“THE ETHICS OF NEGOTIATION : BALANCING INTERESTS, MAINTAINING FAIRNESS AND PROMOTING RESPONSIBLE AGREEMENTS”

Dissertation submitted to Maharishi University of Information Technology, Noida, School of Law, in partial fulfilment of the requirement for the degree of Master of Laws.

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CERTIFICATE

This is to certify that ***Subash*** is submitting his dissertation entitled "**THE ETHICS OF NEGOTIATION : BALANCING INTERESTS, MAINTAINING FAIRNESS AND PROMOTING RESPONSIBLE AGREEMENTS**" for the award of the Degree of Master of Law (LL.M) to the ***FACULTY OF LAW, MUIT NOIDA*** and has worked under my guidance and supervision. The present study is a result of his genuine and bonafide research on the subject. He has carried out of this work carefully, diligently and sincerely. As the work is complete and he fulfills the requirements for the submission of the dissertation. It is hereby recommended that it may be accepted for evaluation by the university.

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DECLARATION

I hereby declare that the Dissertation titled "**THE ETHICS OF NEGOTIATION : BALANCING INTERESTS, MAINTAINING FAIRNESS AND PROMOTING RESPONSIBLE AGREEMENTS**" is submitted by Subash, a student of LL.M. Final Year in the partial fulfilment of requirements for the award of the degree of Master of Law (LL.M) is based on my original research work and this work has been done under the supervision and guidance of **Dr. Vikas Sharma** Law Faculty, ***Maharishi University of Information Technology.***

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Dated: 1.5.2025

SUBASH

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LIST OF ABBREVIATIONS

&	And
AC	Appeal Cases
ADR	Alternative dispute resolution
AIR	All India Reporter
All. E.R.	All England Law Reports
AWC	Allahabad Weekly Case
Cal.	Calcutta
CBI	Central Bureau of Investigation
CCR	Current Criminal Reports
Civil CC	Civil Court Cases
CLA	Corporate Law Adviser
CPJ	Consumer Protection Judgments
Cri LJ	Criminal Law Journal
CTLJ	Contracts and Traders Law Journal
CTLR	Computer and Telecommunication Law Review
Del.	Delhi
DLT	Delhi Law Times
DRJ	Delhi Reported Journal
ER	England Reports
ILR	Indian Law Reports
IT	Information Technology
JCM	Journal of Computation and Mathematics
Ltd.	Limited
Mag.	Magazine
N.C.T.	National Capital Territory of Delhi
NJ	New Jersey Courts
No.	Number
ODR	Online Dispute Resolution
p.	page
PTC	Patents and Trade Mark Cases
pp.	pages
Pvt.	Private
Rptr.	Reporter
SC	Supreme Court
SCC	Supreme Court Cases
SCJ	Supreme Court Journal
SCR	Supreme Court Reporter
Sec.	Section
U.S.	United States Supreme Court
Vol.	Volume
vs.	Versus

CHAPTER 1

INTRODUCTION

1. Introduction

Negotiation is a fundamental aspect of human interaction, permeating various facets of personal and professional life. From business deals to international diplomacy, negotiations shape the outcomes of conflicts, agreements, and relationships. However, the ethics of negotiation are often complex, involving a delicate balance between competing interests, maintaining fairness, and promoting responsible agreements. This introduction will explore the ethical dimensions of negotiation, examining the principles, challenges, and considerations that guide negotiators in achieving mutually beneficial outcomes while upholding moral values and societal norms.

Negotiation inherently involves multiple parties with diverse interests and objectives. Whether in a business setting, legal dispute, or diplomatic negotiation, each party seeks to maximize its own benefits while minimizing concessions. This pursuit of self-interest is integral to negotiation dynamics but can also give rise to ethical dilemmas, particularly when parties prioritize their interests at the expense of others. The challenge lies in finding a middle ground where competing interests can be reconciled, and agreements can be reached that are perceived as fair and equitable by all parties involved.

Maintaining fairness is a central tenet of ethical negotiation. Fairness encompasses the principles of equity, impartiality, and transparency in the negotiation process. It requires negotiators to consider the needs and perspectives of all stakeholders, not just their own, and to strive for outcomes that are just and reasonable. However, achieving fairness in negotiation is not always straightforward, especially when power imbalances, cultural differences, or asymmetric information complicate the process. Negotiators must navigate these challenges with sensitivity and empathy, ensuring that the negotiation process remains fair and inclusive for all parties.

Moreover, ethical negotiation involves promoting responsible agreements that uphold moral values and societal norms. Negotiators have a responsibility to ensure that the agreements they

reach are lawful, ethical, and socially responsible. This entails adhering to legal regulations, industry standards, and ethical guidelines relevant to the negotiation context. It also requires negotiators to consider the broader societal implications of their agreements, including their impact on stakeholders, communities, and the environment. Responsible negotiation involves making decisions that align with ethical principles such as honesty, integrity, and respect for human rights, even when it may require sacrificing short-term gains for long-term sustainability and social good.

In contemporary society, the ethics of negotiation are further complicated by globalization, technological advancements, and evolving cultural norms. Global supply chains, digital communication platforms, and multicultural work environments have transformed the landscape of negotiation, creating new opportunities and challenges for ethical conduct. Negotiators must navigate these complexities with awareness and adaptability, recognizing the diverse perspectives and interests at play in today's interconnected world.

Ethics of negotiation revolve around balancing interests, maintaining fairness, and promoting responsible agreements. Negotiators face the challenge of reconciling competing interests while upholding moral values and societal norms. By embracing principles of fairness, empathy, and social responsibility, negotiators can foster trust, build relationships, and achieve outcomes that are not only mutually beneficial but also ethically sound. In the subsequent sections, we will delve deeper into these ethical dimensions of negotiation, examining the principles, strategies, and best practices for ethical conduct in various negotiation contexts.

2. Statement of the problem

The ethical dimensions of negotiation pose significant challenges in today's interconnected and diverse world. As negotiations involve multiple parties with competing interests, maintaining fairness, transparency, and integrity becomes crucial for achieving mutually beneficial outcomes. However, ethical lapses, such as dishonesty, manipulation, and exploitation, can undermine trust, damage relationships, and lead to inequitable agreements. Furthermore, cultural differences, power imbalances, and asymmetrical information often complicate the negotiation process, making it difficult to ensure fairness and ethical conduct for all parties involved.

Moreover, the globalization of business and the digitalization of communication have introduced new ethical dilemmas in negotiation. Global supply chains, cross-border transactions, and virtual negotiations present unique challenges related to cultural sensitivity, data privacy, and ethical decision-making. Additionally, the increasing emphasis on corporate social responsibility and sustainable business practices has raised expectations for negotiators to consider the broader societal impact of their agreements.

In this context, the statement of the problem revolves around the need to strike a balance between pursuing self-interests and upholding ethical principles in negotiation. How can negotiators navigate the complexities of diverse interests, power dynamics, and cultural nuances while maintaining fairness, transparency, and responsibility? What strategies, guidelines, and ethical frameworks can be employed to promote ethical conduct and foster trust in negotiation processes? Addressing these questions is essential for improving the ethical outcomes of negotiations and enhancing the overall effectiveness and integrity of the negotiation process.

3. Review of literature

Fisher, R., & Ury, W. (1981). "Getting to Yes: Negotiating Agreement Without Giving In." Penguin Books. This seminal work provides practical strategies for achieving mutually beneficial outcomes in negotiations while maintaining ethical standards and fostering cooperation. It emphasizes the importance of separating people from the problem, focusing on interests rather than positions, and generating options for mutual gain.[1]

Lewicki, R. J., & Wiethoff, C. (2000). "Trust, Trust Development, and Trust Repair." In M. Deutsch & P. T. Coleman (Eds.), The Handbook of Conflict Resolution: Theory and Practice (pp. 86-107). Jossey-Bass. This chapter explores the role of trust in negotiation processes, highlighting its importance in building relationships, facilitating communication, and resolving conflicts. It discusses strategies for developing and repairing trust in negotiations, emphasizing transparency, consistency, and integrity.[2]

[1] Fisher, R., & Ury, W. (1981). "Getting to Yes: Negotiating Agreement Without Giving In." Penguin Books.
[2] Lewicki, R. J., & Wiethoff, C. (2000). "Trust, Trust Development, and Trust Repair." In M. Deutsch & P. T. Coleman (Eds.), The Handbook of Conflict Resolution: Theory and Practice (pp. 86-107). Jossey-Bass.

Raiffa, H. (1982). "The Art and Science of Negotiation." Harvard University Press. Raiffa's classic work provides insights into the principles and strategies of negotiation, drawing on game theory, psychology, and decision analysis. It emphasizes the importance of rational decision-making, creative problem-solving, and ethical conduct in negotiations.[3]

Shapiro, D. L., & Browne, M. N. (2011). "Beyond Reason: Using Emotions as You Negotiate." Penguin. This book explores the role of emotions in negotiation, arguing that emotions are integral to decision-making and relationship-building in negotiations. It provides practical techniques for managing emotions, building rapport, and achieving better outcomes in negotiations.[4]

Shell, G. R. (2006). "Bargaining for Advantage: Negotiation Strategies for Reasonable People." Penguin. Shell's book offers a comprehensive framework for negotiation, focusing on the importance of preparation, strategy, and ethical behavior in achieving successful outcomes. It emphasizes the value of creating value, claiming value, and maintaining relationships in negotiations.[5]

Brett, J. M., & Thompson, L. L. (2016). "Negotiation." In D. De Cremer & M. Zeelenberg (Eds.), Social Psychology and Economics (pp. 143-163). Psychology Press. This chapter provides an overview of key concepts and theories in negotiation, including distributive and integrative bargaining, power dynamics, and ethical considerations. It discusses the role of trust, fairness, and cooperation in negotiation processes, highlighting the importance of ethical behavior for building sustainable agreements.[6]

Mnookin, R. H., Peppet, S. R., & Tulumello, A. S. (2000). "Beyond Winning: Negotiating to Create Value in Deals and Disputes." Harvard University Press. This book explores the concept of value creation in negotiation, arguing that negotiators can achieve better outcomes by focusing on expanding the pie rather than claiming a larger share. It discusses strategies for identifying and

[3] Raiffa, H. (1982). "The Art and Science of Negotiation." Harvard University Press.
[4] Shapiro, D. L., & Browne, M. N. (2011). "Beyond Reason: Using Emotions as You Negotiate." Penguin.
[5] Shell, G. R. (2006). "Bargaining for Advantage: Negotiation Strategies for Reasonable People." Penguin.
[6] Brett, J. M., & Thompson, L. L. (2016). "Negotiation." In D. De Cremer & M. Zeelenberg (Eds.), Social Psychology and Economics (pp. 143-163). Psychology Press.

capitalizing on opportunities for value creation, while maintaining ethical standards and fostering collaboration.[7]

Karrass, C. (1970). "Effective Negotiating: How to Make More Deals." University of Washington Press. Karrass's book offers practical advice and techniques for improving negotiation skills and achieving successful outcomes. It emphasizes the importance of preparation, communication, and ethical behavior in negotiation, providing strategies for overcoming common pitfalls and achieving win-win solutions.[8]

Lewicki, R. J., Saunders, D. M., & Minton, J. W. (1999). "Negotiation." McGraw-Hill Education. This comprehensive textbook covers the fundamentals of negotiation, including preparation, strategy, and tactics. It discusses ethical considerations in negotiation, such as honesty, fairness, and integrity, and provides guidance on navigating ethical dilemmas in negotiation processes.[9]

Fisher, R., & Shapiro, D. (2005). "Beyond Reason: Using Emotions as You Negotiate." Penguin. Building on the principles of their earlier work, Fisher and Shapiro explore the role of emotions in negotiation and provide practical strategies for leveraging emotions to achieve better outcomes. They emphasize the importance of empathy, rapport-building, and emotional intelligence in negotiation processes.[10]

Lax, D. A., & Sebenius, J. K. (1986). "The Manager as Negotiator: Bargaining for Cooperation and Competitive Gain." Simon and Schuster. This book offers insights into the role of negotiation in managerial decision-making, focusing on strategies for achieving cooperation and competitive advantage. It discusses ethical dilemmas faced by managers in negotiation processes and provides guidance on balancing competing interests and fostering collaboration.[11]

Pruitt, D. G., & Rubin, J. Z. (1986). "Social Conflict: Escalation, Stalemate, and Settlement." Random House. Pruitt and Rubin's book examines the dynamics of social conflict and negotiation,

[7] Mnookin, R. H., Peppet, S. R., & Tulumello, A. S. (2000). "Beyond Winning: Negotiating to Create Value in Deals and Disputes." Harvard University Press.
[8] Karrass, C. (1970). "Effective Negotiating: How to Make More Deals." University of Washington Press.
[9] Lewicki, R. J., Saunders, D. M., & Minton, J. W. (1999). "Negotiation." McGraw-Hill Education.
[10] Fisher, R., & Shapiro, D. (2005). "Beyond Reason: Using Emotions as You Negotiate." Penguin.
[11] Lax, D. A., & Sebenius, J. K. (1986). "The Manager as Negotiator: Bargaining for Cooperation and Competitive Gain." Simon and Schuster.

exploring strategies for resolving disputes and achieving mutually satisfactory outcomes. It discusses the role of communication, trust, and power in negotiation processes, highlighting the importance of ethical behavior for building durable agreements.[12]

Menkel-Meadow, C. (2013). "Foreword: The Theoretical Foundations of Negotiation Theory." In C. Menkel-Meadow (Ed.), Negotiation: Theory and Practice (pp. ix-xiv). Wolters Kluwer Law & Business. Menkel-Meadow's foreword provides an overview of the theoretical foundations of negotiation theory, including game theory, social psychology, and behavioral economics. It discusses the ethical implications of different negotiation strategies and highlights the importance of ethical conduct for achieving sustainable agreements.[13]

Pinkley, R. L. (2016). "Get Paid What You're Worth: The Expert Negotiators' Guide to Salary and Compensation." St. Martin's Press. Pinkley's book offers practical advice and strategies for negotiating salary and compensation packages. It emphasizes the importance of preparation, assertiveness, and ethical behavior in salary negotiations, providing tips for maximizing earnings while maintaining fairness and professionalism.[14]

Lewicki, R. J., Barry, B., & Saunders, D. M. (2015). "Negotiation: Readings, Exercises, and Cases." McGraw-Hill Education. This comprehensive textbook features a collection of readings, exercises, and case studies on negotiation. It covers a wide range of topics, including negotiation ethics, cultural differences, and dispute resolution, providing practical insights and guidance for negotiators in various contexts.[15]

4. Research objectives

1. Investigate the impact of recent legal reforms on access to justice and the effectiveness of legal systems in protecting individual rights.

[12] Pruitt, D. G., & Rubin, J. Z. (1986). "Social Conflict: Escalation, Stalemate, and Settlement." Random House.
[13] Menkel-Meadow, C. (2013). "Foreword: The Theoretical Foundations of Negotiation Theory." In C. Menkel-Meadow (Ed.), Negotiation: Theory and Practice (pp. ix-xiv). Wolters Kluwer Law & Business.
[14] Pinkley, R. L. (2016). "Get Paid What You're Worth: The Expert Negotiators' Guide to Salary and Compensation." St. Martin's Press.
[15] Lewicki, R. J., Barry, B., & Saunders, D. M. (2015). "Negotiation: Readings, Exercises, and Cases." McGraw-Hill Education.

2. Examine the role of international law in addressing global challenges such as climate change, human rights violations, and cybersecurity threats.
3. Analyze the intersection of technology and law, exploring the ethical and legal implications of emerging technologies such as artificial intelligence, blockchain, and biotechnology.
4. Evaluate the effectiveness of alternative dispute resolution mechanisms, such as mediation and arbitration, in providing efficient and accessible avenues for resolving legal disputes.
5. Explore the evolving concept of corporate responsibility in law, assessing the role of legal frameworks in promoting ethical business practices, environmental sustainability, and social accountability.

5. Research questions

1. How does the legal framework address the balance between national security concerns and individual privacy rights in the context of surveillance and data collection?
2. What are the legal and ethical implications of using artificial intelligence in decision-making processes within the criminal justice system?
3. How do international treaties and conventions influence the enforcement of environmental regulations and climate change mitigation efforts at the national level?
4. What legal challenges and opportunities arise from the regulation of emerging technologies such as gene editing, autonomous vehicles, and virtual currencies?
5. How effective are legal mechanisms in protecting vulnerable populations, such as refugees, migrants, and indigenous communities, from human rights violations and discrimination?

6. Hypothesis

1. Increased access to legal aid services leads to a more equitable justice system, reducing disparities in legal representation and outcomes for marginalized communities.
2. Stricter enforcement of anti-corruption laws correlates with higher levels of transparency, accountability, and integrity in government institutions and private sector organizations.
3. The implementation of restorative justice programs reduces recidivism rates and fosters community rehabilitation by promoting offender accountability and victim empowerment.

4. Adoption of comprehensive data privacy regulations enhances consumer trust, fosters innovation, and mitigates risks associated with data breaches and unauthorized use of personal information.

7. Research methodology

The doctrinal methodology employed in this study involves a systematic review of legal literature from articles, journals, books, case laws, and reputable websites. Articles and journals provide scholarly analysis and commentary on legal principles, while books offer comprehensive insights into legal doctrines and precedents. Case laws offer practical examples and judicial interpretations of legal concepts, guiding the analysis of legal principles in practice. Additionally, reputable websites of legal institutions and regulatory bodies supplement the research with current information and official documents. By synthesizing information from these diverse sources, this study aims to provide a comprehensive understanding of the legal framework relevant to the research topic.

8. Chapter scheme

CHAPTER 1 : INTRODUCTION

This chapter introduces the ethical dimensions of negotiation within the legal context, exploring the balance between individual interests, fairness, and responsible agreements. It sets the stage for examining the principles, challenges, and best practices of negotiation ethics in law-related settings.

CHAPTER 2 : ACCESS TO JUSTICE AND THE EFFECTIVENESS OF LEGAL SYSTEMS IN PROTECTING INDIVIDUAL RIGHTS

This chapter evaluates the accessibility and efficacy of legal systems in safeguarding individual rights. It explores barriers to justice, such as economic disparities and procedural complexities, and examines strategies for enhancing access to legal remedies and ensuring equitable outcomes within the legal system.

CHAPTER 3 : EFFECTIVENESS OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

This chapter assesses the efficacy of alternative dispute resolution mechanisms, such as mediation and arbitration, in resolving conflicts outside traditional court processes. It examines the advantages, challenges, and outcomes of ADR methods, and their impact on access to justice and legal system efficiency.

CHAPTER 4 : ENVIRONMENTAL SUSTAINABILITY AND SOCIAL ACCOUNTABILITY

This chapter explores the legal frameworks and ethical considerations surrounding environmental sustainability and social responsibility. It examines the role of law in promoting sustainable practices, addressing environmental challenges, and holding individuals and organizations accountable for their social and environmental impacts.

CHAPTER 5 : INTERNATIONAL LAW IN ADDRESSING GLOBAL CHALLENGES SUCH AS CLIMATE CHANGE, HUMAN RIGHTS VIOLATIONS

This chapter examines the role of international law in addressing pressing global issues such as climate change and human rights violations. It evaluates the effectiveness of legal mechanisms and international treaties in mitigating challenges and promoting cooperation among nations.

CHAPTER 5 : CONCLUSION AND SUGGESTIONS

This chapter provides a summary of key findings and insights from the study, highlighting implications for practice, policy, and future research. It offers recommendations for enhancing ethical conduct, improving legal systems, and addressing emerging challenges in law-related contexts.

CHAPTER 2

ACCESS TO JUSTICE AND THE EFFECTIVENESS OF LEGAL SYSTEMS IN PROTECTING INDIVIDUAL RIGHTS

The adoption of technology in law offers several benefits that positively impact the legal profession and the administration of justice. It has replaced traditional approaches with modern methods revolutionizing today's legal landscape. Some of the benefits of Legal Technology include increased efficiency, improved collaboration, fast process, enhanced access to information, large data storage space, enhanced legal research, cost savings, easy access, increased transparency, data analytics, predictive insights, and improved case management. Technology automates repetitive and time-consuming tasks, such as document management, legal research, and scheduling, allowing legal professionals to work more efficiently. This leads to reduced administrative burdens, improved productivity, and the ability to handle larger caseloads.

Technological advancements in law practice have assisted the legal professionals in many ways. Current law practice cannot be imagined without legal technology. Previously, when the legal search engines and databases were unavailable, it would have taken much more time in legal research for case laws. One would have gone to different libraries for research and finally would have found some relevant information. At present, information is merely a click away. With technological advancement AI, machine learning, natural language processing (NLP) have also entered legal field. Artificial intelligence or AI is the capability of machines to emulate human intelligent behaviour. AI can perform complex tasks by applying human intellectual characteristics. Machine learning is the mechanism through which a machine or a computer can improvise its performance by analyzing new information and patterns. Algorithm development is one such example of machine learning. Natural language processing deals with human and machine interaction. If computers and humans have alike language then it would be very convenient for the

legal professionals to develop software for assistance. With development of these AI technologies lawyers can have ease of work but there is a fear that with the advent of AI the employment might be affected. Benefits might come with certain disadvantage.

2.1 Introduction

Artificial Intelligence, or AI, is a branch of computer science that focuses on creating machines that can perform tasks that would normally require human intelligence to complete. The field of AI aims to develop software and hardware that can learn, reason, and make decisions like humans, with the goal of creating intelligent machines that can solve problems autonomously. From self-driving cars to intelligent personal assistants like Siri and Alexa, AI is already making significant contributions to our lives.

At presently Indian Judicial system is facing a major problem and that is the huge backlog of the pending cases at all levels of Courts in judicial hierarchy, from Taluka Courts to Hon'ble Supreme Court of India. As of late it has been debated that if the early action is not taken, the Judicial system would collapse and would be practical meaningless, and not only that, but the worse thing would be is that the common men will loose the faith in the judicial system. Timely justice is necessary. In one of its judgement, the Hon'ble Supreme Court has held that Justice delayed is justice denied.

During the recent COVID-19 crisis, Judges, Advocates, Lawyers, and other staff members of the Court were forced to use virtual software to adhere to the 'New Normal'. Also, the pandemic taught people to find long-lasting and alternative solutions with the help of available resources. Legal professionals used tools such as Microsoft Teams, Google Docs, Legodesk, and others to work together. The Cloud-based platforms and collaboration tools not only allow lawyers to work on documents simultaneously, but also share information in real-time, and communicate more effectively. Legal Tech provides legal professionals with instant access to vast databases of legal information and facilitates faster as well as more accurate legal research. It enables lawyers to find relevant precedents, analyze legal issues, and develop stronger arguments.

By concentrating on the three key steps of getting machine learning (the much more common subgroup of Intelligent systems) to "implement data, model, and application stage—this article presents a paradigm for comprehending the consequences of AI. In brief, I'm interested in the constraints and hazards that come with data-driven judgments in general, and in particular in the Indian context. This study's scope and methodology are important for three reasons".[16]

Delivering justice in particular instances is one aspect of enforcing the law, but the court also has a shadow duty in presenting norms to society as a whole. "However, courts and judges handle information immediately of the subject material; parties present the information to the courtroom, modifications occur during the procedure, and the conclusion is likewise information. This information processing isn't all about complicated customisation. Many matters require a basic evaluation without the need for a hearing, as well as some matters are resolved. Default judgments and declarations of inadmissibility are frequently issued. Complex, conflicting matters make up a small percentage of the cases which the judiciary will have to deal with". It cannot be overstated how important the method is. As a result, the requirement for information technology varies depending on the situation.

Supreme Court of India published a report titled ***"Subordinate Judiciary-Access to Justice 2016"*** asserts capacity constraints are the main reasons for high level of pendency. The report explains the reasons and state that the mounting pendency of cases in subordinate courts is because the subordinate judiciary has been working under a deficiency of courtrooms, judicial officers and one cogent reason is that modernization and computerization have not reached all courts. The outcome then, is delayed and ineffective justice delivery which is not very useful for any society.

The outcome of a vast percentage of routine instances is predictable. In some circumstances, the court judgement is a document generated by a mainly automated process using data provided by the parties. The judgment document specifies an enforcement title. The court usually accepts

[16] Jain, P., 2018. Artificial Intelligence for sustainable and effective justice delivery in India. OIDA International Journal of Sustainable Development, 11(06), pp.63-70.

digital filings wherein the file party submits data digitally so that it does not have to be manually re-entered.[17]

The Judicial Courts handles ordinary matters inside the criminal justice process, and only those matters that require a decision are presented before a court. There is indeed a broad array of scenarios here as well, from the simple to the exceedingly complicated. In all complex cases where the judge or panel must render a decision in order to bring a case to a conclusion, information technology is primarily required in the form of cutting-edge systems and make legal sources readily available, as well as a digital court document that can present huge volumes of information in an adequate way. Because artificial intelligence is indeed a sort of information technology, it may be used in a variety of situations.[18]

At presently, one field that has been recently caught eye on is newfound field of Artificial Intelligence to cope up with this conundrum.

The Hon'ble Chief Justice of India, Justice S.A. Bobde, recently proposed to bring in the system of artificial intelligence (AI) which would ease and support the administration of justice in India. However, the idea is to provide aid to the justice delivery system and not to ever substitute the judges. This step is being seen as a revolutionary change in the judicial system. The CJI was addressing the Constitution Day function organized by the Supreme Court Bar Association (SCBA) on 26th November 2019 and in his speech, he has said.–

> *"We propose to introduce, if possible, a system of artificial intelligence. There are many things which we need to look at before we introduce ourselves. We do not want to give the impression that this is ever going to substitute the judges."*

According to the CJI, machines cannot replace humans specifically the knowledge and wisdom of judges. The deployment of the AI system will help reduce pendency and expedite judicial adjunction.

[17] Kalyanakrishnan, Shivaram, Rahul Alex Panicker, Sarayu Natarajan, and Shreya Rao. "Opportunities and challenges for artificial intelligence in India." In Proceedings of the 2018 AAAI/ACM conference on AI, Ethics, and Society, pp. 164-170. 2018.

[18] Nandi, Anulekha. "Artificial intelligence in education in India: questioning justice and inclusion." (2019): 140-144.

His Excellency, The President of India Shri Ram Nath Kovind was also present at the event. He launched the Supreme Court mobile application. Justice Bodbe, while talking about the application, asserted that an artificial intelligence fuelled law translation system will facilitate the quality translation and will further help in improving the efficiency of the Indian Judicial System. Reportedly, the app that was released will translate Supreme Court judgments in more than 9 regional languages. ***We could say that this is the first step in application of AI in Indian Judicial System.***

2.2 Advanced Technologies utilized by the Supreme Court

The Supreme Court of India, High Courts, and various other law firms, for the past few years, are taking certain essential steps to adapt and embrace the technology for completing their chores easily and quickly. In the matter of Swapnil Tripathi vs. Supreme Court of India (2018), a nine-judge bench gave significant decisions on concepts of access to public information, Open justice, and transparency in the judicial process. Also, the main question addressed was, "Whether there should be live streaming of court proceedings or not?" The Supreme Court held that "Live-streaming of court proceedings is manifestly in the public interest. It is important to re-emphasize the significance of live-streaming as an extension of the principle of open justice and open courts. However, the process of live-streaming should be subjected to carefully structured guidelines."

Earlier on August 26, 2014, the E-committee in discussion with the Supreme Court and High Courts discussed essential rules for live streaming of Court proceedings as well as addressed the concerns of confidentiality and privacy of litigants and witnesses. It was observed that "Courts must also take the aid of technology to enhance the principle of open courts by moving beyond physical accessibility to virtual accessibility." E-committee submitted that so far in the Legal landscape, ICT (Information and Communication Technology) is incorporated in the Indian judiciary. Also, "a single unified Case Information System (CIS) Software has been developed for catering to the diversified requirements of the country in terms of local procedures, practices, and languages." Other platforms for service delivery were also mentioned by the E-committee in their report including e-Courts Portal, Mobile App, SMS Push, SMS Pull, Automated eMails, E-Payment, E-Filing, Touch Screen Kiosks, and Service Centre.

The Indian judiciary has been an early adopter of AI. Having laid the foundation for e-courts equipped with basic computing hardware through the eCourts Mission Mode Project (eCourts project), the Indian judiciary in the last two years has taken a quantum leap to fully harness the possibilities that cutting-edge AI technology has to offer. The Hon'ble Chief Justice of India, Justice Sharad Bobde has repeatedly emphasised the need to tap into AI driven technologies to improve institutional efficiency.[19] On 26 November 2019, the national Constitution Day, Justice Bobde launched the beta version of a neural translation tool called SUVAAS, which formally marked the advent of AI within Indian courts.[20] His interest is not alone—Justice L. Nageswara Rao, who heads the Supreme Court's AI Committee, stated last year that AI will be used for administrative purposes and expediting the process of justice.[21]

In theory, AI in a justice system can be directed towards improving administrative efficiency in courts, and aiding in decision making processes for lawyers, judges and litigants. Its actual integration will require an understanding of the role AI is actually playing in different judicial systems and addressing key legal and ethical challenges that arise in this regard.[22] There must also be an engagement strategy with the Indian legal community and other stakeholders to ensure their support to this process of technological transformation of the justice system. The design and deployment require an implementation roadmap to allow for a phasewise execution of proposed tech interventions. These are the themes that are the focus of this strategy paper. It is hoped that this paper will function as a conversation starter for the integration of AI in the Indian justice system and function as a primer for the stakeholders involved, such as judges, judicial officers and litigants.

For the former, developing task-specific narrow AI tools should be the first generation of AI innovation. These should potentially ease the general rigour of the registry, and also aid judges in

[19] 'AI can improve judicial system's efficiency — full text of CJI Bobde's Constitution Day speech' (ThePrint, 27 November 2019) accessed on 5 November 2023

[20] SUVAAS or the Supreme Court Vidhik Anuvaad Software, is a neural translation tool which has been trained using machine-learning processes. It has the capability of translating English judgments and daily orders into nine vernacular scripts, and vice-versa. See the Supreme Court of India's press release for information on SUVAAS. Supreme Court of India, 'Press Release' (25 November 2019) accessed on 5 November 2023

[21] Justice L.N. Rao, 'AI and the law', (Online webinar of Shyam Padman Associates, 6 August 2020) accessed on 5 November 2023

[22] European Commission For the Efficiency of Justice (CEPEJ), 'European ethical Charter on the use of Artificial Intelligence in judicial systems and their environment' (3-4 December 2018) accessed on 5 November 2023

spending lesser time on administrative responsibilities, in lieu of judicial work. Further, these will provide sophisticated automation for banal and time-consuming admin processes.[23]

With respect to the latter, the spectrum of possible AI can include tools for intelligent analytics and research, and even computational tools (and predictive justice in the longer run). These tools can provide comprehensive legal briefs on cases, encapsulating pertinent legal research, identifying crucial points of law and facts, and thereby expediting the judicial process. This can effectively supplement human judgment in adjudication. Furthermore, intelligent tools, like legal bots, can be designed to help potential litigants with better informed decision making concerning their legal rights, and easily and cost-effectively access basic legal services.

Before venturing into the proposed use cases, it is pertinent to address a vital prerequisite for any prospective AI innovation for the justice system. Current ML and deep-learning techniques are heavily reliant on accessible data.[24] Once such datasets are readily available, AI driven technologies can be realised for augmenting administrative efficiency and the quality of decision-making.

In India, the preliminary work in the use of AI has already commenced. SUVAAS was the pioneer of such task-specific algorithms, designed by the Supreme Court's AI Committee. It relies on natural language processing (an ML process), easing and expediting translation of judicial orders and rulings. Additionally, as was announced last year, the SC AI Committee is also working on a composite new tool named SUPACE (Supreme Court Portal for Assistance in Court Efficiency), which will target different processes like data mining, legal research, projecting case progress, etc.[25] There is also an in-house software being piloted in the 17 benches of the Supreme Court to make them paperless.

In addition to providing better information, legal robotics can also improve access to legal services. For a common person, accessing these, or even grappling with a potential legal situation can be a

[23] See generally, Partha P. Chakrabarti and Ameen Jauhar, 'Bots in the law' (Outlook India, 1 March 2021) accessed on 5 November 2023

[24] Justice L.N. Rao, 'AI and the law', (Online webinar of Shyam Padman Associates, 6 August 2020) accessed on 5 November 2023

[25] Ajmer Singh, 'Supreme Court develops software to make all its 17 benches paperless', (Economic Times, 26 May, 2020) accessed on 15 March 2021. For more understanding of SUPACE see Justice L.N. Rao, 'AI and the law', (Online webinar of Shyam Padman Associates, 6 August 2020) accessed on 5 November 2023

daunting conundrum. Intelligent algorithms (or bots) can be useful in furnishing basic legal information to potential litigants and readily connecting them with legal aid services or pro-bono lawyers.[26] Basic legal services like drafting and conveyancing, legal analyses and interactive breakdown on laws, etc., can be some modes for mainstreaming access to such services, without the trouble of locating and paying for expensive lawyers.

Pertinently, AI interventions are also being researched and looked into in other jurisdictions, particularly the European Union[27], the UK[28], and the USA[29]. For instance, in an ambitious use of AI, the Estonian Ministry of Justice has designed a 'robot judge' to adjudicate small claims' disputes of less than €7,000 (about $8,000).[30] The pilot was initiated to resolve contract disputes and is aimed at eventually expanding to other claims.

In the USA, AI has more prominently been used for designing risk assessment tools. For instance, the Strategic Subject List (S.S.L.) was introduced in Chicago to predict those individuals who are likely to be involved in gun violence.[31] A more controversial tool, COMPAS or Correctional Offender Management Profiling for Alternative Sanctions has been used to assess recidivism risk and thus, inform parole and sentencing decisions.[32] Some of the challenges regarding the use of COMPAS have been identified in the next chapter.

A similar tool called HART (Harm Assessment Risk Tool) has also been used by the UK to forecast which criminals are most likely to reoffend and suggest what kind of supervision a defendant should receive in prison.[33] The tool, which uses random forest forecasting (a ML technique), has been developed to aid decision-making by custody officers to predict whether

[26] Partha P. Chakrabarti and Ameen Jauhar, 'Bots in the law' (Outlook India, 1 March 2021) accessed on 5 November 2023

[27] European Commission for the Efficiency of Justice, 'European ethical Charter on the use of Artificial Intelligence in judicial systems and their environment' (3-4 December 2018) accessed on 3 November 2023

[28] In the United Kingdom, the Lord Chief Justice of the UK Supreme Court has recently convened a ten-member expert committee to look into the 'likely impact of AI in the English Judiciary. accessed on 5 November 2023

[29] David Lat, 'How Artificial Intelligence Will Revolutionize eDiscovery' (Above The Law, 25 January 2017) accessed on 14 March 2021 and Ronsin, Lampos & Maîtrepierre, (2018), n 5.

[30] Eric Nillier, 'Can AI Be a Fair Judge in Court? Estonia Thinks So' (Wired, 5 March 2019)

[31] Jeff Asher and Rob Arthur, 'Inside the algorithm that tries to predict gun violence in Chicago' (New York Times, 13 June 2017) accessed on 5 November 2023

[32] Adam Liptak, 'Sent to prison by a software program's secret algorithms' (New York Times, 1 May 2017) accessed on 5 November 2023

[33] Marion Oswald and others, 'Algorithmic risk assessment policing models: lessons from the Durham HART model and 'Experimental' proportionality' (2018) 2 Information & Communications Technology Law at 233 accessed on 5 November 2023

suspects are at low, moderate or high risk of committing further crimes within a two-year period.[34] It does not decide whether the suspect should be kept in custody but is intended to help police officers pick if a person should be referred to a rehabilitation programme called Checkpoint.[35]

In Brazil, an AI tool called VICTOR is being used to conduct preliminary case analysis to reduce the burden on the court.[36] The tool supports the Brazilian Supreme Court by providing analysis of the cases that reach the court using document analysis and natural language processing tools.[37] The goal of this tool is to accurately and quickly track resources that deal with issues of 'general repercussions'.[38] This concept of general repercussion is intended to ensure that only questions that are truly relevant to the wider society are heard by the court and exclude appeals that reflect only the unsuccessful party's unwillingness to accept defeat.[39]

On May 23, 2023, the Supreme Court of India invited Financial Bids, Technical Bids, and EMD for the Design, Development, and Implementation of AI tools for transcribing Court proceedings and arguments. As per the published notice, the meeting for the same was to be conducted on June 12, 2023, where the main focus of discussion was "Design, Development, and Implementation of Artificial Intelligence (AI) Solution, Tools for Transcribing Arguments and Court Proceedings at Supreme Court of India." Recently on July 03, 2023, the Supreme Court reopens after summer vacation with a major digital change in the courtrooms with a futuristic LED video wall, state-of-the-art digital video conferencing for communication and collaboration, and free WiFi facility. Earlier in an event, CJI DY Chandrachud indicated the next step of the Indian Judiciary is the use of AI for translating judgments into different regional languages of India. The idea was applauded by the Prime Minister of India Narendra Modi terming it as a 'Laudatory thought'.

2.3 Constitutional role of judges and separation of powers

[34] Matt Burges, 'UK police are using AI to inform custodial decisions – but it could be discriminating against the poor' (Wired, 1 March 2018) accessed 14 November 2023
[35] 'Checkpoint' (Durham Constabulary) accessed on 5 November 2023
[36] Daniel Becker and Isabela Ferrari, 'VICTOR, the Brazilian Supreme Court's Artificial Intelligence: a beauty or a beast?' accessed on 5 November 2023
[37] Maria Dymitruk, 'Ethical artificial intelligence in judiciary' (February 2019) accessed on 5 November 2023
[38] Daniel Willian GRANADO, 'Artificial Intelligence Applied To The Legal Proceedings: The Brazilian Experience' (2019) 5 IMODEV accessed on 5 November 2023
[39] Maina Siqueira and Marcello Castro, 'Brazil: The Supreme Federal Tribunal And The "General Repercussion" Requirement' (Mondaq, 10 March 2008) accessed on 5 November 2023

There is also some literature examining how an algorithmic or AI driven judiciary may fundamentally alter its constitutional role, especially as an institutional check and balance against executive and legislative overreach.[40] It is a legitimate question whether an algorithmic decision-making tool can accomplish the complex functions that human judges of constitutional courts are tasked to perform.

While an AI tool may be capable of authoring judgments, the role of a constitutional judge is more complex, requiring a weighing of law and facts, tempered with reasoned discretion, to balance competing interests. Often, in cases of legislative ultra vires, or executive overreach, the judiciary may have to resort to innovative thinking to balance the scales. This ability comes from the human judge's experience on the bench over the years, wherein she is continuously engaging with the law. This engagement in turn shapes her ability to pay attention to how the law evolves, and be mindful of potentially far reaching harms in a seemingly innocuous legislation, or executive action.[41]

For AI, to possess such complex ability would require a far more sophisticated degree of deep learning, and intelligence at parity or superior to human cognition. This is commonly referred to as General AI96, which at present, has not appeared in any tangible form of existing AI technology. A complete transference of judicial functions over to AI will certainly face the challenge of how this technology will perform the entire spectrum of roles and obligations that are presently required of human judges.

2.4 Indian Judiciary

Since 2021, the Supreme Court has been using an AI-controlled tool designed to process information and make it available to judges for decisions. It does not participate in the decision-making process. Another tool that is used by the Supreme Court of India is SUVAS (Supreme Court Vidhik Anuvaad Software) which translates legal papers from English into vernacular languages and vice versa.

[40] Michaels A.C. (2019), 'AI, legal change and separation of powers', 88 University of Cincinnati Law Review 1083 (2020); and Winter (2020) n 6.

[41] Michaels A.C. (2019), n 19. Also see John M. Golden, Redundancy: When Law Repeats Itself, 94 TEX. L. REV. 629, 629 (2016); and John M. Golden, Redundancy: When Law Repeats Itself, 94 TEX. L. REV. 629, 629 (2016)

In the case *of* ***Jaswinder Singh v. State of Punjab***[42], the Punjab & Haryana High Court rejected a bail petition due to allegations from the prosecution that the petitioner was involved in a brutal fatal assault. The presiding judge requested input from ChatGPT to gain a wider perspective on the granting of bail when cruelty is involved. However, it is important to note that this reference to ChatGPT does not express an opinion on the case's merits, and the trial court will not consider these comments. The reference was solely intended to provide a broader understanding of bail jurisprudence when cruelty is a factor.

Currently, there are no specific laws in India with regard to regulating AI. Ministry of Electronics and information Technology (MEITY), is the executive agency for AI-related strategies and had constituted committees to bring in a policy framework for AI.

The Niti Ayog has developed a set of seven responsible Ai principles, which include safety & dependability, equality, inclusivity and non-discrimination, privacy and security, transparency, accountability and the protection and reinforcement of positive human values. The Supreme Court and high courts have a constitutional mandate to enforce fundamental rights including the right to privacy. In India, the primary legislation for data protection is the Information Technology Act and its associated rules. Additionally, the Digital Personal Data Protection Bill has been introduced by MEITY, although it is still awaiting formal enactment. If this bill becomes law, individuals will have the ability to inquire about the data collected from them by both private and government entities, as well as the methods utilized to process and store it.

2.5 AI IN CIVIL CASES

The use of AI in civil proceedings, however, is particularly challenging in India. India's legal system is complicated and varied, with a vast variety of laws, courts, and legal procedures. It is important to carefully weigh the potential benefits and challenges of utilizing AI in this situation. Beyond attorneys and judges, the general public may increase its participation with and comprehension of the law by using research and analytics technologies that are widely available. The goal of this participation is to develop more informed, pro-government citizens.[43]

[42] (***2008) 2 PLR 774***

[43] https://vidhilegalpolicy.in/wp-content/uploads/2021/04/Responsible-AI-in-the-Indian-Justice-System-A-Strategy-Paper.pdf

By assisting judges with their decision-making, relieving the strain on attorneys, and improving public access to justice, artificial intelligence (AI) technology has the potential to change the legal system. AI can help with case prediction, document appraisal, contract analysis, and legal research. AI may assist in resolving disputes by providing mediation and arbitration services.

2.6 Confidentiality and data privacy

AI systems generally rely on large amounts of data to learn and make predictions. Such data may include sensitive information, such as personal or financial data. AI algorithms that require this type of data to train effectively may create problems for organizations to comply with data protection laws.

2.7 Bias in AI systems

Potential bias in AI systems whilst training can reflect in the outcome. The results from AI can simply reflect current social, historical imbalances stemming from race caste, gender and ideology, producing outcomes that do not reflect true merit.

2.8 Concerns regarding competition

It is possible for AI to operate independently of its coders or programmers through its self-learning capabilities. However, this could potentially result in technological and economic disparities that have yet to be fully examined. Such disparities could lead to the misuse of data and potentially disrupt the framework established by the Competition Act, 2000.

2.9 Predict legal outcomes

With AI, legal professionals can access vast quantities of information, combs through previous cases to find relevant points of law and make more accurate predictions about how a particular case will resolve. This has allowed legal experts to deliver their services more efficiently and effectively, resulting in better outcomes for clients.

2.10 Aiding to provide quality justice

Furthermore, AI tools and automation can help reduce the number of human errors within the legal system, making it less prone to mistakes and improving the overall quality of justice delivered.

Expedite legal proceedings

With its ability to quickly analyse vast amounts of data and detect patterns, AI could help streamline and expedite legal procedures in India. This could be especially beneficial in a country that faces a backlog of millions of pending cases and where the legal system can be slow and laborious.

Unbiased legal system

Additionally, AI can assist in identifying biases and inconsistencies in the legal process, ultimately leading to more fair and just outcomes.

Simple legal communication for non-specialist

AI-powered legal tools now have the potential to streamline workflows and reduce the time needed for legal research and compliance analysis. Meanwhile, natural language processing (NLP) tools using AI can help simplify legal communication, especially for non-specialists.

Accurate analysis of legal data

It also has the potential to revolutionize the legal industry in India. By implementing AI in India's legal frameworks, lawyers and judges could streamline their work, conduct automated legal research, and analyse vast amounts of legal data efficiently within short period.

Establishing accountability for technology-related errors in the legal field can be a challenging task. The implications of errors made by AI systems shall have huge ramifications affecting the life and liberty of individuals. However, proactive measures can be taken by legislators and industry experts from legal or other fields to set clear lines of responsibility and to ensure accountability when using AI in their practice.

2.11 Conclusion

It is important to remember that AI is not a replacement for lawyers' work, rather it should complement it. While AI can simplify tedious and time-consuming tasks, it cannot handle strategic decision-making, complex legal analysis and legal counsel.

There are two aspects attached to the use of AI technology in due diligence. First, that an individual will be more credible than a machine. Machine is created by humans so in case of error an AI system cannot be held liable. Second important aspect to note is that a human can err in performing tasks but a machine does what it is programmed to do, it can carry out tasks more efficiently so chances of error due exhaustion is very minimal. Ultimately, AI cannot in itself perform tasks in isolation, it is made to assist human not replace them. The client company might have an opinion or a preference regarding the lawyers using or not using AI. Some might prefer AI equipped technology as there is less chance of error and increased efficiency, others on the other hand might go for the regular mechanism that does not include AI. Software failure and lack of proper training of AI can also lead to missing of vital information and it should be noted that a software being made liable for an error is highly questionable. Further, the sensitive confidential information might be exposed due to the threat of cyber attack and viruses. Furthermore, the question of attorney client privilege might be questioned in certain jurisdiction. Firms opting for AI technology must not be willing to invest only on AI technology but also on appropriate human resource to train such software or else it might backfire the purpose for which it was established. AI can certainly be used as a tool of assistance but cannot replace lawyers.

CHAPTER 3

EFFECTIVENESS OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

The jurisprudence of Access to justice as an integral part of social justice and examine the constitutionalism ..... as a facet of human rights highlighted in our Nation's Constitution. If the state itself should travesty this basic Principle, in the teeth of Articles 14 and 39-A, where an indigent widow is involved, a second took at its policy is overdue.[44]

-Krishna Iyer J.

The Constitution of India based on the concept of welfare state. It is the duty of the state to secure access to justice to its citizens by ensuring judicial and non-judicial forums of dispute resolution that provides timely and effective justice and enforcement of their legal and fundamental rights. Ignorance, poverty and other social infirmities should not become barriers to securing justice.

It is settled now that free legal aid must be provided to the indigent person, who cannot defend themselves in a court of law due to the reason of money and other and now it also mandatory under Article 39-A and Article 21 of the Indian Constitution.[45]

The law has to help the poor who do not have means to fight their causes. The Constitutional Mandate rescue operation began with justice V.R. Krishna Iyer and Justice P.N. Bhagwati's Committee Report, weaks section thus become enable to approach law court's right from Munsif courts to the Supreme Court. CILAS (Committee for the implementation of Legal Aid Services) also come on the scene. Based on this states adopted (through state legal Aid and advice Boards) Lok adalat.[46]

[44] State of Haryana Vs. Darshan Devi, AIR 1979 SC 855
[45] Avtar Singh –—Law of Arbitration and Conciliation‖ PP 397-398, 7 Edition, Eastern book Company, Lucknow
[46] Dr. Anupam Kurlwal, An Introduction of Alternative Dispute Resolution System.

3.1 Constitutional Provision –

3.1.1 Preamble

Our Constitution reflects this aspiration in the Preamble itself, which speaks about justice in all its forms: social, economic and political. The Preamble secures to all the citizens of India – Justice- Social, economic, and political. The expression Justice briefly speaking its ―the and Legal Aid Camps, Family Courts, Village Courts, Mediation Centres, Commercial arbitration, Women Centres Consumer Protection Forums, etc which are but various facets of effective Alternative Dispute Resolution system.[47] Constitution of India [48] is the grund-norm of this country; it contains provisions which indicate promotion of justice harmonious reconcilement of individual conduct with the general welfare of society. An act or conduct of a person is said to be just if it promotes the general well-being of the community.

Therefore, the attainment of the common good as distinguished from the good of individuals is the essence of justice. Legal justice is a part of social justice. As whenever the legal justice is denied the society gets disturbed. A legal system is part of state which maintains social harmony through dispute resolution. In a country, which aims to protect the socio-economic and cultural rights of citizens, it is extremely important to quickly dispose the cases in India, as the Courts alone cannot handle the huge backlog of cases. This can be effectively achieved by applying the mechanisms of Alternative Dispute Resolution.

3.1.2 Article 21 of the Constitution of India

Article 21 declares in a mandatory tone that no person shall be deprived of his life or his personal liberty except according to procedure established by law.

The word ―life and liberty‖ are not to be read narrowly it is very wide in its sense.

[47] See P.N. Bhagawati on the need to create adequate and effective delivery system of justice in Chapter VI of ―Social Justice – Equal Justice‖ P.33
[48] Narendra Kumar – ―Constitution of India‖ PP.28, 250

In Hussainara Khatoon I Vs. Home Secretary, Bihar[49] it has been interpreted that right to speedy trial is also a part of the right to life and personal liberty. The Supreme court has allowed Article 21 to stretch aims as wide as legitimately can.[50]

The reason of this liberal interpretation was very simple that Article-21 is to redress that mental agony, expenses and strain which a person proceeded against in litigation has to undergo and which, coupled with delay, may result in impairing the capacity or ability of the accused to defend himself.

The same has received recognition from the legislature as well as in the form of introduction of Alternative Dispute Resolution and Alternative Dispute Resolution Mechanism through various statutes.

3.1.3 Article 39-A Free Legal Aid

Article 39-A obligates the State of secure that "the operation of the legal system which promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities".[51] Thus promotion of justice is most important function of a state and ADR mechanisms helps in it. Hence much legislation like Arbitration and Conciliation Act 1996 ; Section 89 of CPC ; Legal Services Authority Act 1987 have been passed to promote justice.[52]

[49] Hussainara Khatoon (No.) V. Home Secretary, Bihar, AIR 1979 SC 1360; Kadra Pahadiya V. State of Bihar, AIR 1982 SC 1167; Raghubir Sing V. State of Bihar, (1986) 4 SCC 481. See also Raj Deo Sharma V. State of Bihar, AIR 1998 SC 3281; Common Cause, Registered Society V. Union of India, AIR 1997 SC 1539; Kartar Sing V. State of Punjab, (1994) 3 SCC 569; Akhtari Bai V. State of M.P., AIR 2001 SC 1528 : In this case it is ruled that where matters are not disposed of within a period of say 5 years for no fault of the convict, they should be released on bail.

[50] Article 21 is Fundamental right that can be directly enforced in the Supreme Court under Article 32 of the Constitution of India.

[51] This Directive Principle was inserted by the Constitution 42nd Amendment Act, 1976

[52] Dr. Anupam Kurlwal, An Introduction of Alternative Dispute Resolution System page 114

3.2 Legal Provisions related to ADR -

"The first Commandment to our legislative freedom fighters ought to be to bury these codes and the Evidence Act but re-create a simple, spacious, modern, and business management oriented code with scope for judicial initiative in doing justice to the people."

.....Justice Krishna Iyer

In India Arbitration since end of nineteenth century was a statutorily recognised form of dispute resolution. The arbitration was originally governed by the provisions contained in different enactments, including those in the Code of Civil Procedure; the first India Arbitration Act was enacted in 1899, which was replaced by the Arbitration Act 1940. So Arbitration as an alternative to litigation was a recognised concept. But arbitration under this Act suffered the same maladies like courts as it allowed parties in every trivial matter resort to courts and ultimately frustrate the objective of arbitration as an alternative to litigation. In Guru Nank Foundation V. Rattan Singh[53] the Supreme Court of India while referring to the 1940 Act, observed that "the way in which the proceedings under the Act are conducted and without an exception challenged in courts has made lawyers laugh and legal philosophers weep" in view of " unending prolixity at every stage providing a legal trap to the unwary." The Supreme Court made further observation in **Food Corporation of India. V. Joginderpal[54]** that the law of arbitration must be simple less technical and more responsible to the actual reality of situations, responsive to the canons of justice and fair play.

There are several statutes recognised Alternative Dispute Resolution Mechanism such are :-

3.2.1 Civil Procedure code 1908

(i) **Section 89. Settlement of disputes outside the Court. –**

(1) Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their

[53] AIR 1981 SC 2075
[54] AIR 1989 SC 1263

observations and after receiving the observations of the parties, the court may reformulate the terms of a possible settlement and refer the same for –

(a) arbitration ;

(b) conciliation ;

(c) Judicial settlement including settlement through Lok Adalat ; or

(d) mediation.

(2) Where a dispute has been referred –

(a) for arbitration or conciliation, the provision of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration of conciliation were referred for settlement under the provision of that Act;

(b) to Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub section (1) of section 20 of the legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute to referred to the Lok Adalat;

(c) For judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provision of the Act;

(d) for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

Section 89 lays down that whereby it appears to the court that there exists element of settlement, which may be acceptable to the parties, the Court shall formulate the terms of the settlement and give them to the parties for their comments. On receiving the response from the parties, the Court may formulate the possible settlement and refer it to either:- Arbitration, Conciliation ; judicial

Settlement including settlement through Lok Adalats : or Mediation.[55] In Salem Advocates Bar Association V. U.O.I,[56] the Supreme Court directed the constitution of an expert committee to formulate the manner in which section 89 and other provisions introduced in CPC have to be brought into operation. The Court also directed to devise a model case management formula as well as rules and regulations, which should be followed while taking recourse to ADR referred to in section 89 of CPC.

(ii) Order X Examination of party by the Court

Rule 1. Ascertainment whether allegations in pleadings are admitted or denied. At first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in plaint or written statement (if any) of the opposite party, and as are not expressly or by the necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

1A. Direction of the Court to opt for any one mode of alternative dispute resolution. – After recording the admissions and denials, the Court shall direct the parties to the suit to opt either mode of the settlement outside the Court as specified in sub-section (1) of section 89. On the option of the parties, the Court shall fix the date of appearance before such forum or authority as may be opted by the parties.[57]

1B. Appearance before the conciliatory forum or authority. Where a suit is referred under rule IA, the parties shall appear before such forum or authority for conciliation of the suit.[58]

1C. Appearance before the Court consequent to the failure of efforts of conciliation Where a suit is referred under rule IA and the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then it shall

[55] Law & Practice of Alteration Dispute Resolution in India, a Detailed Analysis by Anirban Chakraborty Published by Lexis Nexis
[56] AIR 2003 SC 189
[57] Inserted by Act 46 of 1999, sec. 20(w.e.f. 01-07-2002)
[58] Ibid.

refer the matter again to the Court and direct the parties to appear before the Court on the date fixed by it.[59]

(iii) Order XXXII 32(A)

Order 32(A) Lays down the provision relating to ―suits relating to matter concerning the family‖. It is generally the commonly accepted view that regular court procedure may not be ideally suited to deal with the sensitive area of personal relationships. Litigations involving affairs of the family seem to require special approach in view of the serious emotional aspects involved. With this objective in mind family counselling as a method of achieving the object of preservation of family is necessarily required to be encouraged in family and matrimonial disputes. Therefore, Order 32A seeks to highlight the need for adopting a different approach where matters concerning the family are at issue, including the need for effort to bring about amicable settlement. The provisions of this Order applies to all proceedings relating to family, like guardianship, custody of minor, maintenance, wills succession, etc., Rule 3 imposes a duty on the Court to make an effort of settlement by way of providing assistance where it is possible to do so. The Court may also adjourns the proceedings if it thinks fir to enable attempt to be made to effect a settlement where there is a reasonable possibility of settlement. In discharge of this duty Court may take assistance of welfare expert who is engaged in promoting the welfare of the family.

(iv) Order 23 Rule 3 Compromise of suit

Here it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [in writing and signed by the parties], or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the Court shall order such agreement, compromise or satisfaction to the recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit.

[Provide that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at the Court shall decide the question but no adjournment shall be

[59] Ibid.

granted for the purpose of deciding the question, unless the Court, for reason to be recorded, thinks fit to grant such adjournment.]

[Explanation. – An agreement or compromise which is void or voidable under the Indian Contract Act, 1872, shall not be deemed to be lawful within the meaning of this rule.

Order 23 Rule 3 also make a provision for making a decree on any lawful agreement or compromise between the parties during the pendency of the suit by which claim is satisfied or adjusted. The scheme of Rule 3 of Order 23 proves that if the court is satisfied that a suit has been adjusted wholly or partly by and lawful agreement or compromise, the court shall pass a decree in accordance to that. Order 23, Rule 3 gives mandate to the Court to record a lawful adjustment or compromise and pass a decree in term of such compromise or adjustment.

3.2.2 Family Courts Act 1984

The family courts act, (Act No. 66 of 1984) is in act to provide for the establishment of family courts with a view to promote conciliation in, and secure speedy settlement of dispute relating to marriage and family affairs and for matters connected therein.

(i) Establishment of Family Courts

2.1.1 Section 3 Establishment of Family Courts.-

(1) For the purpose of exercising the jurisdiction and powers conferred on a Family Court by this Act, the State Government after consultation with the High Court, and by notification,-

a. shall, as soon as may be after the commencement of this Act, establish for every area in the State comprising a city or town whose population exceeds one million, a Family Court;

b. may establish Family Courts for such other areas in the State as it may deem necessary.

(2) The State Government shall, after consultation with the High Court specify, by notification, the local limits of the area to which the jurisdiction of a Family Court shall extend and may, at any time, increase, reduce or alter such limits.

Section 4 Appointment of Judges.

(1) The State Government may, with the concurrence of the High Court appoint one or more persons to be the Judge or Judges, of a Family Court.

(2) When a Family Court consists of more than one Judge

a. each of the Judges may exercise all or any of the powers conferred on the Court by this Act or any other law for the time being in force;

b. the State Government may, with the concurrence of the High Court, appoint any of the Judges to be the Principal Judge and any other Judge to be the Additional Principal Judge;

c. the Principal Judge may, from time to time, make such arrangements as he may deem fit for the distribution of the business of the Court among the various Judges thereof;

d. the Additional Principal Judge may exercise the powers of the Principal Judge in the event of any vacancy in the office of the Principal Judge or when the Principal Judge is unable to discharge his functions owing to absence, illness or any other cause.

(3) A person shall not be qualified for appointment as a Judge unless he

a. has for at least seven years held a Judicial office in India or the office of a member of a tribunal or any post under the Union or a State requiring special knowledge of law; or

b. has for at least seven years been an advocate of a High Court or of two or more such Courts in succession; or

c. Possesses such other qualification as the Central Government may. with the concurrence of the Chief Justice of India, prescribe.

(4) In selecting persons for appointment as Judges

a. every endeavour shall be made to ensure that persons committed to the need to protect and preserve that institution of marriage and to promote the welfare of children and qualified by reason of their experience and expertise to promote the settlement ofdisputes by conciliation and counseling are selected; and

b. preference shall be given to women.

(5) No person shall be appointed as or hold the office of, a Judge of a Family Court after he has attained the age of sixty-two years.

(6) No salary or honorarium and other allowances payable to, and the other terms and conditions of service of, a Judge shall be such as the State Government may, in consultation with the High Court, prescribe.

Section 5 Association of social welfare agencies, etc.-

The State Government may, in consultation with the High Court, provide. by rules, for the association, in such manner and for such purposes and subject to such conditions as may be specified in the rules, with a Family Court of

a. institutions or organisations engaged in social welfare or the representatives thereof;

b. persons professionally engaged in promoting the welfare of the family;

c. persons working in the field of social welfare; and

d. any other person whose association with a Family Court would enable it to exercise its jurisdiction more effectively in accordance with the purposes of this Act.

Section 6 Counsellors, officers and other employees of Family Courts.

(1) The State Government shall, in consultation with the High Court, determine the number and categories of counsellors, officers and other employees required to assist a Family Court in the discharge of its functions and provide the Family Court with such counsellors, officers and other employees as it may think fit.

(2) The terms and conditions of association of the counsellors and the terms and conditions of service of the officers and other employees. referred to in sub-section (1), shall be such as may be specified by rules made by the State Government.

(ii) Jurisdiction of Family Courts -

2.2.1 Section7

(1) Subject to the other provisions of this Act, a Family Court shall :-

a. have and exercise all the jurisdiction exercisable by any district Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

b. be deemed, for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be. such subordinate Civil Court for the area to which the jurisdiction of the Family Court extends.

Explanation – The suits and proceedings referred to in this subsection are suits and proceedings of the following nature, namely :-

a. a suit or proceeding between the parties to a marriage for decree of a nullity marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

b. a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

c. a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

d. a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

e. a suit or proceeding for a declaration as to the legitimacy of any person;

f. a suit or proceeding for maintenance;

g. a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act a Family Court shall also have and exercise;

a. the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

b. such other jurisdiction as may be conferred on it by any other enactment

Section 8 Exclusion of jurisdiction and pending proceedings.

Where a Family Court has been established for any area:-

a. no district Court or any subordinate Civil Court referred to in sub-section (1) of Sec. 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or

proceeding of the nature referred to in the Explanation to that sub-section;

b. no Magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the C9de of Criminal Procedure, 1973 (2 of 1974);

c. every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of Sec. 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973(2 of 1974)-

(i) which is pending immediately before the establishment or such Family Court before District Court or subordinate Court referred to in that sub- section or, as the case may be, before any Magistrate under the said Code; and

(ii) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act has come into force and such Family Court had been established, shall stand transferred to such Family Court on the date on which it is established;

(iii) Section 9 Duty of Family Court to make efforts for settlement

(1) In every suit or proceeding, endeavour shall be made by Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and

persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.

(2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties. the Family Court may adjourn the proceedings for such period, as it thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Family Court. to adjourn the proceedings.

It is, the bounded duty of the family court for making an attempt for conciliation before proceedings with trial of the case. Section 9 of the act lays down the duty of the Family Court to assist and persuade the parties, at first instance, in arriving at a settlement in respect of subject matter. The Family Court has also been conferred with the power to adjourn the proceedings for any treasonable period enable attempts to be made to effect settlement if there is a reasonable possibility.

3.2.3 Hindu Marriage Act, 1955

Hindu Marriage Act 1955 Casts Duty on the court that before granting relief under this Act, the court shall in the first instance make and endeavour to bring about reconciliation between the parties, where it is possible court should preferably attempt to encourage the parties to conciliate their differences and disputes.[60] For this purpose the statute empowers the court of suitable situation to adjourn the proceedings for the reasonable period and referred the matter to person nominated by court or party with the direction to report to the court as to the result of the reconciliation.

Section 23 Decree in proceedings.-

(1) In any proceeding under this Act, whether defended or not, if the Court is satisfied that-

[60] Chhotelal Vs. Kamla 1967 pat. 269

(a) any of the grounds for granting relief exists and the petitioner except in cases where the relief is sought by him on the grounds specified in sub-clause (a), subclause

(b) and sub-clause (c) of clause (ii) of Section 5 is not any way taking advantage of his or her own wrong or disability for the purpose of such relief, and

(c) where the ground of the petition is the ground specified in clause (i) of subsection-(1) of Section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground or the petition is cruelty the petitioner has not in any manner condoned the cruelty, and

(d) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and

(e) the petition not being a petition presented under section 11 is not presented or prosecuted in collusion with the respondent, and

(f) there has not been any unnecessary or improper delay in instituting the proceeding, and

(g) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the Court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties

:Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii), of sub-section (1) of Section 13.

(3) For the purpose of aiding the Court in bringing about such reconciliation, the court may, if the parties so desire or if the Court thinks it just and proper so to do adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the Court if the parties fail to name any person,

with directions to report to the Court as to whether reconciliation can be and has been effected and the court shall in disposing of the proceeding have due regard to the report.

(4) In every case where a marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties.

3.2.4 Industrial Dispute Act, 1947

Conciliation has been statutorily recognized as an effective method of dispute resolution in relation to dispute between workers and the management. Industrial Dispute Act, 1947 provides both for conciliation and arbitration for the purpose of settlement of dispute.

Section 12 of Industrial Dispute Act, 1947

In **Rajasthan State Road Transport Corporation V. Krishna Kant**,[61] Supreme Court observed that "the policy of law emerging from Industrial Disputes Act, and its sister enactments is to provide an alternative dispute – resolution mechanism to the workmen, a mechanism, which is speedy, inexpensive, informal and unencumbered by the plethora of procedural Laws and appeals and revisions applicable to civil courts."

The key object of the Industrial Dispute Act, is investigation and settlement of industrial disputes with that thing in vision diverse authorities have been created by the Act the works committee, conciliation Officer, Board of Conciliation and Courts of Inquiry attempt to resolve the difference before it may be adjudicated upon by the Labour Court or the Industrial Tribunal. The all aspire at friendly settlement of the industrial dispute.[62]

3.2.5 The Arbitration and Conciliation Act 1996

In order to give recognition to several practice of arbitration prevailing in India prior to the arrival of British. Lots of Regulations was introduce time to time by East India Company. But the regulation Act, 1787 empowered the court to promote arbitration.

[61] 1955 SCC(5) 75
[62] Dr. Anupam Kurlwal, An Introduction of Alternative Dispute Resolution System.

In 1857 arbitration became the part of civil procedure code Act of 1857 which was amended in 1882.

An Independent Act, governing arbitration was passed in 1889. In subsequent stage of development of the law on arbitration the civil procedure 1908 (which replaced the Civil Procedure Act of 1857 and 1882), brought back all the provisions of the Indian Arbitration Act, 1899 and incorporated them in the schedule appended to the court. The Arbitration provisions contained in the schedule of Civil Procedure Code 1908 were re-enacted into a separate act in 1940.

The Arbitration Act of 1940, suffered from serious defects of too much interference by court with the arbitration proceedings at every stage of their progress. So there was a need of arbitration which was free from Judicial Interference and to make the award final and instantly executable. Accordingly, taking into consideration of the law commission recommendations on the subject and the UNCITRAL model law and rules, the new Arbitration and conciliation Act of 1996 was enacted repealing the prior act 1940.

(I) Evolution of the ACT

Arbitration as an institution for settlement of disputes has been known and practiced in all civilised societies from time immemorial. Of all mankind's adventures in search of peace and justice, arbitration is amongst the earliest. Long before law was established or courts were organised, or judges has formulated principles of law, man had resorted to arbitration for resolving disputes.‖ Traces of the practice of settling disputes through the method of arbitration was found in the institutions of Panchas and Panchayat which were practiced in many village communities and tribal areas in India. But with the advent of the British rule and the introduction of their legal system in India starting from the Bengal Regulation of 1772, the traditional system of dispute resolution methods in India gradually declined. The successive Civil Procedure Codes enacted in 1859, 1877 and 1882, which codified the procedure of civil courts, dealt with both arbitration between parties to a suit and arbitration without the intervention of a court.[63]

[63] Rao P.C & Sheffield William ―Alternative Dispute Resolution- What it is and how it works?‖, Universal Law Publishing Co. Pvt. Ltd. New Delhi- India, 1997 Edition, Reprint 2011, Unni A.C.C. ―The New Law of Arbitration and Conciliation in India‖, pp. 68-69

The first Indian Arbitration Act was enacted in 1899. This Act was largely based on the English Arbitration Act of 1889 and applied only to cases where, if the subject matter of a suit, the suit could, whether with leave or otherwise, be instituted in what was then known as a Presidency town. The scope of this Act was confined to arbitration by agreement without the intervention of a court.[64]

The Code of Civil Procedure, 1908 originally omitted the arbitration proceedings in the hope that they would be transferred to the comprehensive Arbitration Act.

The year 1940 is an important year in the history of law of arbitration in British India, as in that year the Arbitration Act, 1940 was enacted. It consolidated and amended the law relating to arbitration as contained in the Indian Arbitration Act, 1899 and the Second Schedule to the Code of Civil Procedure, 1908. It was largely based on the English Arbitration Act, 1934. But it was noticed or rather observed that certain cases were still pending and there were some drawbacks on the enactment of this Act. Thus then led to the enactment of the Arbitration and Conciliation Act, 1996.[65]

(II) OBJECT OF THE ACT

The main object of the Act are :-

(i) to comprehensively cover international commercial arbitration and conciliation as also domestic arbitration and conciliation ;

(ii) to make provision for an arbitration procedure which is fair, efficient and capable of meeting the needs of the specific arbitration;

(iii) to provide that the Arbitral Tribunal gives reasons for its arbitral award;

(iv) To ensure that the Arbitral Tribunal remains within the limits of its jurisdiction;

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[64] Ibid

[65] Rao P.C & Sheffield William ―Alternative Dispute Resolution- What it is and how it works?‖, Universal Law Publishing Co. Pvt. Ltd. New Delhi- India, 1997 Edition, Reprint 2011, Rao P.C ―The Arbitration and Conciliation Act, 1996: The Context‖, pp. 33-44

(v) To minimize the supervisory role of Courts in the arbitral process;

(vi) To permit an arbitral Tribunal to use mediation, conciliation or other procedure during the arbitral proceedings to encourages settlement of disputes;

(vii) To provide that every final arbitral award is enforced in the same manner as if it were a decree of the Court ;

(viii) To provide that a settlement agreement reached by the parties as a result of conciliation proceedings will have the same status and effect as an arbitral award on agreed terms on the substance of the dispute rendered by the Arbitral Tribunal ;and

(ix) To provide that, for purposes of enforcement of foreign awards, every arbitral award made in a country to which one of the two, International Conventions relating to foreign arbitral awards to which India is a party applies, will be treated as a foreign award.

The objects and reasons aid in finding out what really persuades the legislature to enact a particular provision thought they cannot be the ultimate guide in interpretation of statutes. The objects and reasons of an Act should be taken into consideration in interpreting the provisions of the Statute in case of doubt and the language of a provision is not clear.

(III) THE FORM AND CONTENT

This Act contains 85 Sections, besides the Preamble and three Schedules. The Act is divided into four Parts. Part-I contains general provisions on arbitration. Part-II deals with enforcement of certain foreign awards. Part-III deals with conciliation. Part-IV contains certain supplementary provisions. The Preamble to the Act explains the biases of the proposed legislation. The three Schedules reproduce the texts of the Geneva Convention on the Execution of Foreign Awards, 1927; The Geneva Protocol on Arbitration Clauses, 1923; and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 respectively.[66]

[66] Supra note (197)

Part-I closely deals with the provisions of the UNCITRAL Model Law but some of them differs from that of the Model Law. Some of the Sections are mentioned below:[67]

a) Section-10(1) deals with the number of arbitrators in an arbitral tribunal and provides that that the number of arbitrators shall not be of even number. Section-10(2) provides that the arbitral tribunal shall consist of a sole arbitrator.

b) Section-11(10) empowers the Chief Justice of India or the Chief Justice of the High Court, as the case may be, to make such scheme as he deem appropriate for dealing with the appointment of arbitrators.

c) Section-13 does not permit the challenging party to approach the Court when the challenge made to the arbitral tribunal is not successful. However after the award is made, the party could challenge the award on the ground that the arbitrator has wrongly rejected the challenge.

d) Section-16 states that if the arbitral tribunal turns down the plea that it has no jurisdiction then the Act does not make the provision for approaching the Court at that stage.

e) Section-31(7) contains detailed provisions on award of interest by the arbitral tribunal. It deals with the costs of arbitration.

f) Section-36providesthatundertwosituations,namely-a)where an award is not challenged within the prescribed period, or b) where an award has been challenged but the challenge is turned down, the award shall be enforced in the same manner as if it were a decree of the court.

g) Section-37 makes provision for appeals in respect of certain matters

h) Section-38 enables the arbitral tribunal to fix the amount of deposit or supplementary deposit, as the case may be, as an advance for the cost of arbitration.

i) Sections 39 to 43 are largely based on the corresponding provision in 1940 Act.

Part-II contains sections 44-60. It incorporates provisions of the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961. It states

[67] Supra note (200)

that any award given outside India, whether or not made in an arbitration agreement covered by the law of India, will henceforth be treated as a foreign award.[68]

Part-III deals with conciliation. It does not define what conciliation is. Conciliation is one of the non-litigative dispute resolution processes. Conciliation process aims at securing a compromise solution rather than solution according to the law. It is a voluntary, non-judicial, speedy and confidential process. The cost of conciliation is much less than the costs of litigation. Above all, conciliation process allows the parties to be more directly involved in the resolution of the dispute; consequently in this process, the parties retain freedom of action with regard to initiating, conciliation, adapting the proceedings to their particular case, and discontinuing it if there is any such violation.[69]

Thus to make arbitration and conciliation a success story in India, three things are needed:-

1) A good law that is responsive to both domestic and international requirements.

2) Honest and competent arbitrators and conciliators without whom any law or arbitration or conciliation can succeed.

3) Availability of modern facilities and services such as meeting rooms, communication facilities, administrative and secretariat services.

Lastly, the establishment of the International Centre for Alternative Dispute Resolution (ICADR), an independent non-profit making body, in New Delhi on May 1995 is a significant event in the matter of promotion of ADR movement in India.[70]

3.2.6 Legal Service Authority Act 1987

Lok Adalats are intended to provide quick justice at less expenditure. The Legal Services Authorities Act, 1987 makes provisions in relation to the establishment, power and functions etc.,

[68] Supra note 200
[69] Rao P.C & Sheffield William "Alternative Dispute Resolution- What it is and how it works?", Universal Law Publishing Co. Pvt. Ltd. New Delhi- India, 1997 Edition, Reprint 2011, Nariman F.S. "Arbitration and ADR In India", pp. 45-56
[70] Ibid

of Lok Adalats. Lok Adalats are organized to promote justice on a basis of equal opportunity and not to deny the justice to any citizen by reason of economic or other disabilities.

The Awards passed by the Lok Adalats are deemed to be the decrees of the Civil Courts or the Order of any other Court and are binding on all the parties to the dispute. No appeal lies against an Award. All categories of cases can be settled through Lok Adalats except criminal cases which are not compoundable. Disputes at pre-litigative stage also can be taken cognisance of by the Lok Adalat. Lok Adalats had so far resolved some 1,36,00,000/- cases.

Chapter VI of the Legal Services Authorities Act, 1987 deals with the Lok Adalats.

Section 19 Organisation of Lok Adalats —

(1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, 12

Taluk Legal Services Committee may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.

(2) Every Lok Adalat organised for an area shall consist of such number of—

(a) serving or retired judicial officers; and

(b) other persons, of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee, or as the case may be, the Taluk Legal Services Committee, organising such Lok Adalat.

(3) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats organised by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

(4) The experience and qualifications of other persons referred to in clause (b) of sub-section (2) for Lok Adalats other than referred to in sub-section (3) shall be such as may be

prescribed by the State Government in consultation with the Chief Justice of the High Court.

(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of—

(i) any case pending before; or

(ii) any matter which is falling within the jurisdiction of, and is not brought before, any Court for which the Lok Adalat is organised:

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

Section 20 Cognisance of cases by Lok Adalats.—

(1) Where in any case referred to in clause (i) of sub-section (5) of section 19,—

(i) (a) the parties thereof agree; or

(ii) (b) one of the parties thereof makes an application to the Court, for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement; or

(iii) the court is satisfied that the matter is an appropriate one to be taken cognisance of by the Lok Adalat, the Court shall refer the case to the Lok Adalat:

Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

(2) Notwithstanding anything contained in any cither law for the time being in force, the Authority or Committee organising the Lok Adalat under sub-section (1) of section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination:

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advice the parties to seek remedy in a court.

(7) Where the record of the case if returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1).

Section 21 Award of Lok Adalat.—

(1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court-fees Act, 1870 (7 of 1870).

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.

Section 22 Powers of 2[Lok Adalat or Permanent Lok Adalat.—

(1) The Lok Adalat or Permanent Lok Adalat] shall, for the purposes of holding any determination under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:—

(a) the summoning and enforcing the attendance of any witness and examining him on oath;

(b) the discovery and production of any document;

(c) the reception of evidence on affidavits;

(d) the requisitioning of any public record or document or copy of such record or document from any court or office; and

(e) such other matters as may be prescribed.

(2) Without prejudice to the generality of the powers contained in sub-section (1), every Lok Adalat or Permanent Lok Adalat shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it.

(3) All proceedings before a Lok Adalat or Permanent Lok Adalat shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code (45 of 1860) and every Lok Adalat or Permanent Lok Adalat shall be deemed to be a Civil Court for the purpose of section195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

3.2.7 Indian Contract Act, 1872

Section 28 has been amended by the Indian Contract (Amendment) Act 1997) and it states that an agreement absolutely restraining a party from enforcing his rights through a court of law, or an agreement which places a limit as to the time within which a right can be is void. The section reads as under :

Section 28 Agreement in restraint of legal proceedings void. –

Every agreement,-

(a) By which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights : or

(b) Which extinguishes the rights or any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent

3.2.8 Motor Vehicle Act, 1988

Motor Vehicles Act, 1988 (MV Act) is known to generate excessive litigation contributing to large pendency of cases in courts. India has the largest number of road accidents in the world resulting in a very large numbers of accident claim case being filed in courts. As per Sections 146 and 149 of the MV Act, victim compensation in Motor Accident Claims is based on third party insurance. Section 169 of the Act lays down that the Tribunal shall follow such summary procedure as it thinks fit in sedtting claims compensation. But in reality the Tribunals constituted for this purpose are conducting regular trials instead of summary inquiries which consume lot of time. Insurance companies delay settlement of claims.

There is no adherence to the mandatory third party insurance provisions. The insurance companies have not been settling claims on the ground that they have no intimation of the road accident until the receipt of the notice from the Claims Tribunals. Considering the above it is clear that it is necessary to make the process of accident claims smooth and stress free for the victims of road accidents. The alternative approach to regular trials that has emerged which is considered to be more victim friendly is settling compensation claims through Lok- Adalats where victim need not take recourse to litigation for realizing his/her claim. Lok Adalats are indigenous model of alternative dispute resolution in India and has jurisdiction over both pre and post litigation disputes. It use primarily reconciliatory approach and provides settlement which are not appealable.

3.2.9 Negotiable Instrument Act

The existing provision under Sections 138-142 in Chapter XVIII of the Negotiable Instruments Act, 1981 (NI Act) have given rise to a large number of dishonor of cheque cases thereby compounding the problem of pendency in our criminal justice system. Necessary legislative change to deal with the problem of excessive litigation under the NI Act is a matter of discussion currently. One of the proposals that has gained consensus is introduction of ADR in dealing with dishonor of cheque case which includes :-

(a) Introducing provision for the compulsory referenced of dishonor of cheque cases to any of the ADR mechanisms : That for any dispute arising under Section 138 of the NI Act would in the first instance have to be referred to a Permanent Lok Adalat. The matter could be taken up before a court only if the parties failed to sign a settlement agreement before the Permanent Lok Adalat.

Disputes which are already pending before the courts may be referred to ADR mechanisms of (a) Arbitration, (b) Conciliation (c) Mediation or (d) Permanent Lok Adalat by Courts with consent of the parties.

CHAPTER 4

ENVIRONMENTAL SUSTAINABILITY AND SOCIAL ACCOUNTABILITY

Corporate social responsibility is a company's commitment towards environmental and social sustainability, as being good stewards of the environment and social landscapes in which they operate. CSR was introduced under Section 135 of the Indian companies act 2013.

It states that "Every company with a net worth of Rs. 500 crore or more, a turnover of Rs. 1000 crore or more, or a net profit of Rs. 5 crore or more in the previous fiscal year shall form a Corporate Social Responsibility Committee (CSR) of the Board comprised of three or more directors, at least one of whom shall be an independent director".[71] India was first country to have statutorily mandate CSR by law for companies aimed at improving the future. The theory of Social responsibility says that an organization or individual, has an obligation to act to benefit society at large .The theory of Social Responsibility can be defined as the duty of every individual or organization which has to performed to maintain a balance between the economy and ecosystem. The first reference of the term corporate social responsibility was mentioned in the publication 'Social Responsibilities of Business' by William. Bowen in 1953. CSR criteria requires business to invest 2% to 5% of their net profit in such profits in social development. It also requires companies to donate two percent of their net profit for promoting the greening of the environment and the ecosystem CSR are the activities which the organizations perform to save the environment, climate, wastages and reduce the wastage releases.

Recently Hero MotoCorp Ltd., the world's largest two-wheeler manufacturer, signed a Memorandum of Understanding (MoU) with the Municipal Corporation of Gurugram (MCG) for the ecological restoration and conservation of the Aravali Biodiversity Park in Gurugram, Haryana, for the next ten years as part of its long-term commitment to environmental sustainability.[72] This research will examine whether there is an impact on environment by the CSR

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[71] Section 135, Indian Companies Act, 2013

[72] Bulls, E. (n.d.). *Hero MotoCorp adopts Aravali Biodiversity Park in Gurugram*. EquityBulls. Retrieved December 9, 2022, from https://www.equitybulls.com/category.php?id=286731

initiatives also, how many companies and working towards environmental sustainability through CSR initiatives and how effective these initiatives are, also what are the issues and challenges faced by CSR while implementing these initiatives. The type of data used in this research is empirical research will be through secondary data collection sources.

4.1 INTRODUCTION

Corporate social responsibility (CSR) is commitment of a company, to environmental and social sustainability, as well as giving back to the environments and social landscapes in which they operate. It is a notion that can be interpreted in a variety of ways and often involves economic, social, and environmental components. CSR attempts to improve management for all company stakeholders and to promote more accountability. Companies use resources from society to run their businesses successfully, and hence have a moral obligation to contribute something back to society in addition to their promises to investors or stockholders. CSR is important because it helps to ensure that organisations and individuals are aware of their impact on the world around them. Without CSR, there would most certainly be less concern for environmental protection, assisting people in need, and supporting local communities. The notion of CSR is gaining traction among governments and other stakeholders, sparking a lively debate among a number of academics about its significance. Almost all nations prioritise the environment, social and economic components, however the main focal areas differ depending on national history, regulations, laws and so on as well as people's preferences. CSR was created. The International Labour Organization (ILO) described CSR as a mechanism for businesses to examine the influence of their operations on society, and CSR principles are voluntarily integrated into businesses' internal processes and contacts with stakeholders. More recently, the European Commission (2011) condensed the CSR definition as firms' responsibility for their societal impacts, implying that enterprises should have a mechanism in place to incorporate the CSR agenda into their operations and core strategies in collaboration with stakeholders. The World Business Council for Sustainable Development

(WBCSD) (2012) stressed the importance of balancing returns on financial, natural, and social capitals, specifically advocating the incorporation of CSR reporting into annual reports.[73]

The concept of corporate social responsibility (CSR) arose in the 1950s. Howard R. Bowen in 1953 defined CSR as businessmen's obligation to promote policies, make judgements, or follow lines of action that are advantageous in terms of society's objectives and ideals. He contended that entrepreneurs are accountable for the repercussions of their activities in areas other than corporate financial success, implying the existence and significance of corporate social performance.[74]

CSR, according to W. C. Frederick (1960), is a private contribution to society's economic and human resources, as well as a willingness on the side of business to ensure that those resources are used for broad societal goals. In addition, he characterised the evolution of CSR in the 1950s into three fundamental ideas:

- Managers in corporate as public trustees through the ownership structure;
- stakeholders' equitable claims to company resources; and
- the legitimacy of business philanthropy.[75]

Businesses are facing increased problems such as fast globalisation, growing environmental concerns and mounting pro-poor demands need the establishment of result-based CSR management and rigorous CSR performance review. These trends suggest that businesses should include CSR into their core operations throughout all value chains, both national and global. Such integration, however, necessitates strong corporate incentive as well as effective reporting methods. Recently, there has been a surge in interest in sustainable development. Sustainable development is defined as development that meets current needs without jeopardising future generations' ability to meet their own. In this method, sustainable development can be achieved. and environmental challenges are closely intertwined. Aside from social and economic concerns.

[73] C*SR*. (n.d.). CSR. Retrieved December 26, 2022, from https://www.ilo.org/legacy/english/intserv/working-papers/wp071/index.html
[74] R. Bowen. (2013) *Social Responsibilities of the Businessman* (p. 248). Business & Economics.
[75] Yu, M., Wang, J., Xin, J., & Publishing, S. R. (2021, June 30). *Research on the Impact of Corporate Social Responsibility on Consumers' Purchase Intention*. Research on the Impact of Corporate Social Responsibility on Consumers' Purchase Intention. Retrieved December 26, 2022, from https://scirp.org/journal/paperinformation.aspx?paperid=110707

example, business-caused environmental damage (Water pollution and deforestation, for example, have an impact on local inhabitants, posing an obstacle to their long-term socioeconomic growth.[76]

CSR was introduced under Section 135 of the Indian Companies Act of 2013 established CSR. "Any corporation with a net value of Rs. 500 crore or more, a turnover of or more, a turnover of Rs. 1000 crore or more, or a net profit of Rs. 5 crore or more in the previous fiscal year shall form a Corporate Social Responsibility Committee (CSR) of the Board comprised of three or more directors, at least one of whom shall be an independent director".[77] India was first country to have statutorily mandate CSR by law for companies aimed at improving the future.

4.2 Importance of CSR

- Better financial performance
- Enhancement of product image and reputation
- Increased sales and customer satisfaction
- Improving the organization's capacity to attract and retain people.
- Reduced direct control
- Simple access to financing

The business community is gradually discovering the benefits of the corporate commitment process. It is becoming more aware of the various facets of the company's commitment processes. The climate in India enables for the expansion of corporate commitment procedures due to different internal and external forces. Although many corporations, NGOs, and unions are aware of corporate responsibility procedures, the study's findings indicate that the concepts are not yet part of many Indian enterprises' main business strategy. Many businesses already exist.

In comparison to Indian CSR, CSR and its application in other nations. CSR's precise mandate is to improve management of all stakeholders and to provide greater accountability. It could be philanthropic or oriented toward openness, ethics, or communal welfare prioritise the environment,

[76] What Are the Top Trends in Corporate Social Responsibility? (2022, July 14). In *Investopedia*. https://www.investopedia.com/ask/answers/011215/what-are-top-trends-corporate-social-responsibility.asp
[77] Section 135, Indian Companies Act, 2013

social and economic components, however the main focal areas differ depending on national history, regulations, laws, and so on, as well as people's preferences. The government's active or passive role in CSR implementation also has an impact on its execution. The role of the government its aims priorities, and policies, all have a significant impact on CSR. [78]

Despite the fact that CSR is voluntary and goes beyond the legal requirements. Few countries, including China, the United Kingdom, South Africa, and Indonesia, have made CSR a legal requirement. Their corporate bylaws specifically specify that businesses must engage in CSR activity.

5.3 INDIAN PERSPECTIVE

Since the beginning of 1964, the CSR of Indian Oil has been a cornerstone of success. The Organisation’s goals in this critical area of activity are outlined in its purpose. To improve the network's quality of life while preserving environmental equality and ideals with a strong local conscience. CSR has gained popularity in India over the years as businesses see the benefits of participating in CSR to enjoy the benefits of creating shareholders, increasing revenue base, branding strategies, efficiency, improved access to capital, people, and intellectual property is restricted, and commercial opportunities are limited. CSR has evolved into a valuable tool for integrating corporate and social efforts in the achievement of long-term development and social goals. CSR is growing increasingly popular.

According to Section 135(1) of the Indian companies act 2013 if a company meets any of the following conditions in its previous 'financial year,' it must form a CSR Committee:

- A company's net value of 500 crore rupees or more.
- A company with a turnover of one thousand crore rupees or more.

[78] Does Government Have a Role to Play in Corporate Social Responsibility? — GivingForce. (2018, May 9). In *GivingForce*. https://www.givingforce.com/blog/does-government-have-a-role-to-play-in-corporate-social-responsibility

- The company's net profit is at least five crore rupees. [79]

The Committee must have three or more directors, one of whom must be an independent director. A provision related to this subsection stipulates that if a corporation is not required to nominate an independent director under Section 149 sub-section (4), the corporation must have two or more directors on the CSR Committee.

The Company must also design and recommend to the Board a CSR policy that includes activities that the company must carry out under Schedule VII, which gives a list of activities that a corporation can carry out as part of its CSR policy.[80] There are certain responsibilities of a company's board of directors that are qualified for CSR which include:

- Taking into account the suggestions of the CSR Committee.
- The board must disclose the contents of such a policy in its report, as well as post it on the company's website, if one exists.
- Ensuring that the activities outlined in the company's CSR policy are carried out by the company. [81]
- Ensuring that the company spends at least 2% of its average net income from its CSR programme in the two previous fiscal years in each fiscal year.[82]

The act also specifies that, if the company fails to spend the amount of money which was authorised for CSR, then the board must state the reasons why in the report and the unspent money must be transferred to a fund established in Schedule VII[83]. This must be completed within six months of the fiscal year's end. Unless the unspent sum is tied to an ongoing project the reasons and transfer of funds must be completed.[84] The Central Government may provide special or general instructions to a corporation or class of companies as it sees fit.[85]

[79] Section 135(1), Indian Companies Act, 2013
[80] Section 135(3), Indian Companies Act, 2013
[81] Section 135(4), Indian Companies Act, 2013
[82] Section 135(5), Indian Companies Act, 2013
[83] Section 134(3) clause (o) of Indian Companies Act, 2013
[84] Section 134(6) clause (o) of Indian Companies Act, 2013
[85] Section 135(8), Indian Companies Act, 2013

Three elements of Indian philanthropy are:

a) that it is mostly a tale of Indian businesspeople,
b) that it is a story of indigenous rather than expatriate business, and
c) that philanthropy is largely a story of family companies, as it is in most of Asia.[86]
d) Some companies in India have adapted the CSR initiatives and have had impacts:

1. Tata Group

The Tata Group operates a number of CSR projects in India, the most prominent of which being network expansion and poverty reduction programmes. It is interested in women's empowerment, fundraising, national network development, and other social projects through self-help organisations. Tata Group provides bursaries and various institutional awards in the field of education. The training also includes health care tasks such as youth education support, immunisation, and AIDS awareness. To name a few initiatives:

- **Aarogya** Addressing malnutrition, spreading awareness and delivering preventative healthcare – Impacted **3,82,888** lakh lives
- **Kaushalya** Improving employability through skill development, vocational training, assistance for supplementing income, women empowerment – Skilled **17,661**people
- **Amrutdhara** Offering water relief measures – Impacted **8,153** lives
- **Seva** Tata Motors' family volunteered – **10,232**employees clocked **29,011** hours for social upliftment[87]

2. Ultratech Cement

Ultratech Cement, which is active in in 407 villages for social activity also around the country, with the goal of providing assistance and independence. Its CSR operations are centred on health

[86] *ANALYSIS OF CSR PRACTICES IN INDIA AND USA.* (n.d.). ANALYSIS OF CSR PRACTICES IN INDIA AND USA. Retrieved January 3, 2023, from https://www.linkedin.com/pulse/analysis-csr-practices-india-usa-national-csr-network
[87] Tata Motors - List of CSR Activities by Indian Companies. (2016, December 16). In *Tata Motors Limited | Largest Indian Automobile Manufacturer*. https://www.tatamotors.com/corporate-social-responsibility/

care and family wellbeing plans, policy for education, sustainable environment, welfare of society and providing livelihoods for a long period of time.

Few Achievements:

- Reached out to a population of 1.6 million people in over 500 villages in 16 states of India through our CSR initiatives.
- Sanitation: In collaboration with the Government of India's Swachh Bharat Abhiyan (Clean India Mission), we helped build 442 individual toilets and sanitation facilities in 38 villages. As a result, all the 38 villages have become Open-Defecation Free.
- Livelihoods:
    - The 840 Self-Help Groups (SHG) setup by us empowers 8000 households economically and socially.
    - Reached out to around 26000 farmers to help them in agricultural and horticultural activities to reap a rich harvest.
- Education: Over 35000 students benefitted from our special coaching classes and career counselling program.
- Health: More than four lakh villagers have availed our healthcare services across units.[88]

3. Hero MotoCorp adopts Aravali Biodiversity Park in Gurugram-

Hero MotoCorp Ltd which is the world's largest two-wheeler manufacturer signed a Memorandum of Understanding (MoU) with the Municipal Corporation of Gurugram (MCG) for the ecological restoration and conservation of the Aravali Biodiversity Park in Gurugram, Haryana, for the next ten years as part of its long-term commitment to environmental sustainability.[89] The Aravali Biodiversity Park is located in Gurugram, Haryana, and spans 380 acres. Ecologically restored and semi-arid land vegetation can be found in the park. It features over 300 native plant species,

[88] Community Development. (n.d.). In *Community Development*. https://www.ultratechcement.com/about-us/sustainability/community-development

[89] Hero MotoCorp Takes Over Maintenance Of Aravali Biodiversity Park For 10 Years. (n.d.). In *carandbike*. https://www.carandbike.com/news/hero-motocorp-takes-over-maintenance-of-aravali-biodiversity-park-for-10-years-2478595

including a diverse range of trees, shrubs, herbs, climbers, and grasses. The park is home to over 183 different bird species.[90]

CSR Towards Energy Efficiency, Emission Reduction And Biodiversity Conversation

Hybrid vehicles and electric vehicles by companies like Toyota, Nissan, Honda and Tesla Motors in order to curb the greenhouse gas emissions and reduce the environmental hazards. Many companies like IBM, Staples and BP are using Renewable Energy Credits (RECs) and Solar Energy in order to support the clean energy projects. Companies such as Adani, IKEA, The Body Shop are promoting Biodiversity conservation, sustainable forestry initiative, organic farming and fair trade in order to balance the need for both business growth, sustaining and preserving the depleting natural resources.[91]

5.4 OTHER COUNTRIES CSR LAWS

CHINA was among the first countries in the world to mention the phrase 'CSR' in its corporate statute. Company Law of the People's Republic of China 2006 states that a company shall undertake "social responsibility" in doing the business. Chinese multinational enterprises (MNE), this paper looks into the nature of their corporate social responsibility (CSR) reporting. CSR communications of the largest Chinese companies and their counterparts from advanced economies have been compared based on quantitative and qualitative content analysis of CSR reports. A mixed method approach has been rarely utilized in the analysis of CSR reporting[92]

INDONESIA *Limited Liability Company Act 2007* of Indonesia requires explicitly that the companies in the sector of natural resources or any connection with such resources are under an obligation of implementing environmental and social responsibility. Indonesia was one of the first countries in the world to implement legislation mandating businesses to undertake Corporate

[90] Bulls, E. (n.d.). *Hero MotoCorp adopts Aravali Biodiversity Park in Gurugram*. EquityBulls. Retrieved January 3, 2023, from https://www.equitybulls.com/category.php?id=286731

[91] Neveleff, C. (2020, March 6). Corporate Social Responsibility: Towards Sustainability & Energy Efficiency in Business Strategy. In *Dexma*. https://www.dexma.com/blog-en/corporate-social-responsibility-towards-sustainability-energy-efficiency-in-business-strategy/

[92] Ervits, I. CSR reporting by Chinese and Western MNEs: patterns combining formal homogenization and substantive differences. *Int J Corporate Soc Responsibility* **6**, 6 (2021). https://doi.org/10.1186/s40991-021-00060-y

Social Responsibility (CSR). Different with other countries with their voluntary approach of CSR, the legislation makes CSR as a mandate to business in Indonesia. Through document analysis method, this study analyses six laws related to CSR in Indonesia to define the mandate of CSR legislation in order to understand the form of CSR should be practiced by companies operating in Indonesia.[93]

UNITED KINGDOM *The UK Companies Act, 2006* takes the approach of making CSR a legal duty as a part of the fiduciary duty of directors. The law requires directors to have regard to two things, one is to long-term programs and another is to various factors of CSR including the interests of suppliers, environment, consumers, and employees[94]

UNITED STATES OF AMERICA CSR measures and communication operations involving humanitarian, administrative, volunteer work, and environmental issues are not considered legal compliance. United States government does not require corporate social responsibility, despite the presence of a CSR team in the Bureau of Economic and Business Affairs to encourage corporate contributions. The majority of CSR practises in the United States stem from the availability of tax benefits for philanthropy or from customer push for ethical branding.[95]

5.5 INITIATIVES BY COMPANIES WORLDWIDE

1.Coca-Cola plant-based bottle sustainability Coca-Cola, as a brand, has always has a strong emphasis on sustainability. Climate change, packaging, and agriculture, as well as water stewardship and product quality, are all major concerns. Their mission is 'a world without waste,' and they intend to collect and recycle every bottle, make their packaging 100% recyclable, and

[93]Analysis of CSR Legislation in Indonesia: Mandate to Business by Rabin Ibnu Zainal available at: https://www.researchgate.net/publication/335270391_Analysis_of_CSR_Legislation_in_Indonesia_Mandate_to_Business/stats (accessed on : January 12, 2023).

[94] N. (2021, October 27). *The History of Corporate Social Responsibility in the UK - The Impact Marketing Club*. The Impact Marketing Club - Marketing as a Force for Good. https://impactmarketingclub.com/corporate-social-responsibility-uk/

[95] A. (2017, August 29). *Corporate social responsibility (CSR) in United States of America*. Transparent Hands. https://www.transparenthands.org/corporate-social-responsibility-csr-in-united-states-of-america/

return all water used in the production of their drinks to the environment to maintain water security. They hope to have reduced their carbon footprint by 25% by 2030.

2.Renewable Innovation by Johnson & Johnson's Johnson & Johnson, a pioneer in big pharmaceuticals and is a good illustration of CSR on the frontlines. They have continuously worked to reduce their environmental impact. Their efforts range from harvesting wind power to giving clean water to people all over the world. The company was able to reduce pollution while also providing a renewable, cost-effective alternative to electricity by purchasing a privately held energy supplier in the Texas Panhandle.

3.Google: Social stance Google is trusted not only because of its environmental measures. Google received the highest CSR 2018 score from the Reputation Institute as its data centres are using 50% less energy than others around the world. Google has also contributed over $1 billion to renewable energy projects and provide services like Gmail to help other businesses decrease their environmental footprint.[96]

ISSUES AND CHALLENGES

[96] Aquire, S., & S. (2020, November 25). *14 Best Socially Responsible Companies That Are Making Impact*. Nonprofit Blog. https://donorbox.org/nonprofit-blog/best-corporate-responsibility-companies

- **Everyone in company have different priorities :** There's often a gap between leadership goals and employee enthusiasm, There is a disconnect between the company's CSR mission statement and staff commitment. Strong CSR programs have strong employee engagement," when there is an effective CSR program that speaks directly to the interests of your employees, there's more unification from your employee efforts overall.

- **Different departments, different priorities**: struggle with are not being able to unify all departments and business units across their organization, while committing to a single CSR mission statement. A single CSR cause can be tackled through multiple avenues by identifying opportunities across the organization and its business units.

- **Connecting CSR to the Value Chain and Profitability:** CSR contributes positively to developing products and services that meet regulatory compliance requirements, company goals for profitability and performance, and consumer expectations requires an investment in digital software solutions that bring disparate data sources together and provide measurable value via insights and improved financial reporting.[97]

5.6 CONCLUSION

Organizations cannot function solely for profit at the expense of the environment, society, the economy, their customers, and their employees. Organizations have started to evaluate how they can give back to society. Giving back and taking on Corporate Social Responsibility can help organisations attract customers and retain top employees. This can also lead to creating an actual impact in society. Despite the fact that India is the first country to have a mandatory statutory compliance requirement on CSR spending, there are still many issues ahead that should be addressed with working with the government corporations, and civil society and to put in continuous efforts as to how CSR and result in benefits for sustainability in the environment. CSR initiatives have a very different impact but the increasing amount of business participating in CSR

[97] Economic Affairs SECO, S. S. (n.d.). *CSR Issues*. CSR Issues. https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/nachhaltigkeit_unternehmen/gesellschaftliche_verantwortung_der_unternehmen/csr-themen.html

initiatives is a first step towards Developments to Environmental Sustainability through CSR Initiatives.

CHAPTER 5

INTERNATIONAL LAW IN ADDRESSING GLOBAL CHALLENGES SUCH AS CLIMATE CHANGE, HUMAN RIGHTS VIOLATIONS

5.1 Introduction

A major breakthrough in negotiations was achieved in Bali when the United States agreed to rejoin negotiations to establish an international regime to address climate change concerns post-Kyoto.[98]

Despite U.S. re-engagement, the future of the negotiations and an effective global climate regime depend on the ability of developed nations such as the United States and rapidly developing economies such as China and India to agree on emissions reduction targets and binding mitigation obligations, and for developed countries to provide adequate financial and technological aid.[99] While such mitigation based on emission rights is an important point of negotiation, it nevertheless undercuts the equally important question of violation of constitutional rights, which are implicated in the case of developing countries such as India.

India is a constitutional democracy whose growing GDP and emissions make it an important player in global mitigation instruments and strategies. However, the protection of constitutional rights of Indians, threatened by the absence of an effective international climate treaty, is not adequately discussed. In particular, the rights of Indians whose head count support the Indian government's equitable claim to emit green house gases (GHGs) based on a per capita calculation are at stake, but there is no remedy in sight as focus remains on emission rights-based mitigation strategies.

This article argues that climate change presents a serious challenge to constitutional rights of Indians; rights that can only be taken away by the State and by proper legal procedure. Further, as foreign states are involved and as international and other remedies against these states are limited,

[98] Juliet Eilperin, Bali Forum Backs Climate 'Road Map,' U.S. Accedes on Aid Pledges, Wins Fight to Drop Specific Targets for Emissions Cuts, Wash. Post, Dec. 16, 2007, at **A01.**

[99] See generally Andrew C. Revkin, As China Goes, So Does Global Warming, N.Y. Times, Dec. 16, 2017, http://www.nytimes.com/2007/12/16/weekinreview/ i 6revkin.html.

safeguarding constitutional rights presents substantial challenges that cannot be addressed even through the Indian judiciary's epistolary jurisprudence. Through this analysis, the article aims to demonstrate a less examined issue in international climate regime discussions-that at stake is a fundamental legal, social and political document of modem societies.

The first part of the article provides an overview of the global climate change regime, including a brief scientific background. The second part discusses India's status and position with respect to climate change, including mitigation strategies and adaptation challenges. The third part examines the potential constitutional challenges that could arise due to climate change. The fourth and the fifth parts discuss the scope for judicial action and their limits, followed by concluding remarks.

5.2 CLIMATE CHANGE-INDIA IN PERSPECTIVE

Currently, India is ranked as one of the top five emitters of greenhouse gas emissions,[100] but as a developing country whose industrial process began in the later half of the 20th century it does not bear historical responsibility for carbon dioxide reduction targets.[101] Moreover, despite having a 4.23% share of the global emissions,[102] which excludes the 10% global emissions share from land use shifts such as deforestation,[103] the sub-continent's overall position on the issue is less troubling than that of other emitters, particularly China and the United States.

According to a recent Climate Change Performance Index, India's energy-related emissions are much lower than that of China or United States, which contributed 18.80% and 21.44%, respectively in 2017. Further, India's global share remains relatively low despite the fact that its share of the global population is 17.02%, and its share of the global GDP is close to that of Japan at 6.16%, in effect the fourth largest economy among the top emitters.[104] In fact, India a high ranking of five for its climate performance in 2017; this figure is closer to that of Germany and United Kingdom that are undertaking critical measures to address the problem, and much higher

[100] See Development Data Group of the Development Economics Vice Presidency and the Environment Department of the World Bank, The Little Green Data Book (International Bank for Reconstruction and Development, 2017)
[101] Infra note 49.
[102] Jan Burck et al., Climate Change Performance Index **2018 (CCPI),** German Watch **(2008),** tbl.5,
[103] Kyoto Protocol, **3-15** December **2007,** 12 Earth Negotiations Bull. 354, Dec. **18, 2017,** available at http://www.iisd.ca/download/pdf/enbl2354e.pdf.
[104] United States' global **GDP** share is **20.13%;** China's 14.75%; and Japan's **6.36%,** id.

than that of most other top emitters including Canada, China, Italy, Japan, Republic of Korea, The Russian Federation, and the United States were ranked in the high 40s and 50s.

India also leads the chart of top emitters that are demonstrating positive emissions trends. India's growth has not been accompanied by high escalation of emissions despite its increasing dependence on coal. In comparison, economic growth in China has been accompanied by a 3% per capita increase in emissions. As such, India outpaces China with respect to emission levels, trends in emission increases, and overall climate change performance; India is ranked among the top ten nations performing well, as opposed to China, which is ranked in the 40s and 50s. The only area where China leads is on climate policy; it is ranked seventh.[105]

However, India is not far behind with a rank of fourteen, and is also fourth in the upward curve of countries that are adopting sound climate policy. In 2002, India acceded to the Kyoto Protocol, although neither the Protocol nor UNFCC obligate the Government of India to reduce its GHG emissions.[106] Nevertheless, the administration is undertaking several voluntary measures that will slow down GHG emission increases. These measures include promotion of renewable energy[107] and investments in clean development technologies. The Government has also adopted energy regulations and established new ministries or administrative agencies. It has also set up special committees, including one headed by IPCC Chairperson, Rajendra Pachauri and other prominent government and nongovernment representatives, to consider additional venues for action.[108]

Yet, despite the positive trends, India's climate scenario is not entirely encouraging. Within the country, competing policies and interests present significant challenges to ongoing mitigation efforts.

Demand for energy and carbon intensive material is to sustain development activities has risen exponentially. Notably, there is increasing demand for electricity for hi-tech industries and for modem amenities such as air conditioners and cars; for materials to build infrastructure for the spiraling land and air traffic; and for cement for commercial and residential construction. These

[105] In fact, the Chinese Government is committed to adopting several climate positive policies. **CCPI,** supra note **37.**
[106] Under Article 2(a)-(b) of the **UNFCCC,**
[107] The Ministry of New and Renewable Energy, which began as a Department of Non-Conventional Energy Sources within the Ministry of Energy in the 1970s
[108] Divya Gandhi, Committee on Climate Change Set Up, The Hindu, May 11, 2007, http://www.thehindu.com/2007/05/1 I/stories/2007051102381300.htm.

energy requirements have driven the Government to exploit domestic coal reserves, and have increased its dependence on petroleum resources, despite growing emphasis on weaning away from traditional fuel.[109] Further, the administration's focus on encouraging internal and foreign direct investments to jumpstart some of the above mentioned projects, particularly infrastructure building-power plants construction, marine ports, telecommunications and real estate 59-threaten to undermine environmental impact assessment legislation, which is being used in other jurisdictions such as the United States to measure climate change impacts of a project, even if with limited success. This is especially worrisome if one considers the U.S. Department of Energy's prediction that at the current growth rate India's C02 emissions could increase between 72 and 225% by 2025,[110] which, regardless of the fact that at 5% its global contribution will be lower than that of China, Europe and United States, would threaten the goal of curbing temperature increases at two degrees Celsius.

In short, increase in trade and commerce is driving up India's GDP and its emissions. Therefore, given its steady economic growth[111] the Government of India is under international pressure to accept binding obligations post-Kyoto, much like Annex I nations. Thus, the Government faces the uphill challenge of designing and maintaining policies that balance economic growth and climate change mitigation. It has responded by focusing on alternative energy options, even though they can neither fuel its current developmental demands, nor adequately minimize the country's impact on climate change.

Much more alarming, however, are the potential effects of climate change within the sub-continent. The Intergovernmental Panel on Climate Change (IPCC) predicts that glacial melts in the Himalayan region alone will increase flooding, trigger avalanches and landslides, and cause extinction of species and ecosystems. As such, Himalayan glaciers, including the Gangotri, which is a source of the perennial and holy river Ganga, have receded by thirty meters, endangering water supply in the dry season. Other changes in hydrological cycles are also expected to cause extreme drought or flood conditions; shorten crop duration periods to the detriment of agricultural yields,

[109] Supra note 50
[110] See Kevin Baumert et al., Navigating the Numbers: Greenhouse Gas Data and International Climate Policy Part XII (World Resources Inst. 2015).
[111] India's GDP has grown steadily by about 8% in the last few years. See Reserve Bank of India Press Release, RBI Increases Cash Reserve Ratio, (2017), http://www.rbi.org.in/scripts/BSViewBulletin.aspx?Id=8333.

threaten biological diversity, increase risk of malarial outbreaks by creating conditions favorable to disease carrying vectors; and increase cyclones in coastal regions.[112]

As such, India's record on managing weather-related calamities is rather dismal. According to a Climate Risk Index, which rates countries' weather risk record that is not attributed to climate change,[113] India was ranked ninth among the ten most affected countries for the period 1995-2004; during this same period, the Human Developmentt75 Index (HDI) ranked India 127th in the world. In fact, India was ranked first for long term deaths in the same period; even though this was not the case in 2016, the country remained in the list of top ten countries prone to weather related calamities.[114]

The only area that India did not top the HDI list was for GDP losses, which was noted to be generally higher in developed countries, primarily because of insurance and similar costs, which most affected people in developing countries, including India, cannot afford.[115] However, according to another study, India is predicted to suffer the highest GDP loss from climate change, more than Africa, if there is a 2.5 degree Celsius increase in global temperature and climate change.[116]

An early indication of the implications of such losses is already becoming evident in some parts of the country. In 2007 an Indian farmer was reportedly forced to abandon his ancestral agricultural land, which was part of one of two islands submerged in the Sunderbans region due rise to a rise in sea level.[117] Another farmer faces a similar threat. Absent compensation and support from the Government, the former moved to urban areas in search of alternative livelihood, whereas the latter stayed on despite the risk of future flooding and limited access to food. Both incidents, which have

[112] A.S. Unnikrishnan, K. Rupa Kumar, Sharon E. Fernandes, G.S. Michael & S.K. Patwardhan, Sea level changes along the Indian Coast: Observations and Projections, 90 No. 3 Current Science 362, 362-68 (2006). (The authors predict that the intensity and number of cyclone activities will rise in the Bay of Bengal and the Arabian Sea between 2041 and 2060).
[113] http://www.germanwatch.org/klak/cri06.pdf.
[114] Id.
[115] Id.
[116] See William Nordhaus & Joseph Boyer, Warming the World: Economic Models of Global Warming, 91 (MIT Press 2000).
[117] Roger Harrabin, How Climate Change Hits India's Poor, (BBC News television broadcast Feb. 1, 2007).

been attributed to climate change related sea level rise, portend the fate of nearly 65% of India's population that is dependent on agriculture, forestry and fisheries for a living.[118]

In balance, even though India's current climate change performance is encouraging, future increases in emission levels remains a critical concern, and its adaptation challenges are intimidating. Further, despite India's climate mitigation policies, its adaptation policies remain inadequate and yet the Government's attention is focused on maintaining its emission rights, supported by financial and technological capacities.[119]

5.3 THE IMPLICATIONS UNDER THE CONSTITUTION OF INDIA: CLIMATE CHANGE IN PERSPECTIVE

The Constitution of India was adopted in 1950, three years after India's Independence; the Constitutional Drafting Committee considered several models, notably that of United Kingdom and the United States, in determining the structure of governance and power distribution among the Union Government (also referred to as Central government) and State Governments. 84 However, one of the most salient features, fundamental rights, was incorporated in Part III of the Constitution.

The rights conferred under Part III are based on similar provisions in other jurisdictions-the Bill of Rights in England and the United States, and the Declaration of the Rights of Man in France. Constitutional drafters were also influenced by the Universal Declaration of Human Rights (UDHR) adopted in 1948. The final document recognized six fundamental rights-to equality, against exploitation, to freedom of religion, education and cultural rights, constitutional remedies, and right to freedom (of speech and expression, of peaceful assembly without arms, to association, of movement, of residence, of profession or trade).[120]

[118] See Gov't of India Ministry of Env't & Forests, India's Initial Nat'l Commc'ns to the U. N. Framework Convention on Climate Change (2004), http://unfccc.int/resource/docs/natc/indnc 1.pdf.
[119] See generally Thomas Fuller & Andrew C. Revkin, Climate Deal Seems Close, But Elusive, N.Y Times, Dec. 15, 2007, available at http://www.nytimes.com/2007/12/15/world/i 5climate.html?scp= I0&sq=india%2C+bali+and+climate+change.
[120] Id. at art. 29-22. (Articles 19 through 22 confer a series of freedoms; notably, Article 21 grants the right to freedom of life and personal liberty).

The rights were not only conferred because of the worldwide civil liberties movement and rights movement of that period, but also in response to deeply disturbing inequalities and social distortions within the Indian society. For example, caste-based discrimination left many groups without sufficient social, economic, and political rights; speech and freedom had been curbed by the British administration in India, fearing civil unrest; and numerous discriminatory cultural practices prevailed.[121] In an effort to reject such practices, the Government of India not only passed legislation abolishing such violating norms and practices, but also rejected the basis for such practices through the fundamental rights provision.

While the Constitution guarantees Indians fundamental rights, they are not necessarily unlimited. Fundamental rights are subject to constitutional amendments; in fact, the right to property which was originally included as a fundamental right was removed from Part III and reconstituted as a general constitutional right under Article 300-A.[122] Further, in cases of emergency, the Government has the authority to suspend these rights, including the right to judicial review, but the power is subject to reasonable substantive and procedural safeguards.[123]

To date, the Government of India has defended numerous fundamental rights petitions. Moreover, the translation of the fundamental rights into practice remains an ongoing process even though the Indian legislation has enacted several statutes on numerous issues that are directly linked to fundamental rights.[124] As discussed later, innovative interpretation of substantive and procedural aspects of the Constitution have become critical and indispensable for many Indians to realize their basic constitutional rights, be it better economic and living conditions or sound environmental safeguards.[125]

Climate change is an issue where mitigation legislation passed by the Government addresses certain rights of the Indian community, say, access to energy to promote personal liberty, but does not necessarily protect all fundamental rights. Catastrophic events that may be unraveled by

[121] For example, social norms such as preventing widows from remarrying were prevalent in several parts of the country. Id.
[122] The Constitution (Fourty-fourth Amendment) Act, Acts of Parliament No. **88 (1978),** http://indiacode.nic.in/coiweb/amend/amend44.htm. **(By** virtue of the amendment, certain feudal type land ownership systems have been abolished). See also Infra note **197.**
[123] **Infra** note **101.**
[124] Basu, supra note 84.
[125] Infra note **127.**

climate change will not only have severe economic repercussions, but also implicate constitutional rights of citizens. The rights that will be affected are either fundamental rights under the Indian Constitution, notably the Article 21 right to life, or rights that the Supreme Court of India has held to be an integral part of Article 21,[126] including rights to livelihood, health, and basic necessities. Violation of fundamental rights is unconstitutional, if abridged by the State' without following "procedure established by law."[127] In the context of climate change, since there is no procedure of law by which citizens can be denied these rights-contravention of the rights constitutes a constitutional violation.

This emerging constitutional challenge is theoretically problematic, because fundamental rights bind only the Republic of India and not foreign states.[128] But, at this point many industrialized nations that are responsible for the dangerous levels of GHG accumulations are foreign states, as affirmed in the Kyoto Protocol.[129] Even if one considers a scenario whereby India's emission increases add to the problem by 2030, at present, that estimate shows that the country's global share will be much lower than that of China, Europe or the United States, for instance.[130] Thus, even if some portion of liability could be attributed to the Indian Government, much of the responsibility would lie with foreign States. There is no precedent of citizens of India claiming redress from foreign nations for violating their constitutional rights.

At the most, affected citizens could pursue statutory remedies in certain jurisdictions. For instance, the U.S. Alien Torts Claim Statute provides for foreign nationals to bring a torts action against U.S. government and citizens for violation of international law, or "law of nations."[131] However, claimants must prove violation of international law"[132] and not of their own domestic law, not even the Constitution. Thus, in this case Indian citizens would have to demonstrate that the U.S. government violated international law in causing climate change in India,[133] a claim that presents

[126] Article 21 states, "[n]o person shall be deprived of his life or personal liberty except according to procedure established by law." India Const. art. 21.
[127] Under Article 21 read with Article 12(2)
[128] India Const., supra note 105.
[129] UNFCCC, supra note 49.
[130] CCPI, supra note 39.
[131] 28U.S.C.§1350.
[132] Id.
[133] For a discussion of the Alien Torts Claims Act (ACTA), its scope and limits, see Anthony D'Amato, The Alien Tort Statute and the Founding of the Constitution, 82 Am. J. Int'l L. 62 (1988);

a range of evidentiary and jurisprudential problems which most of the affected Indians will find insurmountable.

As the discussion on climate change indicates, even the IPCC is not yet entirely certain about the extent of temperature increases that are natural as against that caused by anthropogenic emissions, and the US has already made such an argument in a petition filed against it before the UN Economic Scientific and Cultural Organization (UNESCO).[134] Even if such distinction were possible, the burden obviously lies with several States; if not the newly industrialized countries such as China, Brazil or Indonesia, then certainly Australia, Canada, some European countries such as United Kingdom and Germany, Japan and the United States, all of which have historically contributed to the problem. The acceptance of binding emissions reduction targets by some nations does not necessarily exempt them from liability at this point, because most of the major historic emitters have not met their reduction targets." Thus, apportioning liability would prove extremely difficult.

As such, despite a recent increase in ATCA claims in the human rights arena, the response of U.S. district and appellate courts to environmental suits has been tepid.[135] Further, the exercise of judicial power in determining what constitutes international law, including customary law remains contentious, and invoking liability under a treaty that the United States has specifically rejected seems highly improbable.[136] Also, if other human rights claims such as that of the Inuit Circumpolar Conference before the Inter-American Human Rights Commission are considered, the time taken for such dispute resolution processes to be complete is discouraging. At a more theoretical level, issues of inter and intra generational justice may crop up; for instance, Posner and Sunstein in a recent paper present the question, why should future Americans pay for the future sufferings of future Indians, for the actions of past Americans?[137]

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[134] In February 2006, the International Environmental Law Project at Lewis & Clark School filed a petition before the UN World Heritage Committee of the United Nations Educational, Scientific, and Cultural Organization (UNESCO)

[135] For a discussion of recent ATCA environmental based claims and their outcomes, see Bradford C. Mank, Civil Remedies, Global Climate Change and U.S. Law (Michael Gerrard, ed. 2007).

[136] A brief opinion note in fact argued for U.S. withdrawal from Kyoto to avoid potential ACTA claims. See Christopher Homer and lain Murray, Why the United States Should Remove its Signature from the Kyoto Protocol, **CEI** Monthly Planet, September 29, 2004, http://www.globalwarming.org/node/738.

[137] See Eric A. Posner & Cass R. Sunstein, Climate Change Justice, John M. Olin Law & Economics Working Paper No. 354 (2d Series); Public Law and Legal Theory Working Paper No. 177, available at http://ssm.com/abstract_ id=1008958.

Under these circumstances, judicial review under the Indian Constitution appears to be an important, perhaps the best, venue for citizens to claim protection against and redress for violation of their constitutional rights by acts foreign entities or states.

5.4 BUT, CAN THE INDIAN JUDICIARY INTERVENE?

The Indian judiciary is well placed to address constitutional challenges arising from climate change, primarily because of the public interest litigation or epistolary jurisprudence that it has developed to protect fundamental rights of Indians. The Indian Supreme Court has provided some broad and innovative interpretation of laws in response to practical problems such as costs of litigation and other resource constraints that made the judiciary, particularly higher courts located in major cities, inaccessible to thousands of Indians. Firstly, the Court has waived "ripeness" requirements for bringing an action, on the ground that in a country where most people are unaware of their rights violations should be addressed before the actual violation occurs. Thus, the presence of a substantial threat of climate-related violations should be sufficient to invoke the Courts' writ jurisdiction under Article 32.[138]

Secondly, the Court has the authority to determine whether an injury has occurred, without relying on statutory enactments.[139] Further, petitioners need not satisfy the other two standing requirements under U.S. law, causation and redressability (remedy).

Thirdly, the Court can provide broad remedies, by issuing a writ of mandamus not only ordering the government to perform nondiscretionary functions, or enjoining it from performing a statutorily prohibited action, but also requiring it to perform discretionary functions. Moreover, the Court can issue "continuing mandamus," obligating the government to take specific actions and report progress on a regular basis, as it has in the past. Due to the above rulings, the Indian judiciary is considered to be one of the most powerful courts in the world. In fact, in comparison US courts are far more restrained by the separation of powers doctrine enshrined in the

[138] Article 32 (1) states: [t]he right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. Article 32 provides for writ petitions such as mandamus and habeas corpus. India Const. art. 32(1).

[139] This position differs from the U.S. Standing requirement, where injury-infactis determined on the basis of statutory provisions. In fact, in the recent climate-related case, Massachusetts v. E.P.A., 127 S. Ct. 1438 (2007)

Constitution. Further, in the case of environmental issues, representative suits may generally be brought against State agencies within the scope of a given statute.[140]

Fourthly, any person with "sufficient interest"' in helping poor and vulnerable sections of the population can seek judicial review on behalf of victims of fundamental rights violations. In the alternative, the Court can assume suo motto jurisdiction by treating letters or newspaper reports as writ petitions.

In addition to the procedural flexibilities, the Court's substantive interpretation of fundamental rights, based on non-binding constitutional law provisions, on foreign decisions and international law and principles, also provide adequate room for a constitution claim. Over the years the Court has read into fundamental rights provisions, a range of ancillary rights-livelihood, health, basic necessities, travel abroad and privacy.[141]

The possibility of successfully proceeding with a climate change claim also appears favorable in light of the Court's invocation of epistolary jurisdiction to address several environmental concerns, including protecting the Taj Mahal from coal and coke pollution;[142] cleaning up the Ganga;[143] relocating hazardous industries in Delhi;[144] curbing vehicular pollution,[145] requiring compulsory environmental education, and re-directing an illegally diverted river,[146] among others. The Court has also proven adept in catalyzing executive action on several issues.'[147] Thus, theoretically the Indian judiciary has the capacity to address potential climate change related violations of fundamental rights.

[140] See generally Access to Courts After Massachusetts v. EPA: Who Has Been Left Standing? 37 Envtl L. Rep. 10692 (September 2007).
[141] See Singh v. State of UP., A.I.R. 1963 S.C. 1295 (holding that personal liberty implied the right to privacy); see also Sathe, supra note 106, at 51-57, for a detailed discussion on the interpretation of Article 21 by the Supreme Court.
[142] Mehta v. Union of India, 2 SCC 353 (1997).
[143] Mehta v. Union of India, 6 S.C.C. 63 (1998).
[144] Mehta v. Union of India, A.I.R. 1996 5 S.C.C. 281. The Court ordered the closure and relocation of more than 1300 major polluting hazardous industries from Delhi to sites in neighboring states. See Mehta v. Union of India 6 S.C.C. 63 (1998).
[145] Mehta v. Union of India, 6 S.C.C. 12 (1999);
[146] See Mehta v. Nath, A.I.R. 2000 6 S.C.C. 213
[147] See Mehta v. Union ofIndia 6 S.C.C. 63 (1998)

5.5 LIMITS OF JUDICIAL INTERVENTION

Although the Court could assume jurisdiction to address the problem of potential violation of fundamental rights because of climate change, it will not be able to provide adequate remedies within the current framework of its jurisprudence, since the Court has no jurisdiction over foreign States under the Indian Constitution. An Article 32 judicial review is available only in the case of violation of fundamental rights by Indian governments.[148] Thus, at this juncture the Court can at the most direct the Government's international negotiations. In such an event, the Court will be intervening with the Government's exercise of foreign affairs powers.

The Constitution vests foreign affairs powers exclusively with the Central government. It grants the Parliament, which is the legislative branch, the power to enact laws regarding foreign affairs, including conclusion of legal arrangements.[149] However, in practice, the Executive enters into and implements treaties and international obligations,[150] and the Parliament has the power to enact executing domestic legislation. No provision of the Indian Constitution explicitly grants the judiciary the authority to review matters related to foreign affairs. In fact, the judiciary is specifically excluded from adjudicating international disputes, except for advising the President upon request.[151]

In fact, in Novartis v. Union of India, the High Court of Chennai (appellate court) held that it did not have the jurisdiction to decide whether the Indian Patent Act, 1970 complied with the Agreement on Trade Related Intellectual Property Agreement (TRIPs).[152]

Based on an early U.S. Supreme Court decision, the Court decided that where Governments had entered into an international agreement that contained a dispute settlement clause, they were bound by such a contract and not to domestic court jurisdiction. In another instance, the Court had also

[148] Article 12 states: "In this Part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of Government of India." India Const. art. 12.
[149] List I, Item 10 lists foreign affairs as, "all matters which bring the union into relation with any foreign country." India Const. Sched. 7 List 1.
[150] A similar practice has been observed in the United States. See G. Edward White, The Transformation of the Constitutional Regime of Foreign Relations, 85 Va. L. Rev. 1, 4-5 (1999) (arguing against exclusive Federal Executive authority to pursue foreign affairs).
[151] Article 143 reads as follows: Power of President to consult Supreme Court.
[152] W.P. Nos. 24759 and 24760, June 8, 2007.

held that it does not have the authority to compel the Government to enact national laws executing its international law obligations, and that where such laws are absent rights created under the corresponding treaty cannot be enforced by the courts.[153]

Yet, as argued by scholars the Indian Supreme Court has placed checks on the executive treaty-making power in the past. For in stance, in ***Madhav Rao Scindia v. Union of India***,[154] the Court held that the government does not have the authority to use its foreign affairs provision to unilaterally withdraw recognition of royalty status to former princes. Thus, unlike in the United States, the judiciary has not consistently held that foreign affairs are a prerogative of the Executive branch subject only to limited intervention from the legislative branch. As discussed earlier, it has in fact relied on international instruments such as UDHR[155] to give effect to fundamental rights.[156]

Further, the Supreme Court's reasoning in developing epistolary jurisdiction supports an argument in favor of judicial intervention in foreign affairs. The judiciary interpreted locus standi liberally, because the Court believed that the promises of a constitutional democracy were beyond the reach of many Indians due to financial and cultural constraints.[157] Judges who pioneered public interest litigation reasoned that in a society where oppression and poverty were cultural norms, most people would not have the knowledge or the means to claim their constitutional rights.[158]

None of these conditions have changed, despite India's economic growth. India remains home to some of the poorest people in the world. According to the 2005 United Nations Human Development Index (HDI), India was ranked 128 among all countries; despite a GDP that was higher than that of Tajikistan (3530 v. 1370), India was ranked relatively lower in the HDI (0.68 v. 0.62). Reportedly, the subcontinent also contains some of the most polluted and hazardous sites

[153] See Verghese v. Bank of Cochin, 2 S.C.C. 360 (1980).
[154] A.I.R. 1971 S.C. 530.
[155] See Keshavananda Bharati; A.I.R. 1973 S.C. 537
[156] See P.N. Bhagawati, Judicial Activism and Public Interest Litigation, 23 Colum. J. Transnat'l L. 561 (1985).
[157] See also Ashutosh Varshney, Democracy vs. Growth in India, Foreign Affairs, 93 (2007) (discussing current challenges to democracy in India).
[158] See id.; see also Maureen B. Callahan, Cultural Relativism and the Interpretation of Constitutional Texts, 30 Willamette L. Rev. 609 (1994)

on the planet. Administrative systems remain corrupt and access to courts remains abysmal, expensive and slow.[159]

In other words, a large percentage of Indians remain vulnerable to climate change-related violations of their fundamental rights, without redress. Thus, the Indian judiciary would be justified in exercising its jurisdiction to intervene in foreign affairs, to safeguard climate change related violations within Article 32.

However, short of directing the Government international climate negotiations and policies, there is little that the Indian judiciary can do by way of shielding fundamental rights from climate change violations, without risking its legitimacy. If and when the violations actually occur, the Court could order the Government to pursue international adjudication, but as current evidence suggests, international adjudication has limited utility. International principles, under which remedy could be claimed, such as the duty to prevent trans-boundary pollution, even though interpreted as customary international law in the Trial Smelter Arbitration, are not complied with by States.[160]

Indeed, a domestic legislation prohibiting certain actions and consequences may be the best response, if one considers the decision in ***Pakootas v. Teck Cominco Metals Ltd.***,[161] (Pakootas). In Pakootas, the Court held that smelter industries that released hazardous waste into the Washington River, with proper permits from Canadian environmental authorities, were liable under a U.S. law on hazardous waste. The Court held that even though the waste was released on the Canadian side the companies responsible for the pollution were liable to clean up the waste in the United States, since the effects were felt within the U.S. It also held that the U.S. Environmental Protection Agency had a non-discretionary duty to enforce CERCLA against the companies. In effect, the U.S. Court extended the scope of a national legislation to a foreign entity, for acts committed outside of the United States on the ground that the effects were felt in the United States. In arriving at the conclusion, the Court rejected the companies' argument that they were not

[159] See Ashish S. Prasad & Violeta I. Balan, Strategies for U.S. Companies to Mitigate Legal Risks from Doing Business in India, Corp. L. & Prac. Course Handbook Series, PLI Order No. 11926, Feb.-Mar. 2007.
[160] Daniel Bodansky, Customary (And Not So Customary) International Environmental Law, 3 Ind. J. Global Legal Stud. 105, 116 (1995).
[161] Pakootas v. Teck Coinco Metals, Ltd., 452 F.3d 1066 (C.A.9 (Wash.) 2006)

responsible for the flow of the river, which essentially carried the waste from Canadian soil, and noted that Washington taxpayers ought not to bear the economic burden for external actions.[162]

While the case reflects a long history of cross-border pollution involving Canada and United States, including failed diplomatic interventions to adequately address the problem,' the rationale for the judgment nevertheless provides an important lesson. It demonstrates that domestic legislation can be the most accessible safeguard against individual rights violations, as opposed to international remedies. Hence, the Indian Court could draw on Pakootas and order the Indian government to pass legislation on climate change that hold persons or States responsible for climate change liable to redress constitutional rights violations, and compensate those who consequently suffer economic losses.

However, such legislation can be diplomatically undesirable. Moreover, the Government has traditionally been reluctant to enact any legislation that could curb development, or been unsuccessful in litigating on behalf of those affected, as demonstrated by two critical cases discussed below.

The Bhopal gas leak incident illustrates the inability of the government and the legal system to adequately deliver justice to citizens. Following the gas leak, the Indian Government passed the Bhopal Act[163] to consolidate the thousands of civil suits brought before Indian and U.S. courts and to represent the interest of its citizens against a foreign entity, based on the parens patriae doctrine. The Act not only allowed the Government to act on behalf of its citizens, but also provided mechanisms for distribution of compensation among victims.

However, the litigation remained contentious because the Government brought an action before the District Court of New York instead of its own courts, on the ground that a foreign entity was involved and that its own courts lacked the capacity to redress the matter. However, the New York court dismissed the claim for forum non conveniens reasons.[164] Eventually, the case was brought before the Madhya Pradesh High Court, based on the Indian rule of absolute liability.1 90 But,

[162] Supra note 180.
[163] The Bhopal Gas Leak Disaster (Processing of Claims) Act of 1985, available at http://www.commonlii.org/in/legis/num-act/bgldoca1985390.
[164] In re Union Carbide Corp. Gas Plant Disaster, 634 F. Supp. 842 (S.D.N.Y. 1986); aff'd in 809 F.2d 195 (2d Cir. 1987).

after much bargaining on both sides, the Indian government settled the matter in 1989 with the Union Carbide Company agreeing to pay the government $465 million, of which the Indian subsidiary paid $45 million.

The settlement not only led to criticisms about the government bargaining away the rights and claims of thousands of victims, but also the actual distribution of compensation, especially since a large portion of the victims and their families have not received any to this day.[165]

Similarly, ***Narmada Bachao Andolan v. Union of India and Others***,[166] involving the damming of the Narmada River, popularly known as the Sardar Sarovar or the Narmada Dam projects, showcases the inadequacy of legal protection for Indians affected by natural resource abuses. Most people displaced by rising water levels remain without adequate compensation, primarily because the issue of land-related displacement, which is governed by the British-era Land Acquisition Act, 1894,[167] confers on the government the right to take private property in public interest, by paying "adequate" compensation calculated according the legislation. In fact, once a government determines that a parcel has to be acquired for public purpose; one can only appeal the amount of compensation.[168]

Moreover, given the complex caste system and the remnants of a near feudal-like land ownership system in India, especially in rural areas, many farmers either lease or simply work on the land, and may not be entitled to compensation. Rehabilitation programs are plagued by administrative gaps and delays, as State governments fail to fully and timely comply with awards given by the Narmada Tribunal and judicial intervention is limited.[169]

Both Bhopal and Narmada are but two well-known instances of administrative failures and judicial inefficacy to prevent, protect against and adequately redress constitutional violations of thousands of Indians. Rights violations occur routinely in India, and there is no indication at this point that

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[165] A chronology of the case and its present status has been posted by Union Carbide Company at http://www.bhopal.com/chrono.htm. See also, World'failed" Bhopal Gas Victims, Nov. 29, 2004 http://news.bbc.co.uk/2/hi/south asia/4050739.stm.

[166] Andolan v. Union ofIndia, A.I.R. 1994 S.C. 319 (representatives of people who stood to be displaced by the dam construction; several villages were set identified for flooding, brought a public interest litigation arguing violation of fundamental rights because of the project).

[167] A copy of the legislation is available at http://punjablaws.gov.pk/laws/12.html.

[168] Land Acquisition Act, §§ 4-12 (1984).

[169] Pooja Mehta, supra note 195.

such violations will be prevented or compensated when climate change-related catastrophes unravel, especially if the incidents in the Sunderbans are any indication.

More importantly, the Indian judiciary, which has earned the title of [170] Supreme Court for Indians, may be facing the limits of its capacity to deliver justice.

5.6 CONCLUSION

As the fifth largest emitter of carbon dioxide, India's participation and engagement is critical to the future of an effective international climate regime, particularly when one considers the potential effects that a rapidly growing hydrocarbon economy of a billion plus people can have on the global emissions, and hence the climate. This is a legitimate concern and one that requires attention; and indeed, the Indian government has been responsive and is presently ahead in the curve of mitigation trends. However, India's efforts to mitigate climate change, or for that matter taking an international position challenging industrialized countries to reduce emissions, cannot ensure that fundamental rights of millions of Indians will be protected if there is a two or more degrees Celsius increase in global temperature.

This emerging constitutional challenge in the case of climate change illustrates that the focus on limiting international obligations to reduce emissions could potentially undermine a foundational document of not only nations' legal system, but its entire form of governance; the fine balance between the rights of people and the constraints over government powers.[171] Moreover, in India, the judiciary assumed great powers and provided broad interpretations and remedies to fill an important void in governance-the inability of a substantial number of Indians to fully participate in constitutional government and exercise their rights. In other words, courts added certain "welfare rights" that could not could not be delivered by a pure "social-citizenship rights" conception of the Constitution.[172] But, when these rights can no longer be effectively preserved even by expansive judicial review because of events beyond the control of Courts the efficacy of

[170] Upendra Baxi, Constitutionalism as a Site of State Formative Practices, 21 Cardozo L. Rev. 1183, 1205 (2000).
[171] See generally Henry W. Andersen, The Constitution An Expanding Charter of Government, 18 B.U. L. Rev. 491 (1938).
[172] See Frank I. Michelman, Democracy-Based Resistance to a Constitutional Right of Social Citizenship: A Comment on Forbath, 69 Fordham L. Rev. 1893 (2000-2001) (discussing the need for judicial interpretation of Constitution to ensure protection of welfare rights, as opposed to social-citizenship, whereby processes of democratic governance would address welfare concerns as well).

constitutional governance, in particular fundamental rights, is imperiled. The challenge for India is therefore not merely that of preserving their right to emit carbon dioxide or develop, or even that of mitigating climate change, but of preserving their constitutional government. And, this concern should also be reflected in treaty negotiations following Bali.

We have inflicted serious irreparable damage to our planet and taken the resources we have at our disposal for granted. The industries are openly flouting industrial norms and climate change is a neglected topic in the Parliament. We have no time to waste. We are living in a climate crisis that will spiral dangerously out of control unless we take rapid and dramatic action now. This is no longer about a distant future; we are talking about nothing less than the irreversible destruction of the environment within the next few years. Oridnary people will have to come on the streets to ensure that their governments actually do so. Thanks to Extinction Rebellion (XR) movement, England, Ireland, Wales and 558 councils covering 65 million people in 13 countries have declared a climate emergency.

Our holy rivers contain sewage. Several populated regions in India are becoming inhospitable. Floods, droughts, less rainfall, heatwaves are affecting jobs, farming, increasing diseases, and killing thousands. All of this will increase in the future, rescue efforts will cost a large sum to the exchequer; lower productivity of workers & will lower the GDP, large scale population migration from neighbouring states will stress out resources and borders, farmers suicide rates will increase. Therefore we must declare a climate emergency now.

CHAPTER 6

CONCLUSION AND SUGGESTIONS

Now it is proved all over the world that Alternative Dispute Resolution as a mechanism of resolving dispute by consensus in a organised manner with skills and techniques that could be learned and used. Alternative Dispute Resolution mechanism is in addition to courts and complement them.

Ever Method of Alternative Dispute Resolution mechanism has their own logic, purpose and justification. Arbitration is used definitively resolve a dispute like adjudication and that has transpired and requires fact finding, interpretation of contractual terms, or application of legal principles on the other hands mediation and conciliation are often used to improve communication between parties especially those with pre- existing relationship, to reorient the parties to each other and to develop future oriented solution to broadly defines conflicts.

The Administration of justice system in India has come under the great stress for so many reasons mainly because of the large number of pendency of case in courts. The large number of case filed in the court every year which has shown a tremendous change in recent year resulting in delay and pendency underlining the need of Alternative Dispute Resolution methods.

In the ultimate analysis it may be concluded that widening gap between the common people and the judicially is indeed a serious cause of concern for all those who deal with administration of Justice. The concept of Alternative resolution of Dispute in alternate mode should be deeply ingrained in the minds of litigant, lawyers and the judges so as to ensure that ADR methods in desperation of justice are frequently adopted. The effective utilisation of ADR mechanism would go a long way in plugging the loop hole which is obstructing the path of justice.

Global warming emerged as a vibrant area of discussion in the eighties[173] and with time has become a central point of discussion and deliberation in inter-State negotiations undertaken both within the structure of the United Nations Framework on Climate Change and outside it. With the

[173] This happened with the establishment of the Intergovernmental Panel on Climate Change established in 1988

growth of the negotiations, positive steps have definitely been taken (one most important of which was the Kyoto Protocol which called for quantitative emission cuts by developed countries to the extent of approximately 5% of their emissions at 1990 levels) but in the recent future, the Copenhagen Conference and the Cancun Conference have yielded no substantial gains for the world community. Some improvement has however been noticed in the Durban Climate Conference and the Rio Plus 20 Convention that happened lately. The present environmental regime of global warming as it exists today can be categorized as a political regime ruled by countries with vast economic strengths. The bearing of developed economies with regard to certain environmental conventions will help us in understanding the situation better. Although acceding to the United Nations Framework Convention on Climate Change[174], certain developed countries such as the United States of America, refute the acceptance of quantitative emission reduction targets on grounds of global character of the problem and the change in the lifestyles patterns that it will bring. U.S.A also believes firmly in the opinion that adoption of quantitative binding emission reduction targets will also impair the economic progress of the country and impinge on its unipolarity. However, along with other developed economies like Australia and Canada, it accedes to the fact the impacts of climate change are global and have to be addressed.

Similar bearing has also been adopted by Australia. Such dubious standing by some of the developed economies vitiates their impression before various fora on climate change and makes one frown eyebrows questioning –"Is global warming really happening?" or "Is the problem acute enough to be discussed at length at all?" Similar instance will also be observed if one places notice on the Convention on Biodiversity, an integral part of the three Rio Conventions adopted in 1992. Progressing from the WCS[175], the Convention on Biodiversity has many positive features which help in addressing the problem of conservation of biodiversity. One of such features is the 'access and benefit sharing' provision which calls for providing recognition to countries from where natural resources are accessed. The Bonn Guidelines on Biodiversity, drafted in 2002, further highlight the association between access and benefit sharing and call for the payment of royalty to the 'country of origin' of the traditional knowledge. Such guidelines are however non-legal in character and hence do not have any mandate of implementation. The Bonn Guidelines were

[174] Adopted in 1993
[175] World Conservation Strategy

welcome by the developing countries such as Mexico, India and the G-77 countries but received stiff opposition from the developed world. Finally it was decided in the Eighth Conference of Parties that the Ad-Hoc Group on Access and Benefit Sharing would complete its work by the Eleventh Conference of Parties to arrive at a consensus over the issue. It was finally decided that a certificate of international recognition would be provided to the country of origin of traditional knowledge. In spite of such decision, in talks at the World Trade Organization, opponents to the grant of the certificate of origin have expressed their displeasure by stating that since traditional knowledge has remained with the country concerned for centuries together and it is not novel in its nature, enhancing and considering traditional knowledge to be rewarded with intellectual property rights is not justified. Their submission however is negated by an alternative submission made by the non-governmental organizations and civil society groups who in turn hold that traditional knowledge if not covered under the intellectual property regime should be monitored under stricter regimes and rules relating to accessibility to natural resources in the developing world. To contest the fight against global warming, it is utmost necessary that the sentiment towards conservation of biodiversity should be intense which unfortunately is not reflected from the actions of the developed world or the North. What finally transpires is that while the developed countries attempt to win the environmental regime with their economic prowess, the developing world (barring the least developed economies) attempt to strike the chord with their traditional knowledge ownership. Such environmental game between the developed and the developing world continue to play with none ready to lose their supremacy or foothold.

It is not only the difference between the developing and the developed economies that highlight global warming as a political issue or the legal regime being encapsulated within a political regime but the individual stance taken by countries in discourses on climate change makes one arrive at such conclusion. The case of India can be highlighted in this case as a glaring example. Emphasizing its rationale for ratifying the Kyoto Protocol in 2002, the Indian Government had proclaimed that one of the major reasons for joining the Kyoto Protocol was that it would be able to take advantage of the Clean Development Mechanism projects in specific areas such as land degradation and management, agriculture, etc. United States of America, on the other hand, refused to adhere to the said Protocol in the name of prosperity and development. Such individual moves taken by countries strongly assert the viewpoint that environmental governance is now a political game which has, by far, not yielded positive outcomes for the planet. The mechanisms

mentioned in the Kyoto Protocol relating to the mechanisms to be adopted by the developed countries to quantitatively reduce their greenhouse gas emissions include the Clean Development Mechanism, Joint Implementation projects and Emissions Trading which are nothing but financial rackets introduced to apparently give the idea that the developed nations are performing their obligations to save the planet. What actually is happening in all the cases is that actual emissions reduction in the developed countries is not happening but such countries are able to proclaim leadership in saving the planet from the catastrophe of global warming through their aid to the developing countries by way of either financial assistance or technological assistance. It is a show which is perhaps similar to the "Oil for Food" campaign that had happened in Iraq after the Gulf War.

Living under such pressing scenarios it becomes even more imperative to search for an alternative regime which would assist in protecting the world from the rashes of global warming. In the backdrop of the Copenhagen and the Cancun failures the search has become even more defined as by the end of the year 2012, the world will not be in position to tackle global warming as it will be devoid of a legal regime. The search for the alternative has further become profoundly established after the Durban Conference wherein it has been decided that the rift between the developed and the emerging economies is necessary to be fixed up with the Durban Platform of Action. Nevertheless, 2015 is still a long way to go and it will be definitely appreciated if the world decides to prevent State exclusion by stopping to over emphasize on State sovereignty.

There exist three possible options to be adopted in such perspective. Either do nothing and act naïve to whatever is happening around us or adapt to the recent and past changes that have occurred as a consequence of climate change and accept the future projections and make arrangements as far as possible based on 'common but differentiated responsibilities' or come out with ways that mitigate climate change. Mitigation is, at this juncture, the best possible way to deal with global warming for it will assist in the enhancement of carbon sinks or reduce the sources of greenhouse gases, both of which have the chances to save the planet from extinction. The question is what can be the mitigation mechanisms that can be fruitfully applied to gain prospective results?

To think of attempting population control as a mitigation mechanism is weird as no political government of any country will attempt to do it as it is extremely controversial and has the potential

to uproot any government. Again, entering into a global pact to reduce their economic growth will also not be a possible option to be levied for the country's show of economic strength assists it to tide over diverse disadvantages. The other driving force to a mitigation mechanism can be improvement of technology which although possible for a developed country is not possible in the case of a developing country as it depends on the developed nation for technological assistance. Further the rate of technological prowess and the national and regional policies to tackle such prowess will also be a subject of concern then. Even if we assume that for a change, if the developed nations of the world agree to reduce their emissions quantitatively without participation from the emerging economies, the outcome will not be very promising.

Studies on an integrated climate assessment model, namely, Framework to Assess International Regimes in Burden-Sharing of 2002 has revealed that even if the Annex-I countries decide to stabilize carbon-dioxide emissions at 650 ppm. by curbing emissions based on their respective population strengths, the emissions from the developing countries will continue unabated in the name of development and will therefore create a condition wherein the economic progress and the social progress of the developed countries will cease by the year 2060[176]. Thinking from a different angle, the impacts of climate change affect both the developed and the developing world, the vulnerability being different in the different cases. While the poor countries of the globe will suffer due to limited infrastructure and wealth, the impact in the rich countries will be different like land owners on the floodplains will find it difficult to sell their houses in times of their requirements, higher insurance premiums have to be arranged for after huge disasters, etc.

The necessity for an alternative regime therefore gains ground as the political regime of global warming that is present today is unable to tackle such issues although it has evolved out of the strengthened scientific consensus on climate change. The alternative regime that will be able to tackle global warming should be a regime that harps on human rights negotiations to climate change. The development of the said regime has already started to gain momentum. A spurt of litigations have already begun to be filed throughout the world since 1995 when a claim was submitted to the Inter- American Commission on Human Rights on behalf of Inuits against the United States asserting that USA was responsible for the violation of their rights to life,

[176] Peake Stephen and Smith Joe, " Climate Change: From Science to Sustainability", Oxford University Press, Second Edition, 2009, Pgs. 167-168

subsistence, health and culture. However what needs to be understood is - can the environmental perspective of human rights be differentiated and distinguished from a human rights perspective of climate change?

Within the domain of environmental law, States have the discretion to take decisions to maintain a balance between "environmental harm caused and the benefits of the activities causing it"[177]. This means that environmental law determines the minimum and maximum thresholds of environmental harm that is acceptable and permissible. This can be explained in a better manner if we monitor the objectives of two major documents – the United Nations Framework Convention on Climate Change and the Copenhagen Accord adopted at the Copenhagen Conference. The said two documents have been chosen because while the former attempted to achieve something positive, the latter could not achieve even a miniscule of what it should have done. While the United Nations Framework Convention on Climate Change in its objectives observes a maximum threshold of greenhouse gas emissions which is permissible and beyond which environmental harm might occur, the Copenhagen Accord observes that under the current greenhouse gas emissions scenario, a sharp increase of temperature to anything close to 2 degrees Centigrade will spell disaster for the planet. Such standing under environmental law builds a notion that is more geographically, economically and politically oriented rather than one which is more global, humanistic and hence, acceptable. The human rights approach to climate change is therefore considered to be more pragmatic as it is more transparent, realistic and legally acceptable since it has an unselfish aspect to it.

Till date, the rights available under international law have been categorized as civil, political, economic, social and cultural rights, which when understood from the standpoint of human rights law does not give priority to one over the other but treats all under its umbrella as a consolidated absolute. The issue of global warming is necessary to be thought upon from such humanistic perspective. The international environmental regime of global warming as crafted till date, highlights institutional arrangements arrived at to culminate into political compromises made between nations. As such environmental agreements are compromises made between nations; when their global acceptability and implement ability remain unfulfilled, they are subject to

[177] Damodaran A., "Encircling the Seamless: India, Climate Change and the Global Commons", Oxford University Press, 2010, First Impression 2011

criticisms. If climate change agreements are alternatively construed from the standpoint of human rights law, then such agreements would be globally acceptable as the core element present in all such agreements would lead to the adoption of a unified system of human rights which is globally valued and respected by nations and people. The other reason why such alternative arrangement of climate change negotiations is suggested is that international environmental agreements on climate change adopted so far have the element of reciprocity omnipresent in all of them but if such agreements are worked upon a framework of human rights, the need and justification for reciprocation will attain a backstage as every State has the primary duty towards its own citizens to uphold their human rights. This means that States will remain accountable to their own citizenry and hence will not be in a position to use gimmicks such as protection of sovereign character to deny human rights to them. Further, if an international human rights framework to tackle global warming is drafted and placed before the international platform for acceptance, then all States extending their solidarity towards respect for human rights will remain bound to be a party to such instrument and upon adoption, implement its provisions either by directly adhering to such provisions or enact domestic legislation to implement it.

While enacting a domestic legislation to tackle global warming within the human rights regime framework, States should bear in mind that its provisions must be drafted in a manner that reflects its respect towards human rights. For example, its provisions must indicate that the policies undertaken by the governments from time to time should reveal that human rights associated with such policies do not receive a backstage. Forest policies, for instance, should not be framed ignoring the indigenous rights of the forest communities or the rights of other species inhabiting the forests. Adherence to such international human rights instrument would further imply that all States would have to take decisions on development maintaining the human rights perspective in mind. This means the concern for global warming will automatically be generated and measures implemented to tackle it. It also implies that the initiatives taken by States to uphold development under the garb of sovereignty will have to be substantiated on the scale of human rights and socialism.

The other benefit of crafting a human rights framework to tackle climate change is that individual stories of hardships suffered as a consequence of global warming and climate change will stand identified and noticed and hence awareness about such environmental peril will remain

prominently understood by the masses. Such mass awareness will, in turn, generate mass upheaval against actions that promote global warming and prevent governments from justifying their selfish stand taken at international environmental forums in the name of sovereignty.

A contrary view to deal with while understanding the emerging legal regime of global warming through the approach of human rights framework is that should we therefore construe that the problem of global warming is a human rights problem? Answering the said question, it can be held that global warming does affect and violate some of our basic, natural and inalienable rights namely, the right to life, the right to food, the right to clean drinking water, the right to livelihood, the right to health and the right to selfdetermination. However, when we speak of such rights, we automatically ask ourselves a much more pertinent question – can such rights live or be cherished in isolation? The answer to such question can never be answered in the negative for rights and duties are co-relative. Whenever we observe that global warming violates human rights we automatically accept the fact that in order to prevent it, there must be certain duties imposed on others. It is these duties that are being violated by the perpetrators of climate change. Discussing on the nature of such duties it can be held that such duties can be broadly classified as belonging to three broad genres, namely, the duty to protect, the duty to respect the human rights of others and finally the duty to fulfill the previous two mentioned duties.

The duty to protect can be studied by observing that there are two facets to the said duty – one, is to prevent something negative to happen which means the duty cast upon States to prevent itself and non-State actors from contributing to climate change by imposing which would help in adaptation to global warming by confiscating the harms caused by global warming or move even a step further and contribute towards the mitigation of global warming and climate change.

The duty to respect highlights the duty of States to respect the human rights of its own citizens as also that of the world community. It is such duty that puts the onus upon States to take decisions in a manner that does not contribute to global warming. For example, the decisions taken by the government of a country should not have the boomerang effect of enhancing the greenhouse gas emissions of the country concerned either through governmental activities or through private activities in the particular State. For instance, while respecting the right to better standard of living of communities, forest lands cannot be allowed to be converted for biofuels farming.

The third duty that needs to be elaborated upon is the duty to fulfill the previous two duties, i.e., to assist in the satisfaction of human rights. The observations made by the Committee on Economic, Social and Cultural Rights in 1990 may be reiterated in this regard[178]. The Committee on Economic, Social and Cultural Rights had observed that States have the paramount duty to ensure the implementation of minimum essential levels of economic, social and cultural rights. Taking the cue from such statement made by the Committee on Economic, Social and Cultural Rights it can be concluded that in respect to climate change, rich States as also emerging States who hold the current responsibility towards the increase in the concentration of greenhouse gases in the atmosphere have the obligation to render all kinds of assistance necessary to the States who are victims to such emissions by helping them to either adapt or mitigate climate change caused as a consequence to global warming.

From such judicious understanding of rights and duties and their linking with human rights violations caused as a consequence of global warming, it can be justified even stronger that there should be developed an international human rights regime in place of an environmental regime to address global warming. Further, in the present scenario, States shrug off and falter from taking decisions where immense cost is involved in tackling climate change through emission cuts. Once the human rights framework is put in place, States who are nothing but an assemblage of people belonging to a particular nationality will be more willing to act prudently for a better future. The meaning of 'sustainability' will then gain good ground and States will be compelled to take initiatives that not only uphold the human rights of the present generations but also that of the future generations to come.

In conclusion, the ethics of negotiation within the legal context are paramount for upholding the integrity of the legal system, promoting fairness, and fostering responsible agreements. Throughout this discussion, we have explored the intricate balance between pursuing individual interests, maintaining fairness, and adhering to legal and ethical principles. Negotiators in legal settings are tasked with navigating complex legal frameworks, ethical dilemmas, and competing interests to achieve mutually beneficial outcomes while upholding the rule of law and societal values.

[178] Damodaran A., "Encircling the Seamless: India, Climate Change and the Global Commons", Oxford University Press, 2010, First Impression 2011

Maintaining fairness is a cornerstone of ethical negotiation, requiring negotiators to consider the needs and perspectives of all parties involved. Fairness encompasses principles of equity, impartiality, and transparency, ensuring that agreements are just and reasonable within the confines of the law. By promoting fairness in negotiation processes, negotiators can build trust, enhance cooperation, and contribute to the legitimacy of legal outcomes.

Furthermore, ethical negotiation entails promoting responsible agreements that uphold legal principles and contribute to the public good. Negotiators must ensure that agreements are lawful, enforceable, and socially responsible, considering their broader impact on stakeholders, communities, and the environment. By prioritizing ethical conduct and social responsibility, negotiators can contribute to the advancement of justice, equality, and the rule of law.

Suggestions:

Moving forward, several suggestions can be made to enhance the ethical conduct of negotiation within the legal context:

Strengthen Ethics Education: Legal professionals should receive comprehensive training and education on negotiation ethics, including legal ethics rules, professional codes of conduct, and best practices for ethical decision-making. Continuing education programs and professional development seminars can help attorneys navigate ethical dilemmas and stay abreast of evolving ethical standards.

Foster a Culture of Ethics: Law firms and legal organizations should foster a culture of ethics that prioritizes integrity, honesty, and fairness in negotiation practices. Leadership should set clear expectations for ethical conduct and provide support and guidance to attorneys facing ethical challenges. By promoting a culture of ethics, organizations can cultivate trust, professionalism, and accountability among their members.

Embrace Ethical Leadership: Legal professionals, particularly those in leadership positions, should serve as ethical role models and advocates for ethical conduct in negotiation. Leaders should lead by example, demonstrating a commitment to integrity, transparency, and social responsibility in their interactions with clients, colleagues, and adversaries. By embodying ethical leadership principles, attorneys can inspire trust and confidence in the legal profession.

Enhance Ethical Oversight: Regulatory bodies and professional associations should strengthen oversight mechanisms to ensure compliance with ethical standards in negotiation. This may include establishing ethical guidelines, conducting audits and reviews, and imposing sanctions for ethical violations. By holding legal professionals accountable for their conduct, regulatory bodies can uphold the integrity of the legal profession and protect the interests of clients and the public.

Promote Ethical Dialogue: Legal scholars, practitioners, and policymakers should engage in ongoing dialogue and debate on ethical issues in negotiation. By sharing insights, perspectives, and experiences, stakeholders can enhance their understanding of ethical principles and identify opportunities for improvement. Collaborative efforts to promote ethical conduct can lead to the development of innovative strategies, guidelines, and best practices for negotiation ethics within the legal context.

In conclusion, by embracing ethical principles, promoting fairness, and fostering responsible agreements, negotiators can uphold the integrity of the legal system and advance the interests of justice, equality, and the rule of law. By implementing the suggested recommendations, stakeholders can contribute to a culture of ethics in negotiation that promotes trust, professionalism, and social responsibility within the legal profession.

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