laying down “*duties of the employer*”, they held that it shall be their duty to deter cases of sexual harassment on women at workplaces and provide settlements.<sup>110</sup> They further laid down the definition of such as *sexual-harassment*.<sup>111</sup> They laid down rules relating to “*criminal proceedings*”,

---

<sup>107</sup> UNITED NATIONS HUMAN RIGHTS, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women> (last visited Apr. 22, 2022).

<sup>108</sup> *Supra* note 104.

<sup>109</sup> Priyanka Samy, *What Significance Did the 1995 Beijing Conference Hold for Dalit Women’s Movement?*, FEMINISM IN INDIA (Aug. 7, 2020), <https://feminisminindia.com/2020/08/13/significance-1995-beijing-conference-dalit-womens-movement/#:~:text=In%201993%2C%20in%20the%20run-up%20to%20the%20Fourth,large%20numbers%20to%20participate%20meaningfully%20in%20the%20conference.>

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

“disciplinary actions” and “complaints mechanism”<sup>112</sup>; a *complaint committee* which would make an annual report to governmental department concerned.

Thus, the act laid down definitions, the procedures regarding the internal complaints committee and its constitution, also a local committee which would provide redressal to those women who work in the informal sector. The act is a visionary in the sense that it included within the ambit of both the public services as well as the private sector jobs, thus furthering its ambit. It also set out fines for those complaints which would be maliciously intended in their bearing.

Yet, the act is not without its problems. While the codification as mentioned is to be appreciated, implementation is a failure. Lack of awareness continues so does the problem of identification of sexual harassment. A friendly pat on the back of the co-worker does not, in legal reasoning, does not constitute sexual harassment. An appreciation of beauty is not, usually, a sexually colored remark. Agreeing to a sexual favor in return for promotion cannot be later called rape for it has the consent but should the first proposal to a sexual favor result in sexual harassment? If the two acts of subsequent sexual intercourse and the proposal to engage in one, are separated, then yes, but if the proposal is construed as a mere approach and the act is identified in its entirety, then it should not be sexual harassment.

Cases are mostly lodged in the human rights department of every

---

<sup>112</sup> *Id.*

company whose members neither have the requisite knowledge nor are they trained in law thus, a lot of cases are under-penalized and many over-penalized. So, should they be trained in the law, especially in specific provisions of IPC in relation to sexual harassment so that they are sound in their legal capabilities to judge the cases?

## **5. CONCLUSION AND SUGGESTIONS**

Acts are always essential in dealing with specific provisions that need emphasis. A case in point would be the Prevention of Sexual Harassment at Workplaces Act, Prevention of Children from Sexual Offences Act, and Domestic Violence Act. But it is also essential that they are strictly monitored by the government and implemented well. It is the same for all the acts wherein the codification is apt but the implementation is poor. Moreover, implementation can improve with an informed citizenry-aware, educated and conscious. That can only be accomplished with proper legal education. Judiciary must deal swiftly with those cases of sexual violence in the workplace that are received under IPC. The law fraternity or the litigators must make it a fact to discourage deliberate false cases which dilute the entire gravity of the offense. Employers must make sure all conditions are met to mitigate the cases.

Thus, sexual harassment must be terminated at the roots. Asking for sexual favors is more of a display of power than a portrayal of lust, for the same can be obtained without much effort in return for consideration. Yet the absence of safe, sound, and secure working conditions is



detrimental for women who aspire to work and fulfill their ambitions. Having a duty to protect its citizenry is the call for the day and it incorporates men too who suffer at the hands of men and women co-workers and employers alike. Equality can be reached not with just a sanction that imposes a duty but with a change in the structure and a change within the hearts and minds of the population.

Include within the internal complaints committee a lawyer or someone competent in law, for there is indeed a provision for an external member but when the internal committee itself is hardly established, let alone a member from the external committee. If the cases are reported to the Human Resources department, as so often is, there may be a member of the legal wing of the company so as to understand the intricacies of the law. Students of MBA must be trained in the basics of law relating to pertaining offenses. This would increase awareness among the workers and members of the HR department alike.

Like other penal provisions, this too must be made gender neutral for, along with women, men are subjected to it as well but hardly taken care of. Small companies cannot afford any establishment of committees and in that case, local committees must be active in their disposition of cases. Reports must be regularly submitted and government must produce data that would help researchers help in prevention and chalking out other tools to mitigate the practice.

# COVID-19: THE VICIOUS CYCLE OF ECONOMIC DEPRESSION AND HUMAN DEPRESSION WITH SPECIAL REFERENCE TO INDIA

-Devapriya Saha<sup>113</sup>

---

## ABSTRACT

*India during this new economic depression brought by COVID-19, experienced a significant fall in the business cycle which in turn led to high rates of unemployment, poverty, and a decline in living conditions, adversely impacting both the health of individuals and economic development. This economic depression has also resulted in a psychological imbalance in people, the job losses and salary cuts increasing with each passing day have resulted in anxiety and depression stemming from one's financial stability. There is a causal relationship between health and wealth, because the mental and social well-being of the workforce of a country is of paramount importance to yield maximum labor productivity. Therefore, the aim of this paper is to evaluate the relationship between mental health and labor productivity, in addition, the article outlines the lacunae in the Indian*

---

<sup>113</sup> Student of BA. LL. B (H), Semester V, Indian Institute of Legal Studies, Siliguri, devapriyasaha89@gmail.com

*legislations in addressing the significance of mental health to multiply labor productivity.*

**KEYWORDS:** COVID-19 Pandemic, Economic Depression, Human Depression, Mental Health, and Unemployment.

# 1. INTRODUCTION

Since the dawn of the 21st century, the world has witnessed multiple economic crises. COVID-19 is an extraordinary health crisis that has shaken the whole world, dragging it into a state of fear and uncertainty, greatly impacting economies, societies, employees, and organizations worldwide.

It all began in the city of Wuhan (China), when in December 2019 the city witnessed the outbreak of the severe acute respiratory syndrome coronavirus (SARS-CoV-2).<sup>114</sup>

The SARS-CoV-2 spread fast, propelling its status to a global pandemic on March 11, 2020, by the World Health Organization.<sup>115</sup> Due to the rapid spread of this virus, India applied several safety measures to contain it such as Social Distancing, Lockdowns, and Quarantine.

Schools, Universities, Nonessential Businesses, and Non-governmental Organizations were also temporarily closed. Travels were restricted; flights were cancelled public gatherings, as well as social events, were banned. The COVID-19 outbreak led to a significant slowdown in world economic activities leading to shutdowns and redundancies. These unforeseen circumstances led to an increase in the unemployment rate. Many studies are now emerging to assess the impact of COVID-19 on the

---

<sup>114</sup> CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/locs/2020/outbreak-of-2019-novel-coronavirus-2019-ncov-in-wuhan-china.html> (last visited Sept. 29, 2022).

<sup>115</sup> *Id.*

mental health and well-being of the population.

## **2. ECONOMIC DEPRESSION: CONCEPT AND MEANING**

An economic depression is an occurrence wherein an economy is in a state of financial turmoil. It is so cataclysmic that it takes a perfect storm of negative events to create one. It is a situation worse than a recession. There is a significant fall in business and consumer confidence. Its common elements are unemployment, poverty, financial crisis, and bankruptcies. Declining economic activity is characterized by falling output and employment levels.

## **3. COVID-19: THE NEW ECONOMIC DEPRESSION**

The pandemic has resulted in a tragically large number of human lives being lost. This is a crisis like no other, and there is much uncertainty about its impact on people's lives and livelihoods. Countries like India reliant on tourism, travel, hospitality, and entertainment for their growth are experiencing particularly large disruptions. Emerging markets and developing economies are facing additional challenges with unprecedented reversals in capital flows as global risk appetite wanes and currency pressures, coping with weak health systems, and limited fiscal space to provide support. Moreover, several economies entered this crisis in a vulnerable state with sluggish growth and high debt levels.

The impact of the coronavirus pandemic on India has been largely disruptive, both in the loss of human lives and in terms of economic activity. The economic impact of COVID-19 is seen in every sphere including growth, international trade, financial markets, unemployment, income, poverty, and many more variables.

## **4. LOCKDOWN AND ITS IMPACT ON HUMAN RESOURCES**

The COVID-19 pandemic has undoubtedly changed the way of life for most, forcing countries, societies, companies, and individuals to rethink how they live and work. One of the most significant public health measures implemented during the pandemic has been extended periods of ‘lockdown’ whereby whole populations were advised to remain in their homes and not venture out except to collect necessary supplies, care for others, or exercise. This sudden compulsory lockdown led to, first an abrupt and complete closure, and then disruptions to the operations of businesses posing the predicament of continuing the business operations for survival. The lockdown and the physical distancing measures have impacted the informal economy which provides a livelihood for almost 1/5th of men and nearly 1/3rd of women and the majority of city dwellers who rely on this economy for their day-to-day needs.<sup>116</sup>

---

<sup>116</sup> Samuel Nehminthang Haokip, *Lockdown and its Impacts on the Society*, THE SANGAI EXPRESS, (Jul. 2, 2020) <https://www.thesangaiexpress.com/Encyc/2020/7/2/-Lockdown-and-its-impacts-on-the-society>.

Additionally, farmers are being affected badly by lockdown measures as their perishable products are not reaching the cities as expected. Migrant workers mainly faced problems related to food, shelter, healthcare, fear of getting infected or spreading the infection, loss of wages, concerns about the family, anxiety, and fear and they also faced harassment and negative reactions from the local community.

## **5. THE RELATIONSHIP BETWEEN ECONOMIC DEPRESSION AND HUMAN DEPRESSION**

Usually, economic depression is meant to be related to the economy but economic depression is also linked to human depression. There is a positive correlation between them.

Major life events such as the loss of jobs can lead to depression. It can be caused due to changes in lifestyles, helplessness, physical changes, peer pressures, etc. The economic fallout of COVID-19 resulted in unprecedented job losses, which is pertinent to the individual's mental well-being as losing our job is one of life's most stressful experiences. The COVID-19 pandemic has hit the human capital directly. The stress of losing jobs and livelihoods can be overwhelming for many but this is worse for people having low socioeconomic status, especially those working in the informal sector.

The layoffs and salary cuts increasing with each passing day have led to them suffering from depression and fear of losing financial stability. Migrant workers have lost their jobs and many were unable to return to their

homes.

Social isolation led to an increase in domestic violence cases and suicides. People lost their jobs; we're deprived of our basic needs. Executing lockdown and physical distancing measures without sufficient mitigating measures to help informal businesses and individuals cope economically will lead to uncertainty, loss of livelihood, and financial strain which will hurt mental health.

As we know human capital is one of the chief cornerstones of economic development and an economy that is deficient in this vital component will suffer from economic depression. However, economic growth also has a strong effect on human capital outcomes. Human capital refers to the knowledge, skill sets, and experience that workers have in an economy. The skills provide economic value since a knowledgeable workforce can lead to increased production.<sup>117</sup> The causal relationship between health and wealth is important to see how the two work. Although good health may be considered a form of human capital that has a positive impact on productivity, income also positively influences health. Earning a higher income will increase the consumption of health-related goods such as adequate food and medicine. There will also be an improvement in the living standard and this will bring efficiency to the workplace.

Health here, doesn't only mean physical health but also mental health, if a person feels depressed due to job losses and staying isolated it's going to

---

<sup>117</sup> Sunita Sanghi, A. Srija, *Skill Development and Productivity of the Workforce*, ECONOMY MATTERS, 36, 38 (2015), <https://www.niti.gov.in/sites/default/files/2019-01/Skill%20Development%20and%20Productivity%20of%20the%20Workforce.pdf>.



harm the mental health of the individual this in turn decides how he is going to contribute to the economy.

When people become incapable of contributing to the economy the economy falls, further increasing the rate of unemployment which is one of the main causes or essentials of economic depression. All of this results in a never-ending vicious cycle.

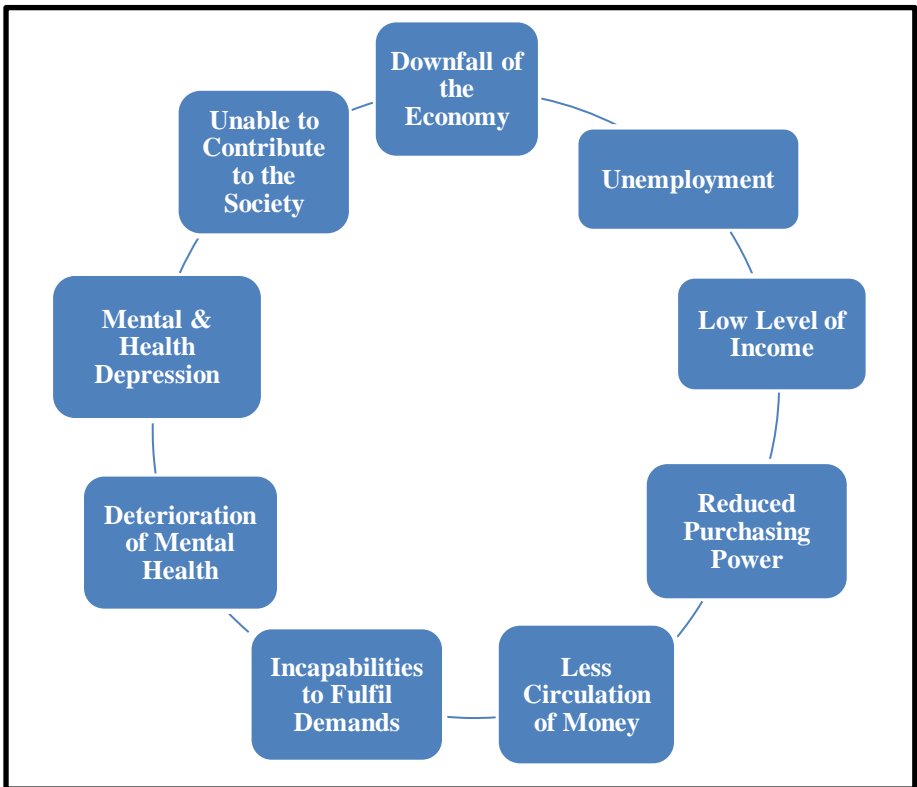


FIG: THE VICIOUS CYCLE OF ECONOMIC DEPRESSION AND HUMAN DEPRESSION.

## 6. THE LEGAL PERSPECTIVE ON HUMAN HEALTH

Health has been acknowledged as a fundamental right of the people. It is not only about the physical but also the mental and social well-being of individuals. A person is said to be healthy only when all of these three elements are present.

Physical well-being implies the notion of perfect functioning at optimum capacity, in harmony with the rest of the body. There must be a state of balance between the individual and the surrounding world and a state of harmony between oneself and others.

Mental health is not merely the absence of mental diseases, it is the ability to respond to the many experiences of life with flexibility and a sense of purpose. Health includes happiness, income, and social status.

Mental health is given inadequate attention in public health, despite the high levels of problems such as violence, poverty, and social exclusion that contribute to worsening both mental and physical health.<sup>118</sup> Amidst all of this, a question arises: whether the socio-economic provisions in the Indian constitution and international laws help guide the governments in times of economic crisis?

Socio-economic rights are designed to provide certain entitlements and protections for the interests of individuals in having access to certain

---

<sup>118</sup> Marney A. White, *What is Mental Health?*, MEDICAL NEWS TODAY, (July 28, 2022) <https://www.medicalnewstoday.com/articles/154543>.

socio-economic resources.<sup>119</sup>

According to Article 25(1) of the Universal Declaration of Human Rights “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”<sup>120</sup>

Article 21,<sup>121</sup> of the Indian constitution states that every individual has the right to a dignified life and personal liberty.<sup>122</sup> Everything necessary for an individual to survive should be available to the individual, such as health, food, clothing, shelter, and education.

Article 38,<sup>123</sup> of the Indian Constitution imposes an obligation on the State that states will make sure about a social request for the advancement of individuals and the State must care for the health and the necessities of the public at large, and ensure that every citizen will be economically independent.<sup>124</sup>

Article 47,<sup>125</sup> of the Indian constitution imposes an obligation on the State

---

<sup>119</sup> David Bilchitz, *Socio-economic Rights, Economic Crisis, and Legal Doctrine*, 12 INT. J. CONST. LAW 710, 712 (2014).

<sup>120</sup> UNITED NATIONS, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited Sept. 29, 2022).

<sup>121</sup> INDIA CONST. art. 21.

<sup>122</sup> *Id.*

<sup>123</sup> INDIA CONST. art. 38.

<sup>124</sup> *Id.*

<sup>125</sup> INDIA CONST. art. 47.

to improve public health, nutrition, and the standard of living.<sup>126</sup>

Planning and policy making is very critical to ensure that every individual's basic needs are met especially in the backdrop of COVID-19 where the mental well-being of individuals has been greatly affected. All through the COVID-19 pandemic, India's informal and migrant workers have faced extreme adversities. The reason for their suffering is the ineffective implementation of a multitude of existing labor laws. Governance failures in the three labor laws which concern India's most marginalized unorganized workers—the Unorganised Workers' Social Security Act, 2008,<sup>127</sup> the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996,<sup>128</sup> the Inter-State Migrant Workmen Act, 1979<sup>129</sup>—have resulted in tremendous hardship for India's workers.<sup>130</sup>

During the pandemic, the Ministry of Labour and Employment stated that around 3.5 crore construction workers had registered with state boards, which have about ₹52,000 crore funds collected over the years.<sup>131</sup> The

---

<sup>126</sup> *Id.*

<sup>127</sup> Unorganised Workers' Social Security Act, 2008, No. 33, Acts of Parliament, 2008 (India).

<sup>128</sup> The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, No. 27, Acts of Parliament, 1996 (India).

<sup>129</sup> Inter-State Migrant Workmen Act, 1979, No. 30, Acts of Parliament, 1979 (India).

<sup>130</sup> KR Shyam Sundar, *Migrant Workers: Who will Penalise Errant Law Enforcers?* NEWS CLICK (Oct. 7, 2020), <https://www.newsclick.in/migrant-workers-who-penalise-errant-law-enforcers#:~:text=Governance%20failures%20in%20the%20three%20labour%20laws%20which,1979%E2%80%94have%20resulted%20in%20tremendous%20hardship%20for%20India%E2%80%99s%20workers.>

<sup>131</sup> *COVID-19: Union Labor Ministry Directs States to Transfer Welfare Funds to Construction Workers*, INDIAN EXPRESS (Mar. 5, 2020, 10:39 AM),

<https://www.newindianexpress.com/business/2020/mar/25/covid-19-union-labour-ministry->

Centre asked states to transfer these funds to the workers to mitigate the crisis.<sup>132</sup>

Regardless of the gendered impact of job and business loss, women are likely to be more vulnerable than men to any crisis-driven loss of income. While the COVID-19 crisis has endangered the jobs and livelihoods of many sections of society, women's lower average incomes, lower average wealth, greater caring responsibilities, and potential over-exposure to job loss means they are more likely than others to find themselves in vulnerable positions. Rising economic insecurity is likely to have a particularly damaging effect on women, especially single mothers. In this regard, policies that help maintain standards of living in cases of income loss are likely to be especially important for women.

During the first half of the pandemic, the State had not taken proper care of the people who are psychologically disturbed because of the pandemic, despite having certain constitutional provisions stating the obligation of the state to take care of the individuals.

There is no explicit provision that these articles extend to the duty of the state during pandemics but to protect the right to health under Article 21 of the Indian constitution, the state has to take proper care by providing its people a decent standard of living. However, in the second half of the covid phase, the state ensured that every individual who is psychologically affected as a result of not being able to return to their

---

[directs-states-to-transfer-welfare-funds-to-construction-workers-2121162.html](#).

<sup>132</sup> *Id.*

native places, due to lockdown, is not deprived of food and shelter. The government has taken measures which included ensuring community shelters and community kitchens, making other relief materials available and means of transportation by emphasizing the need for social distancing, identification of suspected cases of infection, and adherence to protocols for management of such cases. Mechanisms were also put up to enable them to reach their family members through telephone, video calls, etc. as ensuring their physical safety which was the main motto.

## **7. CONCLUSION AND SUGGESTIONS**

India during the new economic depression COVID-19 experienced a significant fall in the business cycle which led to high rates of unemployment, poverty, and a decline in living conditions, which has negatively impacted both, the health of individuals and the economy. The COVID-19 has resulted in unprecedented job losses, which is pertinent to the individual's mental well-being, as losing our job is one of life's most stressful experiences, Economic growth also has a strong effect on human capital outcomes which is one of the most important cornerstones of the economy, The psychological effect led to the deterioration of health and made person incapable to contribute for its economy, and this led to falling of the economy, this vicious cycle continues. Human rights and mental health care of vulnerable populations need

supportive legislation and policies.<sup>133</sup> Amendments in laws and the formulation of new laws are often required in the area of mental health care in India. In developing countries like India, persons with mental illness and their situations are being aggravated by socio-economic and cultural factors, such as lack of access to healthcare, superstition, lack of awareness, stigma, and discrimination. The Mental health Act empowers accessibility to mental health services for all. This right is meant to ensure that services be accessible, affordable, and of good quality, but it doesn't ensure a person gets compensation for mental health issues caused due to overwork at the workplace or loss of jobs. The ambit of the legislation is very narrow, it talks about the after effects on the person facing mental health issues.

---

<sup>133</sup> M.T. Kumar, *Mental Healthcare Act 2017: Liberal in Principles, Let Down in Provisions*, 2 INDIAN J. PSYCHOL. MED., 40, 101-107. [https://doi.org/10.4103/IJPSYM.IJPSYM\\_23\\_18](https://doi.org/10.4103/IJPSYM.IJPSYM_23_18).