VOLUME X ISSUE–I (JAN - MAR 2024)

QUEST

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

INDIAN INSTITUTE OF LEGAL STUDIES

UG & Post Graduate Advanced Research Studies in Law
Approved under Section 2(f) & 12B of the UGC Act,1956
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THE STUDENT JOURNAL (2024)

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MESSAGE

FROM FOUNDER & CHAIRMAN'S DESK

SHRI JOYJIT CHOUDHURY

Founder & Chairman
Indian Institute of Legal Studies

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

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

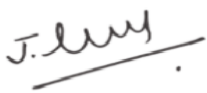
have been called to take immediate steps to detect, treat and reduce the further spread of the virus to save lives of the people. Presently the COVID-19 is no more confined to China, Italy or U.S.A. It has become a global issue. The economic impact has had devastating and cascading effect world- wide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

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

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

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

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



JOYJIT CHOUDHURY

MESSAGE

FROM PRINCIPAL'S DESK

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

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

Dr. Trishna Gurung
Principal-in-charge,
Indian Institute of Legal Studies

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LONG ARTICLE

THE TELECOMMUNICATIONS ACT 2023- PAVING THE WAY FOR INDIA'S DIGITAL REVOLUTION

- *Sushmita Singh*[1]

ABSTRACT

The Telecommunications Act of 2023 is a major update to India's telecom laws. It replaces Indian Telegraph Act of 1885 and the Indian Wireless Telegraph Act of 1933. This paper looks at how the new law will affect the telecom sector, consumers, and national security. The old laws were outdated. They didn't match how technology has changed. The new law aims to fix this. The article explains how the new law was created. It talks about the debates and input from different groups. The main changes in the new law include Authorization-based model.

[1] Student of BA LL.B(H), Semester X, Indian Institute of Legal Studies, Siliguri, susmitasingh7407@gmail.com.

(Companies need permission to operate), Spectrum allocation (How radio frequencies are given out), Right of way (Rules for building telecom infrastructure). The article discusses how these changes may affect competition, consumer protection, and innovation. The new law also includes provisions for interception and surveillance. The article examines if these matches up with privacy rights. The paper criticizes the new law for giving too much power to the government. It discusses how this could impact the way the telecom sector is regulated. It also summarizes its findings and offers recommendations for how to implement the new law and develop future policies. The article concludes that the new law is a step forward. It has the potential to boost the telecom sector. But it raises concerns about privacy, government control, and clarity in regulations. The paper calls for a balanced approach that protects consumers and national security while promoting growth and competition.

KEYWORDS: *Telecommunications, Reformation, Consumer Protection, Privacy and Surveillance, Security.*

1. INTRODUCTION

The Telecommunications Act, 2023 marks a major overhaul of India's telecommunications legislation, replacing the archaic Indian Telegraph Act of 1885 and the Indian Wireless Telegraph Act of 1933. India's tele density, a measure of the number of telephone connections for every hundred individuals, was reported at 85.11% as of July 2022, indicating a vast telecommunications market. The Act supports India's entry into the **5G race**, which is a significant step towards enhancing the country's digital infrastructure. This new law aims to modernize the regulatory framework for India's growing telecommunications industry, which is the second largest in the world. The Act contains a comprehensive set of regulations to meet the current needs of the telecommunications industry. It's purpose is to facilitate the development, expansion and operation of telecommunications services and networks, as well as the allocation of frequencies. The Act is expected to have a transformative impact on the industry by promoting competition, stimulating technological innovation and ensuring user protection .The Telecommunications act,2023 defines telecommunications under **sec 2(p)** as *transmission, emission or reception of any messages, by wire, radio, optical or other electro-magnetic systems, whether or not such messages have been subjected to rearrangement, computation or other processes by any means in the course of their transmission, emission or reception.*[2] The Act contains

[2] The Telecommunications Act, 2023, § 2(p), No. 44, Acts of Parliament, 2023(India).

provisions authorizing a state to intercept Services or networks and directly intercept or transmit messages in the event of a public emergency or for security reasons using measures specified in the Code. The Act refines rules on interception and suspension of telecommunication services, following judgments like ***PUCL v. UOI (1997),[3] Anuradha Bhasin v. Union of India (2020),[4]*** and ***Justice K.S. Puttaswamy (Retd.) v. Union of India (2017),[5]*** which laid out constitutional safeguards.

2. THE LEGISLATIVE FRAMEWORK AND WAY FORWARD

2.1 THE EVOLUTION OF TELECOMMUNICATIONS LAWS IN INDIA

2.1.1. The Indian Telegraph Act, 1885

The Indian Telegraph Act of 1885 was the cornerstone of Indian telecommunication laws. It was adopted during the British colonial period and provided the legal basis for the establishment and operation of telegraph services in the country[1]. The act gave the government exclusive rights to build and maintain telegraph lines and established a licensing system for private operators[2]. It also provided

[3] People's Union of Civil Liberties v. Union of India, 1997 SCC OnLine SC 568.
[4] Anuradha Bhasin v. Union of India, 2020 SCC OnLine SC 1308.
[5] Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017 SCC OnLine SC 1.

for the interception of messages, which was later extended to telephone communications.[6]

2.1.2. The Indian Wireless Telegraphy Act, 1933

With the advent of wireless technology, the Indian Wireless Telegraphy Act was enacted in 1933 to regulate the possession and use of wireless telegraph equipment[5]. That Act supplemented the Telegraph Act by dealing with emerging wireless communications, which included radio broadcasting and later television[6]. It created a wireless licensing system and gave the government the power to control the airwaves, a precursor to modern spectrum management.[7]

2.1.3. Liberalization and Reforms, 1990

The liberalization of the Indian economy in the 1990s brought significant changes to the telecommunications industry. In 1994, the government introduced a national telecommunications policy aimed at attracting private investment and bringing competition to the market. This

[6] THE INDIAN TELEGRAPH ACT, 1885 ARRANGEMENT OF SECTIONS, https//www.indiacode.nic.in/bitstream/123456789/13115/1/indiantelegraphact_1885.pdf.(last visited March 20, 2024).

[7] THE INDIAN WIRELESS TELEGRAPHY ACT, 1933 - TELECOM REGULATORY AUTHORITY, https//www.trai.gov.in/sites/default/files/Indian_Wireless_Telegraphy_Act_1933.pdf. (last visited March 20, 2024).

led to the creation of the **Telecom Regulatory Authority of India (TRAI)** in 1997 to regulate the industry and ensure fair competition.[8]

2.1.4. The Telecommunications Act, 2023

The most recent and groundbreaking change occurred with the enactment of the Telecommunications Law in 2023. That law replaced earlier laws and established a modern legal framework to govern the rapidly developing telecommunications industry. It simplified the licensing process, introduced consumer protection measures and strengthened cyber security and data protection regulations.[9]

2.2. KEY FEATURES OF THE TELECOMMUNICATIONS ACT, 2023

The Telecommunications Act, 2023 of India encompasses a range feature which are mentioned below:

[8] DEVELOPMENT OF TELECOMMUNICATION LAW IN BRITISH INDIA, https//enhelion.com/blogs/2022/06/02/development-of-telecommunication-law-in-british-india/ (last visited March 20, 2024).
[9] TELECOM BILL 2023- THE LEGAL LANDSCAPE OF CONNECTIVITY, https//www.legalserviceindia.com/legal/legal/legal/article-14612-telecom-bill-2023-the-legal-landscape-of-connectivity.html. (last visited March 20, 2024).

2.2.1. Central Government Authorization

The Act requires authorization from the central government for the provision of telecommunication services, establishment, and operation of networks, and possession of wireless equipment. Sec 2 (d) defines authorization under the act. Section 3 under chapter II empowers the Central Government to grant licenses for establishing, operating, and maintaining telecommunication services. It also outlines the terms and conditions that may be imposed on licensees, including the payment of license fees and other charges.

Section 7 allows the Central Government to exempt certain telecommunication services or telecommunication systems from the licensing requirements specified in Section 3. This provision is essential for facilitating the development and deployment of new technologies or services that may not fit within the existing licensing framework.

2.2.2. Spectrum Allocation

Spectrum allocation is primarily conducted through auctions, ensuring a transparent and fair process, except for specified entities and purposes for which it will be

assigned administratively. For instance, if a mobile network operator wants to expand its services, it must participate in these auctions to acquire the necessary spectrum bands. [Sec 4-8 of Chapter II]

2.2.3. Interception and Detection

The Act allows for the interception of telecommunication on specified grounds including national security, public order, or prevention of offences. [sec 19-23 under Chapter IV[10]]

2.2.4. User Enforcement

Measures to protect users include requiring prior consent sec 28 (2)(a) to receive specified messages and the creation of a do not disturb register [(sec 28 (2)(b)].

2.2.5. Grievance Redressal

Entities providing telecom services must establish an online mechanism for the registration and redressal of grievances.[1] (sec 28 clause 3)[11] The act establishes a

[10] The Telecommunications Act, 2023, § 19-23, No. 44, Acts of Parliament, 2023 (India).
[11] THE TELECOMMUNICATIONS ACT, 2023 – A STEP TOWARDS DIGITAL INDIA, https//trilegal.com/knowledge_repository/the-telecommunications-act-2023-a-step-towards-digital-india/ (last visited March 21, 2024).

mechanism for resolving disputes between service providers or between service providers and consumers. It allows TRAI to adjudicate disputes and issue orders for their resolution.

2.2.6. Right of Way

The Act provides a mechanism to exercise the right of way for laying telecom infrastructure in public as well as private property. [sec 10-18, CHAPTER III].

2.2.7. Telecom regulatory authority of India (TRAI) Chairperson or Members

The Act likely outlines the qualifications and the process for individuals to serve as **TRAI** Chairperson or members, although the specific section is not detailed in the search results. It is a regulatory body set up by the Government of India under section 3 of the Telecom Regulatory Authority of India Act, 1997. It regulates the telecommunications sector in India. Proviso under sec 59 (b) of the acts talks about qualification of chairperson. The act establishes the Telecommunication Regulatory Authority of India (TRAI), which is the regulatory body responsible for regulating the telecommunication services

in the country. It outlines the composition, powers, and functions of the TRAI.

2.2.8. Interception and Surveillance

The Act allows for lawful interception of messages for national security and public order. As an example, in the event of a suspected terrorist threat, the government may intercept communications from specific individuals or groups to prevent potential attacks.

2.2.9. Quality of Service Standards

Service providers are required to adhere to quality-of-service standards, including network coverage and internet speed. For example, if consumers experience frequent call drops, they can report this to the Telecom Regulatory Authority of India (TRAI), which will ensure the service provider addresses the issue. Section 19 empowers TRAI to establish quality of service standards and ensure compliance by service providers. It aims to maintain a certain level of service quality and protect the interests of consumers.

2.2.10. Digital Bharat Nidhi Fund

This fund aims to provide telecom services in underserved areas and support research and development in telecom, though the specific section is not detailed in the search results. [(sec 24-26) Chapter V].

2.2.11. Crimes and Penalties

Unauthorized access to telecommunication services is punishable with imprisonment, fines, and investigations under the Act. [(Sec 42 - 44) Chapter Ix] Also, compared to the law, the penalties for violations have been strengthened. Providing telecommunication services without the necessary national license is punishable with imprisonment for a term which may extend to 3 (three) years and with a fine which may extend to Rs. 2,00,00,000/- (two billion rupees).[12]

2.2.12. Infrastructure Development

The Act encourages the development of telecom infrastructure, including the expansion of rural network coverage. An example of this would be the government's

[12] The Telecommunications Act, 2023, § 42-44, No. 44, Acts of Parliament, 2023 (India).

initiative to provide high-speed internet connectivity in remote villages, bridging the digital divide.

2.3. AUTHORIZATION AND LICENSING REQUIREMENTS

Section 2(1)(b) of the Act defines the term 'assignment' as the permission for a radio station to use a radio frequency channel under specified conditions. Sec 2 (1)(d) defines authorization.[13] Chapter II of the Act provides the procedure for authorization and assignment by the Central Government. obtain an authorization from the Central Government.

2.3.1. Necessity of Prior Authorization

The Telecommunications Act of 2023 mandates that any entity intending to provide telecommunication services or operate telecommunications networks must obtain prior authorization from the central government[123]. This requirement is rooted in the need to ensure that the telecommunications infrastructure, which is critical to national security, economic stability, and public welfare, is managed and operated by entities that meet certain standards of reliability and accountability.

[13] The Telecommunications Act, 2023, § 2(1)(d), No. 44, Acts of Parliament, 2023 (India).

2.3.2. The central government's role in granting authorizations is crucial for several reasons

- **Ensuring Compliance with National Standards**- The central government's authorization process ensures that all telecom service providers comply with national standards and regulations. This is crucial for maintaining a uniform quality of service across the country and for protecting consumer interests.
- **Safeguarding National Security**- By controlling who is authorized to provide telecom services and manage networks, the central government can safeguard national security. This includes the ability to prevent unauthorized entities from accessing sensitive communication channels. (sec 19)
- **Facilitating Spectrum Management**- The government's role in authorizing entities helps in the effective management of the spectrum. It ensures that the spectrum is allocated and used efficiently, avoiding interference and maximizing its utility for various services.
- **Promoting Fair Competition**- Through its authorization power, the government can prevent monopolistic practices and promote fair competition in the telecom

market. This helps in fostering innovation and providing consumers with a choice of services.[14]

- **5. Protecting Consumer Rights**- The authorization process allows the government to enforce measures that protect consumer rights, such as privacy protection and quality of service. It ensures that telecom providers adhere to the standards set forth in the Act.
- **6. Enabling Infrastructure Development**- By granting authorizations, the government can facilitate the development of telecom infrastructure. This includes the expansion of network coverage and the introduction of new technologies, which are essential for economic growth and social development.[15]

2.3.3. Validity of Existing authorization

Existing licenses granted under the previous legal framework remain valid for their granted period or up to **five years**, whichever is earlier. This provision allows for a smooth transition from the old regulatory regime to the new one, ensuring that service providers have adequate

[14] TELECOMMUNICATIONS ACT, 2023 - RAU'S IAS, https-//compass.rauias.com/current-affairs/telecommunications-act-2023/, (last visited March 21, 2024).
[15] THE TELECOMMUNICATIONS ACT, 2023, A STEP TOWARDS DIGITAL INDIA, https//trilegal.com/wp-content/uploads/2023/12/ (last visited March 22, 2024).

time to align with the new requirements.[16]

The act also introduces a framework for the allocation and usage of spectrum. Spectrum will be assigned through auctions, except for specific purposes like national security, disaster management, and satellite services. This approach aims to maximize the efficient use of this scarce resource while also generating revenue for the government. The authorization and licensing requirements are designed to foster a secure, reliable, and competitive telecommunications environment that supports the nation's journey towards a digital future.

2.4 SPECTRUM ALLOCATION AND USAGE

2.4.1. Spectrum Allocation Through Auctions

According to the new law, spectrum allocation will be done mainly through transparent auctions. This method aims to ensure fair distribution of this valuable resource while generating revenue for the government. The auction process is designed to be fair, competitive and open, allowing multiple telecommunications companies to bid

[16] INDIA DEMYSTIFYING INDIA'S TELECOMMUNICATIONS ACT, 2023 – MONDAQ, https//www.mondaq.com/india/telecoms-mobile-cable-communications/1407178/demystifying-india39s-telecommunications-act-2023 (last visited March 22, 2024).

for rights to use certain radio frequency bands.[17] [Sec 4-8 of Chapter II]

2.4.2. Advantages of spectrum allocation

Firstly**,** it encourages efficient use of spectrum by allocating it to those who value it most and are likely to use it most efficiently. Secondly, it generates important income for the government, which can be reinvested in telecommunications infrastructure or other public services. Lastly, it provides a clear and transparent spectrum allocation method that reduces the risk of corruption or favoritism.

While auctions are a common spectrum allocation method, the law defines exceptions for certain scenarios where spectrum is allocated administratively.[18] These exemptions are made for purposes that serve the public interest and national priorities, such as:

- **National security**

  Frequencies are allocated for activities important from the point of view of national security without

[17] INDUSTRY HAILS SPECTRUM ALLOCATION WITHOUT AUCTION, https//bestmediainfo.com/2023/12/industry-hails-spectrum-allocation-without-auction-keeping-messaging-apps-out-of-telecom-rules. (last visited March 21, 2024).
[18] The Telecommunications Act, 2023, No. 44, Acts of Parliament, 2023 (India).

auction, to ensure the necessary rights for security agencies to operate effectively. [sec 19-23 under Chapter IV]

- **Disaster Management**

  In the event of a natural disaster, frequencies are quickly reserved to facilitate emergency communications and assistance. [Sec 19]

- **Satellite services**

  Frequencies for satellite broadband services are administratively allocated to promote the development of satellite infrastructure, which is critical for connectivity in remote and rural areas.[19]

2.5. SECURITY FRAMEWORK AND CYBER THREATS

The law emphasizes the importance of a strong information security framework in protecting the integrity of telecommunications systems. It imposes a series of strict requirements on service providers to ensure their networks are

[19] TELECOMMUNICATIONS ACT, 2023 NEW TELECOM LAW COMES INTO EFFECT, https//government.economictimes.indiatimes.com/news/governance/telecommunications-act-2023-new-telecom-law-comes-into-effect-with-presidents-assent/106277860 (last visited March 23, 2024).

resilient against cyber threats.[20] These requirements include:

2.5.1. Implementation of Encryption Protocols- Service providers are required to implement state-of-the-art encryption protocols to secure communications and protect sensitive consumer data. This measure is crucial in preventing unauthorized access and ensuring that consumer information remains confidential and tamper-proof.

2.5.2 Secure Storage Practices- Telecom companies must adopt secure storage practices for consumer data. This includes the use of secure databases, regular updates to storage security protocols, and measures to protect against data breaches, ensuring that consumer information is stored safely and securely.

2.5.3. Stringent Access Controls- Access to sensitive information and network operations must be strictly controlled. Service providers are mandated to establish robust access management systems, which include multi-factor authentication and regular audits, to prevent unauthorized access by internal or

[20] TELECOM BILL 2023 KEY CYBERSECURITY TAKEAWAYS FOR INDIVIDUALS AND…., https//government.economictimes.indiatimes.com/blog/telecom-bill-2023-key-cybersecurity-takeaways-for-individuals-and-enterprises/107416289 (last visited March 21, 2024).

external actors.

2.5.4. Advanced Threat Detection Systems- The Act requires the deployment of advanced threat detection systems to identify and mitigate cyber threats proactively. These systems must be capable of monitoring networks in real-time, detecting anomalies, and responding to potential security incidents swiftly.

2.5.5. Regular Security Audits and Compliance- Service providers are obligated to conduct regular security audits to ensure compliance with the Act's requirements. These audits help in identifying vulnerabilities, assessing the effectiveness of current security measures, and making necessary improvements to fortify network resilience.[21]

To combat the ever-increasing development of cyber threats, the Act provides a number of **measures** to protect mobile networks:

- Telecom operators must implement strong data protection protocols, including encryption and secure storage methods, to prevent unauthorized access to sensitive data.

[21] TELECOM BILL 2023- KEY CYBERSECURITY TAKEAWAYS FOR INDIVIDUALS, https//government.economictimes.indiatimes.com/blog/telecom-bill-2023-key-cybersecurity-takeaways-for-individuals-and-enterprises/107416289 (last visited March 23, 2024).

- A clear framework for responding to and reporting cyber security incidents exists to ensure coordinated action to quickly address breaches.
- The Act includes guidelines for assessing cybersecurity risks posed by providers and ensuring that third-party services do not compromise network security.[22]

2.6. EXCLUSION OF OTT PLATFORMS FROM 'TELECOM SERVICES'

OTT platforms, which include a wide range of services from streaming video content to messaging and voice calling applications, have been deliberately left out of the ambit of 'telecommunication services' as defined by the Telecommunications Act of 2023. This strategic move acknowledges the unique nature of OTT services, which operate over the internet and are distinct from traditional telecom services that require access to spectrum and network infrastructure. The exclusion of OTT platforms means that they are not subject to the same regulatory requirements as telecom operators, such as obtaining licenses, paying regulatory fees, or adhering to specific

[22] NEW TELECOM LAW IN PLACE, TO HELP CURB CYBERATTACKS, https//timesofindia.indiatimes.com/business/india-business/new-telecom-law-in-place-to-help-curb-cyberattacks/articleshow/106274789.cms (last visited March 23, 2024).

service quality standards. This differentiation is significant because it allows OTT platforms to innovate and grow without being burdened by the regulatory frameworks that apply to traditional telecom service providers.[23]

2.6.1. Potential Risks and Conflicts

While the exclusion of OTT platforms from 'telecom services' offers regulatory relief, it also presents potential risks and conflicts, particularly concerning the broad definitions of 'telecommunication' under sec 2 (p) and 'message.' The Act's definitions could encompass a wide array of digital communications, creating ambiguity about the regulatory status of various services. For instance, if the definition of 'message' includes any form of digital communication, it could imply that any service facilitating such communication might be considered a telecommunication service, despite the exclusion of OTT platforms. This could lead to legal disputes and challenges as service providers seek clarity on their regulatory obligations. Moreover, the exclusion of OTT platforms raises concerns about the level playing field with telecom operators. Telecom operators argue that OTT services, which offer features such as voice calls and

[23] TELECOMMUNICATIONS BILL 2023 NOT APPLICABLE TO OTT, https//www.techlusive.in/telecom/telecommunications-bill-2023-not-applicable-to-ott-instant-messaging-platforms-1444314/ (last visited March 24, 2024).

messaging, compete directly with their own services, but without the costs or legal responsibilities. This may lead to market disruption and competition for mobile service provider.[24]

2.7. INNOVATION AND EFFICIENCY

Innovation is the cornerstone of the development of the telecommunications sector. The law provides some measures to create an environment conducive to innovation:

2.7.1. The law establishes a legal sandbox, which allows companies to test new products and services in a controlled environment without prior legal restrictions.

2.7.2. A dedicated fund called Digital Bharat Nidhi has been created to fund innovation and research in the telecom sector and ensure that startups and established companies have the resources to innovate.

2.7.3. To encourage construction activities and attract international investment, the Act supports the PLI program, which provides incentives based on

[24] GOVERNMENT TO INTRODUCE TELECOMMUNICATIONS BILL, https//business.outlookindia.com/news/government-to-introduce-telecommunications-bill-ott-services-to-be-excluded (last visited March 24, 2024).

increased sales of products manufactured in India.[25]

The quality of the phone part is important to offer the highest quality service to consumers and to maintain India's competitiveness in the global market. The law improves efficiency by:

- By moving from licensing to certification, the law simplifies regulatory procedures, making it easier for companies to enter the market and expand their work.
- The Act promotes the transition to fibre networks, which is essential to support the growing demand for data and the deployment of 5G technology.
- Promoting technological dynamism is a fundamental objective of the Law, which aims to keep pace with rapid technological changes and support the adoption of new technologies.[26]

[25] ANALYSIS- UNPACKING THE TELECOMMUNICATIONS ACT, 2023 INSIGHTS, https//thedialogue.co/publication/analysis-unpacking-the-telecommunications-act-2023-insights-and-implications/ (last visited March 24, 2024).
[26] TRANSFORMATIVE IMPACTS OF TELECOMMUNICATIONS ACT 2023, https//www.drishtiias.com/daily-updates/daily-news-editorials/transformative-impacts-of-telecommunications-act-2023/print_manually, (last visited March 24, 2024).

2.8. RIGHTS PROVIDED TO CUSTOMERS

2.8.1. Right to Privacy and Data Protection- The Act enforces strict data privacy norms, mandating telecom service providers to secure explicit consent from consumers before collecting or sharing their personal information. This right aims to prevent unauthorized use of consumer data and aligns with global privacy standards, ensuring that consumers' personal details are handled with the utmost care and confidentiality.

2.8.2 Right to Quality of Service- Consumers are entitled to high-quality telecommunications services. The Act obligates service providers to maintain standards for network coverage, call drop rates, and internet speeds. This ensures that consumers receive reliable and uninterrupted services, and service providers are held accountable for any lapses in service quality.

2.8.3. Right to Transparency- The Act promotes transparency in the operations of telecom service providers. It requires clear communication of tariff plans, service terms, and conditions, ensuring that consumers are well-informed and not subjected to hidden fees or misleading practices.

2.8.4. Right to Fair Treatment- Consumers have the right to be treated fairly by telecom service providers. This includes non-

discriminatory practices in service provision and pricing, as well as the assurance that all consumers have access to the services they are entitled to without any undue bias or favouritism.

2.8.5. Right to Grievance Redressal- The Act establishes a robust grievance redressal mechanism, allowing consumers to lodge complaints against telecom operators. TRAI oversees the resolution of these disputes, providing consumers with a platform to address issues related to billing, service quality, or other grievances.

2.8.6. Right to Consumer Education- The Act emphasizes the importance of consumer education. It ensures that consumers are informed about their rights, the services available to them, and how to use these services responsibly. This empowers consumers to make informed decisions and engage with telecom services effectively.

2.8.7. Right to Dispute Resolution- Consumers have access to an efficient dispute resolution mechanism for any conflicts that arise with telecom service providers. This mechanism is designed to handle complaints swiftly and fairly, ensuring that consumer interests are protected and that justice is accessible. (sec 28)

2.9. CHALLENGES FACED BY CONSUMERS

2.9.1. Complex Regulatory Framework- The Act introduces a comprehensive set of regulations that can be difficult for the average consumer to understand. This complexity may hinder consumers' ability to fully grasp their rights and the means to enforce them, potentially leading to a lack of empowerment in dealing with telecom service providers.

2.9.2. Data Privacy Concerns- While the Act aims to protect consumer data, there are concerns about its effectiveness, especially regarding data breach liability and the government's data localization requirements. These concerns stem from the potential for misuse and surveillance, which could compromise the privacy of consumers.

2.9.3. Government Overreach- The Act gives the government extensive powers to monitor and regulate telecom services, which raises fears of mass surveillance and infringement of consumer privacy. Critics argue that such powers need to be balanced with stringent safeguards to prevent potential abuse.

2.9.4. Redressal Mechanism Efficiency- The Act establishes a dispute resolution mechanism, but there are doubts about its

capacity to handle the volume of complaints efficiently. Consumers may face delays and bureaucratic hurdles when seeking redressal for their grievances.

2.9.5. Technological Adaptability- The rapid pace of technological advancement may outstrip the Act's provisions, leading to regulatory gaps. Consumers could be left unprotected against new forms of exploitation or service issues that the Act does not yet address.

2.9.6. Liability in Data Breaches- There is ambiguity around the assignment of liability in the event of data breaches. This uncertainty can affect consumer trust and deter them from utilizing digital services due to fears of inadequate recourse in case their data is compromised.[27]

3. CONCLUSION

The Act aims to make things fairer in the telecom world by promoting competition, pushing for better fiber networks, and encouraging new ideas. It makes the rules simpler so that new companies can join in and come up with cool stuff. For example, it sets up things like the Regulatory Test Box and

[27] TRANSFORMATIVE IMPACTS OF TELECOMMUNICATIONS ACT 2023, https://www.drishtiias.com/daily-updates/daily-news-editorials/transformative-impacts-of-telecommunications-act-2023 (last visited March 24, 2024).

Digital Bharat Nidhi Fund to help more people get mobile access, especially in areas where it's hard to reach. The Act also makes sure telecommunication networks stay safe from cyber threats, even beyond India's borders. It updates how disputes are solved, making it easier to do things online.

These changes will have a big impact on how India uses technology, bringing everything together in a smarter way. This helps the telecom industry keep growing and coming up with new things. The Act also focuses on solving problems fairly and keeping people safe online. Overall, the Act is all about making India's telecom world better, helping the country change digitally, grow its economy, and make life better for lots of people. It's an important step toward making sure everyone in India can succeed in the digital age.

STATUS OF OPIUM ABUSE IN INDIA

- Sindrala Paul &Prabhat Kumar[28]

ABSTRACT

The Opium abuse in India is a rapidly spreading menace. The drug has become the world's second biggest trading commodity and the increased sale of the same has severely impacted the whole nation's youth. Illicit drug usage causes an escalation of organized crime, domestic violence, illegal transactions, and disruption in general public life security, and worldwide epidemic spread of HIV AIDS. In a nut-shell, Opium, and other chemical drug, has not only affected lives at present but it has also endangered the future generations. International communities have been

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responsive to tackling the prevailing situation. Various nations are signatory to a number of international conventions that cover all aspects of drug abuse. In India, cannabis and opium have been rapidly abused for centuries. New laws were enacted in India for delving into narcotics and opium abuse. A social menace like drug abuse cannot be eradicated in all respect by laws alone. The so-called stringent regulations can only halt the supply of drugs temporarily as the drug traffickers will always be able to find new ways and strategies to meet the demand of the consumers. This article delves into various ways to have a control on ever-evolving pitfall of drug abuse. Finally, the article concludes by examining the legal framework governing Narcotics drug and psychotropic substances in India.

KEYWORDS: *Organized crime, Endangered, International conventions, Opium abuse, Narcotics Drugs, Psychotropic Substances.*

1. INTRODUCTION

Around the world, trafficking of narcotic substances has been found to be one of the most pliable and evolving crimes. The scenario has been the same for India as well where the trade of narcotics and its abuse has widened swiftly throughout the nation. Opium and Cannabis popularly known as Charas, Ganja, weed, etc. have become familiar names for the youth of the nation. The drug which has been used as a medicinal plant in ayurveda since 1600 AD,[29] has turned into a substance of abuse for the young Indians. The heightened sale and availability of life-threatening drugs like depressants, heroin, LSD, methaqualone, and amphetamines in the nation, and the growth of prevalence of drug abuse amongst the youth and even the school-going children, have become a matter of concern throughout the nation. Apart from mental and physical distress, drug abuse has also affected the nation through organized crime, illicit trafficking, corruption, money laundering and violation of various laws.
A social menace like drug abuse cannot be eradicated in all respect by laws alone. The so-called stringent regulations can only halt the supply of drugs temporarily as the drug traffickers will always be able to find new ways and strategies to meet the demand of the consumers. The only way to have a control on this ever-evolving pitfall of drug abuse is to

[29] INTERNATIONAL SOCIETY FOR HORTICULTURAL SCIENCE, scientific basis of therapeutic uses of opium poppy (papaver somniferum) in ayurveda | international society for horticultural science (last visited March 24, 2024).

have an effective control mechanism for supply of drugs as well as the demand.

1.1 OPIUM AND CANNABIS ABUSE IN INDIA

Opium and cannabis have been a part of our Indian culture since time immemorial. The use of cannabis and opium began around 1000 BCE in various religious ceremonies. Later on, these started to have medicinal value in our culture and cannabis, popularly known as 'ganja', became a way for religious medicants to achieve religious hallucinations. It is also used in various Hindu rituals as a part of tradition during festivities namely shivaratri, khumbmela, holi, etc.

In 1893, addressing the issue of widespread opium abuse all over India, the British government appointed Indian Hemp Drugs Commission in.[30] The Commission concluded that moderate use of hemp drugs does not cause any harmful effects on the mind, unless the person has a marked neurotic diathesis. In these cases, even moderate use may cause mental injury. However, moderate use does not cause any mental injury, except in exceptional cases. Excessive use, on the other hand, may indicate and intensify mental instability. [31] The Commission also recommended

[30] REPORT OF THE INDIAN HEMP DRUGS COMMISSION, 1893-1894, https://archive.org/details/b32222920_0001 (Last visited March 20, 2024).

[31] (1997) INDIAN HEMP DRUGS COMMISSION REPORT - EFFECTS OF MARIJUANA, https://web.archive.org/web/20140305023422/http://www.druglibrary.org/schaffer/Library/effects.htm (Last visited 07 April 2024).

measures to restrict the use of cannabis.

The government of India, adhering to the raising concerns passed the XII act of 1985, the Narcotics Drugs and Psychotropic Substances Act.[32] It imposed prohibition on cultivation of 'ganja' extending to the whole of India with effect from the 15th day of May, 1989 and also its production, possession, sale, consumption and use, etc.[33] with effect from 13th day of December, 1989.

1. 2 MAJOR CAUSES CONTRIBUTING TO THE DRUG ABUSE

There is no single factor which is exclusively and necessarily associated with opium abuse. There are various factors on which cannabis and opium abuse is based such as easy availability of drugs, complacent attitude of the government, lack of medical help facilities for addicts, etc.

- The **inefficient law enforcement** is the foremost reason for the easy availability of illicit drugs throughout the country. This includes the legal channels of unrestricted illicit supply of drugs via the licensed chemists and druggists. A multitude of retailers and vendors are involved in this illegal supply chain of opium.

[32] *Id.*

[33] Narcotics Drugs and Psychotropic substances Act, § 1(2), NO. 12, Acts of parliament, 1985(India).

- The **geographical location** has made Indian market a convenient transit point for trafficking of drugs. India is one of the south Asian countries which is sandwiched between the 'golden triangle' and 'golden crescent' which form one of the major opium-cultivating regions of the world. This route is not limited to just being a flow to the United States and Europe, but has also made a dedicated market for drug abusers in the subcontinent. The lack of any national strategy to fight this havoc is a dominant contributor to the significant growth of drug abusers in the nation.

- Although the **Indian legislation** has made various laws and regulations including 'the pharmacy act, 1948,[34] the drugs control act, 1950, etc., India does not have proper infrastructure for the treatment or rehabilitation and research centre for the drug abusers and addicts.

- The power-hungry politicians and bureaucrats are the major players in whose hands the country is breeding crime of all sorts including drug trafficking across the nation and its borders at ease.
- The illicit trade of drug is one of the most rampantly growing industries with a global high profit rate, and it includes India as well.

[34] The Pharmacy Act, No. 8, Acts of Parliament, 1948(India).

1.3 INDIAN LEGISLATION ON OPIUM ABUSE AND ITS CONSEQUENCES

Delving into the Indian history, we can find various sources where it is mentioned that 'Bhang' and 'charas' are used as medicinal plants. As it is evident from various researches and surveys, one of the major causes which harbored drug abusers in our nation is the geographical location of our country. India is sandwiched between the 'golden crescent' (Pakistan, Iran and Afghanistan) and 'golden triangle' (Myanmar, Laos, Thailand) making Indian prone to an unrestricted flow of drug supply through various corridors and borders.

Our Indian legislation has made specific laws encircling the drug abuse, various committees have been formed for the same, parliamentary debates, etc., laws such as The Narcotic Drugs and Psychotropic Substances Act, 1985[35] and Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.[36]

[35] Narcotics Drugs and Psychotropic substances Act, NO. 12, Acts of parliament, 1985 (India).
[36] Drugs and Magic remedies(objectionable advertisements) Act, No. 21, 1954(India).

2. ARTICLE 47 OF THE INDIAN CONSTITUTION

Under article 47 of the Indian constitution, it is mentioned that it is the duty of the state to raise the level of nutrition and better standards of living and also to improve public health.[37] It is also the duty of the state to bring about prohibition of the consumption except for the medicinal purpose of intoxicating drugs which are injurious to health. Even though Part IV of the constitution is not enforceable by the court, but under the social contract theory it is the duty of the state to make policy for the citizen upliftment. If the state succeeds in doing this, then the problem of drug abuse can definitely be brought under control. As we know that drugs are mentioned in concurrent list, so both the State and Central Government have power to make laws in this favour, but again there are chances of uneven coordination between state and central government due to which the main objective of law will deviate.

The Indian parliament has enacted two central acts for the control of abuse of drugs including opium:

2.1 The Narcotics Drugs and Psychotropic Substance Act, 1985.[38]

2.2 The Prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act, 1988[39]

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[37] INDIA CONST. art 47.

[38] *Id* at 6.

[39] The prevention of illicit traffic in narcotics drugs and psychotropic substances Act,

3. NARCOTICS DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

This act is basically enacted to prohibit drug trafficking which includes (cultivation, manufacture, distribution, sale & purchase of drugs) and prohibition on consumption of drugs. These are the two dominant aims of the act and it also helps our country to control the adverse effect of drug consumption.

We already know that Ganja and charas are used for medicinal and scientific purposes. Similarly, NDPS act also states that it is legal to use them if they are used for medicinal and scientific purposes, and there should be no punishment. However, if they are used for illicit purposes then this kind of use is not permitted.

Now if we talk about prosecution under NDPS act then it depends on the type of drug and the quantity of drug. It is defined under the act itself and the categories of drug quantity is divided into three groups (small, less then commercial and commercial), and the punishment varies in different quantities.

For example,

- Mr. 'X' is a person caught with 5 gram of cocaine. Now this person is liable to be prosecuted under NDPS act. He stated that he was

No. 46, Acts of parliament, 1988(India).

caught with only 5 gram of cocaine which is of very less amount and for this purpose he is not liable under this act. Now for clearing this doubt only the classification of drug quantity is necessary. It is clearly mentioned in the act that there are different categories under which punishment varies and it doesn't imply that there should be no such punishment.

- Mr. "P" is a person caught with 2.5 kg of opium and Mr. 'S' is a person caught with 1 kg of Charas. Here in this case both the parties should be prosecuted in commercial quantity under NDPS act.

The following Table identifies the amount of Drug that is permitted to be in use:

DRUGS	SMALL QUANTITY	COMMERCIAL QUANTITY
CHARAS	100 GRAMS	1 KG
COCAINE	2 GRAMS	100 GRAMS
GANJA	1 KG	20 KG
HEROINE	5 GRAM	250 GRAMS
LSD	2 MILLIGRAMS	100 MILLIGRAMS
MORPHINE	5 GRAMS	250 GRAMS
OPIUM	25 GRAMS	2.5 KG

Under this act various punishments are given under section 8[40] by the courts to the offenders and the most important thing of this section is that for a repeat offender the punishment is increased 1.5 times to normal cases.[41] And if we go through previous history of punishment then in this act also capital punishment or 30 years of jail is given by the courts in various cases.

4. OTHER LEGISLATIONS

4.1 THE DRUGS AND COSMETIC ACT, 1940[42]

This act was amended in 1964 and recently in 2008. It basically deals with the import, manufacture, distribution, and sale of any kind of drugs (allopathic, ayurvedic, Unani, siddha, etc.) and cosmetics. According to this act every patented or proprietary medicinal preparation should display on the container, either exact formula or a list of the ingredients. This is necessary because few cough syrups contain high amount of narcotic ingredients (good for curing cold), but their misuse is also prevalent.

[40] Narcotics Drugs and Psychotropic substances Act, § 8, NO. 12, Acts of parliament, 1985 (India).
[41] GOVERNMENT'S EFFORTS FOR CONTROLLING DRUG ABUSE (2022) NYAAYA, https://nyaaya.org/legal-explainer/governments-efforts-for-controlling-drug-abuse/ (Accessed: 08 April 2024).
[42] The Drug (control) Act, No. 26, Acts of Parliament,1950 (India).

4.2 THE DRUGS AND COSMETICS RULE, 1945[43]

This is a supplementary legislation to the Drugs and Cosmetics Act of 1940 and is only concerned with the standard quality of drugs apart from exercising control over the manufacture, sales and distribution of drugs and cosmetics. In this drugs and cosmetics rule drugs are divided into the different schedules.

4.3 THE PHARMACY ACT, 1948[44]

This act basically provides the regulation of the pharmacy profession as well as the establishment of the pharmacy council of India, which also takes care of pharmacy education across the country.

4.4 THE DRUGS CONTROL ACT, 1950[45]

This act regulates the supply and disposal of drugs and also guides the producers to fix the maximum price for each drug.

4.5 THE DRUGS AND MAGIC REMEDIES ACT 1954[46]

The drugs magic remedies act of 1954 is a legislation enacted in 1954 and came into effect on April 1, 1955. It outlaws the advertising of drugs

[43] The drugs and cosmetics act, act no. 23, acts of parliament,1940 (India).
[44] The pharmacy act, no. of 08, acts of parliament,1948 (India).
[45] The drug (control) act, act no. 26, acts of parliament,1950 (India).
[46] Drugs & Magic Remedies (objectionable advertisements) act, no. 23, acts of parliament,1954 (India).

and remedies that claim to have magical properties and criminalize them.

4.6 NARCOTICS CONTROL BUREAU

Narcotics Control Bureau was established in 1986 as per NDPS act. This is an apex body that regulates drug trafficking in India and the headquarters of the same is located in Delhi. There are zonal offices in Kolkata, Mumbai, Chennai and Varanasi.

4.7 OTHER LEGAL BODIES WHICH GOVERN DRUG ABUSE

- Narcotics Control Division.
- Central Bureau of Narcotics.
- Narcotics Control Bureau.
- Directorate of Revenue Intelligence.
- Central Bureau of Investigation.
- Customs Commissions.
- Border Security Force.
- Police.

5. EFFORTS OF THE GOVERNMENT IN CONTROLLING DRUG ABUSE

The Ministry of Social Justice and Empowerment implemented a central sector scheme for prevention of drug abuse in 1986 for identification,

counseling, treatment and rehabilitation of addiction through voluntary and other eligible organizations. Under this scheme financial aid is given to the organizations who voluntarily maintain integrated rehabilitation center for addicts.

5.1 NATIONAL ACTION PLANS FOR DRUG DEMAND REDUCTION

- Awareness generation
- Preventive education
- Identification, counseling, treatment and rehabilitation of those who are addicted to drugs.
- Training and capacity building of service provider through collaboration efforts of government and NGOs.

Its main aim is to protect adverse consequences of drug abuse through education.

5.2 NATIONAL FUND FOR CONTROLLING DRUG ABUSE

- Combating illicit trafficking
- Controlling abuse of drug and substances.

- Preventing drug abuse
- Supplying drugs as a medical necessity.

The money for this fund comes from central government after parliament sanctions it by law.

6. AMBIGUITIES IN THE LAW ENFORCEMENT REGARDING OPIUM ABUSE

It is crucial to lay down statutory provisions as to the procedure to be followed by the law enforcement officials during investigation of the criminal offences related to drugs, seizure of items, search without warrant, detention of the suspected criminals, and illicit means to collect evidence from the crime scene. Certain procedural norms are required to be followed and are crucial to the fair and just dispensation of justice in the court of law.

The Narcotics Drugs and Psychotropic Substances Act, 1985 (hereafter referred to as the NDPS act, 1985)[47] has been enforced by the Indian legislation to be followed by the enforcement officials during investigation of a case. However, these laws are complex and cumbersome in nature. Moreover, the courts have given contrasting and diverse interpretations to these provisions thus making it difficult for the officials to follow these provisions meticulously. The following points

[47] *Id* at 7.

would be explaining the impediments in the law enforcement in cases of drug abuse.

6.1 AUTHORIZATION FOR SEARCH OF PREMISES

Section 41[48] of the NDPS Act says that any gazetted officer, who is empowered by the state or the central government, may issue a warrant for the arrest of any person who he has reason to believe that such person might have committed any offence related to narcotic drug or psychotropic substance or controlled substance. Such warrant can only be issued if the 'information' that has been received either by personal knowledge or any other person, is taken in **writing.**

There has been contradicting judicial pronouncement on the question as to whether the failure of an officer merely to record the information, received by him, in writing in terms of section 41[49] or section 42[50] of the NDPS Act will lead to the search of the premises or things in possession illegal and vitiate the subsequent proceedings.

In ***Hakamsingh v. Union of India,***[51] Chandigarh, the Punjab High court held that it is mandatory to reduce the information in writing received by an officer under section 41.[52] The court held that the prerequisite of

[48] Narcotic Drugs and Psychotropic Substances Act, 1985, § 41, No. 61, Acts of Parliament, 1985 (India).
[49] *Ibid.*
[50] Narcotic Drugs and Psychotropic Substances Act, 1985, § 42, No. 61, Acts of Parliament, 1985 (India).
[51] Hakam singh v. state of punjab, AIR 1975 PUNJAB AND HARYANA 148.
[52] Narcotic Drugs and Psychotropic Substances Act, 1985, § 41, No. 61, Acts of

recording the information in writing cannot just be a formality and its contravention would "certainly cause prejudice to the accused, because, in the absence of any writing, there will be no chance to cross-examine the officer with regard to the factum and contents of the information received."[53] The failure of the police officer in recording the secret information in writing was one of the grounds for quashing the conviction of the accused under the NDPS act.

On the other hand, Bombay high court in ***Abdul Sattar v. State***[54] and the Delhi High court in ***Richpal v. State***[55] have also held that mere failure to reduce the information received by an officer into writing would not vitiate the proceedings.

Also, practically it is not possible for the officer to write all the information received secretly as it might require acting swiftly over the same matter. This might also be a situation where criminals might flee and that would require prompt action from the officer to arrest the criminals rather than taking the information down.

There is a clear ambiguity into the application of section 41 as it does not seem to have much practical application. Also, such reduced information can be faked easily as the officers are not forced to disclose their source of information.

Parliament, 1985 (India).

[53] *Id* at 24.

[54] Abdul sattar v. state, 1989 (1) BOM CR 388.

[55] Richpal v. State, 1989, delhi, cr. appeal no. 8/88.

6.2 SEALING OF THE SEIZED DRUGS

Section 55[56] in The Narcotic Drugs and Psychotropic Substances Act, 1985.[57]

Police to take charge of articles seized and delivered.—

An officer-in-charge of a police station shall take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station.[58]

Failure of the enforcement agencies to comply with the given provision under the section has resulted in acquittal of many offenders in various cases. Some High Courts have also been of opinion that non-compliance of section 55[59], to have 'safe custody' of contraband upon seizure, would lead to acquittal. It stresses the crucial need for promptly transferring it to the secure storage of police stations and timely forwarding it to the Forensic Science Laboratory (FSL).[60] However, these provisions have

[56] Narcotics Drugs and Psychotropic substances Act, § 55, NO. 12, Acts of parliament, 1985 (India).
[57] *Ibid.*
[58] *Ibid.*
[59] *Id* at 28
[60] GOVERNMENTS EFFORTS FOR CONTROLLING DRUG ABUSE(2022) NYAAYA, https://nyaaya.org/legal-explainer/governments-efforts-for-controlling-

been interpreted in contrasting manner by the High courts.

In ***Rajesh v. State***[61], the Delhi High Court held that where the officer-in-charge of police station puts his seal on the seized material without having personally seen the Investigating officer, making the samples and sealing the seized materials, the action would be contrary to section 55. However, the same High Court took a different view while interpreting the case, ***Nathu ram v. State.***[62] The court had a contrasting interpretation in this case holding that even if the case property and samples have been sealed on the spot by the investing officer, the "irregularities or the illegality stands curse when the officer-in-charge affixed his own seal on such property either at the spot or in the police station."[63]

This shows that there might be certain unfair means in the same situation and thus it shows a clear ambiguity in the application of this provision.

7. CONCLUSION

During the last two decades there has been rapid growth in the use of illegal drugs throughout the world. Opium has become the world's second biggest trading commodity. The increased sale of opium constitutes a grave threat to the stability, security, development and infrastructure-building of many nations. Illicit drugs also caused an escalation of

drug-abuse (Last visited May 19 2024).

[61] Rajesh v. State, 1989 CRI LJ 1814 (Delhi).

[62] Nathu ram v. State, 1990 Cri. L.J. 806 (Delhi).

[63] *Ibid.*

organized crime, violence at home, illegal banking operations, general disruption in general public life security, lower rate of productivity at workplaces and epidemic spread of AIDS not only in India but all over the world.

In a nut-shell, drugs have not only affected human life at present but it has also endangered our future generations. We need to swiftly succeed in curbing this menace. International community has been quite responsive to this prevailing situation and for this purpose a large number of international conventions that cover all aspects of drug abuse, have been adopted in recent years. In India, cannabis and opium have been extensively abused for centuries. However, other narcotics drugs and psychotropic substances came to be used by addicted people after the 1950s. Till 1985, the drug laws that were enacted are The Opium Act,1957, The Opium Act, 1978 and the Dangerous Drugs Act,1930. The maximum term of imprisonment under these acts were extended to three years only, except in the case of repeat offenders for whom the maximum term of punishment is four years. These laws somehow lagged behind according to the changing society and were outdated in the context of the prevailing situation in this field. In order to provide different punishments to the person indulging in illegal drug abuse, the Narcotics Drugs and Psychotropic Substances Act,1985 was enacted. The act prescribed mandatory sentence of imprisonment for minimum 10 years and

minimum fine of rupee one lakh for most of the drug offences.[64] In 1989, the act was amended and imposed the death penalty for certain offences. However, these steps have not given us good results so far as is evident from the fact that drug abuse is constantly increasing in the country.

The main reason for this is the geographical location of our country which makes it highly vulnerable to illicit drug abuse and trafficking. Heroin from the 'Golden Triangle' as well as the 'Golden Crescent' countries is smuggled into India through 1600/1700 km long Pakistan border. The Indo-Nepal border is highly prone to smuggling of ganja from Nepal to India. It is very difficult to fully intercept the illicit drugs along these long international borders. These factors have made it convenient for the international drug syndicates to use India as a major transit country for narcotics destined for Europe and the US in the last two decades. The spill-over effect of this transit trade has transformed India into a huge or major consumer of narcotics. India itself is the world's largest producer and exporter of illicit opium. However, there are over 1,40,000 farmers and licensed cultivators of opium poppy in Madhya Pradesh, Rajasthan and Uttar Pradesh. All these licensed producers are legally required to sell only to the central government, and the produce is meant only for the essential medical and scientific requirements in India as well as in the whole world. However, there is a huge range of price variations at which the central government purchases

[64] *Id* at 7.

opium from the farmers and the price at which such opium can be illegally sold by the farmer to the drug traffickers. About 35% of opium leaks into the illicit market. And then such opium is sold to the opium addicts, or converted into crude heroin in the make-shift laboratories for local consumption as well as for the outside sale.

There is a need for rationalizing the purchase price of opium by the central government so that farmers do not sell it for higher profits to drug traffickers. There is also a need for restricting the number of licensed growers of opium poppy to minimum cultivators so that their activities can be well regulated and monitored.

CONFLICTING POSITION OF RIGHT TO LIFE AND THE CONCEPT OF EUTHANASIA: STUDY OF THE LAW OF INDIA, ENGLAND AND AUSTRALIA

- *Diya Patodia and Akriti Dixit*[65]

ABSTRACT

The fundamental principle of right to life has become a debatable matter whenever it is compared with the right to die a dignified death. Whether a person should enjoy the right to dignified death has become an

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important question in the context of human rights at an international level, wherein, different nations have presumed a considerably different opinion on the issue. As the concept of euthanasia persists among the people of the nation, the debate on the righteousness of allowing a person to die by removing all the life supporting system or not is yet another question which seeks a justifiable answer.

Although there has been various judgments to support or oppose the process of euthanasia, be it active or passive, the extent to which it is allowed in India, as compared with the countries like England and Australia, is the main aspect on which the author shall deal with on the paper.

Further, the researcher shall try to evolve a comparative study of the laws of India, England and Australia in matters of right to life and the concept of euthanasia, considering the fact that India partly allows passive euthanasia, but Australia has improvised its laws on active euthanasia. However, the laws of England are not clear enough on both the aspects. The paper aims to give a broader understanding of the Right to life and Right to a dignified death after looking it from three different perspectives and provide a conclusion on what may possibly be the best modicum for India.

KEYWORDS: *Euthanasia, Death, Human Rights, Right to life, Illness.*

1. INTRODUCTION

With the change in the societal patterns and growing industrialization and globalisation, "Individual autonomy"[66] has emerged as a very important aspect of human life. The concept of individual autonomy has become a wide concept making an attempt to include within itself the right of a person to kill his/her own self. When a person talks about suicide, it is generally considered as an offence for which he/she is entitled to be punished by the Court of law. However, with evolution in time, the perspective of the society has changed. The people trying to commit suicide are now dealt with considerable amount of empathy and are seen as psychological weak people who need a higher level of care and attention. This has also led to decriminalizing the act of suicide as those who are already in need of special treatment, if penalized, may have a completely adverse effect to them.

But the point of concern arises with the individual autonomy gaining the question of Right to die, as people consider the right to have a dignified death as a part and parcel of right to life. As of now, euthanasia has become a topic of debate at an international level, wherein the righteousness of the concept is being questioned. However, to consider an act right or wrong cannot be a justifiable point of discussion from a

[66] Individual's capacity for (self-directed, independent) action, Dr. SilkeBothfeld, Individual autonomy A normative and analytical core of democratic welfare statehood, "The Future of Social Citizenship: Politics, Institutions and Outcomes," 2008.(Last accessed on 31st May, 2024).

legal point of view, as something which may seem right to one can be wrong for others and vice versa. Therefore, the real debate is not about the righteousness of the concept of euthanasia, but the extent to which a country can apply the said idea, in what ways and the precautions which needs to be taken while applying the same.

Further, while analyzing the aspects of euthanasia, it also becomes essential to analyse it from different viewpoints and make a comparative analysis of the same. The researcher has tried analyzing the laws of India with respect to euthanasia as the nation has not completely given assent to active euthanasia, but has partly allowed for passive euthanasia. This study has been done in comparison with the laws of Australia which has worked upon regulating the laws on euthanasia and is thus way ahead on this matter. Further, the laws of England has also been studied as most of the laws in India has been taken from the laws of England, which makes it essential to study the anatomy of the said nation. Therefore, the three countries have been chosen after careful analysis and an in-depth study has been done in this regard.

2. CLASSIFICATION OF EUTHANASIA

Euthanasia is the act of causing death of a person who is terminally ill or has lost all hopes of living a normal life. It is done by various means and methods, the legality of which varies from country to country.

The major types of euthanasia have been analysed herein:

2.1.Voluntary Euthanasia

When a terminally ill patient represents his will to the doctor or family that he/she wants to terminate his/her life and further expresses his deliberate intention of not being alive under the life-support systems, this is termed as voluntary euthanasia. The acceptance or rejection of such will of the patient varies largely from jurisdictions to jurisdictions as countries have diverse opinions on this matter.

Most of the countries, including India, opine that a person born naturally should die naturally and therefore, one does not have the right to take his/her life. However, countries like Netherlands have legalised the concept of voluntary euthanasia considering that a person who is living a life like a dead human, should be given the right to end his/her life, as such a life does not amount to a dignified life.

2.2.Non-voluntary Euthanasia

One of the controversial situations arises when the patient is in a condition wherein he/she is unable to give consent for euthanasia, the reason being the illness. For example, a patient in a permanent vegetative state or permanent coma, when the people know that there are no chances of recovery and the patient is merely living a life of a dead, the consent cannot be taken. If the death of a person is accelerated in such circumstances, without taking the

consent from the patient, it is termed as non-voluntary euthanasia.

2.3.Involuntary Euthanasia

- **Active Euthanasia:** This refers to the killing of a terminally ill person by use of medicines that usually results in the instant death of a person. Such act is normally not legal in most of the nations and any act constituting active euthanasia is considered to be murder or man-slaughtering even if the consent for such an act has been given by the patient.
- **Passive Euthanasia:** The concept of passive euthanasia is quite complicated as it does not involve a direct act of ending someone's life. Rather, it is an omission to act outwardly, which would have amounted to the person living a little longer. In simpler terms, passive euthanasia means that the person is being disregarded from the proper medical treatment so that he/she can die earlier than the time, if he/she would have been on such medical support. Therefore, active euthanasia is a direct act, whereas passive euthanasia is the omission to do an act. It accelerates the death of the person by the removal of the life-supporting medical treatment and therefore, leads to a faster death of the patient.

3. RELIGIOUS IDEOLOGIES ON EUTHANASIA

Following are the religious ideologies on euthanasia:-

3.1 HINDUISM

Under Hinduism, the idea of euthanasia is neither accepted completely nor has been rejected as a whole. If the Vedas are looked into, one may find examples of the *'brahmins'*[67] who had the right to put an end to his/her life at their own will. It was allowed and considered as an act to attain the highest level of freedom from the wordly pleasures, that is, attain '*moksha.*'[68] Therefore, the act of ending one's life was not disregarded in ancient times.

However, Hinduism also discusses about the natural process of birth and death of a human body. It believes that if a person is born through a natural process, no one, including that very person, has the right to take away that life from him/her.[69] It is only through nature that the person

[67] James Lochtefeld (2002), Brahmin, The Illustrated Encyclopedia of Hinduism, Vol. 1: A–M, Rosen Publishing, ISBN 978-0-8239-3179-8, page 125. (Last accessed on 31st May, 2024).
[68] John Bowker, The Oxford Dictionary of World Religions, Oxford University Press, ISBN 978-0192139658, p. 650. (Last accessed on 31st May, 2024).
[69] "Religion & Ethics - Euthanasia". BBC.Retrieved 2009-02-14. (Last accessed on 31st May, 2024).

should meet his/her inevitable death.[70] By interefering in the process of death, one is trying to change the cycle of birth and death, known as karma, and is therefore committing a wrong.

Thus, Hinduism is not very exact in its concept of euthanasia if both the perspectives are looked into. However, the bottom line is that the idea is not rejected completely, and stands a chance of being approved in future course of time.

3.2. ISLAM

Any act of causing death or even planning to cause the end of one's life is considered as a sin in Islam.[71] The religion is very strict in this matter and opines that a life given by the Almighty can only come to an end by the permission or the will of God.[72] Any human being cannot try to end his/her life by any means, and nor can the person try to know the time of his/her death.

3.3. BUDDHISM

Buddhism does not support euthanasia and states that any person who himself tries to end his life or preaches others towards ending their lives,

[70] "Religion & Ethics - Euthanasia". BBC.Retrieved 2009-02-14. (Last accessed on 31st May, 2024).

[71] Translation of SahihBukhari, Book 71. University of Southern California.*Hadith 7.71.670.(*Last accessed on 31st May, 2024).

[72]Translation of SahihBukhari, Book 71. University of Southern California.*Hadith 7.71.670.(*Last accessed on 31st May, 2024).

does a wrongful act. The religion preaches compassion but many have tried to mould the meaning of preaching compassion to promote euthanasia.[73] However, the religious ideology of Buddhism does not in any way support euthanasia.

4. COMPARATIVE ANALYSIS OF RIGHT TO LIFE AND EUTHANASIA

The comparative analysis of right to life and euthanasia has been done on the basis of three countries. The countries are India, England and Australia.

4.1 POSITION OF INDIA

The complete euthanasia controversy in India revolves round Article 21[74] of the Indian Constitution. The ambit of Right to life guaranteed under Article 21 of the Constitution of India is very wide and encompasses within itself not only a life of mere existence, but a dignified life which may comprise of a healthy environment, healthy lifestyle, and many more. However, if the same right which accords life to individuals also includes the right to die within itself is a question that has become a major

[73]Keown, Damien. "End of life: the Buddhist View," Lancet 366 (2005): 953. (Last accessed on 31st May, 2024).
[74] INDIA CONST. art. 21.

concern and raised many a times in the Court of law by now.

The Right to life includes extra than simply existing and breathing; it additionally includes dwelling a satisfied and gratifying lifestyle. The basic principle on which the entire concept of Right to life is based is that a person who is born naturally should also die naturally. It is due to this concept that the debates arise. However, the right to life, as stated before does not restrict to mere animal living. If a person isn't always even dwelling as much as the naked minimal of a first rate and first-class lifestyles, he may try to end this type of depressing existence.[75] Furthermore, reading Article 21 of the Constitution of India in depth provides an idea that a human body enjoys enormous rights over itself and can affect itself the way the person wants to.

People usually debate over the matter contending that people who try to live in pain with all the problems existing in their life are a mere choice, and if they wish so, they can end their pain by ending their life. However, people on the other side regard life as a gift from the God and trying to bring an end to the same contrary to moral principles and ideologies. This has further been enunciated under the Indian Penal Code wherein the abetment to suicide[76] and attempt[77] of the same was penalized.

The judicial system of India has tried discussing the aspect and ambit of euthanasia in one of the case wherein the constitutional validity of

[75] George Buhler (Translation), Laws of Manu, MAX MULLER (Ed.), SACRED BOOKS OF EAST 204 (Vol. 25, 1967). (Last accessed on 31st May, 2024).
[76] Indian Penal Code 1860 § 306.
[77] Indian Penal Code 1860 § 309.

Section 309 was challenged in context with Article 14 and 21 of the Constitution of India. In ***Maruti Shripati Dubal v. the State of Maharashtra***,[78] the question came up before the Court of law wherein a constable tried to end his life by committing suicide due to some mental illness.

The Supreme Court of India took the view by analyzing Article 21 of the Constitution and ruled that the Article is not only for protecting a person's life, rather it aims to give a way to a dignified lifestyle to any individual. The Court for the first time opined that the Article includes within its ambit the right to bring an end to one's life under special situations. Furthermore, every basic Right could be viewed negatively also as positively. As a result, Article 21 features a distinct, but not necessarily negative, perspective thereon. Keeping this in mind and taking the preceding remark under consideration, Section 309 violates Article 21. The Bombay High Court, on the contrary, drew a narrow line between suicide and euthanasia. Suicide is self-destruction, whereas euthanasia involves the engagement of a 3rd party.

Recently, the Supreme Court of India emphasized on the concept of passive euthanasia in the landmark case of ***Aruna Ramchandra Shanbaug v. Union of India,***[79] wherein the major point of discussion was the legality of passive euthanasia for those people who are just living an animal life, that too, over life supporting systems, without any hope

[78]Maruti Shripati Dubal v. State of Maharashtra, (1987) Cr L J 743 (Bombay).
[79]Aruna Ramchanadra Shanbaug v. Union of India, (2011) 4 SCC 454.

of living a normal life in the future. Thereafter, considering the aspect of the patients being under permanent vegetative state, the Court gave recognition to passive euthanasia, and the same was also followed in the case of ***Common Cause v. Union of India***.[80] However, concerning the wrong implications of the judgment, the Court ensured to issue guidelines for proper regulation of passive euthanasia.

The rulebook which guides the activities of the Medical Professionals with respect to the passive euthanasia is the Indian Medical Council (Professional Behavior, Etiquette, and Ethics) Rules, 2002.[81]Under this rulebook, the proper procedure to be followed while attempting an act of euthanasia over a patient has been mentioned explicitly under Regulation 6.7.

Firstly, the Regulation ensures that a single physician does not by himself decide upon the act of euthanasia. Therefore, an entire panel of doctors decides upon the removal of life supporting machines from a person under a vegetative state. Secondly, Transplantation of Human Organs Act, 1994[82] acts as a recommendation for selection of the doctors who need to reside at the panel for deciding whether the process of euthanasia should be adopted for a particular patient or not.

[80]Common Cause (A Registered Society) v. Union of India, (2018) 5 SCC 1.

[81] Indian Medical Council (Professional Behavior, Etiquette and Ethics) Rules, 2002 Published on 6 April 2002 in part III section 4 of the Gazette of India (Last accessed on 31st May, 2024).

[82] Transplantation of Human Organs and Tissues Act, 1994, Act No. 42 of 1994, Acts of Parliament (India).

Therefore, the Indian standpoint at the present day with respect to euthanasia is quite clear, as it has not yet adopted the active euthanasia, but has restricted its application to the passive euthanasia.

4.2 POSITION OF ENGLAND

Considering the situation of England, the country has decriminalized suicide and it is no more a criminal offence to commit suicide. However, the assistance given in any form for the commission of suicide is considered as a grave offence under Section 2 of the Suicide Act, 1961. Nonetheless, it is only under the consensus of the Director of the Public Prosecutions that the prosecutions under this offence executed.

Furthermore, the debate over the legality of commission of suicide has become a public movement, even if the concept is to a large extent polarized. There have been trials to make the legislation liberal for the nation. Such attempts have been made majorly by the Private Members' Bills, the most recent one being the Lord Falconer of Thoroton's Assisted Dying Bill of 2014-15.

This Bill aimed at permitting the terminally ill patients who have lost the hope to live a normal life, to put an end to their lives with the help of a third party. For obvious reasons, such requests placed by any patient would be subjected to critical review by medical practitioners, as well as

the Family division of the Supreme Court of England. However, the Bill was not passed in the country and therefore, it never became a law.[83]

One of the important aspects that turned out after this Bill was that the changes with respect to the rule on suicide need to be done by the Parliament considering the importance of individual conscience in mind and not for the sake of policy making for the state.

Tony Nicklison brought forward the concern with regards to the irregularities or incompatibility of the rule related to suicide and the Article 8 to non-public life. This was heard by 9 Supreme Court judges in June 2014. The final judgment was ruled against the declaration which Tony Nicklison had sought for by a ratio of 7 to 2.

The minority judgment was of the view of pronouncing the declaration in contrary to the other judges who were against the pronouncement of the declaration sought. However, the main point of discussion was raised by the four judges who asserted that the problem lies on the part of legislation which can be dealt on by the Parliament as they form the right platform to remove the inconsistency which exists in the law for the specified subject matter.

Therefore, the decision did not create much difference on the existing stand on suicide and right to die in the country, but the opinion of the

[83]Right to die and assisted suicide, Social change: key issues for the 2015 Parliament, UK Parliament, available at:https://www.parliament.uk/business/publications/research/key-issues-parliament-2015/social-change/debating-assisted-suicide/.(Last accessed on 31st May, 2024).

judges gave an outlook which can form a basis of discussion for the future course of action to be undertaken by the Parliament while amending the laws on suicide.

4.3 POSITION OF AUSTRALIA

The position of Australia is not very different when compared with other countries with respect to the concept of euthanasia and right to die is considered. Australia's only state which has allowed euthanasia in a regulated manner is Victoria.

Considering the historical background of the development of the law on suicide and euthanasia, the Northern Territory of Australia had passed the primary legislation on the Right to Die and Euthanasia in 1996, with the passage of the Rights of the Terminally Ill Act (RTI).[84] Doctors were allowed to assist terminally sick patients who wanted to die, subject to certification and other conditions. It had been followed by the well-known case ***Wake v. Northern Territory*** (1996),[85] which was a constitutional challenge.

The situation was not the same in other parts of Australia wherein the Federal Parliament tried to come in between the discussion of the Supreme Court in matters of Right to Die and Euthanasia. Thereafter, the

[84] Andrew L. Plattner, "Australia's Northern Territory: The First Jurisdiction to Legislate Voluntary Euthanasia, and the First to Repeal It", DePaul Journal of Health Care Law, Volume 1 Issue 3 Spring 1997: Symposium - Physician - Assisted Suicide, November 2015, available at https://core.ac.uk/download/pdf/232971051.pdf. (Last accessed on 31st May, 2024).

[85] Wake v. Northern Territory, (1996) 109 NTR I (Austl.).

Supreme Court stayed its order on the litigation which was being heard at that time in the Court of law. Further, the entire Rights of the Terminally Ill Acts were overruled by the Euthanasia Laws Act 1997.[86] After this, there was a restriction on formulation of any law which legalized euthanasia or suicide and thereafter any kind of law which had previously legalised the provisions were amended. This incident affected states like the Canberra Territory, Northern Territory, and Norfolk Island. After a lot of debate after 2009, the Dying with Dignity Bill 2009[87]and Consent to Medical Treatment Bill 2008 came into force in the states of Tasmania and South Australia respectively. Yet again, the two Bills were not passed in the legislature due to minor defects.

The state of Victoria, after a lot of hustle, debate and controversies, were able to pass the Victorian Voluntary Assisted Dying Act, 2017.[88] The act is generally termed as the VAD Act, 2017. The Act was completed in 2017 and came into effect in 2019. Howsoever, the present situation of the country calls for a reconciliation over the laws of suicide and requires restructuring.

The VAD Act, 2017 improvised the rules and regulations with respect to

[86] Euthanasia Laws Act 1997, Act No. 17 / 1997.

[87]Lorana Bartels, Margaret Otlowski, "Right to die? Euthanasia and the law in Australia'.Thomson Reuters, Journal of Law and Medicine, (2010) 17 JLM 532, available at https://www.researchgate.net/publication/42437933_Right_to_die_Euthanasia_and_the_law_in_Australia.(Last accessed on 31st May, 2024).

[88] Voluntary Assisted Dying Act 2017, Act No. 61/2017 (as amended in 2020, w.e.f. 19.06.2020) (Last accessed on 31st May, 2024).

suicide and legalized the practices of voluntary suicides which were assisted. The Act came as a pathway to not only legalise the act of voluntary assisted dying, but also provided a pathway for restricting any act which was committed wrongfully in the name of VAD. Therefore, there are a lot many guidelines which follow from the VAD Act of 2017. One of the most important element of the Act is the requirement of a medical professional who assists the process of euthanasia for the terminally ill person. The other requisites[89] for the person to be involved in the voluntary assisted dying are as follows:

1. The person should be of 18 years of age or more.
2. The terminally ill patient who wants to terminate his/her life should be a citizen of Australia. It can be an ordinary residentship or permanent.
3. The person must be capable enough to make decisions as per the guidelines of VAD Act, 2017.
4. The most essential element of the Act is that the person who wants to end his/her life must be under some incurable disease which would ultimately result in the death of the person in the near future as anticipated by the doctors.

Therefore, the state of Victoria became the first state which was successful in passing a legislation to regulate the voluntary assisted dying in the state. This has paved way for not only the other states of Australia

[89] *Id.* at S. 9(1).

to consider the necessity of passing a legislation regulating the same, but also provides a gateway for the other countries who c=may seek resort to the laws of the Victorian state for analyzing the status of its own nation and provide for a better and improvised legislation on euthanasia.

5. CONCLUSION AND SUGGESTIONS

After considering the laws of the major three countries and there way of dealing with the right to die, it becomes quite clear that the right to die is by far one of the most serious issues being dealt on by the nations. The debate to include the concept of voluntary assisted dying in the laws of the country is not an easy question to be answered, especially when it's a country like India, which is very much diverse in almost every aspect.

The complexities involved in regulating the conduct of euthanasia seems more than just making the law on the said matter as the making of the law will also introduce new problems in the form of criminal offences wherein people may try to misuse the law and harm the people to a great extent.

However, with the evolutionary attitude of people, the regulation of laws can be a measure wherein the countries need to carefully evaluate all the positive as well as negative sides of the society and accordingly decide on what is the best for its nation. This is highly dependent upon the societal system of a country, and the mindset of the people. The laws of Australia under the VAD Act, 2017 anyhow cannot be applied directly to

the Indian scenario and similarly, the Indian laws would not survive in Australia. Therefore, even if the laws in Australia seem appropriate to a great extent as it is well regulated, it may not be an appropriate measure for India or England. The countries have come a long way in an attempt to understand the aspects of euthanasia and is yet to cover a longer way in regulating the same.

SHORT ARTICLE

A STUDY ON THE MISUSE OF SEC 498A OF IPC: A SHIELD TO PROTECT WOMEN OR A WEAPON TO HARASS MEN

- Lohit Kumar Bhowmick[90]

ABSTRACT

In the Indian legal system, many laws are crafted with the intention of protecting women. However, in recent times, there has been a growing concern about the misuse of these laws, with women allegedly using them to falsely accuse their husbands. This article critically examines the issue of the misuse of Section 498A of the Indian Penal Code (IPC), which deals with cruelty towards married women. The widespread perception

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of misuse of this provision has sparked debates and calls for reforms within the legal system. The article delves into the various factors contributing to the alleged misuse of Section 498A, including societal attitudes toward marital disputes, financial incentives, and loopholes in the legal framework. It explores the challenges faced by men and their families who are falsely accused under this section, highlighting the detrimental impact on their mental health and social standing. Additionally, the article discusses the role of law enforcement agencies and the judiciary in addressing instances of misuse and ensuring fairness in the application of Section 498A.

Drawing upon legal precedents and empirical research, the article offers insights into potential reforms to prevent the misuse of Section 498A while upholding the protection of women from marital cruelty. Finally, it underscores the importance of striking a balance between safeguarding the rights of women and protecting against false accusations, emphasizing the need for nuanced approaches in tackling this complex issue within the Indian legal system.

KEYWORDS: *Misuse, Protection, Marital Cruelty, False Accusations, Reforms.*

1. INTRODUCTION

Nowadays, women in India are not safe at all. Every hour 51 FIRs are being filed for women harassment. These FIRs consist of different types of harassment such as rape, domestic violence, stalking, etc. In 2022, Statista reported that the most prevalent crime against women in India was domestic abuse or cruelty inflicted by husbands and/or relatives.[91] According to a report of the National Commission for Women, last year(2023) around 28,811 cases were registered out of which 8,579(29.8%) were for the right to live with dignity, 6,305(21.9%) were for the protection of women against domestic violence and 4,820(16.7%) were for harassment of married women/dowry harassment, 1,539(5.3%) were for rape/attempt to rape, etc. The most shocking fact is that 45% of these cases were false.[92] According to MoSPI, 22.8 lakh crimes were recorded against women between 2016 to 2021, of which 30% are under Section 498A of IPC out of which 1,11,549 cases were considered as false and 16,151 cases were closed due to mistake of false fact or law. Section 498A of IPC is the most misused law in India. Many women use it as a tool for extortion of money from their husbands. The Supreme Court of India named it "Legal Terrorism"[93]

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[91] MANYA RATHORE, REPORTED CRIMES AGAINST WOMEN IN INDIA 2022, https://www.statista.com (Last visited Feb 16, 2024).
[92] NATIONAL COMMISSION FOR WOMEN, https://ncwapps.nic.in (last visited May 23, 2024).
[93] The Wire Staff, Women Engaging in 'Legal Terrorism' By 'Misusing' Section on Cruelty By Husbands: Calcutta HC, THE WIRE (May 23, 2024, 10:29 PM) https://thewire.in .

2. UNDERSTANDING SEC 498A OF IPC

Section 498A of the Indian Penal Code (IPC) serves as a crucial legal instrument aimed at safeguarding the rights and well-being of married women in India. Enacted in 1983, it was a response to the prevalent societal issue of dowry-related harassment and cruelty faced by married women. The section defines "cruelty"[94] broadly, encompassing not only physical harm but also mental anguish inflicted upon a woman by her husband or his relatives. This includes instances where a woman is subjected to harassment or coercion for dowry, reflecting the societal concern regarding the commodification of marriage and the exploitation of women for financial gain.

In the legal landscape, Section 498A signifies a significant shift towards recognizing and addressing domestic violence within marital relationships. Its classification as a cognizable and non-bailable offense underscores the gravity of the issue and the need for swift and decisive action to protect victims. However, the implementation of this law has been marred by controversies surrounding its alleged misuse. There have been instances where false or exaggerated accusations under Section 498A have been leveraged as a means of retaliation or coercion, leading to the unjust harassment of innocent individuals and their families.

[94] DRISHTI JUDICIARY, https://www.drishtijudiciary.com (last visited May 23, 2024).

To mitigate these concerns, courts have intervened with guidelines and directives aimed at ensuring the fair and judicious application of Section 498A. These measures include the requirement for thorough investigation and evidence substantiation before arrests are made, as well as the promotion of alternative dispute resolution mechanisms such as mediation. Additionally, efforts have been made to raise awareness about women's rights and avenues for seeking legal recourse in cases of domestic abuse. Despite these challenges, Section 498A remains a critical tool in the ongoing fight against gender-based violence and the protection of women's rights within the institution of marriage, signaling a commitment towards fostering a more equitable and just society.[95]

3. THE APPROACH OF THE JUDICIARY IN DEALING WITH SECTION 498A

In the landmark case of ***Arnesh Kumar v. State of Bihar & Anr (2014)***[96], a significant shift in the interpretation and application of Section 498A of the Indian Penal Code (IPC) was witnessed. A two-judge bench of the Supreme Court highlighted the widespread misuse of this provision, which deals with dowry harassment, particularly noting the unjust arrests of innocent individuals, including husbands and their families, without sufficient evidence. The court expressed concern over the abuse of power

[95] DEVGAN IN, https://devgan.in (last visited 28 May, 2024).
[96] Arnesh Kumar v. State of Bihar & Anr, AIR 2014 SC 2756.

enabled by Section 498A, which allowed immediate arrests without prior investigation, leading to undue harassment and distress for the accused parties.

Moreover, the Supreme Court acknowledged instances where wives exploited this law to target their husbands and their families, exacerbating the issue of false accusations and unjust arrests. In response to these concerns, the court issued directives instructing law enforcement agencies to adhere to a specific set of rules outlined in Section 41 of the Code of Criminal Procedure, 1973. These guidelines, comprising a checklist of nine points, are intended to ensure that arrests are made only after careful consideration of the evidence and circumstances surrounding the case, thereby safeguarding the rights of the accused and preventing arbitrary arrests.

The judges emphasized the need for a balanced approach to the implementation of Section 498A, highlighting cases where even elderly grandparents and relatives residing in other countries were unfairly subjected to arrest under this provision. By advocating for stricter adherence to procedural safeguards and the principles of justice, the Supreme Court's ruling in ***Arnesh Kumar v. State of Bihar & Anr (2014)*** marked a significant step towards addressing the issue of misuse and abuse of Section 498A, while reaffirming the importance of upholding the rights and dignity of all individuals involved in cases of alleged dowry harassment.

4. RECENT JUDGEMENTS

On January 15th, 2024, a complaint was lodged by a woman against her husband's relatives, alleging verbal abuse regarding her cooking abilities among other grievances. The complaint specifically targeted her in-laws, including her brothers-in-law, for derogatory comments about her culinary skills. However, the High Court scrutinized the case and determined that minor disputes or criticisms, such as those related to cooking, do not meet the legal threshold for cruelty under Section 498A of the Indian Penal Code (IPC). This section mandates evidence of deliberate actions resulting in severe harm, attempted suicide, or harassment for dowry to constitute an offense.

In rendering its judgment, the High Court underscored that mere criticism, even if hurtful, does not qualify as cruelty under Section 498A. The court emphasized the necessity of establishing a pattern of continuous or persistent cruelty to substantiate charges under this provision. Therefore, the verbal insults directed at the woman regarding her cooking skills, while unpleasant, were deemed insufficient to warrant legal action under Section 498A. Consequently, a division bench comprising Justice Anuja Prabhudessai and Justice Nitin R Borkar entertained a plea from the complainant's brothers-in-law to quash the FIR against them.

After evaluating the case, the court concurred that the allegations did not meet the criteria for cruelty as defined by Section 498A. Hence, the

division bench ruled in favor of quashing the FIR and chargesheet against the accused relatives. This verdict serves as a reminder of the stringent evidentiary standards required to invoke Section 498A, emphasizing the importance of establishing sustained mistreatment or harassment to warrant legal action under this provision.[97]

5. ACTS THAT CAN CONSTITUTE CRUELTY OR HARASSMENT UNDER SECTION 498A

Following are the categories of acts covered under Section 498-A as acts of harassment or cruelty[98]:

1. Willful conduct that is likely to drive a woman to commit suicide
2. Willful conduct that is likely to cause any superficial injury to the body of a woman
3. A willful conduct that is likely to cause any grievous injury to the body of a woman
4. A willful conduct that is likely to cause danger to a limb of a woman
5. A willful conduct that is likely to cause a danger to the physical well-being of a woman

[97] Omkar Gokhale, Comment on not knowing how to cook not cruelty under Section 498A of IPC: Bombay High Court, The Indian Express (March 28, 2024, 9:29 PM) https://indianexpress.com .
[98] Adv. Rupa K.N, Section 498A of IPC: A Guide to Understanding, EZYLEGAL (May 23, 2024, 10:20 PM) https://www.ezylegal.in .

6. A willful conduct that is likely to cause a danger to the mental health of a woman
7. Harassment of a woman on account of any illegal monitory demands from her parents or herself.
8. Harassment of a woman on account of any unlawful demand of property or valuable security from her parents or herself.
9. Harassment of a woman on account of non-fulfillment of any such demands.
10. Extra marital affair of a husband
11. Constantly suspecting wife on account of her character
12. Wasteful habits of husband or in-laws[99]
13. Non-acceptance of a girl child
14. Taking away children
15. Constant false attacks on chastity
16. Forcing wife to take sex determination tests[100]

6. MISUSE OF THE LAW

Over the past two decades, criticisms against laws concerning violence against women in India have often centered on the assertion that Sec 498A of IPC is prone to misuse. This argument has been echoed by

[99] Akshay Goel, MATRIMONIAL CRUELTY-SECTION 498A OF IPC, PATHLEGAL (May 23, 2024 11:04 PM) https://www.pathlegal.in .
[100] Pooja Gajmer, Domestic violence: An overview of Sec 498A IPC- A case report, IJFCM (May 23, 2024 11:18 PM) https://www.ijfcm.org .

various stakeholders including the police, civil society, politicians, and even judges of the High Courts and Supreme Court. Notably, former Justice K T Thomas articulated this perspective in an article titled 'Women and the Law,' published in The Hindu. The 2003 Malimath Committee report on criminal justice system reforms also acknowledged concerns about the alleged misuse of Section 498A of the IPC and Section 304B about dowry deaths. However, despite these claims, there is a lack of substantial data to support the frequency of such misuse.

There exists a subset of women who pursue relationships with ultra-wealthy individuals with the intention of enjoying a luxurious lifestyle. However, if these relationships fail to meet their expectations, they resort to allegations of domestic violence or cruelty as grounds for terminating their marriages. The primary motive behind such accusations is often to secure alimony and live comfortably without the struggle of providing for themselves. The legal system, along with the courts, is perceived to heavily favor women's rights, granting them an advantage in such situations. However, the male perspective is often overlooked, particularly concerning the emotional toll and social stigma endured throughout the legal process. From facing accusations of cruelty to enduring trials and awaiting judgment, men involved in these cases often grapple with severe mental distress and social ostracization. The disparity in attention given to the experiences of men versus women in these circumstances highlights the need for a more balanced and equitable approach within the legal system. Many innocent men find themselves

overwhelmed by depression and anguish when falsely accused in cases like Section 498A, often leading them to resort to suicide. To shield their families from the severe repercussions of prolonged legal battles associated with such cases, many families choose to settle by paying significant amounts as alimony. These matrimonial disputes can drag on for years in court, burdening only the man and his family with the financial and emotional costs. This section has become a tool for most educated women with malicious intent to extort enormous amounts of money. A woman can file a 498A even after divorce if she wants to extort money from her ex-husband. In a recent case, ***Ashok Jha v Pratibha Jha***[101], the Allahabad High Court through its judgment dated 13th October,2023 granted divorce to a man living separately from his wife for more than 10 years. The High Court has ordered the man to pay alimony to the tune of Rs 1 crore, while cruelty by his wife has been established. The court says "Considering the facts and circumstances of the case, this court, while dissolving the marriage between the parties, also directs the appellant to pay Rs 1,00,00,000/- (One Crore) to the respondent towards permanent alimony within three months, considering the financial condition of the appellant that he is having several immovable properties worth crore of rupees and having ITR for FY 2021-22 of about 2 crores".

[101] Ashok Jha v. Pratibha Jha, 2023 AHC 1987 06.

This shows how a woman uses this law to extract money for their benefit using laws that are created to protect them. There are several ways how women use 498A to extort money.

- **Mental Torture**

  It has been seen that women scream, and yell at their husbands in public places. On 25th March 2024, a case was filed where a woman called her husband 'impotent' in public which caused mental cruelty to him. However, it was proved in the medical tests that the wife suffered from complications but not the husband, due to which the couple could not have a child. The wife refuted the accusations and asserted that she had been facing dowry harassment, although the court concluded that there was insufficient evidence to support her claim.

- **Law Abuse**

  Filing baseless accusations against one's husband and relatives, without any substantial evidence, amounts to an abuse of the court system and has negative repercussions on society. Initiating a malicious prosecution lawsuit against them with the intention of misusing legal procedures for personal gain further exacerbates the misuse of the judicial process.

- **Blackmail**

  A spouse may use the threat of legal action under Section 498A to manipulate their partner's behavior or decisions, such as threatening to involve law enforcement unless certain conditions are met.

- **Seeking Revenge**

  In cases of marital discord or breakdown, one spouse may retaliate against the other by filing false accusations under Section 498A as a form of revenge or to tarnish their reputation.

7. IMPACT ON THE ACCUSED

False accusations under laws like Section 498A can have profound and long-lasting effects on a man's life, impacting his emotional well-being, relationships, finances, career, and trust in the legal system[102].

7.1 Impact on Career and Employment

The stress and distraction caused by false accusations can affect a man's ability to focus on his career. In some cases, employers may become aware of the legal situation, leading to professional repercussions such as loss of job opportunities or damage to career prospects.

7.2 Damage to Reputation

False accusations can tarnish a man's reputation within his family, social circle, and community. Even if the accusations are eventually proven false, the stigma attached to being accused of such offenses can linger and affect relationships and opportunities. Accusations frequently extend beyond the accused individual to encompass their

[102] Samridhi M, IPC Notes- Section 498A of the Indian Penal Code, CLATALOGUE (May 23, 2024 11:30 PM) https://lawctopus.com .

elderly parents, siblings, and distant relatives, despite their lack of direct involvement. Such unfounded claims have the potential to damage the reputation of the entire family and disturb familial peace and unity.

7.3 Physical Health Impacts

The stress and anxiety associated with false accusations can take a toll on a man's physical health, potentially leading to issues such as insomnia, and high blood pressure, and may also commit suicide.

8. THE RIGHT WAY TO TACKLE FALSE CASES UNDER SECTION 498A: A WAY FORWARD

Despite being a law seemingly tilted in favor of women, there remain certain undisclosed clauses that could aid in evading the repercussions of false accusations under Section 498A. Among these undisclosed provisions, here are some effective strategies to shield oneself from such allegations:

8.1 Seeking an Anticipatory bail

This stands as a crucial method that every husband should be well-informed about. When you realize that your marital relationship is not working well in the right direction or your wife is so egoistic that

she may go beyond boundaries to pamper her self-centered intentions. And if you know that she won't hesitate to take legal action against you to extort money or just for vengeance, then it's always better to seek legal consultation without waiting for that time to come. Be mentally and legally prepared so that you can take anticipatory bail after some hours of filing 498a against you. Securing anticipatory bail significantly facilitates the process of gathering evidence to demonstrate that your wife's accusation of cruelty against you is false. Conversely, being arrested not only entails physical distress but also affects your mental well-being and, crucially, your social standing. Moreover, both your personal and professional life may be substantially jeopardized.[103]

8.2 Quashing of a 498a FIR

If your wife has filed a false 498A case against you, you have the option to petition the High Court under Section 482 of the Code of Criminal Procedure. Typically, once an FIR has been lodged, the Courts are hesitant to intervene or interfere with police proceedings unless you possess substantial evidence demonstrating that her actions are driven solely by the intention to harm you, whether mentally, physically, financially, or socially.

[103] Swati Shalini, How to protect yourself against IPC 498A?, MY ADVO (May 23, 2024, 11:32 PM) https://www.myadvo.in .

8.3 File an FIR against the wife for filing a false 498A

If a wife files a false 498A against his husband, he has the option to file an FIR against his wife for filing a false or baseless case against him. Additionally, such husbands can also file a defamation case against their wives.

9. CONCLUSION

In conclusion, the contentious weapon of Section 498A of the Indian Penal Code (IPC) has stirred intense debates surrounding its alleged misuse and the resulting ramifications on individuals and families. Despite its intended purpose to safeguard married women from cruelty, the section has been frequently abused, leading to dire consequences for innocent individuals. The prevalence of false accusations, driven by various motives such as financial gain, revenge, or manipulation, underscores the urgent need for reforms within the legal framework.

The impact of false 498A cases extends far beyond legal proceedings, profoundly affecting the accused individuals' mental well-being, social standing, and financial stability. Moreover, the broader societal repercussions of such misuse contribute to a climate of distrust and instability within communities. Effective strategies to tackle false 498A cases include seeking anticipatory bail, petitioning for the quashing of FIRs, and filing counter cases against false accusers. These measures aim to mitigate the detrimental effects of baseless allegations and restore

justice for those wrongfully accused.

There are very a smaller number of laws made for men in India. Karan Thapar, a famous Indian journalist when asked Renuka Chowdhury, Women and Child Development Minister that the Domestic Violence Act has many loopholes for men then in reply she said "Let men suffer".[104] Ultimately, addressing the issue of misuse of Section 498A requires a nuanced and balanced approach that upholds the rights of both women and men within the legal system. By implementing reforms, raising awareness, and fostering a culture of accountability, India can strive towards a more equitable and just society where the rule of law prevails, and individuals are protected from exploitation and injustice.

[104] VOICE FOR MEN INDIA, https://voice Conflicting Position Of Right To Life And The Concept Of Euthanasia: Study Of The Law Of India, England And Australia reformenindia.com (last visited March 28, 2024).

CASE NOTES

RAMANA DAYARAM SHETTY VS THE INTERNATIONAL AIRPORT AUTHORITY OF INDIA, (1979)

- *Chandan Sha* [105]

CASE NAME: Ramana Dayaram Shetty vs. The International Airport Authority of India (1979).

COURT: Supreme Court of India.

CASE NO.: Civil Appeal. 895 of 1978.

CITATIONS: AIR 1979 SC 1628, (1979) 3 SCC 489, 1979 SCR (3)1014.

DATE OF JUDGEMENT: 4th May, 1979.

PARTIES TO THE CASE:

- **Petitioner(s):** Ramana Dayaram Shetty.

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- **Respondent(s):** The International Airport Authority of India and Ors.

BENCH: Justice P.N. Bhagwati, Justice V.D. Tulzapurkar, and R.S. Pathak.

ABSTRACT

The Constitution of India is the supreme command. The Constitution assures certain fundamental rights to each and every citizen of India that can be enforced against the state. The case of ***Ramana Dayaram Shetty vs The International Airport Authority of India,*** [106] *is a landmark judgment that emphasizes the importance of fairness and non-arbitrariness in administrative actions. In this case Supreme Court of India laid down five tests to determine if an authority is considered a "state" under Article 12 of the Indian Constitution or not. The court held that the International Airport Authority of India is a state as it was established by an Act of Parliament. The court also concluded that the International Airport Authority is subject to the same restrictions as the government acting through its officers. The term "state" in Article 12 of the Constitution is used in a broader sense than the ordinary meaning of the word.*

KEYWORDS: *State, control, Other authority, Airport Authority, administrative functions.*

[106] Ramana Dayaram Shetty v. The International Airport Authority of India, AIR 1979 SC 1628.

1. INTRODUCTION

The Supreme Court of India's decision in ***Ramana Dayaram Shetty v. The International Airport Authority of India (1979)***[107] is a seminal case that articulates the constitutional definition of "state" under Article 12 of the Indian Constitution. The ruling emphasized that public authorities performing government functions must adhere to constitutional principles, particularly those safeguarding citizens from arbitrary state action. The Court's interpretation of the term "state" was crucial in expanding the reach of fundamental rights to cover not only traditional government entities but also statutory bodies with significant public responsibilities.[108] The judgment thus marked a critical development in administrative law, reinforcing the principle that all authorities exercising governmental functions must operate within the confines of law and reason.

2. FACTS OF THE CASE

The case revolves around the actions of the International Airport Authority of India (IAAI) which is established under the International Airports Authority Act, 1971. The petitioner, Ramana Dayaram Shetty, who was vying for a contract to operate a restaurant at the Bombay

[107] *Id.*
[108] LAW COMMISSION REPORT NO. 145- ARTICLE 12 OF THE CONSTITUTION AND PUBLIC SECTOR UNDERTAKINGS, https://latestlaws.com/library/law-commission-of-india-reports/law-commission-report-no-145-article-12-constitution-public-sector-undertakings/ (Last visited March 20, 2024).

Airport, challenged the authority's decision to award the contract to another party. Shetty argued that he met all requisite qualifications and that the decision to exclude him was arbitrary and capricious, violating his rights under Articles 14[109] (equality before law) and 19[110] (freedom of speech and expression, etc.) of the Constitution.[111]

The core issue raised was whether the IAAI's actions could be classified as state actions subject to constitutional scrutiny. Shetty contended that, as the IAAI was created by statute and operated under governmental oversight, it should be classified as a "state" under Article 12[112], making its decisions subject to the doctrine of non-arbitrariness as mandated by Article 14.[113] The Supreme Court was tasked with interpreting the scope of Article 12 and determining whether the IAAI's conduct warranted judicial intervention.

3. ISSUES RAISED

I. Whether the International Airport Authority of India qualifies as a "state" under Article 12 of the Indian Constitution?

II. Whether the actions of the IAAI, as an authority under Article 12[114],

[109] INDIA CONST. art 14.
[110] INDIA CONST. art 19.
[111] R.K. Jain, Administrative Law in India, 2nd ed. 325 (New Delhi: LexisNexis 2018).
[112] INDIA CONST. art 12.
[113] INDIA CONST. art 14.
[114] INDIA CONST. art 12.

were arbitrary and violated Articles 14 and 19 of the constitution?

III. What constitutes fairness in the exercise of discretion by a public authority?

4. ARGUMENTS

4.1 ARGUMENT FROM PETITIONER'S SIDE

The petitioner, Ramana Dayaram Shetty, contended that the IAAI's decision to award the contract was arbitrary, not only because it failed to follow due process but also because it neglected the fundamental rights guaranteed by the Constitution. The petitioner emphasized that the IAAI, being a statutory body receiving substantial government control and funding, should be classified as a "state" under Article 12 [115]. Consequently, its decisions must adhere to constitutional norms of fairness and reasonableness. [116] Shetty's argument was built on the premise that the principle of non-arbitrariness is foundational to democracy and good governance. By awarding the contract without due consideration of the applicant's qualifications, the IAAI acted in a manner that not only breached his rights but also undermined the integrity of public procurement processes.

[115] *Id.*

[116] R.K. Jain, Administrative Law in India, 2nd ed. at 45-47.

4.2 ARGUMENT FROM RESPONDENT'S SIDE

The IAAI defended its actions by asserting that it functioned as an independent statutory authority with the discretion to award contracts based on its internal assessments. The respondent argued that its operational autonomy should not be impeded by judicial intervention unless there was clear evidence of malfeasance or breach of statutory obligations. [117] The authority maintained that the decision-making process was consistent with its policy framework and did not contravene any established norms. The IAAI's position raised concerns about the extent to which public bodies could exercise discretion without the risk of judicial oversight, particularly when such discretion could lead to the exclusion of qualified individuals from public opportunities.

5. JUDGEMENT

In its judgment, the Supreme Court ruled in favor of the petitioner, affirming that the IAAI is a "state" under Article 12 and Supreme Court followed the broader test laid down in Sukhdev Singh's case[118]. The court laid down certain test to determine whether a body is an agency or instrumentality of the State.The test laid down are:

(1) Financial resources of the State is the chief funding source of the

[117] R.K. Garg, Judicial Review of Administrative Discretion, 22 J. Indian L. Inst. 74, 75–76 (1980).

[118] Sukhdev Singh And Others v. Bhagatram Sardar Singh Raghuvanshi And Another, (1975) 1 SCC 421.

body.

(2) Existence of deep and pervasive State control.

(3) Functional character of the body is governmental in essence.

(4) Department of government is transferred to the corporation.

(5) Whether the Corporation enjoys monopoly status which is either State conferred or State protected. The court held that these tests are not conclusive. They are illustrative and should be used with great care and caution.

The Court found that the IAAI, as an authority established by Parliament, fulfilled these criteria and thus was bound by constitutional constraints.[119]

Furthermore, the Court held that the decision-making process of the IAAI was arbitrary, violating the principle of equality as enshrined in Article 14. It emphasized that administrative discretion must align with the principles of fairness, justice, and reasonableness, ensuring that entities classified as "state" do not act in an arbitrary manner.[120] The ruling reinforced the notion that statutory bodies must act in a transparent and accountable manner, thereby strengthening the rule of law and protecting citizens' rights against arbitrary administrative actions.

[119] Justice P.N. Bhagwati, "Expanding the Concept of the 'State' in Indian Administrative Law," Supreme Court Cases, 1979, at 1635.

[120] Ramana Dayaram Shetty v. The International Airport Authority of India, AIR 1979 SC 1628.

6. CASE ANALYSIS

The Ramana Dayaram Shetty case is a cornerstone of Indian administrative law, marking a significant judicial intervention in the regulation of statutory bodies. By including statutory bodies performing public functions under Article 12, the Court expanded the scope of fundamental rights protections.[121] The judgment asserts that entities such as the IAAI must operate with transparency and uphold citizens' constitutional rights, fundamentally altering the landscape of administrative accountability. Legal scholars have noted that this interpretation fosters accountability, making it difficult for government-associated bodies to exercise unchecked discretion.[122] The Court's ruling serves as a precedent for applying Articles 14 and 19 to statutory bodies, furthering the judiciary's commitment to upholding non-arbitrariness in administrative law.

Moreover, the judgment prompts a broader discussion on the balance between administrative discretion and accountability. Critics argue that the expansive interpretation of "state" could blur the lines between public and private entities, leading to potential overreach in judicial oversight.[123]

[121] Law Comm'n of India, Report on Article 12 and Public Authorities, Rep. No. 124, at 15-17.
[122] R.K. Jain, Administrative Law in India, 2nd ed. at 45-47.
[123] R.K. Garg, Judicial Review of Administrative Discretion, 22 J. Indian L. Inst. at 75-76.

7. CONCLUSION

Ramana Dayaram Shetty v. The International Airport Authority of India remains pivotal in defining "state" under Article 12, setting the foundation for judicial oversight over statutory bodies. By ensuring such entities adhere to constitutional principles, the judgment reinforces the judiciary's role in curbing arbitrary actions and upholding citizen's rights.The ruling solidifies those public authorities, even when operating with administrative discretion, must maintain fairness and avoid discrimination, thereby enhancing the protection of fundamental rights and promoting the rule of law in India.[124]

[124] "Judicial Oversight of Statutory Bodies: A Critique of Ramana Dayaram Shetty," Indian Constitutional Review, 1979, available at https://indianconstitutionalreview.org/articles/ramana-shetty-iaai.