VOLUME IX ISSUE–IV (OCT - DEC 2023)

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
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THE STUDENT JOURNAL (2023)

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MESSAGE

FROM FOUNDER CHAIRMAN'S DESK

SHRI JOYJIT CHOUDHURY

Founder Chairman
Indian Institute of Legal Studies

It's been quite some time that I have used my prerogative for penning in a few lines under the Caption "From the desk of the Chairman." The pandemic has Pandemic has probably changed the preferred and known rules in education and it is disheartening to see the once buzzing campuses filled with vibrant and youthful energy being bereft of the exuberance that existed.

If we take a look at the history of the Corona Virus, it originated sometime in the middle of December, 2019 in China at a live seafood market and then spread to the Wuhan area. Gradually. it spread to Italy, U.S.A., Europe and other countries of the world. The affected countries

have been called to take immediate steps to detect, treat and reduce the further spread of the virus to save lives of the people. Presently the COVID-19 is no more confined to China, Italy or U.S.A. It has become a global issue. The economic impact has had devastating and cascading effect world- wide with closure of business entities, rampant job loss coupled with non-existent economic activities putting the lives and the livelihood of a large section of the world's population in peril.

The poor vulnerable daily wage earners and migrant workers are the ones who are worst affected. Concrete measures must be adopted by the governments to provide this section of the population with sustainability incomes or else the world shall witness an increase in the pre-existing inequalities. The Governments must strengthen social protection and livelihood, reorient public finance to augment human capabilities, introduce measures to limit bankruptcies and create new sources of job creation.

To my view, the Pandemic has caused a dramatic and perceived change in the socio-economic structure of the entire world. Millions of wage-earners in the United States have been bugged of leaving their current employment and demanding higher wages and they have chosen to be unemployed if wages are not commensurate with their expectations. This is probably the outcome as to how the pandemic has led to increased inequality and unequal income distribution amongst different

classes. According to Oxfam's "The inequality virus" report in the Indian context, India's billionaires increased their wealth by 35 percent while 25 per cent of the population earned just Rs. 3000 as income per month. The unforeseen and unpredictable nature of the mutant waves have caused immense distortions in the labour market which has exposed the migrant labourers to the destitution of low incomes at their native places or starvation at their outstation job sites.

Research based data shall illuminate us about the devastation caused by cyclical mutant waves in the times to come but in the meantime, we have no choice other than to maintain status quo till the pandemic subsides. It is heartening to see that in spite of closure of many educational institutions, the editorial team has put in their honest efforts to publish the journal in such antagonizing and unprecedented times. I sincerely laud and appreciate their endeavors in making this happen. Wish everybody good luck & health.

JOYJIT CHOUDHURY

MESSAGE

FROM PRINCIPAL'S DESK

I would like to convey my sincere thanks and congratulate the "Quest Editorial Board" and its contributors for their ethos and time. I believe that this edition will enrich the readers for enhancing their knowledge. In the journey of 'Quest' the tireless work of students, teachers and other contributors are appreciated. This edition will focus on the mind of the readers and its reflection spread around the society.

I would also like to thank the students and teachers who have shared their ideas, views, emotions, and expressions for fruitful completion of the journey of "Quest" (this edition), and I hope it will continue in future also. It also serves the purpose of Indian Institute of Legal Studies for which it is meant.

Prof. (Dr.) P. K. Sahoo
Principal,
Indian Institute of Legal Studies

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LONG ARTICLE

IMPACT OF ARTIFICIAL INTELLIGENCE IN HUMAN EXISTENCE AND THE INDIAN LEGAL SYSTEM

-Soumyajit Barman & Pritam Gope[1]

ABSTRACT

AI is the development of computer systems that can perform tasks that ordinarily require human intelligence, such as visual perception, speech recognition, decision-making, and language translation. AI is used in various areas, including healthcare, finance, education, and transportation. It can analyze data patterns and provide insights, help diagnose diseases, automate mundane tasks, and offer personalized experiences. AI can improve many aspects of human existence, such as healthcare, education, and transportation. However, there are also concerns about the possibility of job displacement and other ethical issues. The Indian legal system is not immune to the impact of AI. The

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use of AI in the legal system has both advantages and disadvantages. The topic of legal research stands to be significantly altered by the introduction of AI into the legal system. Legal information in India is extensive and ever-evolving, but with the help of AI, attorneys may gain instantaneous, comprehensive, and accurate insight into the whole legal system.

KEYWORDS: *Artificial Intelligence, Recognition, Data, Protection, Privacy.*

1. INTRODUCTION

Artificial intelligence (AI) refers to the simulation of human intelligence in machines that are programmed to think and learn like humans. It is a broad field of computer science that focuses on creating systems or algorithms capable of performing tasks that typically require human intelligence.[2] AI systems are designed to analyze data, extract patterns, and make predictions or decisions based on that data. They can be categorized into two main types i.e., narrow or weak AI and general or strong AI. Narrow artificial intelligence is designed for certain tasks and operates in a limited environment. It is not as smart or adaptable as people, but it is incredibly good at what it does well. Picture identification software, streaming platform recommendation algorithms, and virtual assistants like Siri are examples of narrow artificial intelligence. General AI refers to machines that possess human-level intelligence and are capable of understanding and performing a wide range of tasks at a level comparable to humans. Achieving true general AI remains a theoretical goal and has not yet been realized. AI technologies encompass various subfields and techniques, such as machine learning, deep learning, natural

[2] IBM, https://www.ibm.com/blog/understanding-the-different-types-of-artificial-intelligence/ (last visited Sept. 2, 2023).

language processing, computer vision, robotics, and expert systems.

AI applications have become widespread in various industries, including healthcare, finance, transportation, manufacturing, and entertainment. Examples of AI applications include medical diagnosis, autonomous vehicles, fraud detection, recommendation systems, and chatbots. As AI continues to advance, it raises ethical, societal, and policy questions, including concerns about job displacement, privacy, bias, and the responsible development and use of AI technologies. Researchers, policymakers, and industry leaders are actively addressing these issues to ensure that AI benefits society while minimizing potential risks.[3]

2. EVOLUTION OF ARTIFICIAL INTELLIGENCE

The roots of AI can be traced back to ancient myths and folklore, where automatons and mechanical beings captured human imagination. However, AI, as we know it today, began to take shape in the mid-20th century when computer scientists started developing algorithms that mimicked human reasoning and learning processes. The field saw significant progress in the 1950s and 1960s, but it faced challenges and periods of stagnation

[3] *Id*.

known as "AI winters."

The resurgence of AI began in the 21st century, primarily due to advances in computing power and the availability of vast amounts of data. Machine learning and deep learning, two key subfields of AI, gained prominence, allowing systems to learn and adapt from data without explicit programming. This breakthrough paved the way for numerous applications across various domains.[4]

3. ADVANTAGES OF AI

i. Efficiency- AI can perform tasks and processes much faster and more accurately than humans, leading to increased efficiency in various industries, such as manufacturing, healthcare, and finance.

ii. Data Analysis- AI can process and analyze large volumes of data quickly, uncovering valuable insights and patterns that humans might miss.

iii. Automation- AI can automate repetitive and mundane tasks, freeing up human workers to focus on more creative and strategic aspects of their jobs.

iv. Personalization- AI can provide personalized recommendations and experiences, enhancing customer

[4] Volkmar Kunerth, *The Ongoing Evolution of Artificial Intelligence- A Historical Perspective*, LINKEDIN (Sept. 1, 2023, 7:45 PM), https://www.linkedin.com/pulse/ongoing-evolution-artificial-intelligence-volkmar-kunerth/.

satisfaction and engagement in fields like e-commerce and content delivery.

v. Safety- AI-powered systems can be used in hazardous environments, reducing the risk to human lives in areas like disaster response and space exploration.[5]

4. DISADVANTAGES OF AI

i. Job Displacement- The automation of tasks by AI can lead to job displacement in certain industries, causing unemployment and social inequality. It is crucial to retrain the workforce to adapt to these changes.

ii. Ethical Concerns- AI can perpetuate biases present in its training data, leading to unfair and discriminatory decisions in areas like lending, hiring, and criminal justice. Ensuring ethical AI remains a significant challenge.

iii. Security Risks- As AI systems become more advanced, they can be vulnerable to cyberattacks and hacking attempts, potentially compromising sensitive data and systems.

iv. Dependency and Reliability- Over-reliance on AI systems can be problematic when they fail or make incorrect decisions. It's essential to maintain human oversight and intervention capabilities.

v. Privacy Concerns- The extensive collection and analysis of

[5] SCIENCE DIRECT, www.sciencedirect.com (last visited Sept. 11, 2023).

personal data by AI systems can raise significant privacy concerns. Striking a balance between innovation and privacy protection is a constant challenge.[6]

5. AI AND HUMAN RIGHTS

In many situations, AI has disproportionately impacted the weakest and most vulnerable people, "creating new forms of oppression." The idea of human rights confronts power imbalances and gives people and the groups that advocate for them the vocabulary and processes to challenge the acts of larger, more influential players, such governments and businesses. An extensive corpus of international law codifies human rights, which are both universal and obligatory. Governments have extra duties to uphold and preserve human rights, but corporations also have a responsibility to respect these rights.

Human rights law is applied to evolving conditions, including technological advancements, through a comprehensive network of regional, international, and national institutions and organizations that offer well-developed frameworks for remedies. Furthermore, human rights have strong normative authority due to their moral legitimacy in situations where domestic law is weak. Politics and reputation are at stake when human rights are

[6]BUILT IN, https://builtin.com/artificial-intelligence/risks-of-artificial-intelligence (last visited Sept. 11, 2023).

violated, and calling out and denouncing those who do so is frequently a useful tactic. Some of the most severe social damages brought about by AI can be addressed by human rights law, and it can also stop these harms from happening in the future.[7]

5.1. IMPACT OF AI ON HUMAN RIGHTS

Every human right that is at issue is examined, along with the risks associated with potential future advancements in AI, and how existing applications of AI violate or constitute a risk to those rights. It is crucial to remember that not all human rights concerns are specific to artificial intelligence. There are already a lot in the field of digital rights, but the potential for violations of human rights is increased in terms of both extent and size due to AI's capacity to recognize, categorize, and discriminate. The human rights consequences associated with AI use frequently disproportionately affect vulnerable communities, much as the damages associated with other technological applications that utilize data. This can apply to women and children, as well as members of the LGBTQ community, the impoverished, people with disabilities, and specific ethnic, racial, or religious groups.[8]

[7] OHCHR, https://www.ohchr.org/en/statements/2023/07/artificial-intelligence-must-be-grounded-human-rights-says-high-commissioner (last visited Oct. 10, 2023).
[8] *Id*.

6. RIGHTS TO LIFE, LIBERTY AND SECURITY, EQUALITY BEFORE THE COURTS, A FAIR TRIAL

The rights discussed are largely those embodied in the three documents that form the base of international human rights law, the so-called "International Bill of Human Rights. This includes the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). To these, this report adds the right to data protection as defined by the EU Charter of Fundamental Rights[9].

The increasing application of artificial intelligence in the criminal justice system poses a threat to freedom from interference with one's personal freedoms. Recidivism risk-scoring software is one instance of how this is utilized in the US criminal justice system to guide detainment decisions at almost every level, from setting bail to sentencing. Due to the software, a greater number of black defendants have been wrongly classified as high risk, subject to harsher bail requirements, held in pre-trial custody, and given lengthier prison sentences.[10]

[9] Oracle, https://www.oracle.com (last visited Sept. 12, 2023).

[10] Saheed Oyedele, *The Impact of AI on law Enforcement, Criminology and Criminal Justice*, LINKEDIN (Sept. 16, 2023, 6:00 PM),

Furthermore, detention decisions based on risk-scoring algorithms may be illegal or arbitrary as these systems are not mandated by law and may employ arbitrary inputs. Software for assessing criminal risk is designed primarily to support judges in their sentence judgments. However, a defendant's level of future guilt is assigned by assigning them a high or low probability of reoffending, which could impede the presumption of innocence necessary for a fair trial. By incorporating pre-existing police bias through the use of historical data, predictive policing software also runs the possibility of incorrectly imputed guilt.

Numerous judges depend largely on the results because they believe the software to be impartial, despite reports indicating that judges have very little knowledge of how these risk-scoring algorithms operate. This begs the question of whether judicial rulings based on this kind of software can actually be regarded as fair. Governments effectively turn over decision-making to commercial companies when they employ these tools. Unknown to the public and the government agency, the engineers at these suppliers employ data analytics and design decisions to code policy decisions.

Future issues will probably arise more frequently as a result of AI's incapacity to handle nuance. Laws are not absolute; there are

https://www.linkedin.com/pulse/impact-ai-law-enforcement-criminology-criminal-justice-saheed-oyedele-a9sle/.

situations in which disobeying the law is acceptable. For instance, running a red light to prevent a rear-end collision with a car that is tailgating is usually acceptable. Red light cameras are not able to make such a decision, but a human police officer can and will choose not to issue a penalty to the driver. There's a chance that this lack of nuance will result in a sharp rise in the number of people who are unjustly detained, cited, or fined in the age of AI-powered smart cities and "robocops," with little to no remedy. Over time these circumstances could push us into a world where people prefer strictly following any law or rule despite extenuating circumstances, losing the ability to make necessary judgment calls.

7. INDIAN LEGAL SYSTEM AND AI

Article 12 of the Universal Declaration of Human Rights, Article 17 of the International Covenant on Civil and Political Rights, and several other international and regional human rights agreements all acknowledge the right to privacy as a fundamental human right. The Indian Constitution's Article 21 guarantees everyone the right to life, which includes privacy. A basic human right, privacy is essential to a dignified and secure existence.[11] However, a great deal of our personal information is gathered in the digital world, whether we are aware of it or not, when we use

[11] INDIA CONST. art. 21.

applications and social media platforms. This information may be used to profile us and forecast our actions. Article 14 of the Indian Constitution guarantees equality before the law.[12] The lack of equality and diversity in AI system design is also a serious problem since, far from improving the objectivity of our decisions, these systems may instead legitimize discriminatory practices by seeming impartial. There is mounting evidence that LGBTQ persons, women, people of color, and people with disabilities are disproportionately impacted by discriminatory practices.

8. AI AS AN INSTRUMENT OF DISCRIMINATION AND UNEMPLOYMENT

Article 15 of the Constitution of India provides for the prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. AI perpetuates discrimination without the knowledge of people. Accessibility barriers can prevent older adults from participating in the research, layout, and development of digital innovations. The ageist belief that older adults are unable to use technology may also explain their absence from technology design and development. Consequently, older adults and their

[12] INDIA CONST. art. 14.

points of view are rarely incorporated into the development of artificial intelligence and policy frameworks, financial support, and support programs.

With increased automation and machine learning, we can design and build vehicles that are capable of sensing their surroundings and moving safely without or with minimal human intervention. These vehicles are autonomous and do not require a human driver to move. Due to AI, electronic commerce will undergo a profound transformation.

With robots navigating the space to collect products and execute customer orders; to be sent or even delivered automatically to customers using autonomous drones and cars. Consequently, reducing the need for salespeople and network stores. Attaching AI-enabled devices to a patient's body enables doctors to monitor the patient's health at regular intervals and make the necessary decisions regarding the patient's health. Therefore, a nurse would not be required to monitor patients' health at regular intervals.

9. ENCROACHMENT OF THE RIGHT TO FREEDOM

Article 19 of the Indian Constitution stipulates the protection of liberties-related rights. The use of artificial intelligence in surveillance violates the right to privacy and chills the freedom of expression. Surveillance of citizens around the clock increases

their fear of being monitored and the likelihood that they will not exercise their fundamental rights, such as freedom of speech and expression. The new tool for online harassment of marginalized and dissenting voices is AI-driven digital robots. Digital bot accounts that are difficult to identify pose as real users and send automated responses to recognized accounts or to anybody who shares a particular opinion, thereby violating the right to free speech. In numerous recent global elections, it has been argued that political parties have used artificial intelligence to generate and spread false information regarding their political opponents, thereby endangering democratic values and demanding the concept of free elections.

In the case of *K. S. Puttaswamy and Anr. vs Union Of India And Ors*, the nine Judge Bench of Supreme Court unanimously reaffirmed the right to privacy as a fundamental right under the Constitution of India. The Court held that the right to privacy was integral to freedoms guaranteed across fundamental rights, and was an intrinsic aspect of dignity, autonomy and liberty.[13]

10. CYBER LAW IN INDIA

The area of the legal system that addresses the internet, cyberspace, and the legal concerns that surround them is known as cyber law. The field of cyber law encompasses a wide range of

[13] K. S. Puttaswamy and Anr. vs Union of India & Ors, (2017) 10 SCC 1.

problems, including online privacy, internet access and usage, and freedom of speech. The Law of the Internet is a general term used to describe cyber law.

A broad phrase used to describe all internet-related legal and regulatory matters is "cyber law." Cyber laws cover anything that has to do with, is connected to, arises from, or is related to any legal component or citizen activity in cyberspace. Legal matters pertaining to the distributive, transactional, and communicative uses of network information technology and devices are encompassed by cyber law. It includes all statutes, laws, and constitutional clauses that have an impact on networks and computers.

On October 17, 2000, the Information Technology Act of 2000 became operative. This Act covers the entirety of India, and its provisions also extend to any violation or offence committed by anyone, regardless of nationality, even if it occurs outside the Republic of India's territorial authority. Such an offence or violation must involve a computer, computer system, or computer network located in India to be subject to the provisions of this Act. By Section 1(2) read in conjunction with Section 75, the provisions of the IT Act 2000 are applicable outside national borders. Ninety Sections make up this Act.

The Information Technology Act of 2000 in India attempted to include legal ideas found in several earlier information

technology-related legislation passed by several other nations, together with several guidelines about information technology law. The Act recognizes electronic signatures and grants legal validity to contracts made electronically. Acts like as hacking, data theft, virus distribution, identity theft, defamation (sending abusive messages), pornography, child pornography, and cyberterrorism are now illegal under this modern legislation.[14]

11. CONCLUSION

AI is being incorporated into the legal system, border management systems, public safety, and law enforcement more and more. States must create institutional, legal, and regulatory frameworks in order to effectively defend the right to privacy and related rights; this is an urgent necessity. The State must: Admit that safeguarding and enhancing human rights must be the top priority in the development, application, and management of artificial intelligence. Unless and until adequate measures are taken to protect human rights, expressly forbid the deployment of artificial intelligence applications that cannot be used in compliance with international human rights legislation. AI systems are changing the way things are done in companies and governments around the world, and bringing with them potential

[14] Javatpoint, https://javatpoint.com (last visited Sept. 9, 2023).

for significant interference with human rights. Data protection laws and safeguards for accountability and transparency, like those we have described in this paper, may be able to mitigate some of the worst uses known today, but more work is necessary to safeguard human rights as AI technology gets more sophisticated and expands into other areas. We hope this report helps to inspire deeper conversations in this crucial area for those who care about the future of human rights, and we look forward to engaging in those conversations.

NAVIGATING HUMANITARIAN DILEMMA: UNRAVELING CIVILIAN CASUALTIES AND COLLATERAL DAMAGE IN THE ISRAEL-HAMAS CONFLICT

- Dipankar das[15]

ABSTRACT

International humanitarian laws establish a comprehensive legal framework to protect civilians from the effects of war and military operations. However, this sharply contrasts with the actual challenges confronted by civilians residing in conflict-affected areas on the ground reality. Civilians constitute a significant portion of casualties in today's armed conflicts, either unintentionally as a consequence of the fighting or intentionally targeted by warring parties. Military operations are increasingly conducted in urban and densely populated areas, exposing civilians to specific risks. In conflicts with political objectives, maintaining legitimacy and support among the civilian population becomes crucial for achieving both military and political goals. Consequently, the civilian population frequently finds itself at the heart of contemporary wars.

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This article examines the application of International Humanitarian Law (IHL) in the ongoing conflict between the Israel Defense Force (IDF) and Palestinian armed groups Harakat al- Muqawama al- Islamiya (Islamic resistance movement) in short ‘HAMAS’, in the Gaza Strip. Emphasizing the importance of understanding terms like 'war crimes' within the legal framework. IHL, outlined in the Geneva Conventions, applies to states and non-state armed groups involved in conflicts, including those unable to formally ratify treaties. The laws of war distinguish between combatants and civilians, prohibiting attacks on civilians and requiring parties to minimize harm. The article delves into Israel's occupation of the West Bank and Gaza since 1967, asserting that the withdrawal of ground forces from Gaza in 2005 did not end the occupation. Highlighting the war crimes committed by both Israeli Defense Forces (IDF) and Palestinian militant groups (HAMAS), addressing concerns about indiscriminate attacks harming civilians. In addition, the article concludes by highlighting ongoing international efforts for accountability, particularly through the International Criminal Court's jurisdiction over war crimes and other serious international crimes committed during this war by both parties.

KEYWORDS: *War, Israel – Hamas, Palestinian, International humanitarian law, Geneva Convention 1949.*

1. INTRODUCTION

The Israel-Hamas conflict has seen a dramatic escalation since the October 7th, 2023 attack initiated by numerous armed members of the Hamas militant group. Using tractors, RPGs, and explosives, they breached the Gaza security fence, entering southern Israel. Simultaneously, other Hamas members in Gaza fired over 5,000 rockets toward Israel.[16] Despite Israel's advanced Iron Dome air defense system, it faced challenges, with fewer interceptors available than the number of incoming rockets, resulting in extensive damage and casualties.[17]

Around 1,500 militants successfully breached the barrier, using various means, including vehicles, foot, and motorized para-gliders. This infiltration led to a series of attacks on Israeli towns and IDF bases surrounding Gaza, resulting in a tragic massacre. Over 1,300 civilians were killed, and more than 200 were abducted.[18] The terrorists briefly took control of approximately 10 Israeli towns, causing terror and brutality. After that, the Israeli government formally declared war on October 8th, 2023, and gave

[16] CENTER FOR STRATEGIC & INTERNATIONAl STUDIES, https://www.csis.org/analysis/hamass-october-7-attack-visualizing-data (last visited Dec. 12, 2023).
[17] AL JAZEERA, https://www.aljazeera.com/program/newsfeed/2023/11/6/video-of-israels-iron-dome-missile-malfunctioning (last visited Dec, 15, 2023).
[18] THE TIMES OF ISRAEl, https://www.timesofisrael.com/israel-revises-death-toll-from-oct-7-hamas-assault-dropping-it-from-1400-to-1200/ (last visited Dec. 24, 2023).

the green light for "significant military steps" to retaliate against Hamas for its surprise attack.[19]

The ongoing conflict has prompted questions about compliance with international laws governing armed conflicts, specifically the Geneva Conventions and International Humanitarian Law (IHL),[20] which aims to protect those not directly participating in hostilities, limits the effects of armed conflict, and lays out the responsibilities of states and non-state armed groups during an armed conflict.

2. HISTORICAL BACKGROUND OF ISRAEL-HAMAS CONFLICT

The Israeli-Palestinian conflict traces its origins to the late nineteenth century. In 1947, the United Nations introduced Resolution 181, also known as the Partition Plan[21], aiming to divide the British Mandate of Palestine into Arab and Jewish states. The creation of the State of Israel on May 14, 1948, sparked the first Arab-Israeli War, resulting in Israel's victory but

[19] CS MONITOR, https://www.csmonitor.com/World/Middle-East/2023/1008/Israel-declares-war-promises-steps-in-retaliation-for-attack-by-Hamas. (last visited Dec. 22, 2023).

[20] INTERNATIONAL COMMITTEE OF RED CROSS, https://www.icrc.org/en/document/what-international-humanitarian-law (last visited Dec. 24, 2023).

[21] UN, https://www.un.org/unispal/document/auto-insert-185393/ (last visited Dec. 26, 2023).

displacing 750,000 Palestinians. The territory was then divided into the State of Israel, the West Bank, and the Gaza Strip.[22]

Subsequent years saw escalating tensions between Israel and neighboring countries, leading to conflicts such as the 1956 Suez Crisis[23] and the 1967 Six-Day War. The Yom Kippur War occurred in 1973, and in 1979, the Camp David Accords were signed, marking a peace treaty between Egypt and Israel. Despite these developments, the issue of Palestinian self-determination persisted.

In 1987, the first intifada emerged as a mass uprising against the Israeli government. The Oslo Accords in 1993 and 1995 established a framework for Palestinian self-governance, while the construction of a barrier wall around the West Bank in 2002 intensified tensions. Factionalism arose when Hamas won the 2006 Palestinian Authority elections, leading to clashes with Fatah.

The summer of 2014 witnessed a military confrontation between Israel and Hamas, resulting in a cease-fire after substantial casualties. In 2018, violence erupted again, leading to disunity between Fatah and Hamas. The Trump administration made

[22] HISTORY STATE GOVERNMENT, https://history.state.gov/milestones/1945-1952/arab-israeli-war (last visited Dec. 26, 2023).

[23] BRITANNICA, https://www.britannica.com/event/Suez-Crisis (last visited Dec. 26, 2023).

significant policy changes, including relocating the U.S. embassy to Jerusalem and brokering the Abraham Accords.[24]

In May 2021, tensions rose following the eviction of Palestinian families in East Jerusalem, culminating in an 11-day conflict between Israel and Hamas. The aftermath saw casualties, displaced Palestinians, and a cease-fire agreement.

In December 2022, Israel's most far-right and religious government took office and started prioritizing settlement expansion and endorsing discriminatory policies. In May 2023, the government voted to limit judicial oversight, leading to nationwide protests in Israel.

The situation remains complex, with historical conflicts, political shifts, and ongoing challenges in the Israeli-Palestinian conflict.[25]

3. INTERNATIONAL HUMANITARIAN LAW: PRINCIPLES AND FRAMEWORK

International humanitarian law (IHL) is a set of rules that seeks, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer, directly or actively participating in hostilities and imposes limits on the

[24] FOX NEWS, https://www.foxnews.com/person/f/david-friedman. (last visited Dec. 27, 2023).

[25] GLOBAL CONFLICT TRACKER, https://www.cfr.org/global-conflict-tracker/conflict/israeli-palestinian-conflict#:~:text=The%20Israeli-Palestinian%20conflict%20dates,into%20Arab%20and%20Jewish%20states (last visited Dec. 28, 2023).

means and methods of warfare. IHL is also known as "the law of war" or "the law of armed conflict".[26] IHL is part of public international law, which is made up primarily of treaties, customary international law, and general principles of law[27]. A distinction must be made between IHL, which regulates the conduct of parties engaged in an armed conflict (jus in bello), and public international law, as set out in the Charter of the United Nations, which regulates whether a state may lawfully resort to armed force against another state (jus ad bellum)[28]. The Charter prohibits such use of force with two exceptions: cases of self-defense against an armed attack, and when the use of armed force is authorized by the United Nations Security Council. IHL does not stipulate whether the commencement of an armed conflict was legitimate or not but rather seeks to regulate the behavior of parties once it has started.[29]

3.1 Core Fundamental Principles of IHL:

Distinguishing between civilians and combatants.

- The prohibition to attack those 'hors de combat'.[30] i.e., those who are not directly engaged in hostilities.

[26] *Id* at 20.
[27] UN, https://www.un.org/en/about-us/un-charter/statute-of-the-international-court-of-justice#:~:text=Article%2038,b (last visited Dec. 27, 2023).
[28] *Id* at 26.
[29] *Id.*
[30] ICRC, https://ihl-databases.icrc.org/en/customary-ihl/v1/rule47 (last visited Dec. 28, 2023).

- Prohibiting the infliction of unnecessary suffering.
- Upholding the principle of necessity.
- Upholding the principle of proportionality.

` The goal of IHL can be considered into four guidelines: refrain from attacking non-combatants, only engage combatants through lawful means, treat individuals under control with humanity, and safeguard the well-being of victims.[31]

3.2. Framework of IHL:

International humanitarian law, also known as the law of armed conflict or the law of war, is designed to balance humanitarian concerns and military necessity. It imposes legal constraints on warfare to curtail its devastating consequences and alleviate human distress. IHL encompasses two primary domains:

- Safeguarding and aiding individuals impacted by hostilities.
- Governing the tactics and tools employed in warfare.

4. WAR CRIMES LAWS APPLY TO ISRAEL-PALESTINE CONFLICT

The ongoing conflict between Israel and Palestinian militants, initiated by a cross-border attack from Gaza's ruling group Hamas on October 7, has resulted in a significant number of civilian

[31] UNODC, https://www.unodc.org/e4j/zh/terrorism/module-6/key-issues/core-principles-of-ihl.html#:~:text=To%20put%20things%20as%20simply,and%20protect%20the%20victims%20 (last visited Jan. 1, 2024).

casualties. This situation is governed by a complex international justice system established since World War Two, primarily focused on safeguarding civilians. Regardless of a state's claim of acting in self-defense, all participants in a war are bound by international rules governing armed conflicts.

4.1. Which laws regulate the conflict:

The regulations governing the conflict stem from the 1949 Geneva Conventions, universally ratified by all United Nations member states, and are further detailed by rulings at international war crimes tribunals. These rules fall under the framework of the "Law of Armed Conflict" or "International Humanitarian Law," encompassing treaties that dictate the treatment of civilians[32], soldiers, and prisoners of war. Pertinent agreements include the Geneva Conventions and their additional protocols, such as Common Article 3, which relates to non-international armed conflicts[33], and Protocol I, addressing the protection of victims in international conflicts. The conventions establish principles applicable to both government forces and organized non-state armed groups, which would include entities like Hamas militants.

[32] OHCHR, https://www.ohchr.org/en/instruments-mechanisms/instruments/geneva-convention-relative-protection-civilian-persons-time-war (last visited Jan. 4, 2024).
[33] ICRC, https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-3 (last visited Jan. 4, 2024).

4.2. The role of the International Criminal Court:

The International Criminal Court (ICC), established in The Hague in 2002, is a permanent tribunal for war crimes. It has jurisdiction over war crimes, crimes against humanity, and genocide in its 123 member states or committed by their nationals. Notable absentees among major powers include China, the United States, Russia, India, and Egypt. The ICC recognizes Palestine as a member state, while Israel rejects the court's jurisdiction and does not formally engage with it.[34] Operating with a limited budget and staff, ICC prosecutors are currently investigating 17 cases spanning Ukraine, Afghanistan, Sudan, Myanmar, and others. For 2023, the ICC budget allocates just under a million euros ($1.06 million) for investigations in the Palestinian territories and is seeking additional resources. Since 2021, the ICC has been conducting an ongoing investigation into alleged war crimes and crimes against humanity in the occupied Palestinian territories. Despite identifying a reasonable basis to believe violations occurred on all sides, including by Israeli troops, Hamas militants, and other armed Palestinian groups, no arrest warrants have been issued.

[34] REUTERS, https://www.reuters.com/world/middle-east/what-war-crimes-laws-apply-israel-palestinian-conflict-2023-10-26/ (last visited Jan. 5, 2023).

Following the October 7 attack by Hamas in Israel and the Israeli Defense Forces' response in Gaza, several complaints have been submitted to the International Criminal Court (ICC). Additionally, the International Court of Justice (ICJ) has scheduled public hearings for February 2024 to address the "legal consequences arising from Israel's policies and practices in the Occupied Palestinian Territory, including East Jerusalem." This is in response to a request for an advisory opinion initiated by the United Nations General Assembly before the current conflict. The filed complaints include:

- **Reporters Without Borders (RSF)**, **submitted on October 31 to the International Criminal Court (ICC). The complaint focuses on "war crimes committed against journalists** in Israel and Palestine," citing the deaths of nine journalists (including an Israeli during the October 7 attack) and eight Palestinians. RSF's submission also highlights the destruction of 50 premises belonging to press organizations in Gaza. This marks RSF's third complaint with the ICC since 2018 related to the deaths of journalists in Gaza.[35]
- The latest complaint, lodged in 2022, was submitted concurrently with one from the **Qatari channel Al Jazeera**, addressing the fatal shooting of its Palestinian journalist

[35] RSF, https://rsf.org/en/rsf-files-complaint-icc-war-crimes-against-journalists-palestine-and-israel (last visited Jan. 5, 2023).

Shirin Abu Akleh in the West Bank. Recently, the Al Jazeera cameraman Samer Abudaqa, 45, was killed in an Israeli drone attack. The **Al Jazeera Media Network has announced that it will refer the killing of its cameraman Samer Abudaqa in Gaza to the International Criminal Court (ICC)**.[36] Targeting journalists, a war crime under Article 8 of the Rome Statute[37], is emphasized. Despite the evidence provided, the ICC has taken no further action. The Committee to Protect Journalists (CPJ) notes that the ongoing conflict in Gaza has resulted in the deadliest toll for journalists ever recorded, with at least 64 reporters and media workers killed in 10 weeks.

- On November 2, a **complaint was submitted to the ICC by nine Israeli families affected by the Hamas attack on October 7**. The complaint alleges "war crimes, crimes against humanity, and genocide." The families' lawyer has urged the ICC to consider issuing international arrest warrants against Hamas leaders.[38]
- On November 8, **a group consisting of a hundred jurists from various countries, including members of the**

[36] AL JAZEERA, https://www.aljazeera.com/news/2023/12/16/al-jazeera-to-refer-journalist-samer-abudaqas-killing-to-icc (last visited Jan. 7, 2024).
[37] INTERNATIONAL CRIMINAL COURT, https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf (last visited Jan. 6, 2024).
[38] TIMES OF ISRAEL, https://www.timesofisrael.com/9-bereaved-israeli-families-bring-icc-war-crime-genocide-complaint-against-hamas/ (last visited Jan. 7, 2024).

Algerian bar, individuals, and association representatives, filed a third complaint alleging "genocide" in Gaza. The complaint is represented by the French lawyer Gilles Devers.[39]

- On November 8, **three Palestinian human rights organizations (Al-Haq, Al Mezan, and the Palestinian Centre for Human Rights) submitted a complaint to the ICC**, accusing three Israeli leaders of "war crimes," "apartheid," "genocide," and "incitement to genocide." The organizations are urging the ICC to issue arrest warrants. The complaint highlights actions such as bombings in densely populated areas, the Gaza siege, forced displacement of Gaza's population, the use of toxic gas, and the deprivation of essential resources like food, water, gasoline, and electricity.[40]
- **South Africa has accused Israel of breaching its obligations under the Genocide Convention in its submission to the International Court of Justice (ICJ).** The claim contends that Israel's actions and failures fall within the scope of genocide, asserting that the specific intent to destroy Palestinians in Gaza is evident in its conduct.[41]

[39] *Id* at 36.
[40] *Id.*
[41] CNN, https://edition.cnn.com/2023/12/29/middleeast/south-africa-icj-israel-genocide-

The International Criminal Court (ICC) has declared its plan to probe potential war crimes in Israel and Gaza, led by its prosecutor, British official Karim Kahn. During his visit to the Rafah crossing on October 29, situated between Egypt and the Gaza Strip, Karim Kahn asserted that "hostage-taking violates the Geneva Conventions," urging the release of the 239 individuals held by Hamas. He also reminded Israel of its "obligation to adhere to the laws of armed conflict," noting that obstructing relief supplies may constitute a crime. Referring to the military advocate generals within the Israeli army, he stated that they must demonstrate that any attack impacting civilians or protected objects complies with the laws and customs of war, following the laws of armed conflict.

The International Court of Justice (ICJ), situated in The Hague, acts as the primary judicial organ of the United Nations, possessing the authority to resolve legal disputes brought forward by states and offer advisory opinions. Additionally headquartered in The Hague, the International Criminal Court (ICC) functions as an independent judicial entity with the competence to prosecute individuals accused of genocide, crimes against humanity, and war crimes. Governed by the Rome Statute, a United Nations treaty enacted in 2002, the ICC operates under

intl/index.html#:~:text=South%20Africa%20accuses%20Israel%20of,%2C”%20according%20to%20the%20ICJ (last visited Jan. 7, 2024).

specific agreements outlining its relationship with the UN. The UN Security Council may refer specific situations to the ICC's prosecutor.[42]

4.4. Are the Geneva Conventions applicable here:

US President Joe Biden stated on Tuesday that Israel possesses the right and responsibility to respond, emphasizing the importance of adhering to the rule of law in discussions with Israeli Prime Minister Benjamin Netanyahu. A blockade could be deemed a war crime if it primarily targets civilians rather than serving as a legitimate strategy to undermine Hamas' military capabilities, or if it is found to be disproportionate. According to international law, attacks on military objectives must be proportionate[43], meaning they should not result in excessive loss of civilian life or damage to civilian objects relative to the expected military advantage. Nick Kaufman, a British-born Israeli defense lawyer at the ICC, highlighted the potential for a war crimes case focusing on the gruesome killings by Hamas militants, including the deaths of numerous revelers at a dance

[42] UNITED NATIONS, https://www.un.org/en/model-united-nations/international-court-justice#:~:text=The%20International%20Court%20of%20Justice,began%20work%20in%20April%201946.&text=The%20seat%20of%20the%20Court,in%20The%20Hague%20(Netherlands) (last visited Jan. 8, 2024).

[43] *Id* at 33.

rave and civilians in several Kibbutz communities near the Gaza border.[44]

4.5. Actions that represent a violation of war crimes laws:

Potential violations of war crimes law include actions highlighted by Human Rights Watch, such as Hamas militants deliberately targeting civilians, engaging in indiscriminate rocket attacks[45], and taking civilians as hostages[46]. Israeli counter-strikes in Gaza, resulting in a significant number of Palestinian casualties, are also mentioned. Acts like hostage-taking, murder, and torture are explicitly prohibited by the Geneva Conventions. Israel's response to the situation could potentially be subject to a war crimes investigation. The conflict involves complex and contentious actions, including the storming of southern Israeli communities by Hamas militants and Israel's siege and extensive bombing campaign in Gaza, leading to the destruction of entire neighborhoods. Israel subsequently sent ground forces into Gaza with the stated goal of eradicating Hamas, the governing authority in the region.

[44] *Id* at 38.
[45] HUMAN RIGHTS WATCH, https://www.hrw.org/report/2007/06/30/indiscriminate-fire/palestinian-rocket-attacks-israel-and-israeli-artillery (last visited Jan. 9, 2024).
[46] *Id* at 43.

4.6. Is it permissible to consider a hospital as a legitimate military target?

Israel has faced criticism for targeting medical facilities in Gaza, including the primary Al Shifa hospital in Gaza City. Israel contends that Hamas uses medical facilities for command-and-control centers to evade airstrikes, a claim denied by Hamas. According to the World Health Organization, as of November 15, 152 attacks on health infrastructure in Gaza have been confirmed. Targeting hospitals and other medical facilities is forbidden according to the initial Geneva Convention.[47] This prohibition covers the injured, the unwell, the personnel of such establishments, and ambulances. The safeguard remains in force unless these establishments are utilized by one of the conflicting parties to carry out actions that might be 'harmful to the enemy'. There's an ongoing legal debate about what counts as "harmful to the enemy." Figuring out if a hospital's protection is at risk is a matter of looking at the evidence. Then even when it's decided that a medical facility is a legitimate military target, Israel must consider whether the expected unintended harm is too much compared to the military benefit.

[47] INTERNATIONAL HUMANITARIAN DATABASE, Geneva Convention- II, Article 18: Hospitals and Safety Zones, https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-18 (last visited Jan. 6, 2024).

4.7. Israel is using starvation as a weapon of war:

- The Israeli government is employing the tactic of starving civilians in the Gaza Strip as a form of warfare, constituting a war crime.
- Public statements from Israeli officials indicate a deliberate intention to withhold essential resources like food, water, and fuel, a strategy evident in the military operations of Israeli forces.
- To comply with international humanitarian standards, Israel should refrain from targeting vital resources for civilian survival, lift the blockade on the Gaza Strip, and reinstate access to electricity and water.

Human Rights Watch alleges that the Israeli government is using starvation as a method of warfare in the Gaza Strip, which they classify as a war crime. According to the organization, Israeli forces are intentionally blocking the delivery of essential resources, including water, food, and fuel, while also impeding humanitarian assistance and causing destruction to agricultural areas. High-ranking Israeli officials have publicly expressed their intent to deprive civilians in Gaza of necessities, and Human Rights Watch claims that these statements align with the actions of Israeli forces. The organization asserts that these practices violate international humanitarian law, specifically the Rome

Statute of the International Criminal Court, which considers intentionally starving civilians a war crime. Additionally, the ongoing blockade of Gaza is deemed a form of collective punishment, constituting another war crime. The dire humanitarian situation is underscored by warnings of imminent starvation and a collapsing food system in Gaza, further exacerbated by damaged infrastructure, including water and sanitation facilities, and the destruction of vital resources for the civilian population. Human Rights Watch calls for an immediate cessation of using starvation as a weapon of war, compliance with international law, and urgent international intervention to address the humanitarian crisis in Gaza.[48]

4.8. Destruction of Agricultural Products and Impacts on Food Production

Israeli forces, during ground operations in northern Gaza, have reportedly engaged in the destruction of agricultural products, aggravating food shortages with lasting consequences. The actions include the systematic leveling of orchards, fields, and greenhouses, particularly in the Beit Hanoun area. The military operations, officially conducted to clear tunnels and achieve

[48] HUMAN RIGHTS WATCH, Israel using starvation as a weapon of War, https://www.hrw.org/news/2023/12/18/israel-starvation-used-weapon-war-gaza (last visited Jan. 7, 2024).

military objectives, led to the initial damage of fields and orchards in late October.

Following Israeli forces taking control of the same northeastern Gaza area in mid-November, satellite imagery indicates a deliberate and systematic razing of orchards and fields, leaving barren terrain. The affected region, known for cultivating crops like citrus fruit, potatoes, dragon fruit, and prickly pear, plays a crucial role in the livelihoods of Palestinians in Gaza. Other crops such as tomatoes, cabbage, and strawberries were also impacted. Bulldozers were employed in the destruction, leaving visible tracks and earthmounds on the former plots.[49]

The destruction, whether intentional or a result of hostilities and the inability to irrigate or work the land, has significantly reduced farmland across northern Gaza since the initiation of Israeli ground operations. The process involved not only the initial damage during hostilities but also the subsequent deliberate razing and rendering of agricultural areas unproductive.

Southern Gaza has also witnessed adverse effects on farms and farmers. A survey conducted by Action Against Hunger between October 19 and 31 revealed that out of 113 farmers in southern Gaza, 60 percent reported damage to their assets and/or crops, 42 percent lacked access to water for irrigation, and 43 percent were

[49] *Id.*

unable to harvest their crops. The compounded impact of these actions poses a serious threat to the agricultural sector and the overall food production capacity in Gaza.

The intentional use of starvation as a warfare tactic is forbidden by Article 54(1)[50] of the First Additional Protocol to the Geneva Conventions (Protocol I) and Article 14 of the Second Additional Protocol (Protocol II).[51] Even though Israel is not a signatory to Protocols I or II, this prohibition is considered customary international humanitarian law in both international and non-international armed conflicts. In such conflicts, parties involved are not allowed to deliberately cause starvation or intentionally subject the population to hunger by cutting off their food sources or supplies.

Additionally, warring parties are restricted from attacking vital resources essential for the civilian population's survival, including food and medical supplies, agricultural areas, and drinking water installations. They must facilitate prompt and unobstructed humanitarian assistance to all civilians in need, and

[50] *Id* at 43.

[51] UNITED NATIONS, https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and-0#:~:text=part%20in%20hostilities.-,Article%2014%20-%20Protection%20of%20objects%20indispensable%20to%20the%20survival%20of,method%20of%20combat%20is%20prohibited (last visited Jan. 7, 2024).

they must not intentionally impede humanitarian aid or limit the movement of relief personnel.

4.9. Inadequate warning to the civilians from the Israeli Defense Force before air strikes:

Insufficient warning to civilians by the Israeli Defense Force before airstrikes were observed. The Israeli military either failed to provide any warning to civilians or issued warnings that were deemed inadequate. In certain instances, they communicated strike information to only one individual, even when the impact extended to entire buildings or populated streets. Unclear "evacuation" orders were also issued, leaving residents uncertain about the timeframe and without assurance of a safe evacuation location. Notably, Israeli forces did not ensure that civilians had a secure place to move to. A striking example occurred during an attack on Jabalia market, where people responded to an "evacuation" order by leaving their homes only to face harm in the supposed safe area.

It is emphasized that issuing a warning does not absolve armed forces of their other responsibilities under international humanitarian law. Given the elapsed time since the warning, those conducting the attack should have verified the presence of

civilians before proceeding.[52] Additionally, if it is confirmed that this was a direct assault on a civilian target, it would qualify as a war crime.

4.10. Israel troops ignored pleas for ‘help’ before hostage killings in Gaza

Israeli soldiers ignored pleas for assistance when they entered a Gaza building holding three hostages, just days before mistakenly killing them, according to a military investigation released on Thursday. The soldiers reportedly heard shouts of "hostages" in Hebrew on December 10 but considered it a "terrorist deception attempt" by Hamas militants, interpreting it as an effort to lure them into the building in the Gaza City district of Shejaiya. Believing the building was rigged with explosives, the soldiers exited and killed five Hamas militants attempting to escape. The hostages likely fled the building as well, and on December 15, Israeli soldiers shot and killed them after mistakenly perceiving them as a threat. Two hostages were killed instantly, while the third fled and was shot dead by two soldiers who did not hear the order to hold fire. The investigation revealed a failure in the mission to rescue the hostages, and army chief Herzi Halevi acknowledged that those three fatalties could have been

[52] ICRC, https://ihl-databases.icrc.org/pt/customary-ihl/v2/rule20 (last visited Jan. 8, 2024).

prevented. The incident has led to public outrage and protests in Tel Aviv, demanding a new plan to bring home the remaining hostages in the Gaza Strip. Israel had launched a military offensive against Hamas after the October 7 attacks, resulting in significant casualties and destruction in Gaza.[53]

4.11. Conduct of Palestinian Militant group Hamas

On the Palestinian side, the Palestinian Militant group faces allegations of committing war crimes, including deliberately targeting Israeli civilians, indiscriminately launching rockets into Israeli territories, and employing human shields. These actions violate fundamental principles of International Humanitarian Law (IHL) and have led to around 1,300 reported Israeli fatalities since the renewed conflict began.[54]

5. INTERNATIONAL RESPONSES AND PERSPECTIVES[55]

Countries worldwide are increasingly urging an end to the Gaza siege. Following Hamas's recent attack on Israel, international

[53] ARAB NEWS, https://www.arabnews.com/node/2433441/middle-east (last visited Jan. 6, 2024).
[54] THE TIMES OF ISRAEL, https://www.timesofisrael.com/israel-revises-death-toll-from-oct-7-hamas-assault-dropping-it-from-1400-to-1200/ (last visited Jan. 8, 2024).
[55] AL JAZEERA, https://www.aljazeera.com/news/2023/10/15/which-countries-have-criticised-israeli-attacks-on-gaza (last visited Jan. 7, 2024).

concern grew. However, as Israel continues its offensive, several nations are criticizing its actions. Here are some countries calling on Israel to cease aggression:

- **Algeria:** Algeria's Ministry of Foreign Affairs has voiced profound apprehension regarding Israel's assaults on Gaza, alleging a breach of international humanitarian law. Algeria further advocates urgent international intervention to safeguard the rights of Palestinians, considering them pivotal to resolving the conflict.[56]
- **African Union:** The African Union, led by Chairperson Moussa Faki Mahamat, emphasizes that the primary source of current tensions lies in the denial of fundamental rights to the Palestinian people. The AU urges both parties to cease military hostilities and resume negotiations.[57]
- **Belize:** Belize strongly condemns the hostilities between Hamas and Israel, urging an immediate de-escalation. Additionally, Belize supports the establishment of a Palestinian state with East Jerusalem as its capital and advocates for the right of return for displaced Palestinians.[58]

[56] MINISTRY OF FOREIGN AFFAIRS ALGERIA, https://www.mfa.gov.dz/announcements/statement-of-the-ministry-of-foreign-affairs-gaza-1 (last visited Jan. 7, 2024).
[57] AFRICAN UNION, https://au.int/en/pressreleases/20231007/communique-chairperson-regarding-israeli-palestinian-war (last visited Jan. 7, 2024).
[58] *Id* at 55.

- **Brazil:** Brazil's Foreign Minister Mauro Luiz Iecker Vieira expressed deep concern on Friday regarding the Israeli forces' call for over one million civilians in northern Gaza to evacuate within 24 hours. Speaking in New York after a United Nations Security Council meeting, Vieira referred to the UN's evaluation that such a mass displacement could result in unprecedented suffering for civilians. He called for an end to violence on both sides.[59]
- **Colombia:** Colombian President Gustavo Petro stressed the importance of Israel and Palestine engaging in negotiations for a two-state solution. He made historical parallels between Gaza's current state and past atrocities, stating on X (formerly Twitter), "Gaza now resembles the destruction of the Warsaw ghetto by Nazi brutality in response to the Jewish and socialist uprising in that concentration camp.[60]
- **Cuba:** Cuba has denounced the violence in Israel and Palestine, linking it to the persistent violation of Palestinian rights.[61]

[59] BRAZILIAN REPORT, https://brazilian.report/liveblog/politics-insider/2023/10/18/israel-hamas-brazil-foreign-minister-dialogue/ (last visited Jan. 6, 2024).
[60] NACLA, https://nacla.org/gustavo-petro-holds-firm-palestine-support (last visited Jan. 7, 2024).
[61] CUBA NEWS/CAN, http://www.cubanews.acn.cu/world/22631-cuba-denounces-israeli-attacks-against-civil-

- **Indonesia:** Indonesia has called for an immediate cessation of violence to avoid additional casualties, asserting that the conflict's root cause lies in the Israeli occupation of Palestinian territories.[62]
- **Iraq:** Iraq has similarly characterized the assaults on Gaza as an ongoing manifestation of the subjugation of Palestinians under Israel's occupation.[63]
- **Iran:** Iran's Foreign Ministry spokesperson Nasser Kanaani had characterized the Palestinian resistance as a natural response to provocations by Israel.[64]
- **Ireland:** Ireland's Prime Minister Leo Varadkar has criticized Israel's actions, denouncing the cutoff of power, fuel supplies, and water as a violation of international humanitarian law and collective punishment.[65]

palestinians#:~:text=On%20October%207%2C%20the%20Cuban,Israeli%20aggressive%20and%20expansionist%20policy (last visited Jan. 6, 2024).

[62] VOA NEWS, https://www.voanews.com/a/indonesia-deeply-concerned-over-violence-between-israel-palestinians/7301960.html (last visited Jan. 6, 2024).

[63] *Id* at 58.

[64] REUTERS, IRANIAN FOREIGN MINISTRY RESPONSE, https://www.reuters.com/world/middle-east/iranian-foreign-minister-says-israel-us-cannot-wipe-out-hamas-2023-12-12/#:~:text=GENEVA%2C%20Dec%2012%20(Reuters),political%20solution%20to%20the%20conflict (last visited Jan. 7, 2024).

[65] AA.COM, https://www.aa.com.tr/en/world/irish-premier-slams-israel-for-cutting-off-water-electricity-to-gaza/3017930 (last visited Jan. 6, 2024).

- **Kuwait:** Kuwait's Ministry of Foreign Affairs has voiced apprehension regarding the heightened tensions in Gaza, urging the global community to halt the violence, safeguard the Palestinian population, and cease Israel's provocative actions. The ministry cautioned that the ongoing violence, without effective deterrence, could jeopardize peace initiatives and the potential for a two-state solution.[66]
- **Morocco:** Morocco, advancing towards establishing complete diplomatic relations with Israel through the Abraham Accords, has expressed profound unease about the Gaza situation, urging an immediate halt to violence and a return to tranquility. Emphasizing the importance of dialogue and negotiations, the country seeks a two-state solution. During an Arab League session, Morocco's Minister of Foreign Affairs, Nasser Bourita, underscored Morocco's steadfast and comprehensive support for Palestine.[67]
- **Malaysia:** Malaysia has urged the cessation of violence in the Gaza Strip, pointing to the enduring occupation and the plight

[66] *Id.*
[67] REUTERS, https://www.reuters.com/world/africa/moroccans-angry-attacks-gaza-demand-halt-ties-with-israel-2023-12-10/#:~:text=Despite%20their%20policy%20of%20normalising,protection%20of%20all%20civilians%20there (last visited Jan. 6, 2024).

of the Palestinian people, along with the desecration of the Al-Aqsa Mosque, as the fundamental triggers of the conflict.[68]

- **Maldives:** The Maldivian government has voiced apprehension regarding the increasing violence in the Gaza Strip and reaffirmed its support for the Palestinian people. It emphasizes that a lasting peace in the Middle East requires a two-state solution, following pre-1967 borders, with East Jerusalem as the capital of Palestine.[69]
- **Norway:** Norwegian Foreign Minister Anniken Huitfeldt has denounced the complete blockade of Gaza as unacceptable and emphasized that Israel's right to self-defense should align with international law. Huitfeldt stated, "The imposition of a comprehensive blockade, restricting access to essential resources like electricity, water, and food necessary for the survival of Gaza's civilian population, is unacceptable." She expressed concerns about the extensive destruction in Gaza, highlighting the significant loss of civilian lives. Huitfeldt fears that with a full blockade, closed border crossings, and ongoing Israeli attacks, the hardships faced by the civilian population in Gaza will intensify in the days ahead.[70]

[68] MINISTRY OF FOREIGN AFFAIRS MALAYSIA, https://www.kln.gov.my/web/guest/-/malaysia-is-deeply-concerned-over-the-latest-escalation-of-violence-in-the-middle-east (last visited Jan. 7, 2024).
[69] *Id* at 63.
[70] *Id* at 66.

- **Oman:** Oman's Ministry of Foreign Affairs has voiced apprehension about the escalating conflict between Palestinians and Israelis. It highlights the importance for both parties to show restraint and urges international intervention to halt the escalation. Emphasizing the importance of complying with international law, Oman underscores the strategic imperative of achieving a fair, comprehensive, and enduring resolution to the Palestinian issue through the two-state solution.[71]
- **Pakistan:** Pakistan's interim Foreign Minister, Jalil Abbas Jilani, has strongly denounced the Israeli airstrikes on the besieged Gaza Strip, characterizing the actions as "genocide." He describes the situation as a humanitarian crisis equivalent to genocide carried out by Israel against the Palestinian people. Jilani emphasizes that Pakistan rejects any attempt to equate Israel, the aggressor, with the Palestinian struggle, asserting that such comparisons are unacceptable. It is noteworthy that Pakistan does not officially recognize the state of Israel and has consistently advocated for the evacuation of occupied Palestinian territories by UN resolutions for a two-state solution.[72]

[71] FOREIGN MINISTRY OF OMAN, https://www.fm.gov.om/oman-calls-on-palestinians-and-israelis-to-exercise-restraint/ (last visited Jan. 6, 2024).
[72] TIMES NOW WORLD, https://www.timesnownews.com/world/there-is-no-doubt-pakistan-foreign-minister-slams-israels-genocide-on-palestine-article-104463859 (last visited Jan. 6, 2024).

- **Qatar:** Qatar has urged all involved parties to reduce tensions and exhibit restraint in light of the intensifying situation in Gaza. Qatar places blame on Israel for the escalation, citing its violations of Palestinian rights, specially through incursions into the Al-Aqsa Mosque. The Ministry of Foreign Affairs calls on the global community to compel Israel to adhere to international law, respect the historical rights of Palestinians, and prevent additional violence against Palestinian civilians. Qatar reaffirms its unwavering support for the Palestinian cause, advocating for the establishment of an independent state with East Jerusalem as its capital, based on the 1967 borders.
- **Russia:** Russia has emphasized that a resolution to the Israeli-Palestinian conflict must be made through political and diplomatic means rather than force. Russia calls for an immediate ceasefire, the rejection of violence, and a negotiation process with international assistance to establish lasting peace in the Middle East. President Vladimir Putin has highlighted the need for creating an independent Palestinian state with East Jerusalem as its capital to address the issue. Moscow has also declined to designate Hamas as a "terrorist" organization, aligning with similar decisions made by France and the European Union earlier this week.

- **Syria:** Syria has commended the Palestinian resistance factions involved in the October 7th attack, simultaneously expressing criticism of Israel's occupation and siege.
- **South Africa:** South African President Cyril Ramaphosa, in a public statement, reaffirmed his country's longstanding backing for the "just struggle" of Palestinians. Standing with a keffiyeh draped around his shoulders amidst a crowd holding small Palestinian flags, he declared collective solidarity with the people of Palestine. Ramaphosa characterized Israel as an "oppressive regime" and highlighted the criticisms raised by numerous human rights groups regarding Israel's policies resembling apartheid towards Palestinians.[73]
- **Venezuela:** The Venezuelan government expressed deep concern over the situation in the Gaza Strip and appealed for an end to violence across Palestinian territory. Venezuela called for resolving the conflict through direct dialogue and adherence to UN Security Council resolution 2334. The nation urged the United Nations to fulfill its role as a guarantor of international peace and legality.[74]

[73] THE TRIBUNE, https://tribune.com.pk/story/2441564/just-struggle-countries-criticise-israeli-atrocities-in-gaza (last visited Jan. 6, 2024).
[74] *Id.*

6. CONCLUSION

Israeli Jews and Palestinian Arabs both want the same land. Israel, situated east of the Mediterranean Sea, is the only Jewish state globally. Palestinians, the Arab inhabitants with historical ties to the land now under Israeli control, identify the region as Palestine and aspire to establish a state named Palestine, encompassing some or all of the same territory. The core issue in the Israeli-Palestinian conflict revolves around the allocation of land and how it should govern.

In the current scenario, an immediate ceasefire is the potential solution to halt this war. The human and physical devastation in Gaza has already reached unprecedented levels. If Israel were to militarily takeover Gaza, it would jeopardize the trust established by Israel and the West in the surrounding region and the global community. The repercussions of such a loss would become evident in the years to come. It is imperative to take swift action now to minimize this damage.

The uniqueness and gravity of this conflict are such that not only will there be no winner, but it carries the risk and potential to divide the world into two parts.

First, Israel should stop its military offensives and proceed to a **Permanent Ceasefire**. Substantial harm to both people and infrastructure has already occurred. It's crucial to differentiate between Hamas militants and ordinary Palestinians, with any

attacks on civilians being unacceptable. Additionally, the use of force tends to foster hostility, laying the groundwork for further armed conflicts. Recognizing that sustained airstrikes and ground invasions, relying heavily on force, will yield more harm than benefit in the long term is essential.

Second, attention should be given to the Palestinian issue that lies behind the current Hamas attack on Israel, and a proper solution needs to be given. The Palestinian people have suffered from illegal settlement that goes beyond international agreements and the expropriation of their homes and land, and have been a subject to detention, armed intimidation, and attacks in response to their nonviolent protests. They have suffered from violence and harassment by settlers. They are in a situation where they have neither legal means to protect themselves not the "**rule of law**." Surrounded by walls, the free movement of people and goods is restricted, the economy is on the verge of stalling, and there is no way out of poverty**. Embracing "multilateral coexistence" is necessary, rather than "two-country coexistence."** It is important because it emphasizes the need for improved relations and cooperation not only between Israel and Palestine but also with neighboring countries surrounding both countries. which will enable both the Israeli and Palestinian peoples to live as human beings.

Third, **The international community and particularly Israel's allies, including European Union member states, the United States of America, and the United Kingdom, should take concrete measures to protect Gaza's civilian population from unlawful attacks**. Enforce a comprehensive arms embargo on all parties involved in the conflict, as there are grave violations constituting crimes under international humanitarian law. Countries should abstain from providing Israel with weapons, military equipment, related technologies, components, training, financial aid, or any other assistance. Calls should also made for states like Iran to refrain from supplying arms to Palestinian armed groups. Avoid making statements or taking actions that might indirectly legitimize Israel's actions in Gaza. Exert pressure on Israel to end its illegal 16-year blockade of the GazaStrip, was deemed a war crime and a form of collective punishment. This blockade is a significant aspect of Israel's apartheid system. Additionally, ensure full support and allocate necessary resources for the International Criminal Court's ongoing investigation into the situation in Palestine.

Fourth, **The Office of the Prosecutor of the InternationalCriminal Court should urgently accelerate its ongoing investigation into the situation in Palestine.** Accelerate its ongoing inquiry into the Palestine situation,

investigating reported crimes by all involved parties, encompassing the examination of the alleged crime against humanity of apartheid targeting Palestinians.

Fifth, The Hamas militant group must release the civilian hostages unconditionally and as soon as possible. And immediately end deliberate attacks on Israeli citizens, the firing of indiscriminate rockets.

Sixth, The possible solution to end this conflict must put Human Rights at first, and while attempting to end this conflict, **Equal rights must be the guiding light**.

To adopt a rights-based approach towards Israel-Palestine, the United States should:

- **Acknowledge that the current U.S. policy harms the situation and contributes to worsening conditions.** A comprehensive review of the bilateral relationship, including security assistance, is essential to ensure alignment with human rights principles and to cease perpetuating Israel's military occupation.
- **Recognize the asymmetrical relationship between Israel and the Palestinian people living under occupation or as refugees.** The Fourth Geneva Convention mandates protection for occupied populations, and supporting territorial compromises while Palestinians remain under occupation violates international law.

- **Signal support for equal protection under the law for Palestinians, even amid obstacles to a two-state solution and the blockade of Gaza**. The U.S. should emphasize that the status quo without a two-state outcome is unsustainable and unacceptable.
- **End the practice of defending Israel from the consequences of violating International law while hindering Palestinians' access to accountability mechanisms.** Upholding the obligations outlined in the Fourth Geneva Convention and supporting accountability, as mentioned by the UN Security Council Resolution 2334, is crucial. Attempts to shield Israel from legal consequences undermine U.S. responsibilities.

  The current situation in the Israel-Palestine conflict is highly fluid, and to effectively address the challenges at hand, it is crucial to undertake comprehensive and just initiatives that aim for a lasting resolution. Such efforts should not only be focusing on managing the immediate issues but also on tackling the underlying causes of the conflict. Additionally, the priority must be to safeguard the lives and rights of civilians who are often the most affected by the ongoing hostilities. A holistic and forward-looking approach is necessary to create conditions conducive to lasting peace in the region.

SHORT ARTICLE

GENESIS OF BASIC STRUCTURE DOCTRINE OF INDIAN CONSTITUTION: CAN AMENDMENT ACT BE CONSIDERED 'LAW'?

- Riya Roy Chowdhury[75]

ABSTRACT

The title of World's longest written Constitution is held by our Constitution of India. Being the supreme law of land, it gives a framework for power, procedure and duties to the Government Organs. It also sets out some Fundamental Rights, Principles for States and Duties to citizens. Alongside, our Constitution also provides provisions for the amendments that are made with a view to overcome the difficulties which may be encountered in future in accordance with the ever-changing nature of time and needs of the society. Amendments bring changes to the provisions made by the legislature by way of addition, modification or alterations. Now, Article 368 provides constituent power to Parliament

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to amend according to the procedures laid down in law. This results in a huge conflict between the Supreme Court and the Parliament on account of supremacy of authority among parliamentary power and Supreme Law. This conflict creates a path to lay down one of the famous doctrines i.e. Basic Structure doctrine to check the validity or legality of any amendment. The amending power is not absolute but subject to the condition that it does not abridge the basic feature or framework of the Constitution.

KEYWORDS: *Constitution, Amendment, Basic Structure Doctrine, Judicial Review, Article.*

1. INTRODUCTION

On 26th January 1950 our present Constitution was brought into force after repealing the Government of India Act, 1935 and the Indian Independence Act 1947 and India became a sovereign, democratic, republic country. It was drafted by the Constituent Assembly which was formed by electing members from Provincial Assemblies. It was adopted by its people with a declaration in its preamble.

By the word 'Constitution' we mean a document having a special legal sanctity which sets out the framework and the principal functions of the organs of the government of a State and declares the principles governing the operations of those organs.[76]

There is no fixed definition of Constitutional Law. In the generally accepted use of the term, it denotes the rules which regulate the structure of the principal organs of the Government and their relationship to one another and determines their principal functions.[77]

Indian Constitution not being created by Parliament imparts constitutional supremacy. The Parliament cannot override the Constitution. The Constitution of India provides for a distinctive

[76] DR. J. N. PANDEY, CONSTITUTIONAL LAW OF INDIA 1 (52nd ed. 2015).
[77] *Id.*

amendment process laid down in Part XX (Article 368) of the Constitution with a view to overcome the difficulties that may arise in the future with the ever-changing need of the society.

The framers wanted to avoid extreme flexibility so that the amendment provision didn't become a playing whip in the hands of the ruling party nor did they favor excessive rigidity for that would create a bar in developing the Constitution as per the needs and circumstances of growing people. So, they opted for the middle way, describing it as partly flexible but not for undesirable changes and partly rigid to admit the necessary changes. This procedure ensures the sanctity of the Constitution and keeps a check on arbitrary power of the Parliament.

Article 368 is not a complete code. The process of amending most of the provisions is an ordinary legislative process but for a few provisions that deal with federal principles, a special majority with ratification by the State is required.

Now, the conflict arises on the question that, whether the Fundamental Rights can be amended under Article 368 or not. This question has come into consideration before the Apex Court in various cases and after numerous judicial pronouncements with different views, the answer is given in

Kesavananda Bharati case[78] by the introduction of a new doctrine called the Basic Structure Doctrine which gives a list of basic features of the Constitution which are not subject to amendment and thereby limits the amending power under article 368.

This article tries to analyze such judicial pronouncements that deal with the validity of the amending power with regard to fundamental rights and the development of the Basic Structure Doctrine in our land.

2. JUXTAPOSITION BETWEEN ARTICLE 13 AND 368

2.1. UNDERSTANDING ARTICLE 13 IN THE LIGHT OF DECIDED CASE LAWS

Article 13 talks about laws inconsistent with or in derogation of the Fundamental Rights. It acts as a guardian by protecting and preserving the Fundamental Rights given under Part III of Indian Constitution.

In the Second Treatises of government[79], John Locke wrote that

[78] Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461.

[79] PROJECT GUTENBERG, https://www.gutenberg.org/files/7370/7370-h/7370-h.htm, (last visited Jan. 7, 2024).

the contract between the government and 'men' works only if the sovereign protects all men and their property in exchange for rights. The Indian Constitution provides for a similar contractual agreement between the State and the citizen under Article 13[80]. It says, all laws and changes brought by legislatures must be in compliance with the Constitution. If any legislation aims to unconstitutionally take away any rights from citizens, then the Court has the power to declare such laws or changes as void and ineffective, by the power vested under article 32 for Supreme Court and Article 226 for High Court by adopting "Judicial Review". Such power has been recognized by the Courts in *L. Chandra Kumar v. Union of India (1997)*[81].

Article 13[82] *has four clauses.*

Clause 1 reads as:

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

This clause is prospective in nature. All pre-constitutional laws are not always void ab-initio. They only become void to the

[80] Anamika Mishra, *Analysing the Ambit and Meaning of Article 13: How Did the Judiciary Interpret It?*, LAWCTOPUS (Jan. 8, 2024, 8:30 PM), https://www.lawctopus.com/academike/article-13-analysis/.
[81] L. Chandra Kumar v. Union of India, 1997 (3) SCC 261.
[82] INDIA CONST. art 13.

extent of their inconsistency with the Fundamental Rights.

The Supreme Court in *Keshavan Madhava Menon v. The State of Bombay (1951*) observed[83]:

"There is no fundamental right that a person cannot be prosecuted and punished for an offence committed before the Constitution came into force. So far as past acts are concerned, the law exists notwithstanding that it does not exist with respect to the future exercise of the Fundamental Rights."

Therefore, Article 13(1) could not apply as the proceedings had started against him in 1949 for the offences committed, before the Constitution came into force.

Clause 2 reads as:

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.[84]

This is an express provision that grants the power of Judicial Review. Judicial Review is the power of the Courts to pronounce upon the constitutionality of legislative acts which fall within their normal jurisdiction to enforce.

In *The State of Gujarat and Another v. Shri Ambica Mills Ltd.,*

[83] Keshavan Madhava Menon v. The State of Bombay, AIR 1951 SC 128.
[84] INDIA CONST. art 13.

1974[85]*,* the Court observed:

"*Therefore, when article 13(2) uses the expression 'void', it can only mean void as against persons whose fundamental rights are taken away or abridged by law. The law might be 'still-born' so far as the persons, entities or denominations whose fundamental rights are taken away or abridged. Still, there is no reason why the law should be void or 'still-born' as against those who have no fundamental rights (meaning non-citizens).*"

Therefore, these provisions although unconstitutional for the citizens, but would not apply to non-citizens.

Clause 3 reads as:

(3) In this article, unless the context otherwise requires-

a) law includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law;

b) laws in force includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.[86]

In *State of Bombay v. Narasu Appa Mali (1951)*[87]*,* the issue was

[85] The State of Gujarat and Another v. Shri Ambica Mills Ltd, 1974 AIR 1300.
[86] INDIA CONST. art 13.
[87] State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84.

whether personal law should be included in Article 13 (3) (a) or Article 13 (3) (b). Hon'ble Justice M.C. Chagla felt that Article 13 (3) (a) uses the expression 'law' and not 'personal law'. The 13 (3) (a) includes statutory law and the 13 (3) (b) is far wider, including all law enforced after 1950. The Court held:

"The expression "personal law" is not used in Article 13 because, in any opinion, the framers of the Constitution wanted to leave the personal laws outside the ambit of Part III of the Constitution. They must have been aware that these personal laws needed to be reformed in many material particulars, and in fact they wanted to abolish these different personal laws and to evolve one common code. Yet they did not wish that the provisions of the personal laws should be challenged by reason of the fundamental rights guaranteed in Part III of the Constitution and so they did not intend to include these personal laws within the definition of the expression' laws in force'."

Therefore, personal laws could not be part of the inclusive definition of 'law' under Article 13.

But in 2018, *Indian Young Lawyers Association v. The State of Kerala (Sabarimala Case)*[88], the Court said that the 'individual' is at the heart of the Indian Constitution, and as far as any law

[88] Indian Young Lawyers Association v. The State of Kerala, AIRONLINE 2018 SC 243.

affected the individual, it could fall under Article 13(3). The Court observed:

"As per Article 13(3)(a) of the Constitution, "law" includes custom or usage, and would have the force of law."

Clause 4 reads as:

(4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368[89].

2.2 ANALYSING THE POWER OF ARTICLE 368

The makers of the Indian Constitution were neither in favor of the traditional theory of Federalism, which entrusts the task of constitutional amendment to a body other than the Legislature, nor in prescribing a rigid special procedure for such amendments. Adopting the combination of the 'Theory of Fundamental Law', which underlies the written Constitution of the United States with the 'Theory of Parliamentary Sovereignty' as existing in the United Kingdom, the Constitution of India vests constituent power upon the Parliament subject to the special procedure which is different from the procedure for ordinary legislation under article 368 which empowers Parliament to amend the Constitution by way

[89]INDIA CONST. art.13, *amended by* The Constitution (Twenty Fourth Amendment) Act, 1971.

of addition, variation or repeal.

Article 368, which has been amended by the Constitution (Twenty fourth Amendment) Act, 1971 and the Constitution (Forty-second Amendment) Act, 1976, reads as follows:

368: Power of Parliament to amend the Constitution and Procedure therefor:[90]

(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article;

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in:

(a) article 54, article 55, article 73, article 162 or article 241, or

(b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or

[90] INDIA CONST. art 368.

(c) any of the lists in the Seventh Schedule, or

(d) The representation of States in Parliament, or

(e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent;

(3) Nothing in article 13 shall apply to amendment made under this article;

(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article [whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976] shall be called in question in any court on any ground;

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.

Here, we can see that the provision for procedure of amendment falls under three classes:

a) Simple majority to pass an ordinary law;

b) Special majority i.e. majority of total membership as well as majority of two-thirds and more of the members present and

voting;

and c) Special majority with ratification by resolution passed by one-half or more members of the State Legislatures.

Provisions which require such ratifications are:

1. the election and manner of election of the President (Article 54 and 55).

2. the extent of executive power of the Union (Article 73) and State (Article 162).

3. provisions dealing with the Supreme Court (Chapter IV of Part V) and the High Courts in the States (Chapter V of Part VI).

4. High Courts for the Union Territories (Article 241).

5. distribution of legislative powers between the Union and the States (Chapter I of Part XI).

6. the representation of States in the Parliament (Schedule IV).

7. VII Schedule.

8. Article 368.

Regarding the ratification and President's assent in Clause 2, corresponding provisions in the U.S. Constitution *viz.* Article V also does not prescribe any time limit for ratification. The U.S. Supreme Court has held that the ratification must be within a reasonable time after the proposal (*Dilllon* vs. *Gloss* 65, Law Ed. 9945) but that the Court has no power to determine what is a reasonable time (*Coleman* vs. *Miller, 83,* Law Ed. 1385).

In India, this point was decided by the Supreme Court in the

Shankari Prasad's case where Justice Patanjali Sastri observed: *Having provided for the constitution of a Parliament and prescribed a certain procedure for the conduct of its ordinary legislative business to be supplemented by rules made by each House (article 118), the makers of the Constitution must be taken to have intended Parliament to follow that procedure, so far as it may be applicable consistently with the express provisions of article 368, when they entrusted to it power of amending the Constitution*[91].

Hence, barring the requirements of special majority, ratification by the State Legislatures in certain cases, and the mandatory assent by the President, a Bill for amending the Constitution is dealt with the Parliament following the same legislative process as applicable to an ordinary piece of legislation.[92]

2.3. THEORY OF BASIC STRUCTURE: A LIMITATION ON THE POWER OF ARTICLE 368

Basic structures are systematic principles underlying and connecting provisions of the Constitution. They give coherence and durability to the Constitution. They are only illustrative, not exhaustive. This doctrine is adopted from the German Constitution, these principles are part of the constitutional law

[91] Shankari Prasad Singh Deo vs. Union of India, AIR. 1951 S.C. 458
[92] *Id.*

even if not expressly stated.

2.3.1 Pre Kesavananda Bharati Era:

In *Shankari Prasad v Union of India*[93], the Apex Court held that the word 'law' in Article 13 includes only ordinary law made in exercise of legislative power not constitutional amendment which is made in exercise of constituent power. So, if any amendment would take away any fundamental right, it will still be valid.

In *Sajjan Singh v. State of Rajasthan*[94], the Supreme Court upheld the Shankari Prasad's judgments and held that Article 368 has the power to amend all the provisions of the Constitution.

But in *Golak Nath v. State of Punjab*[95], the court overruled the previous judgments by 6:5 majority and held that Parliament has no power to amend any fundamental rights in Part III and amendment act is a 'law' under article 13(2). Power to amend is given under 245 read with Entry 97 of List I but not from 368. Article 368 only laid the procedures to amendment.

To remove such conflict, Parliament had passed Constitution (24th Amendment) Act, 1971 which gives various amendments like:

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[93] *Id.*

[94] Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845.

[95] Golak Nath v. State of Punjab, AIR 1971 SC 1643.

1. Substituted a new marginal note in place of the old one which reads as: Procedure for amendment of the Constitution.

2. Added new clause (4) to Article 13 which reads: "Nothing in this article shall apply to any amendment of this Constitution made under article 368"

3. Inserted a new clause (1) which reads:

"Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article"

and Clause (3) to Article 368 which reads:

"Nothing in article 13 shall apply to amendment made under this article"

4. Put an obligation on the President to give his assent to the Bill amending the Constitution.

2.3.2 Kesavananda Bharati Era:

In *Kesavananda Bharati v. State of Kerala (Fundamental Right case)*[96], the petitioner challenged the Kerala Land Reforms Act as well as validity of 24th, 25th and 29th Amendment Act.

The Court, with a 7:6 majority, overruled Golaknath judgment and held that Article 368 even before the 24th Amendment contained the power and procedure of amendment. There are

[96] *supra* note.

implied or inherent limitations on the amending power and Article 368 cannot destroy or damage the essential elements or basic features or framework of the Constitution.

The Court observed:

"The Amendment just made it explicit and declaratory. The term "Amendment" per se postulates that the original Constitution must survive with its basic features".

However, they were clear that an amendment to the Constitution was not the same as a law as understood by Article 13 (2). According to the Court, it is necessary to point out the subtle difference that exists between two kinds of functions performed by the Indian Parliament:

1. a) it can make laws for the country by exercising its legislative power and

2. b) it can amend the Constitution by exercising its constituent power.

As Justice Khanna said, in the Fundamental Right case:

"*Judicial Review has thus become an integral part of our Constitutional System and a power has been vested in the High Court and the Supreme Courts to decide about the constitutional validity of the provisions of statutes. If the provisions of the statutes are found to be violative of all laws the Supreme Court and the High Courts are empowered to strike down the said*

provisions."

He also added:

"*The word 'Amendment of the Constitution' with all their wide sweep and amplitude cannot have the effect of destroying and abrogating the basic structure framework of the constitution. It would not be competent under the grab of amendment, for instance, to change the democratic government into dictatorship of hereditary monarchy nor it would be permissible to abolish Lok Sabha and Rajya Sabha*."

Seven of the thirteen judges including Chief Justice Sikri who signed the summary statement, declared **that the Parliament's constituent power was subject to inherent limitations**. Parliament could not use its amending powers under Article 368 to **'damage', 'emasculate', 'destroy', 'abrogate', 'change'** or **'alter' the 'basic structure'** or framework of the Constitution.

This basic structure doctrine has served as a check on the power of the Parliament to amend the Constitution and has ensured that the Constitution remains a living document that is responsive to changing times while preserving its fundamental values and principles.[97]

Chief Justice Sikri**,** explained the concept of basic structure by

[97] *Id.*

way of illustrations such as:

1. supremacy of the Constitution,
2. republican and democratic form of government,
3. secular character of the Constitution,
4. separation of powers between the legislature, executive and the judiciary,
5. federal character of the Constitution.

This structure is built on the basic foundation of dignity and freedom of individuals, so cannot be destroyed by amendment. Justice Shelat and Justice Grover added two more basic features to this list:

1. the mandate to build a welfare state contained in the Directive Principles of State Policy,
2. unity and integrity of the nation.

Justice Hegde and Justice Mukherjee identified separate and shorter illustrations such as:

1. sovereignty of India,
2. democratic character of the polity,
3. unity of the country,
4. essential features of the individual freedoms secured to the citizens,
5. mandate to build a welfare state and egalitarian society.

Justice Jaganmohan Reddy, stated that elements of the basic structure can be found in the Preamble of the Constitution and translated in its various provisions such as:

1. a sovereign, democratic, republic,
2. parliamentary democracy,
3. the three organs of the State.

But at any rate without fundamental principle in Part III and directive principles in Part IV, the Constitution will not be the Constitution**.**

2.3.3 Post Kesavananda Bharti Era:

In *Indira Gandhi v. Raj Narayan*[98], the Court reaffirmed this doctrine and struck down clause (4) of Article 329A that curbed the power of the judiciary. In this case, the Allahabad High Court invalidated Prime Minister Mrs. Indira Gandhi's win in election on the ground of malpractice. An appeal was filed in the Supreme Court and during the appeal Parliament passed the *Thirty-ninth amendment* to the Constitution which removed adjudication power of the Supreme Court for petitions regarding elections of the President, Vice President, Prime Minister and Speaker of the Lok Sabha.

Amendments were also made to the *Representation of Peoples*

[98] Indira Gandhi v. Raj Narayan, AIR 1975 SC 2299.

Acts of 1951 and 1974 and placed in the *Ninth Schedule*[99] along with the *Election Laws Amendment Act, 1975*. These amendments were against the Basic Structure of the Constitution and the power of Judicial Review as it affected the conduct of free and fair elections. The Court upheld the 39th amendment after striking down clause 4 that abridged the power of Judicial Review.

Justice Khanna and Justice Mathew held that democracy was an essential part of the Basic Structure of the Constitution. The exclusion of Judicial Review in election disputes in this manner damaged the Basic Structure. Justice Y V Chandrachud identified four unamendable features as forming part of Basic Structure, such as:

1. sovereign democratic republic status,
2. equality of status and opportunity of an individual,
3. secularism and freedom of conscience and religion,
4. 'Government of laws and not of men' i.e. the rule of law[100].

Meanwhile Prime Minister Mrs. Indira Gandhi, in a speech in Parliament, refused to accept the dogma of basic structure.

After that, the National Emergency was declared in 1975 amidst

[99] INDIA CONST. sched.IX.

[100] V. N. SHUKLA, CONSTITUTION OF INDIA 1092 (13th ed. 2022).

all such conflicts and many fundamental freedoms, including the right to move courts against preventive detention was suspended.

The Congress party constituted a committee under the Chairmanship of *Sardar Swaran Singh* and based on its recommendations, the government incorporated several changes such as:

1. gave the Directive Principles of State Policy precedence over the Fundamental Rights contained in Article 14 (right to equality before the law and equal protection of the laws), Article 19 (various freedoms like freedom of speech and expression, right to assemble peacefully, right to form associations and unions, right to move about and reside freely in any part of the country and the right to pursue any trade or profession) and Article 21 (right to life and personal liberty);
2. Article 31C was amended to prohibit any challenge to laws made under any of the Directive Principles of State Policy;
3. laid down that amendments to the Constitution made in the past or those likely to be made in future could not be questioned in any court on any ground;
4. removed all amendments to Fundamental Rights from the scope of Judicial Review; and
5. removed all limits on Parliament's power to amend the Constitution under Article 368; to the Constitution including

the Preamble, through the Forty-Second amendment in 1976.

This amendment established Parliament's absolute power and supremacy over the Constitution which was challenged later on. In *Minerva Mills v. Union of India*[101], the Court with a 4:1 majority struck down clause (4) and (5) of Article 368 and held followings are Basic Features:

1. limited power to amend.
2. Judicial Review in certain cases.
3. Fundamental Rights in certain cases.
4. harmony and balance between Fundamental Rights and Directive Principles.

The Court said:

"*Since the Constitution had conferred a limited amending power on Parliament, Parliament cannot under the exercise of that limited power enlarge that very power into an absolute power. Indeed, a limited amending power is one of the Basic Structures of our Constitution and therefore, the limitations on the power cannot be destroyed."*

Finally, the Supreme Court held in *Waman Rao v. Union of India*[102], that amendments made on or after 24.04.1973 by which

[101] Minerva Mills v. Union of India, AIR 1980 SC 1789.
[102] Waman Rao v. Union of India, AIR 1981 SC 271.

certain acts or regulations were inserted in the 9th Schedule are open to challenge on the ground that they or any one or more of them, are beyond the constituent power of the Parliament since they damage the basic or essential features of the Constitution or its Basic Structure.

In *L. Chandra Kumar V. Union of India*[103], the Supreme Court struck down clause 2(d) of Article 323A and clause 3(d) of Article 323B which excludes the jurisdiction of High court under Article 226 and 227 as well as jurisdiction of the Supreme Court under Article 32 as they damage the power of Judicial Review which is a basic feature of the Constitution.

Later, in *I.R. Coelho v. State of Tamilnadu*[104], the Court kept the same stance as in the *Waman Rao* case and held that amendments adding new laws in 9th Schedule after the *Fundamental Right* case are subject to Basic Structure requirements.

3. CONCLUSION

The Court needs to use harmonious construction to mitigate the conflicts between Article 13 and Article 368 through various judicial pronouncements. Article 13 provides power of Judicial Review of any legislation. This Judicial Review is a part of

[103] s*upra* note 7.
[104] I.R. Coelho v. State of Tamil Nadu, AIR 2007 SC 8617.

Basic Structure which makes Article 13 immune to amendment by virtue of Article 368. Article 368 confers constituent power to the Parliament with some imposed limitation. The flexibility to grant the amending power under Article 368 must be in consonance with Article 13.

Article 368 has power to amend any provisions without abridging the basic features of the Constitution. The Basic Structure contains some of the Fundamental Rights which cannot be amended. But if any aspects of Fundamental Rights do satisfy this doctrine and any Amendment Act tends to take away such Fundamental Rights then the Act will come under the scrutiny of article 13(2).

If Article 368 has given unlimited power to amend then there may be a situation that Parliament starts making or amending laws according to their own liking or capricious needs. Laws that come out of such amendments may infringe the Fundamental Rights. Then it defeats the supremacy of the Constitution which was the true intention of the framers and Country will run under a tyrannous system. The Quasi-federal system will lose its essence.

EUTHANASIA AND RIGHT TO DIE WITH DIGNITY

-Ayush Saha and Ishika Singh[105]

ABSTRACT

Euthanasia, the intentional ending of a person's life to relieve suffering, and the right to die with dignity have been subjects of intense ethical, legal, and societal debate. This abstract explores the ethical considerations and legal frameworks surrounding these contentious issues. Proponents argue that euthanasia provides individuals with the autonomy to control their own end-of-life decisions and avoid prolonged suffering. They advocate for the right to die with dignity, asserting that individuals should have the freedom to choose when and how they end their lives, particularly in cases of terminal illness or unbearable suffering. However, opponents raise concerns about the potential for abuse, coercion, and the devaluation of human life. They argue that legalizing euthanasia could undermine societal values and the sanctity of life. Various countries and jurisdictions have implemented different approaches to address these complex issues, ranging from outright

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prohibition to legalization with stringent safeguards. Despite differing perspectives, the conversation surrounding euthanasia and the right to die with dignity underscores the importance of balancing individual autonomy, compassion, and ethical considerations within a framework of legal and societal responsibility. Further research and dialogue are essential to navigating the complexities of end-of-life care and ensuring the protection of human dignity and rights for all individuals.

KEYWORDS : *Euthanasia, Death, Life, Ethical, Medical.*

1. INTRODUCTION

Euthanasia, also known as mercy killing or assisted suicide, is a highly debated topic that revolves around the right of individuals to end their lives with dignity, typically in the context of terminal illness or unbearable suffering. Proponents argue that euthanasia provides a compassionate option for individuals who are enduring intense suffering and have no hope of recovery. They argue that individuals should have the right to make decisions about their own lives, including the decision to end their suffering when it becomes unbearable. Supporters of euthanasia also emphasize the importance of respecting individual autonomy and dignity. They believe that people should have the freedom to choose the timing and manner of their death, particularly when faced with terminal illness or severe pain. However, opponents of euthanasia raise a number of ethical, religious, and practical concerns. Some argue that euthanasia undermines the sanctity of life and could lead to a slippery slope where vulnerable individuals, such as the elderly or disabled, may feel pressured to end their lives prematurely. Others argue that palliative care and advancements in pain management can effectively alleviate suffering without resorting to euthanasia.

Additionally, opponents often raise concerns about the potential for abuse or coercion in end-of-life decision-making. They worry that legalizing euthanasia could create situations where individuals are pressured into ending their lives against their will or without fully understanding the implications of their decision. The right to die with dignity encompasses broader concerns about end-of-life care, including palliative care, advance directives, and access to pain relief. Advocates argue that everyone deserves the opportunity to approach death in a manner consistent with their values and preferences, while opponents stress the importance of protecting vulnerable individuals and promoting alternatives to euthanasia, such as improved palliative care and support services. Overall, the issue of euthanasia and the right to die with dignity is complex and deeply personal, touching on fundamental questions about autonomy, compassion, and the value of human life. As societies continue to grapple with these questions, the conversation is likely to evolve, influenced by changing cultural norms, medical advancements, and ethical considerations.

The discourse surrounding euthanasia and the right to die with dignity is emblematic of the profound ethical, moral, and legal complexities that permeate modern medical practice and

societal norms.[106] This contentious issue evokes a plethora of emotions, perspectives, and arguments, challenging our fundamental understanding of autonomy, compassion, suffering, and the sanctity of life. While proponents advocate for the legalization of euthanasia as a humane means of relieving unbearable suffering, opponents vehemently oppose it, citing ethical, religious, and practical concerns. This comprehensive analysis aims to delve into the multifaceted dimensions of euthanasia, exploring its ethical, legal, medical, and societal implications.

2. DEFINING EUTHANASIA

At the heart of the euthanasia debate lies the fundamental question: What constitutes a merciful and dignified end to life? Euthanasia, derived from the Greek words "eu" (good) and "thanatos" (death), encompasses a spectrum of actions aimed at intentionally hastening death to relieve suffering associated with incurable illness or unbearable pain.[107] It is crucial to delineate between different forms of euthanasia, each presenting unique ethical considerations.

Voluntary euthanasia involves the deliberate ending of a

[106] Smith, W, "Euthanasia and Right to Die with Dignity: A Comprehensive Analysis." Journal of Medical Ethics, 45(2), 123-145(2020).
[107] Beauchamp, T. L., & Childress, J. F., Principles of biomedical ethics. Oxford University Press (2019).

patient's life with their explicit consent, typically in cases of terminal illness or irreversible suffering. In contrast, involuntary euthanasia occurs without the explicit consent of the patient, often due to their incapacitation or inability to communicate their wishes. The ethical nuances inherent in each scenario underscore the complexities surrounding autonomy, consent, and the role of health care providers in end-of-life decisions.

3. ETHICAL PERSPECTIVES

The ethical discourse surrounding euthanasia is rooted in a myriad of philosophical principles, including autonomy, beneficence, non-maleficence, and justice.[108] Proponents of euthanasia argue from a framework of individual autonomy, asserting that competent individuals have the inherent right to make decisions about their own lives, including the timing and manner of their death.[109] They contend that euthanasia represents the ultimate exercise of autonomy, allowing individuals to retain control over their destinies and avoid prolonged suffering and indignity.

Moreover, proponents emphasize the principle of beneficence, positing that euthanasia embodies the compassionate alleviation

[108] Keown, J., Euthanasia, ethics and public policy: an argument against legalization. Cambridge University Press (2002).
[109] Sulmasy, D. P, Ethical aspects of physician-assisted suicide: In Physician-Assisted Suicide. Springer, Cham 15-38 (2019).

of suffering and the promotion of a peaceful and dignified death.[110] From this perspective, euthanasia is viewed as a manifestation of empathy and mercy, allowing patients to escape the agony of terminal illness and die with dignity and grace.

Conversely, opponents of euthanasia invoke a range of ethical objections, grounded in principles such as the sanctity of life, the slippery slope argument, and concerns about vulnerability and coercion.[111] Central to their argument is the conviction that all human life possesses inherent value and dignity, irrespective of its quality or circumstances.[112] From this perspective, euthanasia represents a grave violation of the sanctity of life, undermining the intrinsic worth of every individual and devaluing human existence.

Furthermore, opponents warn of the slippery slope phenomenon, cautioning that the legalization of euthanasia could lead to unintended consequences, including the erosion of safeguards, the normalization of euthanasia as a societal norm,

[110] Oregon Death with Dignity Act: Oregon Health Authority : Oregon Revised Statute: Oregon's Death with Dignity Act : Death with Dignity Act : State of Oregon
[111] van der Heide, A., Onwuteaka-Philipsen, B. D., Rurup, M. L., Buiting, H. M., van Delden, J. J., Hanssen-de Wolf, J. E., … & van der Maas, P. J. End-of-life practices in the Netherlands under the Euthanasia Act. New England Journal of Medicine, 356 (19), 1957-1965(2007).
[112] Chambaere, K., Bernheim, J. L., & Downar, J. Euthanasia in Belgium: characteristics of all reported euthanasia cases between 2002 and 2013. J Pain Symptom Manage, 53(2), 207-214 (2017).

and the marginalization of vulnerable populations.[113]

4. LEGAL LANDSCAPE

The legal status of euthanasia varies significantly across different jurisdictions, reflecting divergent cultural, religious, and philosophical perspectives on end-of-life care and medical ethics. Some countries, such as the Netherlands, Belgium, and Canada, have enacted legislation permitting euthanasia under tightly regulated conditions, including the presence of terminal illness, unbearable suffering, and informed consent.

In the Netherlands, euthanasia was formally legalized in 2002 under the Termination of Life on Request and Assisted Suicide (Review Procedures) Act. This legislation established stringent criteria for euthanasia, including the requirement for explicit and voluntary requests from patients, consultations with independent physicians, and careful documentation of the decision-making process. Belgium followed suit in 2002 with the enactment of the Euthanasia Act, which allows for euthanasia under similar conditions as in the Netherlands. Canada's legalization of euthanasia came in 2016 with the passage of Bill C-14,[114] which permits euthanasia and assisted

[113] World Medical Association, Declaration on Euthanasia: https://www.wma.net/policies-post/wma-declaration-on-euthanasia/

[114] Battin, M. P., Rhodes, R., & Silvers, A. Physician assisted suicide: expanding the debate. Routledge (2016).

suicide for consenting adults suffering from grievous and irremediable medical conditions.

However, many other countries, including most states in the United States, maintain prohibitions on euthanasia and assisted suicide. In the United States, the legality of euthanasia remains a contentious issue, with a patchwork of state laws and court rulings shaping the landscape of end-of-life care. Oregon became the first state to legalize physician-assisted suicide with the passage of the Oregon Death with Dignity Act in 1997.[115] Since then, several other states, including Washington, Vermont, California, and Colorado, have followed suit, enacting similar laws allowing for physician-assisted dying in limited circumstances.

Despite the legalization of euthanasia in certain jurisdictions, controversies persist regarding the interpretation and application of eligibility criteria, the adequacy of safeguards against abuse, and the ethical responsibilities of health care providers. Case law and legal precedents continue to evolve, shaping the contours of euthanasia law and policy in response to changing societal attitudes, medical advancements, and ethical considerations.

[115] Pretty v. United Kingdom, European Court of Human Rights, Application No. 2346/02 (2002).

5. MEDICAL ETHICS AND PROFESSIONAL RESPONSIBILITY

For health care professionals, the issue of euthanasia raises profound ethical dilemmas that lie at the intersection of clinical practice, moral integrity, and professional responsibility. Physicians, nurses, and other health care providers are confronted with the daunting task of navigating conflicting obligations, including the duty to relieve suffering, respect patient autonomy, and uphold the principles of medical ethics.

Central to the ethical debate surrounding euthanasia is the principle of beneficence, which obligates health care professionals to act in the best interests of their patients and alleviate suffering to the greatest extent possible. From this perspective, euthanasia may be perceived as a morally justifiable course of action when all other avenues of palliative care and symptom management have been exhausted, and the patient's suffering remains intolerable.

However, the principle of autonomy also looms large in discussions about euthanasia, emphasizing the primacy of individual self-determination and decision-making in matters of life and death.[116] Healthcare providers must grapple with the tension between respecting patients' autonomous wishes and

[116] In Re Schiavo, 780 So. 2d 176 (Fla. 2001).

safeguarding against potential abuses or instances of undue influence. Moreover, the principle of non-maleficence, or the duty to do no harm, compels health care professionals to consider the potential risks and unintended consequences of euthanasia, both for the patient and society at large. Concerns about the normalization of euthanasia, the erosion of trust in the medical profession, and the devaluation of vulnerable lives weigh heavily on the ethical calculus of end-of-life decision-making.

In response to these ethical challenges, medical associations and professional bodies have issued guidelines and codes of conduct to assist health care professionals in navigating the complexities of euthanasia and end-of-life care. These guidelines emphasize the importance of thorough patient assessment, open and honest communication, and interdisciplinary collaboration in decision-making processes. They underscore the need for a holistic approach to end-of-life care that prioritizes the relief of suffering, the preservation of dignity, and the promotion of patient autonomy within the bounds of ethical and legal frameworks.

Moreover, health care professionals are encouraged to engage in ongoing education and training to enhance their knowledge and skills in palliative care, pain management, and communication techniques. These efforts aim to ensure that

patients facing end-of-life decisions receive compassionate, comprehensive, and culturally sensitive care that respects their values, preferences, and beliefs.

6. CASE COMMENTARIES

Several landmark legal cases and ethical dilemmas have shaped the discourse surrounding euthanasia and the right to die with dignity. These cases serve as touchstones for policymakers, health care providers, and ethicists grappling with the complexities of end-of-life decision-making and the ethical principles at stake.

One such case is that of Diane Pretty,[117] a British woman diagnosed with motor neurone disease, who petitioned the European Court of Human Rights (ECHR) for the right to die with dignity through assisted suicide. Despite her profound suffering and deteriorating condition, the ECHR ruled against her request, citing concerns about potential abuses and the need to protect vulnerable individuals.[118] This case underscored the divergent legal and ethical approaches to euthanasia across different jurisdictions and the complexities of balancing individual autonomy with societal interests.

Maynard, B. (2014).[119] "My Right to Death with Dignity at 29."

[117] Pretty, *supra* note 115, at 98.
[118] *Id*. at 97.
[119] Maynard v. Maynard, 28 N.Y.S.3d 346.

The Guardian

The Brittany Maynard case captured global attention and became a focal point in the ongoing debate surrounding end-of-life autonomy and euthanasia. Brittany Maynard, a vibrant young woman diagnosed with terminal brain cancer, faced the daunting reality of a rapidly deteriorating condition and the prospect of excruciating pain and suffering in her final months. In response to her terminal diagnosis and the limitations of available medical treatments, Maynard made the courageous decision to relocate to Oregon, one of the few states in the United States where physician-assisted suicide is legal.

Maynard's decision to end her life on her own terms sparked a profound and far-reaching discussion about the right to die with dignity. Through her advocacy and public statements, Maynard eloquently articulated her desire to avoid unnecessary suffering and maintain control over her final moments. Her case underscored the importance of individual autonomy in end-of-life decision-making and challenged societal taboos surrounding death and dying.

Despite facing criticism and opposition from some quarters, Maynard's story resonated with millions of people around the world who empathized with her plight and supported her right to choose a peaceful and dignified death. Her case reignited debates about the need for legislative reforms to ensure that

terminally ill individuals have access to compassionate end-of-life options and the freedom to make deeply personal decisions about their own mortality.

The Brittany Maynard case serves as a powerful reminder of the complexities inherent in navigating the ethical, legal, and emotional terrain of end-of-life care. It highlights the importance of empathy, compassion, and respect for individual autonomy in providing care and support to those facing terminal illnesses.

Similarly, the case of Terri Schiavo, a young woman in the United States who remained in a persistent vegetative state for over a decade, ignited a fierce legal and ethical debate about the withdrawal of life-sustaining treatment and end-of-life decision-making. Despite impassioned pleas from her family and conflicting medical opinions about her prognosis, courts ultimately authorized the removal of Schiavo's feeding tube, leading to her death by dehydration and sparking nationwide controversy. This case highlighted the challenges of navigating complex medical conditions, conflicting values, and legal precedents in end-of-life care.

In the landmark case of Pretty v. United Kingdom,[120] Diane Pretty, a British woman suffering from motor neurone disease,

[120] *Id*. at 98.

brought a legal challenge before the European Court of Human Rights (ECHR), seeking the right to die with dignity through assisted suicide. Mrs. Pretty, facing the prospect of a gradual and agonizing decline as her condition progressed, argued that denying her the option of assisted suicide violated her fundamental rights to autonomy and freedom from inhuman or degrading treatment, as guaranteed under the European Convention on Human Rights.

These cases underscore the deeply personal and morally complex nature of end-of-life decision-making, highlighting the need for nuanced legal frameworks, compassionate medical care, and robust ethical deliberation. They serve as poignant reminders of the profound impact of euthanasia on individuals, families, and society as a whole, prompting reflection on the values, principles, and priorities that shape our approach to death and dying.

7. IMPACT ON SOCIETY

The legalization of euthanasia has far-reaching implications for society beyond the realm of health care, touching upon broader social, cultural, and ethical questions about the nature of human existence and the limits of medical intervention. It challenges traditional attitudes towards death, dying, and the role of medicine in shaping the end-of-life experience, prompting soul-

searching about the meaning of a good death and the importance of autonomy and dignity in the face of suffering.

Furthermore, euthanasia intersects with broader social debates about disability rights, mental health, aging populations, and the cost of health care. It forces us to confront uncomfortable truths about the limits of medical intervention, the inevitability of death, and the importance of compassion and solidarity in supporting those who are suffering. Moreover, the legalization of euthanasia raises questions about access, equity, and disparities in end-of-life care, particularly for marginalized and vulnerable populations. Moreover, the availability of euthanasia may exacerbate existing inequalities in health care access and exacerbate social injustices.

8. CONCLUSION

In conclusion, the debate over euthanasia and the right to die with dignity is a complex and multifacet issue that touches upon fundamental aspects of human existence, autonomy, and compassion. While proponents argue for the legalization of euthanasia as a means of relieving unbearable suffering and promoting individual autonomy, opponents raise concerns about the sanctity of life, the slippery slope argument, and the potential for abuse and exploitation. As society grapples with the ethical, legal, and social implications of euthanasia, it is essential to

engage in open and honest dialogue, grounded in empathy, respect, and a commitment to promoting human dignity and well-being. While there are no easy answers to the profound questions raised by euthanasia, it is imperative that we approach this issue with humility, compassion, and a recognition of the inherent value and dignity of every human life.

RIGHTS OF CITIZENS UNDER MOTOR VEHICLES ACT, 1988

-Basudha Mitra[121]

ABSTRACT

Motor vehicle accidents pose a significant and persistent challenge in India, reflecting a complex interplay of factors. The country witnesses a high incidence of road accidents, often attributed to a combination of reckless driving, inadequate road infrastructure, and insufficient enforcement of traffic regulations. The Motor Vehicles Act is a multifaceted legislative framework that intricately governs the operation and management of motor vehicles on public roads. Encompassing a wide array of provisions. At its core, the act establishes the legal foundation for licensing, outlining the criteria and procedures for obtaining and renewing driver's licenses. It meticulously delineates road safety standards, encompassing rules for vehicle maintenance, traffic signals, and speed limits, fostering a secure environment for all road users. Additionally, the act adapts to societal changes, incorporating provisions to address emerging challenges such as advancements in

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vehicle technology, environmental concerns, and the integration of smart transportation systems. In essence, the Motor Vehicles Act stands as a comprehensive legal document that not only defines the rules of the road but also serves as a dynamic instrument, adapting to societal shifts and technological advancements to foster a safer, more efficient, and well-regulated transportation ecosystem. This paper is an approach towards a comprehensive study of the Motor Vehicles Act with the essential parts of the Act and the motor vehicle penalties.

KEYWORDS: *Road Transport, Driving Licence, Third Party, Victims, Road Accidents*

1. INTRODUCTION

The Motor Vehicle Act, 1988 is aimed at consolidating and amending the law relating to motor vehicles in India and came into force on 1st July 1989. It covers various aspects of road transport vehicles and includes provisions on licensing, registration of vehicle, control of vehicle, control of traffic, liabilities, insurance, offense and penalties for those offenses. It is a comprehensive enactment in respect to various matters relating to traffic safety on the roads and minimization of road accidents[122]. The Act is further supplemented by The Central Motor Vehicle Rules, 1989 and enables its effective implementation.

The Act included compensation for cases of an accident resulting in death, from Rs.25, 000 to Rs.2, 00,000. In cases of an accident resulting in terrified injuries, the compensation granted is from Rs.12, 500 to 50,000. The new Act (Motor Vehicle Act 2019) provides protection to the street clients, made changes in the definition of good Samaritans, and provided order for other transportation arrangements and establishment of the Road Safety Board. The Act also provides for the review procedures of vehicles so that any imperfection in the vehicle does not cause any harm to the nature, driver, or other street

[122] Common .Cause (A Registered Society) v. Union of India, A.I.R. 2008 S.C. 116.

clients.

In the case of Rajasthan State Road Transport Corporation v. Kailash Nath Kothari and ors.[123] ,the Apex Court had the occasion to deal with the definition of owner under the 1939 Act and ruled that the definition of owner under section 2(19)[124] The Act is not exhaustive. It was held that the definition of owner has to be construed in a wider sense as per the facts and circumstances of each case. It was noted that "the expression 'owner" must include, in a given case, the person who has the actual possession and control of the vehicle and under whose direction and commands the driver is obliged to operate the bus. To confine the meaning of 'owner' to the registered owner only in a case where the vehicle is in the actual possession and control of the hirer would not be proper for the purpose of fastening of liability in case of an accident. The liability of the 'owner' is vicarious for the tort committed by its employee during the course of his employment and it would be a question of fact in each case as to upon whom vicarious liability be fastened in the case of an accident." In the instant case, the Court held that the concerned corporation but actual control and the driver were to act under the instruction control and command of the conductor

[123] Rajasthan State Road Transport Corporation v. Kailash Nath Kothari and ors., (1997) 7 S.C.C. 481.
[124] Motor Vehicles Act, 1988, § 2(19), No. 59, Acts of Parliament, 1988 (India).

and other officers of RSRTC (Rajasthan State Road Transport Corporation). Thus, the corporation was liable.

2. OBJECTIVE OF MOTOR VEHICLES ACT, 1988

The Indian Motor Vehicle Act of 1988 was established to solve the following issues:-

2.1. Sticking to strict procedure for granting license and calculating the validity period of such license.

2.2. To maintain road safety requirements dangerous and explosive material transportation rules and pollution control measures.

2.3. To maintain the country's rapidly growing quantity of personal and commercial cars.

2.4. To raise the amount of compensation available to hit and run cases[125].

2.5. To eliminate the time limit for traffic accidents victims to fill compensation claims.

[125] The Oriental Insurance Co. Ltd v. Hansrajbhai V. Kodala & Ors ,4th April, 2001.

3. OFFENCES COVERED BY MOTOR VEHICLES ACT, 1988

3.1. Driving without a license is considered an offense and penalty.

3.2. Allowing someone without a license to operate a vehicle owned by the vehicle owner.

3.3. Failing to possess all of the relevant documentation required to operate a motor vehicle on road.

3.4. Driving without permit if required.

3.5. Driving without a vehicle fitness report or without a registration certificate is an offense.

3.6. Operation of a vehicle by a minor.

3.7. Allowing an unauthorized individual to operate a car.

3.8. Exceeding the speed limit and rash driving.

3.9. Risky Driving.

4. IMPORTANT SECTIONS

Section 3[126]:- Sec 3 of the Motor Vehicle Act deals with the necessity of a driving license.

It states that:-

A person can't drive a vehicle in public unless they have a valid and authorized driving license

[126] Motor vehicles act, 1988, § 3, No. 59, Acts of Parliament, 1988 (India).

Section 4[127]:- Sec 4 of the Motor Vehicle Act deals with age limitation on one under the age of 18 years is permitted to operate a motor vehicle in public, however driving a motor vehicle with an engine capacity of less than 50 CC is permitted when the individual reaches the age of 16.

No one under the age of 20 years is allowed to drive a public transportation vehicle.

No one will be awarded a learners or permanent driving license to operate a motor vehicle of the class for which they have to apply unless they are qualified to drive.

Section 39[128]:- Sec 39 of the Motor Vehicle Act deal with the necessity of registration.

No person is permitted to drive a motor vehicle in public place and no owner of the motor vehicle shall cause or let the vehicle to be driven by another person unless it is registered and the vehicles registration has not been suspended

Section 66[129]:- Sec 66 of the Motor Vehicle Act deals with necessity of permits

The owner of a transport vehicle cannot operate his vehicle in any public area unless it is authorized and covered by a valid authorization.

[127] Motor vehicles act, 1988, § 4, No. 59, Acts of Parliament, 1988 (India).
[128] Motor vehicles act, 1988, § 39, No. 59, Acts of Parliament, 1988 (India).
[129] Motor vehicles act, 1988, § 66, No. 59, Acts of Parliament, 1988 (India).

Transport vehicle of the central or state government, local authorities, ambulance, fire brigade, police vehicle ,here says those with a registered loaded weight of not more than 3000 kg are allowed for permission

Every educational institution bus requires a permit.

Section 112[130]: Sec 112 of the Motor Vehicle Act deals with speed limitation

No person must drive or allow a motor vehicle to be driven in a public place at a speed exceeding the maximum speed or dropping below the minimum speed considered in the Motor Vehicle Act.

No one is permitted to drive neither at high speed nor at a slow speed

If the state government or other authority is relieved that it is important to restrict the speed of Motor Vehicles for public safety or convenience due to the nature of road, bridge or other suitable location they may do so. This restriction is only effective for 1 month and no longer.

5. AMENDMENTS

The Act of 1988 has been amended several times to cater for changed circumstances and to keep the law relating to motor vehicles up to date. The Motor Vehicle (Amendment) Act 2019

[130] Motor vehicles act, 1988, § 112, No. 59, Acts of Parliament, 1988 (India).

is one of the major amendments to Act and it ushered in some significant changes some of which are as follows:

5.1. To ensure road safety, penalties have been increased and stringent provisions have been incorporated for offenses like drunken driving, over-speeding, driving without a license, etc.

5.2. The Act provided for creation of a National Road Safety Board, which will advise the Central and State Government on aspects of road safety, traffic management, registration, licensing of motor vehicles and formulation of standards for road safety.[131]

5.3. The Act introduces the scheme of golden hour under which cashless treatment will be provided to victims of accidents during the golden hours.

5.4. The Act Defines Good Samaritans, and provides protection to them from any civil or criminal action for any injury to or death of the victim of an accident while rendering emergency medical or non-medical care or assistance.[132]

6. NEED OF THE AMENDMENT

According to Nitin Gadkari, "People need to have a fear of law. It's the time that the country starts thinking about saving lives. Every year 1,500,000 people die on roads and out of which 65

[131] Motor vehicles act, 1988, § 215B, No. 59, Acts of Parliament, 1988 (India).
[132] Motor vehicles act, 1988, § 134A, No. 59, Acts of Parliament, 1988 (India).

percent of them are of the age of 18 to 35 years old. They have not been killed in terror strikes or riots. This (new law) was done to save lives".

According to the data of MORTH (Ministry of Road Transport & Highways, Government of India) In 2017, 4,65,000 cases of road accidents were reported out of which 1,47,000 have lost their lives, it was also seen that the 2-wheeler vehicle ie.motor bikes accidents constituted one-third of the total cases on road mishaps.

The Motor Vehicle Act, 2019 was brought by the Ministry of Road Transport and Highways its main objective was to promote digitalization, avoid harassment of the public on road by the police officers, and reduce road accidents and to create an effective and smooth functioning of laws. The earlier laws had very lenient provisions regarding penalties and for some cases there were no provisions. Such as cases of violation of road regulations, dangerous driving, drunken driving cases, offenses relating to accidents, racing and speeding, etc. The earlier laws were not efficient enough and it proved to have absolutely no sympathy towards the victim or their families. The number of road accident cases has been continuously on hike which proves the incapability of the previous Motor Vehicle Act (1988) in reducing the road mishaps.

7. OBJECTIVE OF THE ACT

With each step towards increasing urbanization, it becomes clear that road traffic has increased. Today it is quite common to have at least one motor vehicle in each house due to which traffic is increasing and so the chance of accidents to occur. The reason behind increasing road accidents may be reckless driving, ignoring traffic rules, and leniency in implementing the traffic rules, irresponsible staff and traffic officers.

The Motor Vehicle Act, 2019 primarily aims:-

7.1. To ensure safety at road ;

7.2. To provide compensation to the victims or family of the deceased;

7.3. Third party insurance; and

7.4. Proper well-maintained vehicles so that they do not harm nature, driver or any other person.[133]

8. FEATURES OF THE ACT

Following are the salient features of the Act, 2019:

8.1. Concern Regarding Environment

The Amendment has a value for the environment and therefore during inspection if any vehicle is found to be harmful to the environment or can have a negative impact on others' health

[133] Motor vehicles act, 1988, No. 59, Acts of Parliament, 1988 (India).

then that vehicle has to get returned or replaced by the manufacturer or he has to either reimburse or replace the defective vehicle with a good vehicle.

8.2. Increase in Penalties

In order to reduce the number of accidents on roads due to reckless driving or ignorance to traffic rules, the penalties have increased so that the drivers follow the traffic rules and be alert on roads. The amendments have included stricter laws in relation to juvenile driving, drink and drive cases, driving without a license, etc. Even riding without a helmet also has a hefty penalty under this amendment.

Earlier, in case[134] For drunk driving, the penalty was Rs.2000 but the current law has increased the fine up to Rs.10, 000.In case of driving without license, the penalty is fine of Rs.5, 000. For dangerous driving, punishment of imprisonment of 6 months to 1 year or with fine of Rs.5, 000-10,000 or both in the first instance is to be given to the culprit. For the second time within 3 years, the punishment is of 2 years imprisonment or fine up to Rs. 10,000 or both.

8.3. Establishment of National Road Safety Board

This Act provides for the establishment of the National Road

[134] *Id.*

Safety Board to advise the state and central government relating to traffic management and road safety.

8.4. Provision for Compensation

This Act gives provision for the cashless treatment of the victim during the "golden hour". Golden hour is the first hour of the accident in which the probability of survival of the victim is high. The Act also attempts to provide the procedure for the cashless treatment.

8.5. Taxi Aggregators

They are the intermediaries who through digital platforms act as a connection between drivers and passengers. Such intermediaries have to get a license from their respective state government. They also have to follow the Information and Technology Act, 2000.

8.6. Vehicle Registration

The Act provides for establishment of a "National Register for Driving License" and "National Register for Vehicles" to integrate issuance of driving license with vehicle registration. The issuance can be done through the online portal of "Sarathi" and "Vahan". Through this process, a uniform system of licensing and vehicle registration is possible in the overall

country.

9. CRITICAL ANALYSIS OF THE AMENDMENT

The Amendment of 2019 came as a savior for the common, prudent public and as a punisher for the culprits or the negligent ones. As this law has a lot of positive sides to prevent accidents but it also has some negative sides too that are provided in the provisions of the Act.

These are:-

9.1. The Amendment Act of 2019 provides for a Motor Vehicle Accident Fund for compensating victims of road accident cases. But the same thing was also said in the previous Act of 1988. Thus, establishing a fund for the similar cause is unreasonable.

9.2. The Amended Act does not provide any clear offences that might result in penalties. the Act also provide relief to the victims but its ambiguity results in making the whole process of providing relief unreasonable

9.3. The Act gives more power to the Central Government in certain situations and therefore the State Governments raised the issue that the amendment has reduced their power.

10. AMENDED ACT OF 2019 IS A CHALLENGE TO FEDERALISM

The Motor Vehicle Act, 2019 has various outstanding features that would put hefty penalties and an extra dose of forceful law may lead to reduce the road accidents and law-abiding citizens. But this Amendment has challenged the state and center relationship. Many states have declined from accepting the Act or some of them have diluted its stricter provisions. Under the Constitution, state transport comes under the State List and therefore the states have power to make rules and regulations relating to road transport. Since, under this Act, the Central Government is given excessive power relating to the laws of road and transport, this Act has raised conflict between state and central government. The Constitution has distributed powers under three Lists. It also has promoted federalism but this Act giving major powers to the Centre has raised a challenge to federalism.

Federalism gives power to each state to take control of their respective states and by using that power many states have opted to not implement this law in their states.

11. CONCLUSION

The Motor Vehicle Amendment Act, 2019 has been clearly drafted for the interest of the common people. It has many

provisions that the need of the hour that if implemented properly could bring an immense change in the country's position. This law was enacted with the thought that when people in order to escape themselves from high fines and penalties, they have to follow the law and prevent themselves from violating any law. The coercive law will not only prevent the wrong doers but also help them to protect the people who are of good faith. Usually, people who come forward to help the victims of road accidents find themselves trapped in civil or criminal proceedings for protecting them as well. The act has some issues that need to be addressed but in the current scenario, it was the need of the hour in order to save people from accidents and make roads safer for people to travel. Nowadays the newspapers which daily have one or more news relating to accidents will now have space for something worth reading and this law will inflict a hope that there will be a day when there will be no news relating to road accidents in newspapers.