ISSN:2583-8865

Volume: 2, Issue: 2

KRISHNA LAW REVIEW

E-JOURNAL

MARCH 2024

KRISHNA INSTITUTE OF LAW

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EDITOR'S NOTE

On behalf of Editorial Board members, I am glad to announce the second Volume publication of our E-Journal, KRISHNA LAW REVIEW with great pride, passion, and expectation. It is a matter of pride that the Journal is experiencing regular and healthy growth in circulation and readership. The object of this journal is to provide deep knowledge to our Law students for their professional growth. The papers and articles published in the Journal are meant to appeal to a broad audience with an interest in the study of law, including professionals, academicians, and students. Hopefully, it will be the best platform for teachers, academicians, and research scholars to serve their knowledge. This issue especially aims to touch the most important current topics related with civil, economic, political sphere. The Editorial Board, which consist of impartial reviewers has received a number of research papers and articles for submission. Each manuscript has undergone a thorough review. We thank everyone who has made a significant contribution to this Journal.

Suggestions for improvement or otherwise in any part of the Journal are welcome and will be highly appreciated.

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KRISHNA LAW REVIEW

The Annual E-journal of Krishna Institute of Law

Vol. 2, Issue 2 **March 2024**

Contents

A Study on Nobility of The Legal Profession

Mr. Vikas Kapoor*

Abstract

Our legal education is necessary tools to achieve justice in society. The legal profession plays a role to provide fairness and impartial justice. This profession possessed by advocates to provide legal remedy and relief to the people. It serves law-abiding citizen of society. Legal education is a tool by which we entered into a legal profession that equips law student for fulfillment a numerous responsibility in society and discourage various law job. The main object of this paper to highlight the importance and role of legal profession in India and bring substantive changes in the outlook of the concerned persons towards their profession.

INTRODUCTION

Every family has two kinds of problems - one law related disputes and the other medical related issues. And to sort out these two kinds of problems, one has to bank upon Advocates and medical practitioners (Doctors). Accordingly, Advocates and Doctors are the persons concerned to provide peace to the people by way of sorting out their aforementioned problems. The profession pursued by the Advocates for this purpose is referred as legal profession and the one, which is pursued by doctors, is called medical profession. These two professions, keeping in view, the nature of relief they provide to the people, are considered to be **noble** professions[1].

However, this kind of view with respect to Advocates and Doctors seems to be outdated in today's world, because these days profit is the only motive invariably in all the human activities, irrespective of the fact that we have many organizations, like NGOs ('Non-Government Organizations') working for the welfare of the society, but to some extent even they are profit oriented, so as to bear their day to day expenses, including payment of renumeration etc. to their employees, though on paper they are nonprofit-organizations.

In this regard I recollect dialogue from a Hindi feature film, namely, '*Anokhi Raat'*, directed by Asit Sen, wherein in reference to

charity by the Capitalist Class, it is stated that "an industrialist does not do charity, he simply invests". It is submitted that this sentence applies with full force even to the legal and medical professions, which, as a matter of fact, have become full- fledged industries, as is apparent from the very fact that many hospitals are being run by industrialist, wherein medical practitioners are employed on lucrative terms. Similarly, if we look into some Law Firms, they are owned by non-practicing Advocates, having capitalist ideology. Moreover, many Law Firms are engaged in chamber practice only, without pursuing litigation in the Courts of Law, thus, discarding special feature of the legal profession from commercial point of view. It is in this scenario that in this write-up my endeavor has been to find out in brief the reasons for deterioration in the values of the legal profession, consequently, leading to losing of nobility,

[1] Reason for discussing g both the professions together in the beginning of this write-up is that, according to the author both legal and medical professions carry lot of similarities, where the person concerned with his respective problem approaches the Advocate or the Doctor, as the case may be, who on the basis of symptoms of that problem, carries out the diagnosis of the issue involved in the matter and, then, suggests the remedy. though some exceptions might be there (emphasis is on word 'exceptions') but that would not change the overall picture about the profession.

THE REASONS FOR DETERIORATION IN THE VALUES AND NOBILITY OF LEGAL PROFESSION

1. **Our education system**: First of all, our education system is responsible for this fiasco, as it itself makes its students profit oriented, in place of sensitizing them to the pains and grievances of the concerned people. It would not be out of context to mention here that there is no denying of fact that (Doctors and) Advocates are working hard and devoting even 10- 12 hours a day to their profession, but that devotion is invariably towards the fulfilment of their self-interest, and not towards the welfare of the society, more particularly, the people belonging to the poor and lower strata of the society. Therefore, Advocates have to be sensitized in respect of Human Rights, a concept which, though in existence since the beginning of human civilization, has developed recently. For this purpose, subject of 'Human Rights' has to be included in the curriculum of

law students (as well as medical students), with particular reference to down trodden class of the society, who are not aware of their basic rights, which are even guaranteed under the Constitution.

2. **The education has become very expensive**: Though 'Right to Education' has been elevated to the stature of Fundamental Right, as guaranteed under the Constitution of our country, but the same is available only up to primary level, what to talk of education related to professional courses. Moreover, it has become so expensive that the same is beyond the reach of many people, who in realty are entitled to the same, but are not in a position to get it on account of financial constraints. Accordingly, the first target before the person joining the legal profession is to recover his money, which he spent on becoming an advocate, thus, forgetting his duty as an advocate, who once upon a time (prior to independence) never used to demand even his fees and the client after the case was over, used to put into his pocket, made on the back of that advocate's coat/ gown, the coin/ money, according to his own wish. But today everybody knows, how the advocates quote their fees and recover the same. There are various judgements of the Supreme Court on professional ethics, highlighting this issue. The problem has been further compounded by the Government's reservation policy for reserved category people, many of whom are well placed than even those belonging to general category and, as such, do not need such reservation, having become privileged class with the passage of time. This aspect is substantiated by the trend in the pronouncements of the Supreme Court in Rent Control Legislations, which has changed since 1990s in favour of landlords, which used to be earlier in favour of the tenants, for whose welfare in different states these Rent Control Legislations were brought into existence, as the tenants were supposed to be belonging to poor and lower class of the society. This judicial attitude has changed upside down with the passage of time and now law is being interpreted in favour of the landlords, considering them to be on the receiving end. Therefore, this aspect also needs to be looked into before taking corrective measures in this direction.

3. **The broken families**: Even the broken families are responsible for

deterioration of values and nobility in the profession. Further, the society also has changed from joint family structure to nuclear families. Because of both these reasons the person has become more and more self-centered, having lost any concern whatsoever for the others. It is submitted that, further position is going to be worst, if no immediate steps are taken to cure this ailment of the society, which has become part of the vicious cycle, leading to overall deterioration in the society. In fact, the spouse having custody of the children has to forgo his/ her disciplinary control over those children, so as to win over them and to keep them against the other spouse. Under these circumstances, the children are deprived of the qualities vis-à-vis the sacrifice, tolerance and concern for the others, which ought to have been inculcated in them at the childhood itself, leading to their formation of money- making robots in life, having no emotions and feelings for any kind of person.

4. **Selection of persons responsible for justice dispensation needs to be transparent and more effective**: There is no gainsaying about the fact that an advocate's capabilities depend completely upon the Judges, who have to decide the matter. Therefore, we need competent Judges, whose judgements do not have the element of subjectivity, which is not the case nowadays for obvious reasons. In this regard reference is made to a recent survey, according to which about 75% of the Judges all over the country are kith and kin of sitting Judges. It would not be out of context to mention here that this leads to the only conclusion that the eligible persons are not being selected. Therefore, a system on the lines of Civil Services Examination has to be evolved for selection of the Judges at the lower as well as higher levels, including in the Supreme Court, so that justice dispensation, as per the merits of the case, also inculcates nobility in the character of advocates, who form important part of legal profession.

5. **Overall deterioration in the human values**: Even otherwise, it is submitted that, there has been overall deterioration in the human values in each individual, the reasons for which can be categories as under:

a. **Impact of Information Technology and social media on the young generation**: There has been bombardment of unlawful, unethical and immoral knowledge through the means of Information Technology and

social media on the persons of every age, which has affected them adversely, particularly the children of tender age, thus, having long lasting impact on their ideologies and character in coming years. By the time such children become matured, such kind of knowledge has already precipitated in their life style and ruined their thinking for the worst, because even if they wanted to wriggle out of the same it becomes next to impossible for them. This has more perilous impact on those children, who belong to the families, where even parents suffer from similar kind of psychological ailments. Government needs to bring appropriate legislation for removal of such disorder in the society, since the existing legislations, in the form of IT Act, 2005, have been utter failure on these aspects.

b. **Mobiles have created more distance rather than removing the same, as is claimed**: It is trite to say that mobile phones have not brought the people together, rather, they have distanced them apart. It has become such an addiction for the people from young age to old ones that, in place of devoting time to their kith and kin, one feels more comfortable with the mobile phones. The smart mobile phone, as a matter of fact, has brought so many Apps that a person, in place of being dependent on the others, prefers to look into the respective App, even for searching a particular destination. This might appear to be good for the civilization at first blush, but a little thought would reflect as to how adversely it has impacted the human relations and human values. What used to be taught by the parents, during their interaction with the children on the dining table, has been replaced by surfing of internet on mobile. In this manner, person, besides getting requisite information, also gets in touch with the one which is harmful for his overall development and growth. Needless to mention, particularly for the children, that they have lost the affection of their parents and other kith and kin, which was earlier used to be showered at the time of enlightening them (children), which job of enlightenment has been taken by mobile phones. To cure this ailment, it is submitted that first of all elders in the society have to take the initiative before doing the needful for the children.

c. **Loss of tolerance in children as well as parents/ elders:** It is also trite to say that earlier not only the teachers, but also the neighbors and other friends and relatives had the liberty to scold the children, engaged in any wrongful activity. However, the trend has changed to such an extent that, there is no tolerance even with respect to

offensive action of the teachers towards the disobedient students, which has adversely affected such students, more particularly, because even parents do not endorse such offensive action on the part of the children. Without commenting and criticizing the laws/ norms made by the concerned authorities in this behalf, it is submitted that such an attitude has added only fuel to this type of scenario, which is reflected in deterioration in respect and obedience on the part of such students towards their teachers, in contradiction to legacy of our "*Guru Shishya*" (student - teacher) relationship left by our past. In this regard the author feels that, emphasis should be made on moral education in schools right from the beginning, by way of including a particular subject on the same every succeeding year of schooling of the children.

d. **Match-fixing of sports event**: Last but not the least, it is also well known that just like education even the sports has become career making option for the people, on account of many reasons. But, as is apparent, the things have become so commercial in life that even the discipline of sports has remained specially teaches man about his duty towards the humanity, for which uprose the untouched from the same. Accordingly, fixing for the purpose of unlawful gains, has become a part of sports, thus, having the effect of making the man totally commercial and professional, in place of making him a noble person, having the thought of welfare of the society. To some extent, the author feels that, this is also responsible in bringing deterioration in the nobility of the profession, by way of changing one's attitude towards life, which can be appreciated more, while combining it with other factors, as stated above.

CONCLUTION

Gita, a secular scripture, but wrongly considered as the one from the Hindu religion, needs to be taught not only in India but everywhere: Many researches are being made on the propositions, as laid down in Gita (a secular scripture, but wrongly considered as the one from the Hindu religion), which not only stand substantiated, but are also found to be part of other religions as well. One such proposition is existence of 'SOUL', apart from physical body of the Human Being. It is submitted that; it is Gita only which

Karma Theory is well known to everybody.

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A study on Gambling in India

CA Mithun Khatry*

Abstract

Many Gaming app functions as an online betting platform that allows users to gamble on various games including cricket, Teen Patti, and football. In recent years, numerous online gaming and betting applications have emerged and thrived in India. Many of them present themselves as legitimate entities conducting lawful activities in accordance with Indian laws. Consequently, the prevalent query revolves around the legality of these apps in India, especially considering the ongoing arrests related to their operations. This article aims to immerse into the difficulties of the gambling industry in India, shedding light on its functioning and legal status in the country.

INTRODUCTION

Gambling can take place through various methods such as card games, betting, lotteries, casinos, horse racing, prize competitions, and games of chance. It can be conducted both offline and online, with numerous options available in both categories. As online gambling is also prevalent, the gambling industry in India has expanded to include domestic and offshore markets. The recent arrests related to the Mahadev Gaming App have sparked intense debates among legal professionals in India regarding the legality of gambling in the country. The issue gained significant attention when the Enforcement Directorate (ED) launched an investigation into the extravagant wedding of the app's owner, Mr. Sourabh Chandrakar, in the UAE. The presence of Bollywood celebrities at the event further highlighted the matter. Even celebrities who had attended the company's success party previously are now facing scrutiny from the ED. Consequently, the central question that emerges is whether gambling is permissible under Indian law.

According to the definition provided on Wikipedia, gambling involves wagering something of value on a random event with the hope of winning something else of

value, typically without the use of strategy. Therefore, the key components of gambling are consideration, risks, and rewards.

Legal framework in India

In India, all laws derive their authority from the constitution, which serves as the supreme law of the land. The Indian Constitution establishes the fundamental framework that outlines the essential duties of government institutions. Prior to the enactment of the Constitution of India, gambling in the country was regulated by the Public Gambling Act of 1857, which prohibited public gambling and the operation of common gaming houses, except for games of skill.

Since the adoption of the Indian Constitution on January 26, 1950, the Seventh Schedule of the Constitution delineates the distribution of powers and responsibilities between the Union and State legislatures. This schedule comprises three lists: the Union List (List I), the State List (List II), and the Concurrent List (List III). The Union List specifies the subjects on which the Union parliament has authority to legislate, while the State List outlines the areas where state legislatures can make laws. The Concurrent List includes subjects on which both the Union parliament and state legislatures can legislate. If there is any disagreement between the laws enacted by the Union and the states regarding the subjects mentioned in the concurrent lists, the laws of the Union will take precedence. Additionally, Article 248 of the constitution addresses residual powers that are not covered in either the Union or State lists.

The laws related to gambling in India are regulated by the authority listed in List II of the Seventh Schedule of the Constitution of India. Entry no. 34 of States List (List II) specifically mentions "Betting and gambling", granting states the power to oversee these laws. Consequently, there are varying regulations on betting and gambling across different states in India. On the other hand, Entry no. 40 of Union List (List I) includes "Lotteries", giving the Union government the authority to establish laws concerning lotteries in India. As a result, most states have formulated their own gambling laws, while still adhering to the principles of the Public Gambling Act 1857 with certain modifications. Additionally, the Government of India passed The Lotteries (Regulation) Act 1998 to govern lotteries in the country. Subsequently, on 01.04.2010, the Lotteries (Regulation) Rules 2010 were also issued.

As previously discussed, gambling can be carried out in various ways, both offline and online. Moreover, the regulation of gambling is a state matter in India, with each of the 29 states having its own distinct laws and policies. Due to limitations on the word count of this article, it is not possible

to cover all modes of gambling in every state. Therefore, our primary focus should be on understanding the basic laws that govern the different forms of gambling in India. Against this backdrop, we will now examine the legal status of various types of gambling in the country, including Horse Racing, Card Games, Prize Competitions, Casinos, and Betting.

Game of Skill Vs Game of Chance

During the era of British colonial rule, the Public Gambling Act of 1867 was established, which clearly exempted games of skill from being classified as gambling. This legislation was subsequently embraced by all states with certain adjustments, leading to the exclusion of any game of skill from the gambling category. As time passed, numerous legal precedents were set to determine whether a specific activity should be considered a game of skill or chance. Consequently, this fundamental criterion has now become the standard for determining the legality of any similar activity in India. In most states in India, offering skill games does not require a license, except for Sikkim and Nagaland. These two states have specific licensing regimes for skill games as per their respective Acts.

Prize Competitions

Prize Competitions in India are controlled and regulated by The Prize Competitions Act of 1955. This Act applies to specific territories in India, including the states of Andhra, Bombay, Madras, Orissa, Uttar Pradesh, Hyderabad, Madhya Bharat, Patiala and East Punjab States Union, Saurashtra, and all Part C States. As per this Act, Prize Competition encompasses various types of competitions (such as cross-word prize competitions, missing-word prize competitions, picture prize competitions, etc.) where prizes are offered for solving puzzles based on letters, words, or figures. As per this Act no person can promote or conduct any prize competition where the total value of the prize (whether in cash or otherwise) exceeds one thousand rupees per month.

In cases of ***R.M.D. Chamarbaugwalla vs Union of India (1957) AIR 699*** where the petitioners were engaged in promoting and conducting prize competitions across different states in India. They challenged the validity of Rules 11 and 12 of the Prize Competition Act, 1955. On the crucial question whether the games which depend to a substantial degree upon the exercise of skill come within the stigma of "gambling", S.R. Das, Chief Justice of Honorable Supreme Court held as under: -

> *"Thus, a prize competition for which a solution was prepared beforehand was clearly a gabbling prize competition, for the competitors were only*

invited to guess what the solution prepared beforehand by the promoters might be, or in other words, as Lord Hewer. C.J. Observed in Coles v. Odhams Press Ltd., 1936-1 K.B.416 (a) "The competitors are invited to pay certain number of pence to have the opportunity of taking blind shots at a hidden target".

Similarly in case of ***Bimalendu De & Etc. vs Union of India (UOI) And Ors. AIR,2001 CAL30*** regarding Television shows "Kaun Banega Crorpati" by Star T.V. and "Jackpot Jeeto" by Zee T.V. Honorable Kolkatta High Court stated that these shows are purely a game of skill and not a game of chance.

Game of Cards

In the case of State of ***Andhra Pradesh vs. K. Satyanarayana & Ors. (1968) 2 SCR 387,*** the issue presented to the Court was whether Rummy constituted a game primarily based on skill or one predominantly based on chance. The esteemed Supreme Court, in its analysis, made the following observations:

"The game of Rummy is not a game entirely of chance like the `three- card' game mentioned in the Madras case to which we were referred. The `three card' game which goes under different names such as `flush', `brag' etc. is a game of pure chance. Rummy, on the other hand requires certain amount of skill because the fall of the cards has to be memorised and the building up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of Rummy is a game of entire chance. It is mainly and preponderantly a game of skill. The chance in Rummy is of the same character as the chance in a deal at a game of bridge. In fact in all games in which cards are shuffled and dealt out, there is an element of chance, because the distribution of the cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this alone it cannot be said that

> *Rummy is a game of chance and there is no skill involved in it."*

Rummy was differentiated from other card games by the fact that it is not entirely dependent on luck, unlike games like `flush' and `brag' which are purely games of chance.

The majority of card games, including poker, rely on chance, making them exclusive to casinos where they are legally permitted. Nevertheless, there exist skill-based variations of poker, like Texas Hold'em and Omaha Hold'em, which are not subject to these restrictions and can be played in physical locations as well. With the exception of Sikkim and Nagaland, where skill gaming is regulated through licensing, and Tamil Nadu, which explicitly bans real-money poker, other State Gaming Laws do not expressly prohibit skill variants of poker.

Online Rummy

Kerela Gaming Amendment Act tried to put a blanket ban on the game of online rummy when played for stake. Section 14-A of the Amendment Act lists out some exceptions where certain games will be excluded from the ambit of the Act as they involve an element of skill in it and the game of rummy is one of such exemptions in it. Gameskraft Technologies Private Limited sought to challenge the Amendment Act before the Kerela High Court and the court held that if the online game involves a substantial degree of skill, then no prohibition should be imposed on such game as stated in the decision of the Kerala High Court and Madras High Court.

Online Poker

The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016 acknowledges poker as a game of skill and thus allows this game to be played online through operators which needs to acquire a license in order to offer it to its customers.

Horse Racing

Horse racing, despite its association with gambling, has been legalized in most states due to historical reasons. As discussed earlier that The Public Gambling Act of 1867, enacted during British colonial rule, specifically excluded games of skill from the definition of gaming. This act was later adopted by all states with some modifications, resulting in any game of skill being excluded from the definition of gaming. Additionally, some states, such as Assam under the Game and Betting Act of 1970, have specifically excluded horse racing from the definition of gaming. According to this act,

> *"Gaming includes wagering or betting on any figures or numbers or dates to be subsequently ascertained or disclosed, or on the*

> *occurrence or non-occurrence of any natural event, or in any other manner whatsoever except wagering or betting upon a horse race, when such wagering or betting upon a horse race takes place: (a) on the day on which such race is to be run, and (b) in an enclosure which the stewards controlling such race have, with the sanction of the State Government, set apart for the purpose, but does not include a lottery."*

Later in case of Madras Race Club case ***(Dr KR Lakshmanan v. State of Tamil Nadu, WPC 665 of 1996),*** the Supreme Court of India held that:

> *"We have no hesitation in reaching the conclusion that the horse-racing is a+ sport which primarily depends on the special ability acquired by training. It is the speed and stamina of the horse, acquired by training, which matters. Jockeys are experts in the art of riding. Between two equally fast horses, a better trained jockey can touch the winning-post. In view of the discussion and the authorities referred to by us, we hold that the horse-racing is a game where the winning depends substantially and preponderantly on skill."*

So, when it comes to placing bids at Horse Racing on the day of the race, within an enclosure designated by the stewards and approved by the State Government, it is not classified as gambling. However, in terms of online betting on horse races, the state governments of Maharashtra, Telangana, Karnataka, and West Bengal have authorized the respective turf clubs to provide online betting services. However, the approval given to the Bangalore Turf Club in July 2020 was revoked in December 2020 following a legal challenge in the Karnataka High Court. Conversely, the approval granted to the Royal Calcutta Turf Club in West Bengal remains unchallenged, and the club has partnered with international race operators to offer races on an online betting platform. Additionally, enforcement actions have been taken in Karnataka against individuals involved in online betting on horse races.

Online Horse Race

The state of Sikkim permits sports betting under a licence through the intranet and to the exclusion of their state residents.

Casinos

Casino games are games of chance and hence are hit by the prohibitions of most state-level anti-gambling laws. Casino games are regulated by state-level laws in India and their digital forms also fall within the ambit of the same laws.

Offline Casinos

The state of Sikkim, Goa and the union territory of Daman and Diu permits casino games in land-based form through state-specific laws as:

- Casinos in Goa, Daman and Diu are regulated under the Goa, Daman and Diu Public Gambling Act, 1976.
- Casinos in Sikkim are regulated under the Sikkim Casinos (Control and Tax) Act, 2002.

Online Casinos

The state of Sikkim permits the offering of some online casino games playable on only intranet terminals by obtaining a license under the provisions of the Sikkim Online Gaming (Regulation) Act, 2008.

Fantasy Betting / Dream11

In case of ***Avinash Mehrotra V, The State of Rajasthan & Ors., SLP (C) No. 18478/2020*** the Supreme Court has upheld the fantasy sports format offered by fantasy gaming unicorn Dream11 as a game of skill and not chance. Fantasy sports are typically considered games of skill and are exempt from State Gaming Laws in most states, with a few exceptions.

For instance, Nagaland has a licensing system in place for virtual sports fantasy league games under the Nagaland Act. Rajasthan has also introduced a draft bill, the Rajasthan Virtual Online Sports (Regulation) Bill 2022, to regulate fantasy sports through a licensing regime, although it has not been implemented yet. On the other hand, Andhra Pradesh and Telangana have banned fantasy sports involving stakes or winnings.

Other Online Games

Various State Governments across India are introducing amendments to their respective Public Gaming Acts to prohibit online fantasy sports. The Karnataka Government recently passed the Karnataka Police (Amendment) Bill, 2021 to ban online gaming, with the exception of lottery and horse racing. With this Karnataka now joins Tamil Nadu, Andhra Pradesh, and Kerala in their efforts to regulate online gaming through legislation. The common goal of these State Government Amendment Bills is to differentiate between online games and those played in physical locations.

Telangana and Andhra Pradesh have already banned all real-money online gaming activities, including skill-based games, while Tamil Nadu currently prohibits real-money online rummy and poker. In April 2023, Tamil Nadu

implemented the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022 to further restrict online gambling and real-money games of chance in the state. In the same month, the Union Ministry of Electronics and Information Technology made amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 under the Information Technology Act, 2000. These changes propose the establishment of independent self-regulatory bodies to determine the availability of online real-money games to the public.

Lotteries

The Lottery Laws allow for specific types of licensed private lotteries and empower state governments to operate lotteries in accordance with the regulations outlined in the Lottery Laws by the Union Government. Private individuals or companies may be designated by the state government to assist in organizing state-run lotteries. While certain states like Madhya Pradesh and Bihar have prohibited lotteries altogether, others have authorized only non-profit lotteries with a valid license. Presently, around 13 state governments in India conduct lotteries. States like Punjab, Kerala, and Maharashtra exclusively permit physical lotteries.

Various formats of bingo can also be played, whether online or in person, and they are categorized as either lotteries or games of chance. Games of chance are typically prohibited by State Gaming Laws, while lotteries may be allowed in certain states under certain conditions. Please see the relevant section on "Lotteries" for more information.

Offshore Online Gambling

The legality of offshore online gambling in India continues to be a subject of debate. Numerous sites and applications, such as 20Bet, Parimatch, Fun88, 10CRIC, Betwinner, Dafabet, Melbet, Paripesa, and others, are operating within the country.

While Indian casinos are not allowed to promote or host online gambling sites, non-Indian companies (offshore) can still target Indian players without breaking the law. These offshore platforms remain accessible to Indian players, despite operating from outside of India. However, the legality of these offshore online gambling platforms for Indian players is still open to interpretation. It is worth noting that, except for Tamil Nadu and Telangana, online offshore casinos and betting sites are still legal in all other states.

Although Indian companies involved in gambling, betting, and lottery businesses are prohibited under FDI policies, there is currently no policy regarding offshore betting apps. Therefore, payment platforms like UPI, PhonePe, Visa, and Gpay are generally be used for offshore betting.

One of the main challenges faced by sports bettors in India is the difficulty in depositing funds with foreign bookmakers. Depositing money through platforms like Moneybookers or Neteller is typically the preferred method, as attempts to use Visa, MasterCard, or online bank transfers may fail. To overcome these obstacles, tech-savvy internet users have turned to e-wallet services for depositing funds. These services allow users to fund their online betting accounts in Indian Rupees, thereby avoiding potential legal issues related to the Foreign Exchange Management Act (F.E.M.A.).

Various countries and organizations, such as the UK Gambling Commission (UKGC) in Great Britain, the Malta Gaming Authority in Southern Europe, and the Curacao Gaming Control Board in the Southern Caribbean, support online betting. These aggregators exploit loopholes in Indian laws by utilizing overseas bookmakers located outside of India.

Conclusion

It is inaccurate to assume that gambling is universally illegal in India, as the power to regulate and enforce gambling laws lies with individual state governments. Some states have legalized gambling, while others have prohibited it. In states where gambling is allowed, the legality often depends on the methods used, such as in the case of Mahadev App where reports indicate potential money laundering activities. Chandrakar and his associates are suspected of using shell companies to move funds offshore, prompting the anti-money laundering agency to consider international cooperation for legal action against the app owner currently residing in the UAE.

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Krishna Institute of Law E-Journals (Krishna Law Review) Vol. 02, Issue.2 [Year 2024] ISSN: 2583-8865 Mode (0nline)

A study on Effectiveness of IBC So Far

Dr. Rajesh Kumar Singh*

Abstract

In this article, I try to explain the current development and progressive journey of Insolvency and bankruptcy code 2026 so far. Last few years several changes have been made by regulator and policy maker in the legal landscape of the IBC, 2016, marked a turning point in India's history. Article has been drafted with the help of the secondary and primary date with prime objective to know the recent development in the IBC code so far from 2019 onwards and its effectiveness in the insolvency resolution process, with an emphasis on revival rather than liquidation in the treatment of distressed companies and financial entities. Recent development in digitalization of the code and AI are playing a vital role for the core development of IBC. It is also examined the importance of bad bank which is running under the name of NARCL.

INTRODUCTION

India's economic and legal landscape is constantly changing, and the promulgation of the IBC, 2016, marked a turning point in India's history. Described as a game changer, the Code redefined the definition of insolvency and bankruptcy in the country. The aim of the Code is to promote a dynamic and effective insolvency resolution process, with an emphasis on revival rather than liquidation in the treatment of distressed companies and financial entities. This landmark legislation not only facilitates and accelerates the resolution process, but also brings in discipline, accountability, and investor confidence into the Indian market.

The Insolvency and Bankruptcy Code (IBC) have gone through many structural changes since 2016. With evolving regulations and changing business models, realignment of business strategies is the need of the hour. Revised regulatory guidelines around improved governance norms, better disclosures, lower funding requirement for asset acquisition, increase participate as a resolution applicant under

the Insolvency and Bankruptcy Code (IBC) are all expected to structurally fortify the sector.

The legislator alongside the judiciary has through amendments incorporated substantial changes to the Code which aim to enhance the effectiveness and fairness of insolvency resolution processes. The Code has been amended from time to time to safeguard the interest of various stakeholders. The Ministry of Corporate Affairs (MCA) and IBBI, frequently disseminate suggestion papers and documents to solicit feedback from the public regarding proposed amendments to ensure the robustness and effectiveness of the Code with changing times.

Lastly, IBC has improved the credit culture over the seven years since its inception by resolving a considerable amount of stressed assets and achieving better recovery rates compared to other mechanisms. However, there is still room for strengthening the credit resolution framework.

IBC JOURNEY SO FAR AND NEW DEVELOPMENT

Digitalization of the Code and AI: Digitalization and artificial intelligence are driving transformative changes in various sectors, and the field of insolvency and bankruptcy is no exception. The Code may undergo a revolution because of the incorporation of digital tools and AI technology, which would boost the efficacy, efficiency and transparency of these procedures.

One of the major advantages of digitisation is increased transparency. Interested parties can get real-time updates on current insolvency cases via web portals. As stakeholders are kept informed about case developments, hearings and conclusions, this transparency creates more faith in the process. Furthermore, digital networks allow the public to observe processes, increasing accountability and lowering the possibility of fraudulent practices.

Bad banks

NARCL was established by the Government as a key step towards solving India's long-standing problem with bad loans and non-performing assets. The creation of NARCL is a significant step towards improving the balance sheets of financial institutions, promoting economic expansion and regaining investor trust.

Why NARCL?

The load of NPAs has plagued India's banking industry for years, preventing credit from flowing and stifling economic expansion. The availability of funding for important industries has often been impacted by these poor loans, which have restricted banks' capacity to provide further loans. The Government established NARCL as a specialized organization to

resolve strained assets after recognizing the urgent need for a solution to this issue.

Pre-pack insolvency

MSMEs constitute the foundational pillars of India's economy, contributing significantly to employment generation. Their vitality is essential for ensuring sustained growth. To address the challenges brought on by the Covid-19 pandemic, a pre-packaged insolvency resolution mechanism was implemented in April 2021. The rationale behind this approach is the recognition that resolving financial distress among MSMEs necessitates a distinct approach due to the specific characteristics of their business operations.

TREND OF STRESSED ASSETS IN THE LEADING SECTORS

Power

According to the CRISIL Ratings portfolio analysis, stressed assets in this sector have the potential to recover 43-48% of the total debt acquired. The positive trajectory can be attributed to multiple factors, including the escalating demand for power, favourable regulatory changes such as coal auctions through the Shakti scheme, ongoing restructuring initiatives, and strategic investments in the sector. Notably, the resolution of assets in this sector primarily occurs through restructuring, followed by IBC, given that these assets are operational and generate sufficient cash flows, allowing for the repayment of debt through operational cash flows over a period.

Roads

To increase economic activity, the Government of India has taken many measures to develop the public infrastructure ecosystem. This has resulted in increased focus on revival of stressed road assets. Government initiatives, such as extension of concession period for build-operate-transfer (BOT)-toll operators, reduction in performance security from 5% to 3%, release of retention money to the extent of work done have instilled confidence among stakeholders. This has led to many strategic investors coming forward to refinance projects. According to the CRISIL Ratings portfolio analysis, stressed road assets have the potential to recover 58-63% of the total debt acquired.

Real Estate

Healthy economic growth and offices continuing with the hybrid working model will likely keep demand for residential real estate steady. The government has taken many initiatives to resolve the stress in the sector by providing funds to stalled projects. One such fund, SWAMIH Investment Fund, has provided last-mile funding for many stalled projects.

Sale of assets remains the most preferred resolution strategy for the real estate sector, as once the project is completed, sale of

units is the only source for recovery. As the resolution timelines for real estate cases under IBC are stretching beyond expectation, lenders are looking for resolving these assets outside IBC by completing construction through a developer and selling the project under a revenue sharing model with the developer.

Among sector-wise case admissions, the manufacturing sector has the highest number, reflecting the confidence of lenders in the revival of these operating units. Of the admitted manufacturing cases, 13.5% have been resolved. In the dynamic power sector, IBC has resolved 19% of the admitted cases, aligning with the overall industry growth. In contrast, the real estate industry exhibits lower investor interest, with 1508 cases admitted and only 7.82% resolved.

ENHANCEMENT OF EFFECTIVENESS AND EFFICIENCY OF IBC

The expedited settlement of cases, influenced by the apprehension of promoters of losing their companies under IBC, has also played a pivotal role. The positive impact of regulatory changes is evident in the enhanced credit discipline among borrowers.

IBC outperforms other legal recovery modes, pioneering revitalization of business. It must be noted that recoveries made by lenders through bilateral settlements and restructuring with the borrowers will always be higher. Amongst the legal channels, recoveries through the IBC route have been higher than others, barring in fiscal 2021, when SARFAESI had a higher recovery percentage. This is due to a sharp dip in cases referred to SARFAESI during the fiscal.

The primary advantage of IBC over others has been the revival of business, thus creating value not only for lenders but also for all other stakeholders involved and, in the process, keeping the workforce intact. Revival of business has also led to greater credit growth as the stressed companies can take on further debt for revival. This was not the case with other resolution mechanisms, as they were mainly used as a tool for recovery rather than business revival, thus contributing majorly only to lender's recovery.

To continuously enhance effectiveness and efficiency of IBC, several reforms have been introduced since its inception, resulting in resolution of some of the large cases. Still, deliberations are on for bringing in improvements in many aspects, not only to keep the code relevant with changing times but also to maintain its premier position among all resolution mechanisms.

IMPROVING CREDIT CULTURE, BUT IMPLEMENTATION NEEDS TO BE STREAMLINED

Lenders continued to use various legal channels and RBI frameworks for resolution of stressed assets for years. The peculiar characteristic of all of these was 'debtor in control'. IBC emerged with the need to bring in a comprehensive umbrella code with the 'creditor in control' feature. It has undoubtedly tilted the power equation in favour of creditors from debtors, and improved credit culture in India by resolving a significant amount of stressed assets.

Average recovery rate under IBC was 37% of admitted claims in the past five years, surpassing other legal mechanisms, that is, SARFAESI, DRT and Lok Adalat, which had recovery rates of 4% to 22% during the same period.

The secret to the success of IBC lies in its evolving nature, with more than 90 amendments made till date to improve resolution timelines and maximise value. Focussed implementation of some of the recent amendments related to capacity augmentation, digitalisation of IBC platforms and expansion in the scope of implementation of pre-pack resolution plans are critical to ramp-up efficiency. Boosting confidence of lenders though resolution timelines remain a bottleneck.

IBC RECOVERY AND CURRENT STATUS OF NPA

As of September 2023, IBC has helped recover Rs 3.16 lakh crore against admitted claims of Rs 9.92 lakh crore (or around one-third of the admitted claims) from insolvent firms (for the 808 cases resolved out of the total 7,058 admitted).

IBC has led to a strong deterrent effect among borrowers, leading them to opt for settlement with creditors before reaching the IBC gate in fear of losing company ownership once the resolution process under IBC is initiated. As per IBBI, 26,518 cases having underlying default of Rs 9.33 lakh crore were resolved before their admission to IBC, demonstrating the deterrence impact of the code.

As per the government's submission in Parliament, 13,000 cases are pending at NCLT courts. Vacant benches in some locations and limited functioning of courts during the pandemic have contributed considerably to the creation of this backlog. Clearing the backlog would lead to an increase in number of resolutions being approved, thus boosting the recovery rates under IBC.

The GNPAs of banks peaked at 11.2% as on March 31, 2018. NBFCs, after a good run, started facing challenges post 2018. Asset quality in the wholesale book of NBFCs also started displaying signs of stress. However, the asset quality of the financial sector is at its healthiest in recent times, specifically because of the sharp reduction in NPAs in corporate loans, indicating that opportunity for ARCs in corporate loans is

perhaps at a cyclical low. After touching a decadal low in March 2023, overall gross NPAs in the banking sector continue to trend down and are expected ~3% by the end of fiscal 2024.

MAJOR AMENDMENTS FROM 2019 TO 2024

The government, along with the regulator (IBBI), has been proactive in addressing issues faced by various stakeholders and has amended the code from time to time. As of September 2023, more than 90 amendments were made to the IBC code.

In 2019

- Allowed Promoters of MSMEs, who are not categorized as willful defaulters to bid for their Assets.
- Pegged the rights of homebuyers on par with FCs.
- Section 29 A of the IBC tweaked to exempt pure -play financial entities from being disqualified to bid for Assets.

In 2021

- Increase in threshold to initiate CIRP from Rs.1 lakh to Rs 1 crore.
- Suspension of the IBC Process for one year under section 7, 9 and 10 due to covid -19

In 2022

- Section 32A was introduced to protect corporate debtor (CD) and its assets from prosecution upon the approval of a resolution plan.

In 2023

- Pre- Package insolvency resolution framework for MSMEs introduced.
- The supreme court judgment to allow creditors to initiate insolvency proceedings against personal guarantors.

In 2024

- Allowing insolvency professionals Entities (IPEs) to act as Insolvency Professionals
- Paying resolution professional (RP) a minimum fixed fee basis the claim size
- Extending timelines for filling claims
- Modification in form – G to provide more data to potential resolution application.
- Provision for Audit of the CD

THE WAY FORWARD

Since its introduction, the IBC has established itself as the primary tool for revival of business, in turn maximizing value for all stakeholders. All the government authorities, IBBI and others have put their weight behind the code to continuously reform it to keep pace with developments in the stressed assets sector

and to counter the challenges involved in resolving different classes of stressed assets.

To be sure, the code has been successful in returning superior recovery numbers compared with other mechanisms. it requires strengthening on various fronts, such as increasing resolution timelines, falling year-on-year recovery rates, delay in the pre-IBC admission stage, which have led to a diminution in asset value and sub-optimal recoveries.

1. Going forward, focus will remain on effective implementation of amendments already enacted and timely design of newer ones with priorities being:
2. Capacity augmentation by increasing the number of NCLT benches and ensuring that sitting members are available on existing benches.
3. Digitalisation/integration of all information technology platforms used by various stakeholders to eliminate data asymmetry.
4. Expansion of scope of pre-pack insolvency resolution for large corporates

In addition, facilitation of cross-border insolvency processes, standardization of valuation methodologies and introduction of specialized resolution frameworks for specific sectors where success has eluded IBC (such as real estate) will also help enhance the effectiveness of the code.

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An Analytical Study on Rights of Transgender Person in India

Ms. Preeti Gautam*

Abstract

The transgender persons are highly covered population in India but they don't have their proper human right like right of dignity. They are fighting for their rights since a long time, they are suffering from humiliation and discrimination from ancient time. The right of dignity is the right of every human being but the ground level situation is not the same in spite of a separate legislation and decision by the supreme court they are fighting for their human right like the right of dignity, right to education and many more. The objective of this paper is to evaluate the law and policies implementation for transgender in India regarding their human rights.

INTRODUCTION

Sex and gender are totally different concepts. Sex is Typically determined at birth by examining the external genitals. As we are the fastest developing country, we have achieved a lot of success in numerous fields whether it is science, technology and gender equality but darken side exist behind it because as we talk about equal treatment of law and equal circulation of benefits to all, we just forget the person who are neither a male nor female, yes, they are transgender person. They were facing a lot of hatred by the society and discrimination by the government. The society had never seen them respectfully. They are also a human and have their human right but does they receive the same as the other gender of society, the answer is no. They have different liking and inner feelings since their birth that are different in compression of other gender. They are known by different local name like '***Hizara'***, '***Aravani'***, '***Kinner'*** '***Aradhis'***, '***Sakhi'***, '***Jogtas'***, '***Jogappas'***, etc. According to the Indian constitution, every person has the right to equality under Article 14 and right to personal liberty in article 21.

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But after that all, the most important question is that are they provided with these rights properly. They face many dilemmas in society for ages, apart from discrimination like employment, education, marriage, medical facility, homelessness, sexually abused and alcohol abused etc. In a lot of study, it's was found that these factors affect their mental health in the terms of depression and anxiety. In 1997 first time right to vote was provided to the transgender in India. In 2005 Indian passport authority added a third category "E" in their passport application form. In 2009, voting identity cards of the transgender were differentiated as other from male and female.

METHODOLOGY

In this paper we follow doctrinal research, in our paper we used secondary data as book journals, government reports, legislative debates, newspaper etc.

HISTORICAL STATUS

The hardships regarding transgender inequality are not the problem of today, the ancient period across the world was suffering from this problem since a long time. The ancient religions of the world contain reference to homosexuality along with the degree to tolerance towards such practice. many reference are available in the early civilization, ancient scripture, mythology, shastra and Vedas. Undoubtedly in earlier time society was ignorant of such behaviors or was ignoring this behavior taking it to be a normal behavioral pattern Many times they started coming out openly and demanding the same legal and social entitlement as are available to other. There was a different assumption and belief considered in different religions in India for the existence of Transgender. Like Jainism, Christianity, Islam, Buddhism, Hinduism etc. In India we find mention of transgender people- Hizras- in Ramayana. But then they were despised. "Lord Rama, in the epic Ramayana, while leaving for the forest upon being banished form for kingdom for 14 years, turns around to his followers and asks all the "man and women' to return to the city. Among his followers, the Hizras alone do not feel bound by this direction and decide to stay with him so Lord Rama Blessed them the power to confer blessing. This belief set the stage for the custom of badhai in which Hijras sing, dance and confer blessing It is much clear that "Homosexuality" existed in ancient Egypt, Babylonia, Syria, Persia, India and China.[1]

DIFFERENT TERMS OF TRANS PERSONS

Gender identity refers to a person internal sense of being male, female both or neither. It may not correspond with the sex assigned at birth.

"Transgender" a person whose gender identity is inconsistent with the gender they were ascribed at birth.

"Transsexual" the medical term for a person who has changed the physical attributes of their sex to be consistent with the gender with which they identify.

"Asexual" a person who does not feel sexual attraction towards or desire for any group of people.

"Homosexual / Gay" a person who feels romantic and sexual attraction towards a member of the same sex.

"Bisexual" a person who feels romantic and sexual attraction towards people any sex or gender identity.

"LGBT" an initialism for Lesbian, Gay, Bisexual and Transgender which is typically used as an umbrella term for queer people.

"Hijra" a person whose gender identity is neither male nor female, typically a person who was assigned male at birth but whose gender expression is female.

RATIO OF TRANSGENDER PEOPLE IN INDIA

As per the 2011 census, India's transgender population is around 4.88 lakh, with a literacy rate of 56.07%.[2]

CONSTITUTIONAL PROVISION

The transgender community in India face the lawful and social trouble. In British India the condition of transgender became more worst where the Criminal Tribes Act, 1871 was passed and it criminalized the transgender's activities so it demolished their living standard. They also introduced section 377 of Indian penal code and started treating them as criminals. But after a long time, we get freedom from British rule and our constitution came into force. The constitution provided all person "The Equality before Law" and "Equal protection of law". The constitution empowered the judiciary as a guardian of our fundamental rights. In the eye of constitution there is no difference between the normal people and trans people. Furthermore, violations of Part III rights of Transgender persons can be remedied by approaching the Supreme Court or High Courts under Articles 32 or 226. In addition, other rights guaranteed under various laws are protected by Article 226. Moreover, violation of rights to the 'third gender'

constitutes human rights abuse. The State and National Human Right commissions can be approached by the victim. There are different articles in our constitution provide the equality to all.[3] These articles are mention below: -

- **Prohibition against discrimination [3]**

  Article 14: -No one can deny any "person" Equality Before Law" or "Equal Protection of Law'. The use of the gender -neutral term "person" shows that sex or gender identity is not a basis for discrimination under the Law.

  Transperson cannot be subject to unfair treatment in educational institutional or at the time of employment. They also have the right to equal health services, and the right to use public property r the right to freely moving the country.

  Article 15: Article 15 prohibits any short of discrimination or the basis of race, religion, cast, or sex or any of them. This implies that discrimination or ill treatment of transgender person infringes on their basic fundamental rights.

  Article 16: This article prohibits any short of discrimination on the basis of race, religion, cast or sex or any of them. This implies that discrimination or ill-treatment of transgender person infringes on their basic fundamental rights.

- **Right to residence**

  Article 19: This right grant every citizen the freedom of speech and expression. This includes the freedom to express your gender identity publicly.

  Article 21: Article 21 which deals with the protection of life and personal liberty states that no person shall be deprive of his life and personal liberty except according to the procedure of law.
  This rights states that state that every individual including a transgender person has the rights to life and personal liberty. Being citizens of India they have right to protect their life and personal liberty

ROLE OF JUDICIARY

The National Legal Services Authority v. Union of India and Ors, 2014, in this landmark judgement the Supreme Court declared special identity to the trans person as "third gender". It gave the transgender persons right to dignity to choose their gender identity.

G. Nagalakshmi v. Director General of Police (2014) in this case the Madras HC stated that any person has the liberty to choose their sexual or gender identity and

upheld the trans person's right to choose their own gender in the absence of any special law. ***Nangai v. Superintendent of Police, 2014*** in this case the Madras High Court recognized that compelling a person to undergo a medical examination of gender violates Article 21.

Puttuswamy v. Union of India (2017) in this case the Supreme Court noted that the right to privacy inherent in the right to life, equality and fundamental freedoms. It includes the right to have intimate relations of one's choice.

Navtej Singh Johar v. Union of India, in this case five judges' bench of Supreme Court, chief Justice of India Dipak Misra, Justices Khanwilkar, R.F. Nariman, D.Y. Chandrachud and Indu Malhotra partially struck down Section 377 of IPC, which made "carnal intercourse against the order of nature" a criminal offence.

Mrs. X v. State of Uttarakhand (2019) this is the first cases that affirmed the right to self-determination based on the "psyche" of the individual even in the context of the criminal law.

Mx. Alia SK v. The State of West Bengal and Ors, 2019, this case signified the role of courts in ensuring special accommodations and adjustments include transgender people in the process of public university applications and admission process.

On an annual statistic reports the composition of prisoners published by National Crime Record Bureau. In ***Karan Tripathi v. NCRB, WRP (Criminal),2020*** the court suggested NCRB should include transgender in the gender classification of prisoners.

Mx Sumana Pramanik v. Union of India, 2020 In this case the court restated the importance of reservations for the transgender community, age relaxations and fee concessions for them in their examinations. If there are some provisions of reservation, the Government must enforce it.

Kabeer C Alias Aneera Kabeer v. State of Kerala, 2020, In this case the court observed that arranging steps should shall be taken to issuance of gender identity card and the ration card to transgender persons.

Anjali Guru Sanjana Jaan v. State of Maharashtra & Ors (2021), In this case the Bombay High Court observed that in a Village Panchayat election, the petitioner identified herself as a female while she was a transgender and her application was rejected. The court ordered to accepted the application and stated that petitioner had the right to self-identify her gender.

LEGAL DIMENSIONS OF TRANSGENDER RIGHTS

There are a number of rights which were given to transgender in India. These are given below: -

❖ **The Transgender Persons (Protection of Rights) Act, 2019 & Rules:**

In ***NALSA*** case after recognition as "Third Gender" and further partly decriminalization of Section 377 of the Indian Penal Code 1860 in the case of ***Navtej Singh Johar v. Union of India, 2018***, The Protection of Transgender Person's Right Act, 2019 was passed with the assent of the President.

Drawback of this Act

There are several problems in this Act.

- As stated in the NALSA, it ignores the Right of self-determination of identity.
- The Act confers the power on the district magistrate to issue the Certificate of identification to claim benefits under this Act. If the District magistrate denies the certificate, it does not provide for a redressal mechanism.
- The Act does not provide for reservation for transgender persons.
- The decriminalizing of Section 377 of the Indian Penal Code 1860 itself has not been able to end the discrimination against homosexual couples. The need of the hour is to legally recognize the same sex as heterosexual marriages for which the Act is silent.
- Transgender people are two times more likely to get harassed and abused in intimate relationship. The Act provides only 6 months minimum and maximum for 2 years with fine. In the Indian Penal Code 1860, the minimum punishment for assault or criminal force used against women with an intent to disrobe a woman is minimum for three years.

❖ **SC/ST (Prevention of Atrocities) Act, 1989:**

An individual belongs to the Scheduled Caste or Scheduled Tribe community, this law protects that person from any sort of caste/tribe-based discrimination.

❖ **National Council for Transgender Persons:**

National Council for Transgender Persons is a statutory body established on 21st August, 2020 by the Ministry of Social Justice and Empowerment. It advises the government on all policy matters affecting transgender, intersex persons and people with diverse GIESC identities. The role of the National Council for Transgender Persons is as stated below:

Redressal of the grievances of Transgender Persons.

- To give advice, monitor, and evaluate the impact of policies made by the Central Government relating to Transgender Persons.
- To oversee the work of various Governmental and Non-Governmental organizations which are dealing with matters relating to Transgender Persons.

❖ **Marriage & Divorce of Transgender Persons:** A transgender person can get married in India either under personal religious laws (for instance the Hindu Marriage Act or Indian Christian Marriage Act) or under the Special Marriage Act, 1954.

- If they are legally married, then they are eligible to file for divorce under the law under which they had gotten married initially. In case of live-in relationships, there is no legal requirement to get a divorce.
- Any person identifying themselves as a Transgender Woman and facing any form of abuse such as physical, emotional, economic or sexual abuse, is eligible for protection under the Domestic Violence Act.

Other Rights

- A transgender Person who is a major (above 18 years of age) is also entitled to vote in India.
- If any transgender person faces sexual harassment at their school/college then it will be considered as Sexual Harassment at the Workplace. Any transgender student is eligible to file a complaint with the Internal Complaints Committee of the school/university.
- All transgender women can seek protection under all the sections of the Indian Penal Code protecting women from sexual abuse. In case of ***Anamika v. Union of India, W.P.(C) 4356/2020,*** The Court could conclude that the word "woman" in clause (iii) controls the entire provision and that the offence of sexual harassment under section 354A can only be committed by a 'man' against a 'woman'. The Court ought to interpret the word 'woman' to not only include female-born persons but also persons who identify as a woman, though they may be assigned 'male' sex at birth. In the present case, the Petitioner was subjected to sexually colored remarks and advances because of her feminine

gender-expression and personality. Such an interpretation would be in accordance with NALSA.

Conclusion

After a detailed analysis, we have come to know that there are a lot of provisions which has been given to trans people but we found one legislation "**The Transgender Persons (Protection of Rights) Act, 2019"** to protect the rights of transgender persons in India but that legislation has a lot of drawbacks that we find after analysing the existing data. High population of transgender covered a lot of area in India still they don't have the knowledge of their rights, that's reason they were being exploited since a long time. The government should take initiative by starting awareness camp and should promote research work in trans area so that the real situation could be highlighted and they will be able to utilize their rights like other gender in the society. The strain situation of transgender people come on to right platform after the decision of NALSA. The Supreme Court showed a great concern to the rights of transgender person and provided them the identity of "Third Gender".

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Uniform Civil Code (UCC): An Analytical Study

Mr. Santosh Kumar*

Abstract

The culture of India is emphasis the spirit of unity in diversity but this unity does not protect the rights of women at present. There are different personal laws in India to regulate the personal issues like marriage, divorce, maintenance, adoption, guardianship, succession, inheritance, will, gift etc. But at present if we analysis the situation of woman on behalf of personal law, especially the woman of Muslim community, we find that they have to perform a lot of heinous rituals. So, it is very important to bring a uniform civil law so that it will bring the religious equality to all. This article experienced the effect of UCC on society of our country and deeply analysis the need and importance of Uniform Civil Code.

INTRODUCTION

Uniform Civil Code is a law related to social matters which applies equally to people of all religions in matters like marriage, divorce, maintenance, inheritance, and child adoption etc. In other words, the basic idea of 'Uniform Civil Code' is the absence of separate civil laws for different religions. The issue of the Uniform Civil Code is being discussed in full swing. The deadline for sending views on the Uniform Civil Code (UCC) to the 22nd Law Commission ended on July 28. Earlier it was till 14th July. According to the information given by Union Law Minister Arjun Ram Meghwal, the Law Commission has received more than one crore suggestions regarding UCC. Let us know about UCC in detail.

Now, before discussing UCC we must go through Article 44 and Article 14 of the constitution. **Article 44** of Part 4 of the Indian Constitution says that efforts will be made to implement a uniform civil code for the citizens of the country throughout the territory of India. This code is meant to be a law relating to social issues which will apply equally to all communities in relation to

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marriage, divorce, maintenance, child adoption and inheritance etc.

Article 14 talks about the right to equality, it says that there should be one law for all people within a class who are equal.

WHAT IS THE MEANING OF 'COMMON', 'UNIFORM', 'CIVIL' AND 'CODE'?

- Common would mean 'same' for everyone.
- Uniform means that there should be the same law for people who are the same.

There are two types of rights in law. One right is rights in Personam, the other is rights in rem. The personal matter, i.e. violation of personal rights, is dealt with by civil law. Generally, in civil law one will not be sent to jail or will not be fined. Fine is a part of criminal law. Right-in-rem is a violation of the rights of public. That's why in criminal law, the government prosecutes, even if it is a murder, if I am murdered, my brother, father or mother will not need to file a case, the police will itself file a case, but if I forged your property worth Rs. 1000 crores, then the government will not prosecute and won't do anything; you will have to file a case... so personal means civil. Many people think that if only one law is made, it is called a code, but only one law is not a code. Dr. B.R. Ambedkar, while drafting the Constitution, had said that a Uniform Civil Code was desirable but for the time being it should remain voluntary, and thus added Article 35 of the draft Constitution as a part of the Directive Principles of State Policy in Part IV.

NECESSITY OF UNIFORM CIVIL CODE

In India, there are different laws and marriage acts based on caste and religion. Due to this the social structure has deteriorated. This is the reason why there has been a demand for a Uniform Civil Code in the country which would bring all castes, religions, classes and sects into a single system. One reason is that due to different laws the judicial system is also affected. At present, people go to the Personal Law Board to settle issues like marriage, divorce etc.

One of its specific objectives is to provide protection to the weaker sections as envisioned by Ambedkar, including women and religious minorities, as well as to promote nationalist fervor through unity. When this code is created, it will serve to simplify the laws that currently differ based on religious beliefs such as Hindu Code Bill, Shariat law and others.

DEBATE ON UNIFORM CIVIL CODE

Historical Perspective – The debate on a Uniform Civil Code has been going on in India since the colonial period.

PRE-INDEPENDENCE (COLONIAL ERA)

Lex Loci Report of October 1840 – It stressed the importance and need of uniformity in the codification of Indian law relating to crimes, evidence, and contracts. But it also recommended that the personal laws of Hindus and Muslims should be kept out of such codification.

The Queen's Proclamation of 1859 **-** It promised complete non-interference in religious matters.

So, while criminal laws became codified and became common to the entire country, personal laws continued to be governed by different codes for different communities.

POST-COLONIAL ERA (1947–1985)

During the drafting of the Constitution, prominent leaders like Jawaharlal Nehru and Dr. B.R. Ambedkar insisted on a Uniform Civil Code. However, he included the UCC in the Directive Principles of State Policy (DPSP, Article 44) mainly due to opposition from religious fundamentalists and lack of awareness among the public at that time.

SOME REFORMS OF THIS PERIOD WERE

Hindu Code Bill – The bill was drafted by Dr. B.R. Ambedkar to reform Hindu laws, legalizing divorce, opposing polygamy, giving inheritance rights to daughters. Amidst intense opposition to the Code, a diluted version was passed through four separate laws.

Succession Act – The Hindu Succession Act, 1956 originally did not give daughters the right to inherit ancestral property. They could demand maintenance rights only from the joint Hindu family. But this disparity was removed by an amendment to the Act on 9 September 2005.

Hindu marriage act-

- Minority and Guardianship Act-
- Adoption and Maintenance Act-
- Special Marriage Act- It was enacted in 1954 which provided for civil marriage outside any religious personal law.

JUDICIAL INTERVENTIONS

Shah Bano case (1985): - An old woman named Shah Bano was divorced by her husband by saying "I divorce you" three times and refused to pay alimony. She approached the courts and the District Court, and the High Court ruled in her favor. Due to this, her husband appealed to the Supreme Court saying that he had fulfilled all his obligations under Islamic law.

The Supreme Court ruled in his favor in 1985 under the "maintenance of wife, children and parents" provision (Section 125) of the All-India Criminal Code, which applied to all

citizens regardless of religion. Furthermore, it recommended that a Uniform Civil Code be established. Facts related to the case:

Under Muslim personal law, maintenance allowance was to be paid only for the period of Iddat. (Three lunar months – approximately 90 days). Section 125 of CrPC (Code of Criminal Procedure) which applies to all citizens, provides for maintenance of wife.

Impact- After this historic decision, discussions, meetings, and movements took place across the country. Under pressure, the then government passed the Muslim Women (Protection of Rights on Divorce) Act (MWA) in 1986, which made Section 125 of the Code of Criminal Procedure not applicable to Muslim women.

Daniel Latifi case: - Shah Bano's lawyer Daniel Latifi considered the past Act to be an insult to certain provisions of the Constitution because a wife who was dependent on her husband before marriage has the right to life even after marriage. The Muslim Women Act (MWA) was challenged by on the grounds that it violates the right to equality under Articles 14 and 15 as well as the right to life under Article 21. The Supreme Court deemed the law constitutional and made it consistent with Section 125 of the CrPC. It was held that the amount received by the wife during the Iddat period should be large enough to support her during the Iddat period and also provide for her future. Thus, under the law of the country, a divorced Muslim woman is entitled to the provision of maintenance throughout her life or until she remarries.

Sarla Mudgal Case: - The question in this case was whether a Hindu husband who converted to Islam and married under Hindu law can marry again. The court held that a Hindu marriage solemnized under Hindu law can be dissolved only on any of the grounds specified under the Hindu Marriage Act 1955. By converting to Islam and marrying again, the Hindu marriage under the Act will not in itself be dissolved and thus, a second marriage performed after converting to Islam will be an offense under section 494 of the Indian Penal Code (IPC).

John Vallamattam Case: - In this case, John Vallamattam, a priest from Kerala, challenged the constitutional validity of Section 118 of the Indian Succession Act, which is applicable to non-Hindus in India. Mr. Vallamattam argued that section 118 of the Act was discriminatory against Christians because it placed unreasonable restrictions on donation of property for religious or

charitable purposes by will. The bench declared this section unconstitutional.

OTHER CONSTITUTIONAL PROVISIONS

Article 15- No discrimination on the basis of religion, race, caste, sex or place of birth.

Article 25- Freedom of conscience and free profession, practice and propagation of religion, subject to reasonable restrictions on grounds of public order, health and mortality.

Article 25(2)-Provides for regulating religious practices, secular activities related to social welfare and reform.

Article 26- Right to establish and administer religious institutions.

Article 27- Prohibits the State from imposing taxes, the income of which is used for the benefit of any religion.

Article 28- Deals with the issue of religious education in educational institutions.

ARGUMENTS IN FAVOR OF UNIFORM CIVIL CODE

It will unify India- India is a country with many religions, customs and practices. The Uniform Civil Code will help India become more unified than it has been since independence. It will help in bringing every Indian, irrespective of his caste, religion or tribe, under one national code of civil conduct.

- **It will help in reducing vote bank politics-** UCC will also help in reducing vote bank politics which most of the political parties do during every election.
- **Personal laws are a loophole –** By allowing personal laws we have created an alternative judicial system that still operates on thousands of years old values. A Uniform Civil Code will change this.
- **Sign of a modern progressive nation –** This is a sign that the country has moved away from caste and religious politics. While our economic growth has been significant, our social growth has lagged. UCC will help the society to move forward and take India towards the goal of becoming a truly developed nation.
- **It will give more rights to women –** Religious personal laws are misogynistic in nature and by allowing outdated religious rules to control family life we are condemning all Indian women to subjugation and abuse. Uniform Civil Code will also help in improving the status of women.
- **All Indians should be treated equally –** all laws relating to marriage, inheritance, family, land etc. should be the same for

all Indians. UCC is the only way to ensure that all Indians are treated equally.

- **It promotes true secularism-** A uniform civil code does not mean that it will limit the freedom of people to practice their religion, it just means that every person will be treated equally, and India All citizens of the United States must follow the same laws regardless of religion.

Change is the law of nature minorities should not be allowed to choose the laws under which they wish to be governed. These individual laws were formulated in a specific Spatio-temporal context and should not remain static in changing time and context.

MANY PROVISIONS OF SPECIFIC PERSONAL LAWS VIOLATE HUMAN RIGHTS.

Article 25 and Article 26 guarantee freedom of religion and the UCC is not opposed to secularism. Codification and unification of various individual laws will create a more coherent legal system. This will reduce the existing confusion and enable easier and more efficient administration of laws by the judiciary.

CHALLENGES IN THE IMPLEMENTATION OF UNIFORM CIVIL CODE

It is a very tedious task of devising a set of rules that will govern all communities considering the vast range of interests and sentiments to be accounted for.

- **Misinformation about UCC** – Content of UCC has not been spelt out leading minorities to believe that it is a way of imposing majority views on them.
- **Lack of political-will** due to the complexity and sensitivity of the issue.
- **Different religious communities** have different personal laws which lead to the politicization of the UCC debate.

ADOPTION OF UNIFORM CIVIL CODE BY UTTARAKHAND, 2024

UCC now in effect, all residents of Uttarakhand, regardless of their religious backgrounds, will be governed by the same set of laws concerning marriage, divorce, inheritance, and adoption. Under the previous system of personal laws, women often faced discrimination in matters such as divorce settlements, property rights, and inheritance. The state aims to ensure women empowerment and protections as men, to encourage gender equality. Advocates of the UCC argue that it represents a necessary step towards modernization and social justice, aligning personal laws with the principles of equality and justice enshrined in the Indian

Constitution. Additionally, they assert that a uniform legal framework will make legal processes efficient and would reduce complexities, enhancing access to justice. Nevertheless, the adoption of the UCC in Uttarakhand signifies a significant milestone in the ongoing process of legal reform and social transformation in India. It reflects a commitment to upholding the principles of equality, justice, and secularism enshrined in the Indian Constitution,

CONCLUSION

The citizens' fundamental rights to equality before law and equal protection of the laws guaranteed by the Constitution call for a similar action in respect of these territories as well. So does the provision of Article 44 enjoining the state to make endeavors to secure for the citizens a uniform civil code throughout the territory of India. The desirability of a uniform civil code is consistent with human rights and the principles of equality, fairness and justice. A progressive and broadminded outlook should e encouraged among the people to understand the spirit of the UCC. For this, education, awareness, and sensitization programs must be taken up. The Uniform Civil Code should be drafted keeping in mind the best interest of all the religions. A committee of eminent jurists should be constituted to maintain uniformity and care must be taken not to hurt the sentiments of any community. The matter being sensitive in nature, it is always better if the initiative comes from the religious groups concerned.

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CRITICAL EVALUATION OF NBFCs

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Abstract

In Indian economy, NBFCs have crucial role to finance needy people. The contribution of these finance companies is almost 14%. These institutions affect economy positively and negatively. If we talk about positivity of these institutions, they provide banking facilities in accessible and in easy way, on other hand they exploit also with high rate of interest and exorbitant penalty as well as they torture their borrowers mentally. NBFC is a finance company that provides banking services without holding banking license. In modern time NBFCs play an important role in the Indian Economy. In this article, I have aimed to evaluate these roles critically.

INTRODUCTION

A Non-Banking Financial Company (NBFC) is a corporate entity that is registered under the Companies Act, 1956 (New Act 2013). Its activities include lending and advances, as well as the purchase of marketable securities such as stocks, bonds, debentures, and securities issued by municipal or government authorities. The work-field of NBFCs has been extended. Today non-banking Finance companies have engaged in various field i.e. insurance, purchasing of various types of securities, providing hire-purchase credit, chit business, but they are not in field of manufacturing, agriculture and buying or selling goods.

NBFCs are similar to traditional banks but differ to accepting deposits. NBFCs are called shadow banks because they function like bank but with less regulatory control. In the Indian financial sector, non-banking financial companies, or NBFCs, have expanded significantly alongside with major banks and other prominent institutions. Efficiency, diversity in terms of services, asset quality, and a less regulatory framework have all contributed to this over time. The channeling of significant capital

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resources needed by the corporate sector and other business requirements led to the growing systemic relevance and interconnectivity of NBFC. In this way, NBFC has been complementing the Banks, which play a large role in fulfilling the financial requirements. In the Indian financial sector, non-banking financial companies, or NBFCs, have expanded significantly along with major banks and other prominent institutions.

Research Methodology:

This study based on the descriptive, observation and explanatory type of research. This paper is based on secondary data mainly focuses on Literature review, research Paper, RBI Bulletin News Papers, Journals, Networking websites, and other reliable sources. This data is also collected from RBI websites.

IMPORTANCE OF NBFCs

NBFCs provide not only credit but also provide this loan efficiently or in easy way. In order to maintain a stable money supply and a healthy economy, finance and credit are necessary. NBFCs help in supplying credit and assist to boost economy. The expansion of the Indian economy is greatly aided by NBFCs, particularly in the

- Employment creation in the transportation industry
- Generosity generation Credit Specifications for rural areas
- house credit
- funding for infrastructure
- Resource Mobilization: This process transforms savings into investments.
- Capital Formation: Facilitates the augmentation of a company's capital stock
- Long-term and specialized credit provision; assistance in creating jobs; support for the growth of financial markets
- Serves as a government tool to aid in breaking the vicious cycle of poverty and attracting foreign grants.
- Customers are also given emergency services, such as financial support and advice on insurance-related issues.
- The economically disadvantaged segments of society have been primarily benefited from the notable expansion of NBFC in recent times. A few years ago, banks were inaccessible due to numerous restrictions and regulations. Things have changed now they are catering to the needs of their borrowers.

DIFFERENT TYPES OF NBFCs

The different types of Non-Banking Financial Corporations or NBFCs are as follows:

On The Basis of Their Activity

1. Loan Company (NBFCs)
2. Asset Finance Company
3. Investment Company (NBFCs)
4. Mortgage Guarantee Company (NBFCs)
5. Infrastructure Finance Company (NBFCs)
6. Micro Finance Company (NBFCs)
7. Housing Finance Company (NBFCs)

On the Basis of Deposits

1. Deposit accepting Non-Banking Financial Corporations
2. Non-deposit accepting Non-Banking Financial Corporations

On The Basis of Their Activity

1. **Loan Company (NBFCs):** These types of NBFCs provide loan to the needy people easily with less formalities.

2. Asset finance Company: Purchasing tangible assets such as cars, tractors, or other machinery that promotes economic or productive activity can be financed by people or companies with the assistance of asset finance companies. At least 60% of the NBFC's revenue must originate from this type of financing for it to be designated as an NBFC.

3. Investment Company: Any non-bank financial corporation (NBFC) that generates revenue through the purchase of government securities, debt instruments, or equity shares is known as an investment company. NBFCs assist individual and corporate investors in making the finest and most profitable financial decisions.

4. Mortgage Guarantee Company: Mortgage Finance Company is a type of Non-Banking Finance Company that provides credit risk coverage in the form of guarantee to mortgage lender in the event of borrower's default.

5. Infrastructure Debt Fund (NBFCs): Another type of NBFC called IDF-NBFCs was established specifically to make it easier for long-term debt to flow into infrastructure projects. They raise funds by issuing bonds with a minimum five-year maturity denominated in dollars or rupees.

6. Micro Finance (NBFCs): These are financial institutions that offer small-scale financial services like credit, savings accounts, and insurance service to low-income groups in society. They contribute

significantly to the advancement of financial inclusion.

7. Housing Finance Company: As it is clear from name that this type of non-banking company is engaged with providing credit for home. In simple words Housing Finance Company provide credit to the people who built or acquire homes. Ultimately the main objective of Banking Housing Finance Company is helping in arranging credit for homes. This type of company is regulated by National Housing Bank (NHB). According to National Housing Bank Act 1987, it is mandatory to get certificate of registration from National Housing Bank.

OVERVIEW OF THE REGULATORY BODY OF NON-BANKING FINANCE COMPANIES

Types of Financial Institution	**Authority For Regulation, Supervision and Surveillance**
Housing Finance institutions	National Housing Bank
Stock Broking, Collective Investment Schemes, Merchant Banking Company, Venture Capital fund	SBI
Nidhi companies, Mutual Benefit Companies	MCA
Chit Fund	State Fund
Insurance Companies	IRDA

List of some important non-banking finance Companies

- ✓ LIC Housing Finance Ltd
- ✓ Bajaj Finance Limited
- ✓ Shriram Finance Limited (formerly Shriram Transport Company Ltd)
- ✓ Tata Sons Private Ltd.
- ✓ L&T Finance Ltd.
- ✓ Piramal Capital & Housing Finance Ltd
- ✓ Cholamandalam Investment and Finance Company Ltd.
- ✓ India bulls Housing Finance Ltd
- ✓ Mahindra & Mahindra Financial Services Ltd.
- ✓ Tata Capital Financial Services Ltd.
- ✓ PNB Housing Finance Ltd.
- ✓ HDB Financial Services Ltd.
- ✓ Aditya Birla Finance Ltd.
- ✓ Muthoot Finance Ltd.
- ✓ Bajaj Housing Finance Ltd.

INSTRUCTIONS OF RBI FOR NBFCs

Website of The Reserve Bank of India provides access to the list of registered NBFCs: www.rbi.org.in → Sitemap → NBFC List. In addition to being distributed through press releases and notifications published in the Official Gazette, the guidelines that are periodically sent to NBFCs are also available online at

www.rbi.org.in.

Notifications

Master Circulars

Non-banking

Residuary Non-Banking Companies (RNBCs)

Residuary Non-Banking Companies (NBFCs) are a type of corporation that does not engage in investment, asset financing, or lending and whose primary activity is the receipt of deposits under various schemes, arrangements, or other means. These companies must keep liquid assets on hand as well as investments made in accordance with RBI guidelines. These businesses operate differently from NBFCs. They have various deposit mobilization methods and demand that depositor money be deployed in accordance with its directives. Furthermore, these companies are

also subject to the Prudential Norms Directions.

Merits Of Non-Banking Companies

- These institutions provide other source of credit or funding.
- NBFCs are last destination to provide credit.
- Agility is quality found in NBFCs.
- NBFCs can help those whose help banks cannot do.
- NBFCs are the most major motivators for shifting finances into the country.
- NBFCs can readily make information available to others at any time or location because they are up to date on the latest technologies.
- Provide high yield for investors.
- Provide Liquidity for financial system.

DEMERITS OF NON-BANKING COMPANYS

- Regulatory mechanism is not fair.
- All NBFCs can't accept deposits.
- NBFCs are unable to issue cheques.
- Rate of interest is high than commercial banks.
- There is risk too on the basis of investments.

EMERGENCE OF NEW MONEY LENDER GROUP INSTITUTIONS

In ancient time there were many types of persons like money lenders, landlords, and goldsmiths etc. who facilitate money to the needy people on very high rate of interest, the result was that their future generation was unable to repay this debt. Their homes and agriculture land were captured. Apart from this, they had to suffer mental stress also. There was no regulatory body and after this new monetary system (banking system) was established in British era. This was institutionalized as well as regulated by various acts and central bank. Rate of interest of these commercial banks has maintained reasonably. Commercial banks helped capital formation, financial inclusion, debt management for development and other banking facilities. These institutions also helped in filling inequality gap. These banks became more favorable after nationalization by Government of India. After economic reform, private banks are opened massively and later NBFCs (Non-Banking Finance

Company) came into existence. As it is clear from name, NBFC is a company which provides finance to the borrowers and the main objective of the company is to earn profit. So, these institutions charge very high rate of interest and exploit people.

Role of NBFC in developing Indian economy financial system

This offers NBFCs a massive chance to make INR 384 billion in the MSME Small Loan Credit Market over the next five years due to the sector's limited access to mainstream funding. It is commonly known that NBFCs play a crucial role in providing micro credit. This role has been fueled primarily by the need to address the unmet demand for credit through the development of creative and customized financial solutions for particular market groups. NBFCs are subject to a different set of regulations issued by the RBI, with fewer compliance standards. They are not subjected to the same PSL criteria as commercial banks. So, their procedure of giving loan is much simple.

NBFCs ARE PIONEER OF MICRO FINANCE

In the matter of micro finance, NBFCs provide micro credit largely. if we talk about micro finance that play an important role in Indian Economy. For entrepreneurs and small enterprises lacking access to banks and related services, microfinance serves as a foundation for financial services. "Relationship-based banking" for individual entrepreneurs and small enterprises, as well as group-based models where multiple entrepreneurs request for loans and other services collectively, are the two main mechanisms for the distribution of financial services to such consumers. Microfinance organizations are expected to levy the interest charged by their lenders on loans, much like banks do. The so-called interest rates are typically lower than those of traditional banks; some opponents of this idea allege that microfinance organizations make money by taking advantage of the money crisis of the underprivileged.

DIFFERENCE BETWEEN BANK AND NBFCs

The main distinction between a Bank and an NBFC is that a Bank is a government-sanctioned financial intermediary whereas an NBFC operates without a bank license. The main function of a bank is to provide banking services to the general public. On the other hand, an NBFC is a company which provides financial /banking services to individuals without having a bank license.

In India, NBFCs, or non-banking financial institutions, were established and registered in accordance with the Companies Act of 1956. The table below shows the primary distinction between an NBFC and a bank:

BANK vs. NBFCS

- Banks incorporated under the 1949 Banking Regulations Act, whereas NBFCs formed in accordance with the Companies Act, 1956.
- Bank is an institution recognized by the government authority but NBFCs are operated without a bank license.
- Banks are able to Issue Demand Draft while NBFCs not able to solve Request Draft.
- Commercial banks are creator of credit whereas NBFCs are unable to create credit.
- Generally, Banks Offers Transaction Services but NBFCs don't offer transactional services.
- Commercial banks are able to take deposits on demand while NBFCs are not able to take in demand deposits.
- Banks become a component of the settlement and NBFCs payment system but on the other hand NBFCs are not included in the system of payments and settlements.
- Commercial banks are able to write cheques to oneself while NBFCs not able to make cheques payable to one self.
- In Banks the customers deposit insurance is offered by the Deposit Insurance and Credit Guarantee Corporation. in case of NBFCs the customers cannot deposit protection option offered by the Deposit protection and Credit Guarantee Corporation.

FUTURE OF NON-BANKING FINANCE COMPANY

In coming days, the future of non-banking Finance companies will be bright because the importance of NBFCs is increasing day by day. One reason is high profit tendency; another reason is high NPA of public sector bank also. It has been seen that people don’t repay their debt because they think that their debt will be forgiven by the Government. Government as well as Reserve Bank of India are working together to reduce Non-Performing Assets. In last decade, efforts are being made to reduce the Fiscal Deficit if the pandemic situation is left aside then.

CONCLUSION

Non-Banking Finance Companies (NBFCs) have crucial role in Indian financial system.

After new economic reform during last decade, these types of finance companies have flourished and gave financial contribution like easy, quick and without hurdles credit in Indian economy. It is found in a research, house built up credit and acquisition facilities are given by these non-banking finance companies. But on the other hand, these companies exploited people by charging high rate of interest and unlawful penalties. Generally, borrowers are related to low-income group. One side they are already poor on the other hand they are paying high rate of EMI that's why they got a double whammy. They operate arbitrarily because the terms and conditions of these types of finance companies are lengthy and in non-regional language so they are not able to study the terms and condition of loan properly. Generally, it is found that the low-income group is not literate. Except this when they need credit immediately and without collateral, they are ready to obtain expensive debt. Recently Reserve bank of India warned and gave notice to NBFCs on various complaints. Customers have also alleged regarding unfavorable policies used against them. So, it is the responsibility of RBI to regulate these NBFCs in such a manner that their conditions of providing micro finance are not detrimental to the borrowers.

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A Study on Live-In-Relationship

Dr. Vikas Kapoor*

Abstract

The general outlook of the youth towards marriage is changing. But whether this changing trend will be welcomed by the society, considering the stage of social development is still a big question mark. Unfortunately due to pressures of modern living, a visible slackening of moral standard and an inability to cope up with the responsibilities attendant upon a permanent relationship inherent in the institution of marriage especially among the Hindus in India, youth is drifting away from the age old institution of marriage and prefer live-in relationship, which they can continue till such time as they find it meaningful but can end it at their own sweet will as soon as they perceive pain from their companion. The purpose of this article is to find and analysis the legal position of live in relationship in India.

INTRODUCTION

There is a popular dictum that, "Marriages are made in heaven". This means that in ancient time it was considered that marriages are decided by God and some sort of divinity was associated with them. This old dictum however does not hold good in the present context in the modernized social scenario. The general outlook of the youth towards marriage is changing. But whether this changing trend will be welcomed by the society, considering the stage of social development is still a big question mark. Unfortunately, due to pressures of modern living, a visible slackening of moral standard and an inability to cope up with the responsibility's attendant upon a permanent relationship inherent in the institution of marriage especially among the Hindus in India, youth is drifting away from the age-old institution of marriage and prefer live-in relationship, which they can continue till such time as they find it

meaningful but can end it at their own sweet will as soon as they perceive pain from their companion. It is simply a mockery of the long-established custom and social institution of marriage. Thus, live in relationship is as an 'act of escapism' wherein one can easily abandon his partner when he finds that the relationship has turned sour. But this attitude never forms a part of Indian culture which only eulogizes moral values like love, compassion, understanding, trust, patience and tolerance.

This changing trend in the society has affected the 'institution of marriage', which coincides with the history of civilization of man. The institution is till date considered to be sacramental indissoluble union of parties to the marriage. However, with the globalization and industrial revolution incompatibility between the partners of the marriage, as mentioned above, has become inevitable. The best part of the youth of somebody's life, being very limited, the indissoluble nature is not in consonance with the modern time, where Courts are very hesitant in dissolving marriages, even if it amounts to irretrievable break down of the marriage. By the time if any of the parties gets the relief, it is too late in life. These things also affect the children born out of such a wed lock, which has led to the deteriorating moral values of the society due to psychological and sociological reasons arising out of such circumstances. Hence, in western countries live-in-relationship is being looked upon favorably in place of the concept of marriage. The reason is that it is easy to get in the institution of marriage, but very difficult to get out of it, in contradiction to the live-in relationship. Nevertheless, question is as to how far live-in-relationship can overcome the drawbacks of the institution of marriage in today's era of globalization and industrialization, which demands some liberal approach in dissolution of the marriage between the parties. And as to how far legalizing live-in-relationship may protect interest of the vulnerable party, either due to the circumstances or having entered into the live-in-relationship on account of her own volition.

THE CONCEPT OF LIVE-IN-RELATIONSHIP

Live in relation i.e. Cohabitation is an arrangement whereby two people decide to live together on a long term or permanent basis in an emotionally and/or sexually

intimate relationship. The term is most frequently applied to couples who are not married. This (the 'live- in-relationship') is a living arrangement in which an un-married couple lives together in a long-term relationship that resembles a marriage. The Hindu Marriage Act 1955 does not recognize 'live-in-relationship'. Nor does the Criminal Procedure Code 1973. The Protection of Women from Domestic Violence Act 2005 (PWDVA) on the other hand for the purpose of providing protection and maintenance to women says that an aggrieved live-in partner may be granted alimony under the Act.

Merely spending weekends together or a one-night stand would not make it a domestic relationship," said a bench of Justices Markandey Katju and TS Thakur, cautioning that in future, claims for financial relief arising out of live-in link-ups would increase in India. The Supreme Court of India has noted that just any 'live-in relationship' does not entitle a woman to alimony. To make a 'live-in' legal the Supreme Court says that the couple must hold themselves out to society as being akin to spouses; they must be of legal age to marry; they must be otherwise qualified to enter into a legal marriage, including being unmarried; and they must have voluntarily cohabited for a significant period of time. Making an attempt to iron out certain ambiguous situations, the judges also said that if a man has a 'mistress' whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship "in the nature of marriage.

INSTITUTION OF MARRIAGE

It seems to be now well established that the institution of marriage did not exist among the primitive men. At that time man lived more or less like any other animal. He was so engaged in the satisfaction of his primary needs, hunger and shelter, that there was no time or occasion to think of refinement. Sex life was absolutely free. Sex promiscuity was the rule.

Civilization dawned on man with acquisition of knowledge of cattle breeding, agriculture and industry. When man acquired the knowledge of using natural products to the best of his advantage, when he acquired the knowledge of metal smelting, and when he acquired the knowledge of art and industry, the civilization bloomed. Naturally, in the realm of family relationship, some sort of sex regulation came to be established. Probably, it began with group marriages.

At various places, and at various stages of human development, marriage came into existence in different forms.

When humanity came to the patriarchal stage, that is, when man succeeded in establishing descent though the male, we find that marriage as an exclusive union came to be firmly established, though the exclusiveness of the union for male sex was not as strict as for the female sex. The chief attributes of the patriarchal family are the organization of number of persons, bound and free, into a family under the paternal power of the head of the family (pater families, as he was known under Roman law). At this stage, monogamy in the West and polygamy in the East came to be established. In the West, monogamy was a strict rule for women, though not so strict for men. The reason being that if descent is to be traced through male, the fidelity of the wife has to be absolutely secure, as on her fidelity depends the determination of the paternity of his children. The result was that in the patriarchal society woman was placed at men's absolute power; power of corporeal chastisement, and power to kill. If he killed an infidel wife, he merely exercised his power and, therefore, could not be guilty or murder.

Thus, in the era of man's ascendancy to power, the institution of marriage came into existence as an exclusive union. Man, on the one hand, tried to impose fidelity on the woman by the power which he had acquired over her; on the other, he tried to idealize the institution of marriage with a view to dominating the will and mind of the woman. In its most idealized form, marriage among the Hindus and the Christians came to be considered as a sacrament.

Marriage as Sacramental Union

Probably, no other people have endeavored to idealize the institution of marriage as the Hindus have done. Even in the patriarchal society of the Rig Vedic Hindus, marriage was considered as a sacramental union. And it continued to be so in the entire Hindu period, and even in our contemporary world most Hindus regard their marriage as a sacrament. We find the following passage in the Manu Smriti- "I hold your hand for Saubhagya (good luck) that you may grow old with your husband, you are given to me by the just, the creator, the wise and by the learned people." Manu enjoins on the wife that she should become a ***Paturnuvrate***, i.e., she should follow the same principles as her husband.

"Be thou mother of heroic children, devoted to the Gods, be thou Queen in the

father-in-law's household. My all Gods unite the hearts of us two into one."

……. According to the Rig Veda

The wife is also ***Ardhangini*** (half of man). According to the ***Satpatha*** *Brahmana*, "The wife is verily the half of the husband. Man is only half, not complete until he marries." The ***Taittriya Samhita*** is to the same effect, "half is she of the husband that is wife". From this notion of unity of personality of husband and the wife, mutual fidelity of husband and wife is implied. Manu declared that fidelity between husband and wife is the highest ***dharma***. Manu further said that once a man and a woman are united in marriage, they must see that there are no differences between them, and that they remain faithful to each other."

In the ***Shastra***, husband and wife referred to, by several names. The husband is known as ***bhartri***, because he is to support his wife; he is also known as ***pati***, because he is to protect her. On the other hand, the wife is known as ***jaya***, because one's own self is begotten on her. According to the ***Mahabharata***, by cherishing woman, one but virtually worships the goddess of prosperity herself; by afflicting her, one but afflicts the goddess prosperity. A man's half is his wife; the wife is her husband's best of friends; the wife is the source of ***Dharma, Artha and Kama***, and she is also the source of ***Moksha***. In the *Ramayana*, the wife is said to be the very soul of her husband. She is ***Grihini*** (the lady of house) in her husband's household, *Sachiva* (wise counselor), ***sakhi*** (confidante) to her husband and dearest disciple of her husband in the pursuit of art. She is ***Grihalakshmi Ardhangini and Samrajyi*****.**

Marriage is one of the essential ***samaskaras*** (sacraments) for every Hindu. Every Hindu must marry. To be mothers were women created and to be father men, the ***Veda*** ordains the ***Dharma*** must be practiced by man together with his wife. He only is a perfect man who consists of his wife, himself and his offspring. "Those who have wives can fulfill their due obligation in this world; those who have wives, truly have a family life, those who have wives can be happy, those who have wives can lead a full life." Thus, Hindus conceived of marriage as a sacramental union, as a holy union. This implies several things. First, the marriage between man and woman is of religious or holy character and not a contractual union. For a Hindu, marriage is obligatory, for begetting a son, for discharging his debt to his ancestors and for performing religious and spiritual duties. The wife is not merely a

grihapatni but also ***dharmapatni*** and ***sadhaharmini***.

MARRIAGE TO BE AN INDISSOLUBLE UNION

The essential corollary of the sacramental concept of marriage is indissolubility. The recognition of the spiritual ideals of marriage requires Hindus to regard marriage relation as an indissoluble one. It is more religious than secular in character. The union is indissoluble.

The indissolubility and permanent character of Hindu marriage has been also voiced by Manu when he declares that a wife is not to be released from her husband either by sale or desertion. ***Apasthamba Dharmasutra*** emphatically declares that no kind of separation between husband and wife is possible since in marriage they have to perform religious acts jointly. Corroborating the same view ***Kautilya*** remarks that marriage solemnized according to the righteous forms cannot be dissolved. ***Sastrakaras*** informs that the marriage when completed by *homa* and ***Saptapadi*** is indissoluble. Even some decided cases have also recognized its indissoluble character of Hindu marriage. In a case it is upheld that Hindu marriage being a pious obligation is treated as a holy union which is indissoluble.

It was only in some exception cases that the sages allowed a woman to abandon her husband and take another. Vasistha said: "A Damself betrothed to one devoid of character and good family or afflicted by impotency, blindness and the like or an outcaste or an epileptic or an infidel or incurably diseased should be taken away from him and married to another." But this text is confined to betrothal. Narada and Parasara mention fives cases in which a woman may abandon her husband and take another: (a) when the husband is missing, (b) when he is dead, (c) when he has become an ascetic, (d) when he is impotent, and (e) when he is an outcaste. Kautilya also says that a woman may abandon her husband if he is of bad character, if he absents for a long time, if he has become a traitor, or is likely to endanger her life, is an outcaste or has lost his virility. There is a difference of opinion among the sages whether a wife could abandon her husband in the aforesaid cases in all the forms of marriages or whether she could do so only when marriage was in the unapproved form. However, whatever be the texts on abandonment of the husband by the wife, the predominant authority is in favour of the indissolubility of marriage.

Thus, marriage as an exclusive and

sacramental union also gave birth to polygamy, concubinage and prostitution. Man became powerful and he subordinated woman. His lust knew no bounds. In this background it was but natural that man did not quite succeed in his mission of getting absolute fidelity of woman. And there emerged on the scene, the wife's paramour and the cuckold. Adultery, dubbed as a sin of the high order (Upapataka) and as the most heinous crime, came into existence as unavoidable social phenomenon.

SACRAMENTAL CHARACTER OF MARRIAGE HAS BEEN CONSIDERABLY DILUTED

Importance of the institution of marriage under the Indian laws is unparalleled and can be judged by the fact that any attempted deviations / alternations are looked down upon as unethical, immoral and by and large totally unacceptable. However, of late, the sacramental character of marriage has been considerably diluted and with judicial permissibility of its dissolution (though on specified grounds) during the lifetimes of the parties, marriage has lost its traditional divinity. In addition, the era of globalization, with inherent human instinct of experimentation and the visible frustration of people trapped in unhappy marriages, emanating from a failure to convince the judiciary to bring an end to their misery attenuated matrimonial bond, has opened up new avenues of relationships resembling marriage, but do not have the marital building force. A relationship that gives sexual pleasure and companionship, but ensures a freedom to bring it to an end with complete privacy, and at will of either party, is increasingly attractive to the young, economically active and independent people in the age group of 25 -35, predominantly living away from their families in big metros/cities. A uniqueness of these relationships is its totally private character yet the complete absence of community or statutory involvement has its share of drawbacks. Since it is like matrimony but not a marriage, there is total negation of matrimonial rights / obligations including security, stability and respectability. The purpose of the present research is to analyze the pros and cons of marriage and the emerging trends of Live in Relationships from a socio-legal perspective and for a specific goal of analyzing its feasibility, desirability, and sustainability in the Indian socio religious atmosphere.

Conscious that the judgment would exclude many women in live-in relationships from the benefit of the

PWDVA, the apex court further said it is not for this court to legislate or amend the law. Parliament has used the expression 'relationship in the nature of marriage' and not 'live-in relationship.

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The Impact of Artificial Intelligence on Society: Opportunities, Challenges, and the Call for Legal Evolution

Mr. Vikash Kumar Jha*

Abstract

The article highlights opportunities like enhanced decision-making, automation, and personalization, while raising concerns about job displacement, ethical biases, and privacy violations. Jha emphasizes the need for legal evolution to address these challenges, focusing on areas like regulation, employment law, intellectual property, and liability. Drawing on the fictional case of Jarvis Corp. v. Human Innovation Labs, the article underscores the importance of initiative-taking adaptation and collaborative efforts to ensure AI serves the greater good.

INTRODUCTION

The winds of change are swirling, driven by the invisible yet powerful force of Artificial Intelligence (AI). From self-driving cars navigating bustling streets to algorithms predicting personalized newsfeeds, AI is rapidly transforming our world, leaving no stone unturned. While its potential to revolutionize our lives is undeniable, embracing this change demands a nuanced understanding of both the opportunities it presents and the challenges it throws our way. This article dives into this complex landscape, exploring the impact of AI on society and its intricate relationship with the legal system. Artificial Intelligence (AI) is the simulation of human intelligence in machines that can learn, reason, and perform tasks. AI is rapidly transforming our world, creating new opportunities and challenges for society and the legal system. This article explores the impact of AI on various aspects of society, such as decision-making, automation, personalization, employment, ethics, and privacy. It also highlights the need for legal evolution to address the issues raised by AI, such as regulation, liability, intellectual property, and employment law.

It presents a fictional case study of Jarvis Corp. vs. Human Innovation Labs, a lawsuit involving an autonomous delivery drone that causes an accident, to illustrate the legal complexities of AI.

Opportunities

AI can enhance decision-making by analysing large amounts of data and uncovering patterns and insights that humans might miss. This can improve outcomes in healthcare, finance, education, and justice. AI can automate repetitive and mundane tasks, freeing up human workers for more creative and strategic endeavours. This can increase productivity, reduce errors, and create new jobs that require human skills. AI can personalize experiences by tailoring recommendations, products, and services to individual preferences and needs. This can enhance user satisfaction, learning, and consumption.

Challenges

AI can displace jobs by replacing human workers with machines, especially in roles that involve routine tasks. This can cause unemployment, income inequality, and social unrest. AI can raise ethical concerns by perpetuating or exacerbating biases, discrimination, and injustice in the data and algorithms it uses. This can harm vulnerable groups and undermine human dignity and rights. AI can pose privacy risks by collecting and analyzing personal data without proper consent, security, or accountability. This can violate individual privacy rights and enable misuse or abuse of information.

The Law and AI: A Necessary Interplay

The law needs to adapt to the rapid evolution of AI and address the issues it creates. Some of the key areas where the law needs to change are:

- **Regulation:** There is a need for clear and consistent regulations that ensure the responsible development and use of AI, addressing data privacy, algorithmic bias, and accountability for AI decisions.
- **Liability:** There is a need for a legal framework that determines who is liable for the harm caused by AI systems, whether it is the developers, the users, or the AI itself.
- **Intellectual Property:** There is a need for a legal system that defines the ownership and rights associated with AI-generated inventions, balancing the interests of the innovators and the society.
- **Employment Law:** There is a need for a legal system that addresses the impact of AI on the workforce, such as job displacement, worker retraining, and the changing nature of work contracts.

Fictional Case Study

The case study of Jarvis Corp. vs. Human Innovation Labs illustrates the legal challenges posed by AI. The case involves a lawsuit filed by an injured pedestrian, Sarah Jones, against both companies after an autonomous delivery drone, Hermes, malfunctions and collides with her. The case presents complex questions of liability, data access, and legal precedent. Some of the challenges are:

- ✓ **Liability**: It is difficult to determine who is liable for the accident, whether it is Jarvis Corp. for the hardware

malfunction, Human Innovation Labs for the algorithmic error, or both.

- ✓ **Data and Transparency**: It is challenging to access and interpret the data related to Hermes' operation and the AI algorithms, as both companies might have trade secrets and intellectual property rights that prevent data sharing.
- ✓ **Legal Precedent:** The case explores uncharted legal territory, as existing laws might not adequately address the scenarios involving AI technologies. Judges and lawyers will have to grapple with novel legal questions and potentially set precedents for future AI cases.

The case could have different potential outcomes, such as:

- Jarvis Corp. and Human Innovation Labs are found jointly liable: The court might conclude that both companies contributed to the accident and share the responsibility for the harm caused.
- One company is found solely liable: The court might decide that either Jarvis Corp. or Human Innovation Labs was primarily responsible for the accident and assign sole liability accordingly.
- New legal guidelines are set up: The case could prompt legislators and legal experts to develop new frameworks for addressing AI-related accidents, clarifying liability, data access, and other critical issues.

OPPORTUNITIES

Enhanced Decision-Making: AI algorithms can analyse vast swathes of data, uncovering patterns and insights invisible to the human eye. This data-driven approach can inform better decision-making in healthcare, finance, and even justice, leading to more exact diagnoses, personalized financial advice, and potentially fairer legal judgments. Imagine AI-powered systems in hospitals showing early signs of disease or courts using algorithms to predict recidivism and guide sentencing decisions.

Automating Repetitive Tasks: Let's face it, repetitive tasks can be mind-numbing. AI excels at these drudgeries, freeing up human workers for more creative and strategic endeavours. Consider AI-powered chatbots overseeing customer service inquiries or robots tirelessly assembling products in factories. This automation can improve productivity across industries, reduce human error, and ultimately create new job opportunities in areas demanding uniquely human skills like critical thinking and empathy.

Personalized Experiences: Forget one-size-fits-all! AI can tailor recommendations, products, and services to individual preferences, creating a more user-friendly and engaging experience. Picture education platforms adjusting learning modules based on individual learning styles or online stores showcasing products curated to your specific tastes. This personalization can not only enhance user satisfaction but also pave the way for more effective learning and consumption habits.

CHALLENGES:

Job Displacement: While few hail AI as the harbinger of progress, others fear its potential to make certain jobs obsolete. Automation through AI poses a significant threat to roles involving routine tasks, raising concerns about mass unemployment, income inequality, and the need for comprehensive reskilling and social safety nets. Imagine a world where truck drivers are replaced by self-driving vehicles or cashiers by automated checkout systems. The impact on livelihoods and societal stability cannot be ignored.

Ethical Considerations: Just like any powerful tool, AI is susceptible to misuse. Algorithms can perpetuate biases present in the data they are trained on, leading to discriminatory outcomes in areas like loan approvals, employment decisions, and even criminal justice. Imagine a situation where AI facial recognition software disproportionately targets individuals based on their ethnicity or a loan approval algorithm systematically disfavours applicants from certain neighbourhoods. Such biases can clarity existing inequalities and undermine the very fabric of justice.

Privacy Concerns: As AI becomes more ingrained in our lives, so too does its ability to collect and analyse personal data. This raises concerns about privacy violations and the potential misuse of this information. Imagine a scenario where your browsing history dictates your healthcare premiums, or your social media activity influences your insurance eligibility. Balancing innovation with individual privacy rights is a complex challenge that needs careful consideration.

THE LAW AND AI: A NECESSARY INTERPLAY

The rapid evolution of AI causes adjustments to the legal landscape. Here are few key areas where the law needs to adapt:

Regulation: Responsible AI development requires clear regulations addressing data privacy, algorithmic bias, and accountability for AI-powered decisions. Imagine guidelines that ensure companies obtain transparent consent for data collection, implement robust security measures, and develop mechanisms for redress in case of harm caused by AI systems.

Employment Law: As AI automates tasks, legal frameworks need to address issues like job displacement, worker retraining, and the changing nature of work contracts. Imagine legislation that incentivizes reskilling programs, mandates fair severance packages for displaced workers, and adapts labour laws to address the unique challenges posed by AI-powered workplaces.

Intellectual Property: Deciding ownership and rights associated with AI-generated inventions requires legal clarity to incentivize innovation while ensuring fair attribution. Imagine regulations that define the intellectual property rights of both the developers and the AI systems themselves, fostering a balanced environment for creative output

FICTIONAL CASE STUDY

Jarvis Corp. vs. Human Innovation Labs

Jarvis Corp. a leading AI developer, created a revolutionary autonomous delivery drone called "Hermes." Hermes uses advanced AI algorithms to navigate cityscapes, avoid obstacles, and deliver packages efficiently. However, during a delivery, Hermes malfunctions, collides with a pedestrian, and causes significant injuries. The injured pedestrian, Sarah Jones, files a lawsuit against both Jarvis Corp. and Human Innovation Labs, the company that developed the AI algorithms used in Hermes.

Claims

Jarvis Corp.: Sarah Jones sues Jarvis Corp. for product liability, alleging the company did not ensure the safety and reliability of Hermes.

Human Innovation Labs: Sarah Jones sues Human Innovation Labs for negligence in developing the AI algorithms, claiming they were inherently flawed and contributed to the accident.

CHALLENGES

Liability: Finding who is liable for the accident presents a complex challenge. Was it a hardware malfunction on Jarvis Corp.'s part, a programming error in Human Innovation Labs' algorithms, or a combination of both? Who should bear the responsibility for the harm caused?

Data and Transparency: Both companies likely possess vast amounts of data related to Hermes' operation and the AI algorithms. Accessing and interpreting this data is crucial for understanding the accident's cause. However, concerns about trade secrets and intellectual property rights might complicate data sharing.

Legal Precedent: This case explores uncharted legal territory. Existing laws might not adequately address liability and responsibility in scenarios involving AI-powered technologies. Judges and lawyers will need to grapple with novel legal questions and potentially set precedents for future AI-related cases.

POTENTIAL OUTCOMES

Jarvis Corp. and Human Innovation Labs are found jointly liable: The court might conclude that both companies contributed to the accident through faulty hardware and flawed algorithms. This could set a precedent for shared liability in cases involving complex AI systems.

One company is found solely liable: Depending on the evidence presented, the court might decide either Jarvis Corp. or Human Innovation Labs was primarily responsible for the accident, assigning sole liability accordingly.

New legal guidelines are set up: The case could prompt legislators and legal experts to develop new frameworks for addressing AI-related accidents, clarifying liability, data access, and other critical issues

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Delay In Pronouncement of Orders by Adjudicating Authority A Timeline Dilemma Under IBC

Mr. Vishal Madan*

Abstract

Numerous amendments have been made in the IBC, 2016 to speed up the process for timely resolution of the Corporate Debtor. Delay in the process will lead to severe losses to the nation and stakeholders at large, resulting from corrosion of the value of assets, loss of jobs, etc. Thus, various committees have been formed and the Board in consultation with the said committees has made efforts to facilitate the process, to get the same completed on time. Therefore, timelines have been laid under the Code for the IP's and AA. But the Judiciary is frequently observed exploiting its powers by avoiding the duty entrusted upon them by adjourning the matters, having long holidays, rise early. This Articles focuses on showcasing the mirror to the judiciary, and to emphasise on corrective actions for timely resolution of the CD for the beneficial interest of the whole nation.

"Justice delayed is justice denied"
If legal relief is available, but is not forthcoming in a timely fashion,
it is effectively the same as having no remedy at all.

INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 was introduced with the fundamental principle of timely resolution of the stressed Company, as earlier there was multiplicity of laws leading to copious complications and delay in the resolution. Post introduction of the Code there

had been numerous amendments to streamline the process. But event after various eminent amendments, consistent delays in completion of the process have been observed.

On detailed analysis of the Code read with the facts disclosed by the Insolvency and Bankruptcy Board of India, among the variform factors, one of the critical elements causing delay in the resolution process of the Corporate Debtor is delay at the hands of NCLT. It is a factor least talked about, but one of the most critical factors for delay in process, as felt by most of the Insolvency Professionals nationwide.

As provided under the code, NCLT has to admit or reject an application for initiation of CIRP against a Corporate Debtor within 14 days of the receipt of the application. Further, before rejecting an application, principles of natural justice must be followed and 7 days' time from the date of receipt of such notice by the applicant must be allowed for rectification of the defects in the application.

But, on an average it takes more than a year for NCLT to merely pronounce an order for admission or rejection of the application for initiation of CIRP. As reported by IBBI in its "consultation paper on issues related to reducing delays in the CIRP" dated 13.04.2022 wherein the board has highlighted that, the average time taken by NCLT for deciding a matter regarding initiation of CIRP from the date of filing of application is 468 days and 650 days i.e. for the F.Y. 2020-21 and 2021-22 respectively.

IBBI in its Annual Report for the F.Y. 2022-23 has provided for the Compliance Chart for the F.Y. 2022-23, relevant extract is provided below:

Relevant Provisions of Code	**Phase of Process**	**Compliance Status**
Section 16(2) provides that, an IP shall be appointed as IRP if no disciplinary proceeding is pending against him.	IRP Appointment (CIRP)	The Board has provided an online facility to the AA to check the status of disciplinary proceedings, if any, against an IP, thereby eliminating the delay. **No reference in this regard has been received by the Board, from AA in 2022-23**.
Section 22(4) provides	RP Appointment (CIRP)	The Board has provided an online

that, the Board shall confirm the name of the RP proposed by the CoC.		facility to the AA to check the status of disciplinary proceedings, if any, against an IP, thereby eliminating the delay. However, **the Board received 1 reference from AA, in 2022-23** in this regard and which was responded within the stipulated time
Section 97(2): The Board shall confirm, within seven days of receipt of direction by the AA,	RP Appointment (Personal Insolvency)	The Board has provided an online facility to the AA to check the status of disciplinary proceedings, if any,

whether any disciplinary proceedings are pending against proposed resolution professional.		against an IP, thereby eliminating the delay. However, **the Board received 2 references from AA, in 2022-23**, in this regard and which were responded within the stipulated time.
Section 125(2): The Board shall confirm, within ten days of receipt of direction by the AA, whether any disciplinary proceedings are pending against proposed	Bankruptcy Trustee	The Board has provided an online facility to the AA to check the status of disciplinary proceedings, if any, against an IP, thereby eliminating the delay. **No reference in this regard**

BT.		**has been received by the Board from AA in 2022-23**.

Section 7(5) of the Code provides that, where the AA is satisfied that a default has occurred and the application is complete, and no disciplinary proceedings are pending against the proposed RP, it may, by order, admit such application or where AA is satisfied that default has not occurred or the application is incomplete or any disciplinary proceeding is pending against the proposed RP, it may, by order, reject such application.

Further, Section 16(2), Section 22(4), Section 97(2), Section 125(2) provides for the appointment of the IRP/ RP as the case may be, if no disciplinary proceedings are pending against him.

Even Further, Section 7, Section 9 read with Section 8, and Section 10 i.e. for initiation of CIRP by Financial Creditor, Operational Creditor, and Corporate Person respectively, and provides that, the AA shall, within 14 days of the receipt of the application shall ascertain the existence of a default from the records of an IU and/ or on the basis of other evidence furnished before the court.

The AA shall communicate the order to the applicant and the corporate debtor within 7 days of admission or rejection of such application, as the case may be. If there is no disciplinary proceedings pending against the proposed IRP/ RP, it may, by order, admit such application, or if the AA is satisfied that a default has not occurred or the application is incomplete or any disciplinary proceeding is pending against the proposed IRP/ RP, it may, by an order, reject such application, but before rejecting the said application, an opportunity to rectify the defect within 7 days of the date of receipt of such notice from the AA is to be provided. Further, the CIRP shall commence from the date of admission of the application.

Section 12 provides for the Time-limit of the CIRP and provides for completion of CIRP within a period of 180 days from the date of admission of the application for initiation of the process, which may be extended via a one-time extension not exceeding 90 days, if an application in appropriate format is made to the AA in this regard. Further, the Code stringently lays for completion of the process within a period of 330 days from the insolvency commencement date, including any extension of the period of CIRP and/ or the time taken in legal proceedings in relation to such resolution process of the corporate debtor.

In the **10th meeting of the Advisory Committee** on Corporate Insolvency and Liquidation **held on 16th July 2022** chaired by Mr. Uday Kotak. The Committee deliberated on changes in the CIRP **to reduce delays** and

improve the resolution value among other things.

Therefore, from the aforesaid facts and data shared by the Board and Committees made in this regard it can rightly be opined that, the Board has thrived hard to provide an efficient and effective online facility to the Adjudicating Authority to check the status of disciplinary proceedings, if any, against an IP, to eliminate any delay and make the engagement of an IP speedier. But even after so much pain taking efforts by the Board, the AA has either made no reference or has made negligible reference to the Board while appointment of an IP. Thereby, leading to ineffective and inefficient proceedings, leading to delay in pronouncement of final order and ultimately leading to delay in the process of initiation of the CIRP.

In can simply be said that, the very first step towards the resolution of the CD, itself gets delayed due to the ineffective approach of the AA.

Second major factor for delay in the process, that originates from the delay at the hands of the AA is due to a major gap in between the date of pronouncement of order for initiation of CIRP and the date of actual receipt of said intimation of the order and availability of the same on NCLT portal, whereafter an IP can procure certified order copy from the court.

An Insolvency Professional needs certified order copy for various initial tasks such as for taking handover of control and possession, lodging signature with banks of the CD, filing with Ministry of Corporate Affairs, IBBI, taking charge from the erstwhile IRP/ RP, etc. Therefore, in practice, most of the IP's face hurdles as the initial process gets delayed due to delayed receipt of order for commencement of CIRP and appointment of the IRP/ RP. Resulting in delayed handover and late availability of the required information and documents further affecting and delaying the process.

The third major factor as reported by the **Insolvency Law Committee dated 20.05.2022** provides for the timeline for approval or rejection of resolution plan. It has highlighted that, the **approval of a resolution plan by the Adjudicating Authority is the last step in a CIRP**. However, often this last step becomes a significant hurdle to the resolution and rehabilitation of the corporate debtor. The Committee noted significant **delays in the approval or rejection of resolution plans by the Adjudicating Authority**. The Report of the Standing Committee on Finance has identified delays in approval of the resolution plan by the Adjudicating Authority as one of the main reasons for delays in the insolvency resolution process ……

Accordingly, the Committee has suggested for amendments be made to Section 31 of the Code to provide that the Adjudicating

Authority must approve or reject a resolution plan within 30 days of receiving it, and this time period shall be subject to the overall time period specified for the completion of the CIRP under Section 12. Further, where the AA has not passed an order approving or rejecting the resolution plan within such 30 days, it may be required to record reasons in writing for the same.

CONCLUSION

There had been numerous amendments in the Code and Regulations made therein to expedite the process towards a timely completion and timely resolution of the CD. The CD being already under stress if not resolved within due time, will lead to severe loss to the nation and stakeholders, as the delayed process will lead to corrosion of the value of assets, manufacturing facilities being rendered junk, loss of jobs, etc. Thus, to tackle the said critical issues, time and again various committees have been formed and the Board in consultation with the said committees has made efforts to facilitate the process, to get the same completed on time. Therefore, stringent timelines have been laid under the Code for the IP's and NCLT/ AA. But practically it has been observed that, the Judiciary frequently instead of serving justice, exploits its powers to avoid their duty by frequent adjournments of the matters. The Judges tend to enjoy and relive their school life with lavishly long holidays. The Benches stand early. Temporarily Benches are formed which way themselves from imparting any decision and majorly do clerical work of just taking on record the application or reply. There are not enough Judges and Benches to hear a matter, leading to long pending list of cases. In case an order gets reserved, it is not pronounced till a long time and if in the meanwhile the Benche get changed, then the new Bench restarts the whole hearing process to yet again get the order reserved, to be pronounced later.

For success of IBC and revival of stressed companies, the present judiciary must go on a rigorous training on time management, professional approach, taking decisions, leadership, focus on imparting justice, deep knowledge of IBC with other applicable laws, enrolment of more judges *(these suggestions are not exhaustive and there may be other ways to make our judicial pillar more effective)*.

An IP who faces so many practical issues including life threats from vested parties, non-cooperation from the management, burden to comply with all the applicable laws of the land, that to without availability of required support and assistance from departments including government departments. He is still penalized by the AA which itself is incompetent and ineffective on deciding a matter on time.

Therefore, the rules must be modified to stringently and mandatorily include in every order of the AA the reason for their decision including adjournments, reason for allotment

of next date, update of hearing and what is pending to be heard. Detailed reasons for appointment of temporarily bench and its duty. If a temporarily bench is incompetent to decide the matters, then it is same as having no bench at all.

The NCLT in its safeguard has referred to such pendency's to be the outcome of numerous pending cases and limited number of judges to decide the matters. This adds salt to taste like statement hides the ineffective and inefficient approach of the AA. These delays can either be the outcome of incompetent judiciary and/ or lack of proper expertise and knowledge on the subject matter, or an ideology of not bothering to decide the case and to merely postpone the matter till a time where the process itself becomes ineffective due to passage of time or the Resolution Applicant himself becoming frustrated to backout from the process.

This Article is not to be disrespectful toward the court but merely an attempt to criticize the wrongful acts of the judiciary and is focused to show mirror to the judiciary about its incompetence and unprofessional approach in deciding the matters, thereby affecting the credibility of the judiciary and that of the nation in International Society.

The Courts need to reconsider and understand the Legal Maxim "Justice delayed is justice denied" which means if the legal remedy is not provided in time, it is similar to having no legal remedy at all.

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Non-Performing assets (NPA) in Banks & impact of a codified Law, IBC 2016

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Abstract

BANK is a financial institution that accepts deposits and channels the money into lending activities. With this basic concept, a huge and complex system of banking operates, during this operation deposits are accepted under various product names, designed according to needs of the society, and advances are made to cater needs of different sectors of economy with primary concept of providing CAPITAL, one of the major Factor of Production. During the normal course of recycling of funds if a repayment commitment fails, standard financial norms of regulators of economy of the country consider it Non-Performing Assets. These NPA pose a great threat to the capability granting loan of banks. This article tries to evaluate impact and measures to control NPA.

INTRODUCTION

Non-Performing Assets (NPAs) has emerged as a key problem for Indian Banking Sector, it may be considered as one of the greatest and most formidable problem that has shaken the entire banking industry in India. Government & RBI regularly tried to resolve this issue through various Legal and other provisions but most of these do not yield desired result. Finally, Insolvency& Bankruptcy Code 2016(IBC Code) is giving better results to resolve the NPA problems in the Indian Banking system.

DEFINITION OF NON-PERFORMING ASSET (NPA)

A "Non-Performing Asset" (NPA) was earlier defined as a credit facility in respect of which the interest and or installment of principal has remained past due for a specified period of time. An amount due under any credit facility is treated as **"past due"** When it has not been paid within 30 days from the due date. Due to the improvements in the payment and settlement systems, recovery climate, up gradation of technology in the banking system, etc., it was decided to dispense with "past due" concept, with effect from **March 31, 2001.** Instead of that **"overdue"** concept was introduced. Any amount due to the bank under any credit facility is "overdue" if it is not paid on the due date fixed by the bank accordingly, as from that date

CATEGORIES OF NPA

Banks classify Non-Performing Assets (NPA) into the following three categories based on the period for which the asset has remained non-performing and the reliability of the dues:

- *Sub-Standard Assets*
- *Doubtful Assets*
- *Loss Assets*

An asset which does not disclose any problem and which does not carry more than normal risk attached to the business is categorized as "Standard Asset" and does not fall under the

category of NPA.

GROSS NPAS AND NET NPAS

A distinction is made in India between Gross NPAs and Net NPAs. In view of the time lag in recovery process and the detailed procedures and safeguards involved in regard to write-off, even after making provisions for advances considered as irrecoverable, banks continue to hold such advances in their books. These are termed Gross NPAs while provision-adjusted NPAs are termed as Net NPAs. Net NPAs are obtained from Gross NPAs after deduction of the following:

- Total provisions held;
- Part payments received and kept in suspense /sundry accounts;
- Balances in interest suspense account, i.e., interest due but not received;
- Claims received from credit guarantors and kept in suspense accounts pending final settlement.

NEED TO CONTAIN AND CONTROL NPA

NPA is a double-edged weapon that tells on the bank's profitability. On the one hand, banks cannot recognize/Book income (interest) on NPA accounts, and on the other hand, it is a drain on the bank's profitability due to funding costs. To add to woes, profits earned have to be diverted towards making loan loss provisions as per income recognition and asset classification (IRAC) norms.

EVOLUTION OF CONCEPT OF NPA

The Non-Performing Asset (NPAs) concept, presently in vogue, was originally introduced by the Reserve Bank of India (RBI) for implementation in the banks in the year 1993 based on the recommendations of Narasimham Committee on "Financial System Reforms" in line with internationally accepted norms. According to this concept, Non-Performing Assets (NPAs) in banks are those assets, which cease to generate income for the banks and remain irregular due to non-payment of interest and installments.

STATUS OF NPAs OF PUBLIC SECTOR BANKS IN INDIA

Banks in India have already conceived the risk perception arising out of NPA and counter measures have been taken to manage various risks like market risk, credit risk and operations risk particularly under Based-Il. Most of our banks particularly public sector Banks have already put in place a robust risk management system. The Banks in India under guidance of regulatory body Reserve Bank of India (RBI) are prepared to face the challenges of any economic down turn and its impact on banking system in our country. Magnitude of the problem can be understood by the level of the Gross NPAs of Public Sector Banks of the country.

Variation of cross & Net NPAs of Public Sector Banks in India:

Year	Gross NPAs		Net NPs	
	Amount (Rs. Crores)	As % to Total Advances	Amount (Rs. Crores)	As %age to Net Advances
1992-1993	39253.14	23.18	Not compiled	
1993-1994	41041.33	24.78	19690.74	14.46
1994-1995	38385.18	19.45	17566.64	10.67
2000-2001	54773.16	12.40	27968.11	6.74
2005-2006	41358	3.64	14566	1.32

2009-2010	57301	2.3	29375	1.09
2010-2011	71047	2.3	36071	1.09
20119-20	**6,78,316.98**	10.30	**2,30,917.59**	**3.70**
2020-21	**6,16,615.70**	9.1	**1,96,450.80**	**3.1**
2021-22	**5,42,173.82**	7.3	**1,54,745.38**	**2.2**
2022-23	**4,28,196.99**	**4.4**	**1,02,531.56**	**1.00**

IMPACT OF NPA

Impact of NPAs on the performance of the banks is manifold. Present level of NPAs is very big problems for the banks and immediate steps are required to check it.

1. "Profitability" is the worst affected by increase in NPAs. The important ways in which profitability is affected according to rank assigned to them are: -
   a) Interest accrued on NPAs is not considered as income.
   b) NPAs put an end to recycling of funds hence lesser interest income.
   c) More proportion of profits to be allocated in provisions head.
   d) Follow up cost is increased.
2. Impact of NPAs on "Credit deployment and investment policy" is also important. Banks are reluctant in advancing more credit due to higher level of NPAs and consider investment as safer source for deployment of funds.
3. Performance indicator that is further affected by NPAs is "Achievement of capital adequacy ratio level".
4. NPAs also reduce the "Productivity" (measured by business per employee and operating profits per employee). As the branch staff would primarily be engaged in the task of recovery of overdue instead of devoting time for planning for development.
5. "Credibility of Banking System", which is the next major impact, is affected greatly because it shakes the confidence of general public on the banking system and indirectly affects the capacity of the banking system to generate more resources.
6. Next important impact of NPAs is on "Interest spread". With increase in NPAs interest spread decreases. Further, NPAs not only affects the banks as such but it has its impact on "The Economy" as a whole. Because financial system is backbone of any economy and problem in it has its impact on the economy as a whole.[1]

MEASURES TO CONTROL NPA-

Various measures have been taken by the Government of India (GOl) and Reserve Bank of India (RBI) to enable banks recovers NPAs. The measures to control NPAs have been broadly studied under two heads: -

I. Preventive measures; and
II. Curative measures

PREVENTIVE MEASURES-

1. Among the preventive measures" Pre-sanction credit appraisal" is the most important that banker should follow the basic principle of lending including safety of advance, purpose for which loan is given, liquidity, security and profitability. Among the various parameters of evaluating loan applications," Economic viability" and "Technical feasibility" of the units were the most important followed by "Financial position of the borrower" and "Quality of Management" which is running the unit. "Effective credit

monitoring" was considered the second important preventive measures. Respondents felt that post sanction follow up of advances is very important to check the misuse of funds.

2. "Monitoring of standard assets" is ranked third as it helps in taking timely action to prevent them from becoming NPAs.
3. "Imparting specialized training to bank officers" ranks fourth amongst the suggested measures. Advance professional training is required for the managers to deal with NPAs problem effectively.

CURATIVE MEASURES

To reduce NPAs "Regular follow up through notices and personal contacts" is most important, followed by "Recovery Camps", "Compromise" and "Securitization of Assets". However, regarding "Compromise" method Branch Managers had serious reservation also as they felt that it gives wrong to borrower and defaulters that Government/banks are unable to recover full amount and in case they make their account NPA, then a compromise will be offered to them. "Suit filling" is overall ranked fifth and "Writing Off" is considered the last option by the Banks.

ROLE OF VARIOUS EXISTING LAWS TO CONTROL NPA, RECOVERY OF DEBT AND REVIVAL OF BORROWERS

- **Government & RBI has initiated various measures to control the NPA in Banking sector some of these areas under: -**

1. **Setting up of debt recovery tribunals-DRT**

There are 39 DRTs and five debt recovery appellate tribunals in India.

- Comprehensive amendments in the Act have been made to make the provisions for adjudication, enforcement and recovery more effective.

- Among DRT provisions, the most crucial one relates to summary attachment of property and empowering the processing officer to execute the decree of the official receiver, backed by a certificate from the tribunal.

- Banks approach DRTs for disputed loans above Rs 10 lakh and for loans for which agricultural land was the underlying security.

2. **Setting Up of Lok Adalat**

Lok Adalat (people's courts), established by the government settles dispute through conciliation and compromise. The First Lok Adalat was held in Chennai in 1986. Lok Adalat accepts the cases which could be settled by conciliation and compromise and pending in the regular courts within their jurisdiction.

The Lok Adalat is presided over by a sitting or retired judicial officer as the chairman, with two other members, usually a lawyer and a social worker. There is no court fee. If the case is already filed in the regular court, the fee paid will be refunded if the dispute is settled at the Lok Adalat. The procedural laws and the Evidence Act are not strictly followed while assessing the merits of the claim by the Lok Adalat. Main condition of the Lok Adalat is that both parties in dispute should agree for settlement. The decision of the Lok Adalat is binding on the parties to the dispute and its order is capable of execution through legal process. No

appeal lies against the order of the Lok Adalat.

3. **Asset Reconstruction Companies (ARCs)**

   - **Origin of ARCs**

     Asset Reconstruction Companies [ARCs] are established under SARFAESI Act, 2002 as specialized entities for NPA resolution. These ARCs are established to acquire, manage and recover Non-Performing Assets [NPAs] from Banks / FIs. This process would relieve the banking system of the burden of NPAs and would allow them to focus better on their core function of financing and development of new business opportunities so as to further strengthen the economy.

     The Act has made provisions for registration and regulation of securitization companies or reconstruction companies by the RBI, facilitate securitization of financial assets of banks, empower SCs/ARCs to raise funds by issuing security receipts to qualified institutional buyers (QIBs), empowering banks and FIs to take possession of securities given for financial assistance and sell or lease the same to take over management in the event of default.

4. **Setting up of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act-**

   To provide a structured platform to the Banking sector for managing its mounting NPA stocks and keep pace with international financial institutions, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act was promulgated, As stated in the Act, it has "enabled banks and FIs to realize long-term assets, manage problems of liquidity, asset-liability mismatches and improve recovery by taking possession of securities, sell them and reduce nonperforming assets (NPAs) by adopting measures for recovery or reconstruction." Prior to the Act, the legal framework relating to commercial transactions lagged behind the rapidly changing commercial practices and financial sector reforms, which led to slow recovery of defaulting loans and mounting levels of NPAs of banks and financial institutions.

5. **CPC:** A creditor may file a money recovery suit against a defaulting debtor under the Civil Procedure Code, 1908 (CPC) with jurisdictional Civil Court. However, owing to high backlog of cases and slow adjudication process, it may take decades to obtain a decree against the debtor through this route.
6. **SICA:** The Board of Industrial & Financial Reconstruction (BIFR) was set up under Sick Industrial Companies (Special Provisions) Act,1985 ('SICA'). However, SICA principally is inclined towards helping revive sick companies rather than helping lenders to recover their dues. SICA provides moratorium from any action against the defaulting company while a revival plan is worked out. However, there is no time restriction within which BIFR may decide whether it is practicable for a sick industrial

company to stand on its feet again. Reference to BIFR thus became a safe harbor for defaulting companies to delay debt recovery. BIFR route is widely believed to have failed to achieve desirable results. The new Code has therefore repealed SICA wef 01.06.2016 and all matters pending with BIFR are transferred to NCLT.

7. **CDR/JLF/SDR/S4A:** The RBI has provided various voluntary resolution mechanisms in case of multiple or consortium lending relationships to decide on debt restructuring, repayment rescheduling, and conversion of debt into equity etc. As per guidelines, if 60% of creditors by number and 75% of creditors by value agree to a restructuring package, then that package becomes binding on remaining creditors.

   However, this route has largely failed to achieve desirable results as lenders in general used the window to reschedule large accounts and postpone the inevitable.

RECENT LAW-INSOLVENCY & BANKRUPTCY CODE 2016 (IBC CODE)

A need was felt to attempt a complete overhaul of the debt recovery system. The Government set up a committee in 2015 to study present recovery/Resolution Laws and recommend a suitable and effective Law. The Committee on bankruptcy law reforms recommended A comprehensive code called "***The Insolvency and Bankruptcy Code 2016 is a hugely significant legislation".***

The Government has therefore on the recommendation of T. K. Viswanathan Committee enacted IBC code 2016. The Code repeals or overrides around 11 laws and promises to bring a big change in debt recovery resolution and insolvency process. ***The Code was passed as an Act in both the Houses of Parliament on 11 May 2016 and finally received the President's assent on 28 May 2016. The preamble to the Act introduces the Act as "An Act to consolidate and amend the laws relating to reorganization and insolvency Resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues…".***

The Insolvency and Bankruptcy Board of India was established on 1st October, 2016 under the Insolvency and Bankruptcy Code, 2016 (Code). It is a key pillar of the ecosystem responsible for implementation of the Code that consolidates and amends the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of the value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders.

It is a unique regulator: regulates a profession as well as processes. It has regulatory oversight over the Insolvency Professionals, Insolvency Professional Agencies, Insolvency Professional Entities and Information Utilities. It writes and enforces rules for processes, namely, corporate insolvency resolution, corporate liquidation, individual insolvency resolution and individual bankruptcy under the Code. It has recently been tasked to promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions, in furtherance of the purposes of the Code. It has also been designated as the 'Authority' under the Companies

(Registered Valuers and Valuation Rules), 2017 for regulation and development of the profession of valuers in the country.

THE INSOLVENCY RESOLUTION PROCESS (IRP)

For some firms, the right answer after default is to take the firm into liquidation. But there may be many situations in which a viable mechanism can be found through which the firm is protected as a going concern. To the extent that this can be done, the costs imposed upon society go down, as liquidation involves the destruction of the organizational capital of the firm.

Now, any creditor, whether financial or operational, should be able to initiate the insolvency resolution process (IRP) under the code. It may be noted that operational creditors will include workmen and employees whose past payments are due. The Committee also recommends that a resolution plan must necessarily provide for certain protections for operational creditors. This will empower the workmen and employees also to initiate insolvency proceedings, settle their dues fast and move on to some other job.

when default takes place an Insolvency Resolution Process (IRP) can be initiated and run for as long as 180 days. The IRP is overseen by an „Insolvency Professional" (IP) who is given substantial powers.

The IP makes sure that assets are not stolen from the company, and initiates a careful check of the transactions of the company for the last two years, to look for illegal diversion of assets. Such diversion of assets would induce criminal charges.

While the IRP is in process, the law enshrines a „calm period" where creditors stay their claims. This gives a better chance for the firm to survive as a going concern. For the 180 days for which the IRP is in operation, the creditors committee will analyse the company, hear rival proposals, and make up its mind about what has to be done. When 75% of the creditors agree on a revival plan, this plan would be binding on all the remaining creditors. If, in 180 days, no revival plan achieves support of 75% of the creditors, the firm goes into liquidation. In limited circumstances, if 75 % of the creditors committee decides that the complexity of a case requires more time for a resolution plan to be finalised, a one-time extension of the 180-day period for up to 90 days is possible with the prior approval of the adjudicator. This system has many strengths: Asset stripping by promoters is controlled after and before default.

a) The promoters can make a proposal that involves buying back the company for a certain price, alongside a certain debt restructuring.
b) Others in the economy can make proposals to buy the company at a certain price, alongside a certain debt restructuring.
c) All parties know that if no deal is struck within the stipulated period, the company will go into liquidation. This will help avoid delaying tactics. The inability of promoters to steal from the company, owing to the supervision of the IP, also helps reduce the incentive to have a slow lingering death.
d) The role of the adjudicator will be on process issues: To ensure that all financial creditors were indeed on the creditors committee, and that 75% of the creditors do indeed support the resolution plan.

2021-22 Amt in Rs Crore

Recovery channel	Number of cases referred	Amount involved	Amount recovered	Recovery %	

LOK Adalat	8506741	119006	2778	2.3	
DRTs	30651	68956	12035	17.5	
SARFAESI Act	249645	121718	27349	22.5	
IBC 2016	891	197959	47409	23.9	
total	**8787928**	**507639**	**89571**	**17.6**	

2022-23 AMT IN RS CRORE

Recovery channel	Number of cases referred	Amount involved	Amount recovered	Recovery %	
LOK Adalat	14249462	188527	3831	2.00	
DRTs	58073	402636	36924	9.2	
SARFAESI Act	185397	111805	30864	27.6	
IBC 2016	1261	133930	53968	40.3	
Total	**14494193**	**836898**	**125587**	**15.0**	

Source-RBI Financial stability Report Dec 2023

YEAR WISE & STAKE HOLDER WISE INITIATION OF CIRPS

Period	**CIRP Initiated by**			**Total**
	Financial Ccrditor	**Operational creditor**	**Corporate debtor**	
2016-17	8	7	22	37
2017-18	286	310	111	707
2018-19	517	569	71	1157
2019-20	883	1055	51	1989
2020-21	197	317	22	536
2021-22	371	473	43	887
2022-23	654	539	70	1263
2023-24-April to Dec 2023	384	316	45	745
total	**3300**	**3586**	**435**	**7321**

Source-RBI Financial stability Report Dec 2023

CONCLUSION

The best situation is for a person, organization or corporate not to default on its obligations and thus Avoid becoming insolvent. However, if there is a default and there is no possibility of resolving the default in the normal course of business, then the lenders, other creditors and the corporate debtor should work through the insolvency resolution process in a constructive manner. We now have a good law that brings us closer to international best practices. It is pertinent to note that the code will not prevent business failures but if the same is implemented properly, then it will definitely facilitate failed firms to revive or windup seamlessly and pave the way to resurrection.

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भारत में बाल–श्रम की वर्तमान स्थिति पर एक अध्ययन

सुदेश चौधरी*

सारांष

बच्चों को बड़े होने के लिए एक स्वतन्त्र और गरिमापूर्ण परिवेश देने की जरूरत है। उन्हें शिक्षा और प्रशिक्षण के सम्पूर्ण अवसर दिये जाने चाहियें। किसी देश के बच्चों को जिस प्रकार की सुविधाएं, शिक्षा, संस्कार आदि प्राप्त होते हैं उसी के अनुरूप उन बच्चों का शारीरिक, मानसिक विकास सम्भव हो पाता है। एक सुसंस्कृत समाज का सर्वोपरि लक्ष्य होता है कि वह बच्चों की शिक्षा की सम्पूर्ण व्यवस्था करें। शिक्षा प्राप्त करना हर बच्चें का जन्मसिद्ध अधिकार है। आज हमारा देश तकनीकी के क्षेत्र में अग्रसर हैं लेकिन फिर भी अनैतिकता, भ्रष्टाचार, शोषण, आपराधिक हिंसा आदि से देशमुक्त नही हो पा रहा है। बाल श्रम और शोषण भी कहीं ना कहीं इसी से सरोकार रखता है।

''बच्चें हमारा भविष्य है उन्हें बढ़ने दे''

''मैं हूँ देश का भविष्य। जब मैं जन्म लेता हूँ तो पूरी दुनिया की दिलचस्पी मुझमें होती है।''भारत में बालश्रम की स्थिति

दुनिया के बाल श्रमिकों का एक तिहाई हिस्सा भारत में है। भारत एक विकासशील देशों की श्रेणी में आता है। आज भारत को स्वतन्त्र हुये सात दशकों से अधिक बीत चुके है और इस दौरान देश ने बहुत प्रगति और उन्नति भी की है। भारत मजबूत राष्ट्रों की श्रेणी में शामिल हो रहा है और हमारी अर्थव्यवस्था दिनोदिन मजबूत हो रही है, लेकिन फिर भी बाल श्रम की समस्या को अभी भी नियन्त्रित नही किया जा सका है। भारत में बाल मजदूरों की सबसे ज्यादा संख्या पांच बड़े राज्यों उत्तर प्रदेश, बिहार, राजस्थान, महाराष्ट्र, और मध्यप्रदेश में है, इन राज्यों में बाल मजदूरों का लगभग 55% भाग हैं। उत्तर प्रदेश में 21.5 यानि

21.80 लाख, बिहार में 10.7 यानि 10.9 लाख और राजस्थान में 8.5 लाख मजदूर है।

बाल श्रम की परिभाषा या अवधारणा

14 वर्ष से कम आयु के बालक जिनका श्रम किसी अपार्जन के लिए अथवा खतरनाक व्यावसायिक नियोजन के लिये प्रयोग में लाया जाता है, बाल श्रम कहलाता है।

बल श्रम एक ऐसी स्थिति है जो बच्चों को किसी कार्य में लगने उन्हे उनके बचपन से वंचित करके उनके नियमित स्कूल जाने की क्षमता में हस्तक्षेप करती है और बच्चों के मानसिक, शारीरिक, सामाजिक या नैतिक रूप से विकास को बन्धित करती है।

भारतीय समाज में बालश्रम बढ़ने के कारण

1. ***बाल मजदूरी सस्ती होना*** – बालश्रम एक सस्ता विकल्प हैं किसी भी उद्योग या व्यवसाय में अधिक घण्टे काम करने के बदले मजदूरी कम दी जाती हैं। उद्योगों के मालिक बालश्रम के लम्बे घण्टों के बदले उन्हें थोड़ा भोजन और थोड़ा पैसा देते है। पारिवारिक देखभाल की कमी के कारण ये बच्चे अनेक प्रकार के दुर्व्यवहार के शिकार होते है।
2. ***गरीबी*** – ग्रामीण क्षेत्रों में जीवन बहुत जटिल है और गरीबी बहुत व्यापक है। गाँवों की आर्थिक स्थिति बहुत कमजोर है। जिससे यहाँ के लोगों की बुनयादी जरूरते पूरी नही हो पाती और मजबूरीवश उन्हें अपने छोटे–छोटे बच्चों को काम पर लगाना पड़ता है। इसलिए प्रायः देखा गया है कि बाल मजदूरी ग्रामीण क्षेत्रों में अधिक पायी जाती है।
3. ***शिक्षा की कमी*** – ग्रामीण क्षेत्रों के लोग कम शिक्षित होते है क्योंकि वहाँ पर शैक्षिक संसाधनों की कमी पायी जाती है। कम शिक्षित होने के कारण ग्रामीण लोग अपने बालकों की शिक्षा पर अधिक ध्यान नही दे पाते। ग्रामीण लोगों में प्रजनन सम्बन्धी जानकारी भी अधिक नही होती जिससे वो परिवार नियोजन से अनभिज्ञ रहते ळें
4. ***लैंगिक भेदभाव*** – भारत जैसे देश में अनेक मिथक प्रचलित हैं। इन मिथकों के चलते कम उम्र में ही लड़कियों को शिक्षा से वंचित करके उन्हें घरेलू काम–काज के लिये मजबूर किया जाता है या जल्दी ही उन्हें विवाह बन्धन में बाँध दिया जाता हैं। लड़कों को भी शिक्षा से वंचित करके खेती आदि के कार्य में लगा दिया जाता है।
5. ***जनसंख्या विस्फोट*** – भारत में दिनों दिन जनसंख्या लगातार बढ़ती जा रही है, लेकिन देश में आर्थिक संसाधन सीमित है। जिससे व्यवसाय और नौकरियों के क्षेत्र में लगातार कमी आ रही है। बढ़ती जनसंख्या के अनुसार संसाधन बहुत कम है। बहुत ज्यादा लोग बेरोजगार है उनकी बुनयादी जरूरतें पूरी नहीं हो पा रही है और देश में बाल श्रमिकों की संख्या भी लगातार बढ़ रही है।
6. ***बच्चों को स्कूल भेजने के अनिच्छुक माता–पिता*** – प्रायः कुछ लोगों की मानसिक स्थिति इस प्रकार की होती है ि कवे अपने बच्चों को स्कूल नही भेजते, वो बचपन से ही अपने बालकों को अपने पुस्तैनी कार्यों में लगा देते है। उनकी यह धारणा बन जाती है कि किसान का बेटा खेती ही करेगा, लुहार का बेटा लोहे की वस्तुयें ही बनायेगा और उसी धारणा के चलते वो अपने बालकों को शिक्षा से वंचित कर देते है।

7. ***बच्चों का अवैध व्यापार*** – यह भी बालश्रम को बढ़ावा देने का एक बड़ा कारण है। बच्चों की तस्करी करके उन्हें ऐसे स्थानों पर भेज दिया जाता है जहाँ उन्हें कैद करके रखा जाता है और फिर उनसे बहुत से अवैध कार्य कराये जाते है जैसे – नशीली दवाओं के आदान–प्रदान के कार्य, जुआ खेलना, घरेलू कार्य में सहायता हेतू भिक्षावृत्ति, वैश्यावृत्ति आदि कष्टदायक और खतरनाक व्यवसायों में मजबूर किया जाता है।
8. ***उपलब्ध कानूनों का लागू होना न होना*** – कानून होना एक अलग बात है और उसका क्रियान्वयन होना अलग बात है। 1986 से लेकर अब तक बालश्रम पर बहुत से कानून बनाये गये। परन्तु इन कानूनों को तोड़ने वालों पर दी जाने वाली सजा बहुत मामूली और ना के बराबर रही है। कानून के क्रियान्वयन का यही हाल रहा तो कानून बस किताबों में ही रह जायेगा।
9. ***व्यस्कों और किशोरो के लिये अच्छे काम के अवसरों की कमी –*** किशोरों और व्यस्कों को उनकी योग्यता के अनुसार कार्य उपलब्ध नहीं हो पाते, जिससे किशोर अपनी जीविका चलाने के लिये अन्य कार्यों में लग जाते हैं। कभी–कभी वे अन्य अपराधिक गतिविधियों में भी स्वयं को धकेल देते है।
10. ***आवास–प्रवास और आपातकालीन स्थिति*** – भारत में अत्यधिक विविधता पायी जाती है। जैसे – क्षेत्रीय विविधता। इसी विविधता के कारण लोग एक स्थान से दूसरे स्थान पर आते जाते रहते है। जैसे – ग्रामीण क्षेत्र के लोग कार्य की तलाश। ये शहरों में जाकर बस जाते है या औद्योगिक क्षेत्रों में चले जाते हैं जिससे उन्हें बहुत सी कठिनाईयों का सामना करना पड़ता है। कभी–कभी बाढ़, सूखा, भूखमरी, महामारी आदि स्थितियों के कारण भी लोग एक स्थान से दूसरें स्थान पर चले जाते है।

बालश्रम को बढ़ने से रोकने के उपाय

सम्पूर्ण बचपन के लिये शिक्षा अनिवार्य कर दी जाये। गरीबी दूर करने वाले सभी व्यावहारिक उपाय उपयोग में लाये जाये। कानून का पालन करने के लिये कानून को लागू करने वाली संस्थाओं को सशक्त, उनका क्षमतावर्धन और उनका उन्मुखीकरण आवश्यक है। जिससे न्यायालयों व थानों से छूटने के बाद श्रमिकों को पीड़ा ना सहनी पड़े। समेकित बाल संरक्षण कार्यक्रम के अन्तर्गत जिले में बाल सुरक्षा समितियाँ और हर थाने में किशोर कल्याण पदाधिकारी की नियुक्ति अनिवार्य रूप से की जाये। बाल श्रम को जड़ से समाप्त करने के लिये राजनैतिक इच्छा शक्ति और संसाधन भी आवश्यक है। बाल श्रम को समाप्त करने के लिये बाल श्रमिकों के पुर्नवास के लिये पर्याप्त कार्यक्रम बनाने आवश्यक है। बच्चों की शिक्षा की व्यवस्था के साथ–साथ परिवार के बड़े सदस्यों या मुखिया के लिये उचित रोजगार उपलब्ध कराये जाये ताकि वो अपने परिवार का भरण पोषण कर सके और उन्हें परिवार चलाने के लिये बच्चों की मजदूरी पर निर्भर ना रहना पड़े। सरकार इन कानूनों को लागू करने के लिये

राजनैतिक इच्छा शक्ति दिखाए और बच्चों के प्रति अपनी जिम्मेदारी को पूरा करे। इन्टरनेशनल लेबर आर्गेनाइजेशन ने साल 2025 तक पूरी तरह से बाल श्रम को खत्म करने का लक्ष्य निर्धारित किया है।

भारत में बाल श्रम के खिलाफ राष्ट्रीय कानून और नीतियाँ

भारत का संविधान (26 जनवरी 1950) मौलिक अधिकारों और राज्य के नीति निर्देशक तत्वों के विभिन्न अनुच्छेदों के माध्यम से व्याख्या करता है, जो निम्नलिखित हैं–

- 14 साल से कम उम्र का कोई भी बच्च किसी फैक्ट्री या खदान के काम करने के लिये नियुक्त नही किया जायेगा और ना ही किसी अन्य खतरनाक व्यवसाय में नियुक्त किया जायेगा। (अनुच्छेद –24)
- राज्य अपनी नीतियाँ इस प्रकार से निर्धारित करेंगे कि श्रमिकों, पुरूषों और महिलाओं का स्वास्थ्य तथा उनकी क्षमता सुरक्षित रह सकें और बच्चों की उम्र का शोषण ना हा। वे अपनी शक्ति व उम्र के प्रतिकूल काम करने में आर्थिक आवश्यकताओं की पूर्ति के लिये प्रवेश करें। (अनुच्छेद –39 ई)
- बच्चों को स्वस्थ तरीके से स्वस्थ व सम्मानजनक स्थिति में विकास के अवसर तथा सुविधा दी जायेगी और बचपन व जवानी को नैतिक व भौतिक दुरूपयोग से बचाया जायेगा। (अनुच्छेद –39 ई)
- संविधान लागू होने के 10 साल के भीतर राज्रू 14 वर्ष तक की उम्र के सभी बच्चों को मुफ्त और अनिवार्य शिक्षा देने का प्रयास करेंगे।
- (अनुच्छेद –45) बाल श्रम पर संघीय व राज्य सरकारें दोनों कानून बना सकती है।

प्रमुख राष्ट्रीय कानून

1. ***बाल श्रम (निषेध व नियमन) कानून 1986*** – यह कानून 14 वर्ष से कम उम्र के बच्चों को 13 पेशों और इन प्रक्रियाओं में, जिन्हें बच्चों के जीवन और स्वास्थ्य के लिये अहित कर माना गया है। नियोजन को निषिध बनाता है। इन पेशों और क्रियाओं का उल्लेख कानून की अनुसूची में है।
2. ***फैक्ट्री कानून 1948*** – यह कानून 14 वर्ष से कम आयु के बच्चों के नियोजन को निषिद्ध करता है। 15 से 18 वर्ष तक के किशोर किसी फैक्ट्री में तभी नियुक्त किये जा सकते है। जब उनके पास किसी अधिकृत चिकित्सक का फिटनेस प्रमाण पत्र हो इस कानून में 14 से 18 वर्ष तक के बच्चों के लिये हर दिन साढ़े चार घंटे की कार्यविधि तय की गयी और रात में उनके काम करने पर प्रतिबंध है। इसके अतिरिक्त अन्तर्राष्ट्रीय स्तर पर कुछ अन्य नीतियाँ और कार्यक्रम भी बाल मजदूरी के समाप्त करने के लिए तैयार किये गये।

बाल श्रम संवैधानिकता एवं न्यायिक हस्तक्षेप

- बाल श्रम अधिनियम (निषेध व नियमन) कानून 1986 के अनुसार 14 वर्ष से कम उम्र के बच्चों को खतरनाक उद्योगों और प्रक्रियाओं में काम करने से रोकता है।
- मनरेगा 2005 शिक्षा का अधिकार अधिनियम 2009 और मध्याह्न भोजन योजना जैसे नीतिगत हस्तक्षेपों ने ग्रामीण परिवारों के लिये गारंटीशुदा मजदूरी रोजगार के साथ–साथ बच्चों को स्कूलों में रहने का मार्ग प्रशस्त किया जाये।
- वर्ष 2017 में अन्तर्राष्ट्रीय श्रम संगठन के कन्वेशन संख्या 138 और 182 के अनुसमर्थन के साथ भारत सरकार ने खतरनाक व्यवसायों में लगे बच्चों सहित बाल श्रम के उन्मूलन के लिए अपनी प्रतिबद्धता का प्रदर्शन किया है।
- 1979 में सरकार द्वारा बाल मजदूरी को खत्म करने के लिए एक समिति का गठन किया गया।
- 1987 में बाल मजदूरी के लिए कुछ नीतियाँ बनाने के बारे में सोचा गया।
- 1990 में न्यूयार्क में इस विषय पर एक सम्मेलन आयोजित किया गया जिससे 151 राष्ट्रों के प्रतिनिधियों ने भाग लिया।
- 2002 में बाल श्रम के खिलाफ इन्टरनेशनल लेवल पर शुरूआत की गयी।
- 2015 में विश्व स्तर पर नये नियम बनाये गये जिससे बाल श्रम को खत्म किया जा सके।
- इन्टरनेशनल लेबर ऑर्गेनाइजेशन ने साल 2025 तक पूरी तरह से बाल श्रम को खत्म करने का लक्ष्य निर्धारित किया।

भारत समाज की आधुनिक स्थिति पर ध्यान दिया जाये तो प्रायः यह देखा जा रहा है कि हमारे देश में नशे का व्यवसाय बहुत अधिक बढ़ रहा है। लोग इसी नशे के समान या नशीली चीजों के आदी होते जा रहे है, जिससे बहुत कम आयु में ही उनको बहुत सी घातक और जानलेवा बीमारियाँ हो जाती है या उनकी मौत हो जाती है। आवश्यक संसाधनों या शिक्षा की कमी के कारण केवल माता अपने बच्चों के पालन पोषण करने में समर्थ नही होती है। कई बार नशे के आदी लोग अपने घरों में रोज–रोज लड़ाई झगड़ें और मारपीट करते है जिससे घर की महिलाये तंग आकर अपना घर व बच्चों को छोड़ कर चली जाती है और नशे के कारण पिता की मौत होने पर बच्चे अनाथ हो जाते है। बच्चों को सही मार्गदर्शन ना मिल पाने के कारण वो दिशा भटक जाते है और अच्छी शिक्षा प्राप्त करने में असफल रहते है। अतः भारतीय राजनैतिक पार्टियों और संस्थानों को नशीले पदार्थो के उपयोग और उपलब्धता को समीति करने पर जोर देना चाहिये, ताकि हमारी इस पीढ़ी और भावी पीढ़ी के युवाओं के भविष्य को बचाया जा सके।

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