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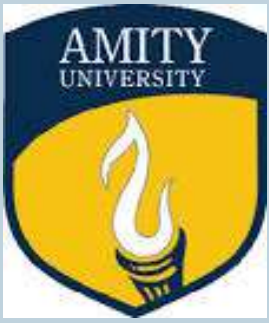

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EXAMINATION OF ENVIRONMENTAL MANAGEMENT AND GOVERNANCE IN CONTEXT OF OIL AND GAS RESOURCES IN NIGERIA: CHALLENGES AND PROSPECTS

Eric Omo Enakireru[*] *Gaga Wilson Ekakitie*[**]

Abstract

The petroleum industry, crude oil pollution, the environment, oil theft, gas flaring, pipeline explosions, and vandalism are the main environmental problems in Nigeria's Niger Delta. The article critically evaluate the implementation of international environmental agreement often involve sing the collaboration between national administering agencies, the issue of differential treatment refers to the use of norms that provide different treatment to some states and under differential obligations, approach to International Environmental Management and Governance and the efficacy of the Nigeria laws and regulations, the challenges of hydrocarbon pollution, the endemic consequences of oil pollution in the Niger Delta environment. One could argue that the Niger Delta region's socio-economic, socio-political, military, and intricate interplay issues involving the populace, economic development, and environment are the result of inadequate management of the region's petroleum resources, ineffectual government policies for petroleum development, and unsustainable business practices by multinational oil corporations. Therefore, in order to improve the regulations governing the petroleum industry, the article suggested proactive measures as well as an efficient institutional and legislative framework for environmental issues. And further concludes that it is important to have adequate institutional machinery for supervising implementation of environmental obligations/commitments. The legal and political framework for environmental governance requires effective enforcement mechanism.

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Therefore, in order to strike a balance between environmental preservation and development initiatives, the law must be fully utilized as a tool for social change or social engineering.

Keywords: *Oil pollution, environmental governance, regulations, and Niger delta of Nigeria*

I. Introduction

The earth is enriched and beautified with plenty of natural resources, which includes oil mineral and environmental resources, both providing for the need and sustenance of earth's habitat and beautifying our environment for recreational activities. These natural resources include air, wind, plants, animals, coal, oil, and others. However, some of these environmental resources are limited, meaning that they will eventually run out because they are non-renewable. Humanity in its restless pursuit of economic growth and development and the effect of globalization is changing the face of the earth. The human activities to explore the gifts of nature for the purpose of sustenance have resulted in variety of change and reduction on our ecosystem.

The environment being treated as nothing more than static, inert and a passive entity which acts as an infinite storehouse of resources, sinks for waste and backdrop to human affairs, while, the economy, as a dynamic productive system, with continued growth can lead to adequate material standard of living for all. In this case, resource depletion and degradation are treated as temporary manageable problems that can be overcome through improved technology, increase efficiency and better regulation.[1]

[1] Ayua, I. A. and Olawole Ajayi (ed). *Implementing the Biodiversity Convention*; Nigerian and African Perspectives (Lagos, Nigerian Institute of Advanced Legal Studies, 1997), 23

The human activities ranging from water, land, air and noise pollutions, the resultant effect of oil explorations, industrial activities, improper disposal of waste from both industries and homes, deforestation caused by incessant logging of trees; extinction of various bio diversity, flooding caused by discharge of industrial effluents, and waste in water bodies, depletion of green house plants caused by industrial gaseous emission, health hazards caused by the consumption of these polluted environmental resources, among others.

It is now generally accepted that for many reasons, the current patterns of economic developments are fundamentally unsustainable in the long run and they have failed to ameliorate poverty.[2] We realize that development that does not take into consideration of the environment in its entire ramification is self-defeating. However, a lot of concept that places environmental concerns at the centre of development is sustainable human development. Sustainable development has jolted humanity in the realization that economic growth cannot be sustained in the face of environmental degradation. However, among the development of these concepts, the search for a suitable, cheaper and accessible resource for consumption and trade is on the increase and has given birth to the growth in interest of renewable resources.

It should come as no surprise that the persistent gas flaring in the Niger Delta over the past four decades has had a major impact on the atmospheric release of greenhouse gases and acid rain. The on-going oil spills and the concerning inappropriate handling of hydrocarbon materials have caused extensive land and water contamination, artisan fishery devastation, ecological damage, and more. Well blowouts, refinery effluents, storage tanks, spills from loading

[2] Ayua and Olawole, *Implementing the Biodiversity Convention; 22*.

operations at terminals, and waste oil discharge all contaminate Nigeria's waters. Nigerian coastal communities have had to deal with the issue of contaminated groundwater, rivers, streams, and creeks.

Nigerian society has been deeply impacted by these environmental violations, which have also contributed to human health problems and put the country's wildlife, flora, and fauna in jeopardy.[3] Nigeria and several other African nations

[3] The Ogoni pollution case is noteworthy. The communities of the four local government councils—Khana, Gokana, Tai, and Eleme—all in the Ogoni area of Rivers State are not doing well right now. Thousands of them find farming and fishing to be a nightmare due to the effects of oil pollution. Ogoni, one of the largest ethnic groups in Rivers State, has experienced extensive environmental contamination brought on by the operations of multinational oil companies operating in the area. Over 500,000 people live in rural Ogoni, according to the 1980 census. The largest landmass with a dense forest reserve for farming is the Nyor Khana. There is a lot of potential for agricultural pursuits throughout Ogoniland, such as farming, fishing, tapping, and turning palm wine into regional gin. However, since their founding in 1958, petroleum exploration firms have been involved in environmental degradation, contaminating nearby farmlands, streams, and creeks. Maduagwu Chimezie claims that although Ogoniland is blessed with fertile soil, it has recently been altered to the point where cropping and other agricultural practices are essentially exploitative due to the removal of nutrients. Additionally, the onset of mineral oil exploitation has had an impact on all farms within oil drilling locations, resulting in low crop yield and avidity, which alters crop adaptability. Researchers have found that airborne illnesses caused by oil pollution not only harm humans but also contribute to the depletion of fish and other marine life. According to recent studies, tilapia groups of fish die a few weeks after ingesting oil pollutants. Additionally, it was discovered that oil kills catfish embryos and damages their gills, which reduces the population of the species. People in Ogoni communities, as well as throughout the Niger Delta, have been grumbling about the lack of food, low crop yields, and poor animal production. Numerous communities in oil-producing regions have long lamented the hardships, neglect, and low crop yields associated with animal husbandry. Due to the severe economic consequences of oil pollution, many people have fled their homes. Because oil production has contaminated their rivers and rendered farmlands unusable, the communities are no longer able to hunt, fish, or farm. Fish have been forced into offshore waters where the Ogonis lack the necessary gear to fish due to oil spills from antiquated oil equipment. The people of the area now buy foodstuffs because acid rain has destroyed much of the land,'' stated Chimezie. A number of years ago, oil pollution in Ebubu Eleme destroyed streams and farmlands. Ollor Chujor, a community member, claimed that farming in the area has been impacted by oil pollution. "In Ebubu, we are experiencing very serious problems with farming and other agricultural activities. Unthinkable amounts of land have been destroyed as a result of oil exploration. Our land is no longer producing crops.Prior to this, our aggressive farming practices were producing bumper harvests. We grow a wide variety of crops, including vegetables, yams, cassava, and other food crops, but the land is no longer fertile enough to produce a good crop. Since there aren't any

have the oldest environmental regulations, which were left over from their respective colonial overlords. These laws were designed to accommodate the exploitative political and economic whims of their colonial overlords. The final straw was the Koko scandal in June 1988, when tonnes of toxic and dangerous waste were disposed of in the small town of Koko in the now-defunct Bendel state.[4]

---

significant fishing operations in our area, our aquatic life is also impacted, Chujor said. Barinee Koba, another Ogoni native, claimed that oil exploration and exploitation had negatively affected farming operations. "Ogoniland's agriculture has suffered greatly as a result of oil exploration. No region of Ogoniland is unaffected by pollution in one way or another. Our communities were destroyed and left in ruins because of oil exploration. We are unable to produce a good crop. Our aquatic life was destroyed, and our farmland was contaminated. The high effects of hydrocarbon pollution had a significant impact on the soil. We are no longer able to go fishing, and this has had a significant impact on us. "What are we going to do now that our only source of income is in danger?" Koba bemoaned. "We are totally reliant on farming." Given Ogoniland's abundance of arable land, the Rivers State government has established numerous agricultural projects there. The Songhai farm projects and the banana plantation were two of the agro-farm initiatives that were established. Since every household in Ogoni has a sizable amount of land for farming, the locals engage in subsidiary farming; however, a significant amount of the area's arable land has been severely damaged by oil pollution. In August 2011, Ogoni's environmental assessment was published by the United Nations Environmental Programme (UNEP). The Federal Government of Nigeria ordered and received the report, according to the Shell bulletin. It offers suggestions to the government, the oil and gas sector, and local communities on how to start a thorough cleanup of Ogoniland, repair contaminated areas, and stop all types of persistent oil pollution in the area. According to the UNEP, Ogoniland's environmental restoration would necessitate concerted efforts from communities, businesses, and government agencies at all levels. Additionally, it portrayed its recommendations as a significant chance to boost employment and investment opportunities while promoting improvements in the local environment and health conditions. The majority of Ogonis think that their environment will be restored and serious farming operations will start once the current administration has finished its cleanup effort. After this cleanup is complete, we hope that our land will be restored and that significant agricultural operations will start. Tombari Dekor, a Bomu resident, said, "We need to take immediate action in this direction because the majority of the Ogonis would like to return to farming, which is our primary trade."

[4] Based on my personal research and further investigations, the gathered facts revealed that this deadly shipment originated from Italy and resulted in an epidemic that engulfed the entire community of Koko.

The effect of this toxic waste among the people of Koko included cancer resulting to immediate death. This awakened the government of Nigeria, who saw it as a challenge to environmental protection.

In 1988, the Federal Environmental Protection Agency[5] Act was enacted to cater for environmental matters.[6]From then onwards, environmental matters became serious issue of concern, and environmental laws kept evolving to regulate the changing and developing activities capable of affecting the environment. The environment has been accorded a lot of wide definitions. Environment has been defined as: "the totality of physical, economic, cultural, aesthetic and social circumstance and factors which surround and affect the desirability and value of property, and which also affect the quality of people's lives".[7]

However**,** environment has further been defined as:

> **"***The whole complex, physical, social, cultural, economic, aesthetic factors that affect individuals and communities and ultimately, determine their form, character, relationship and survival*."

A further categorization of this definition could be made into four dimensions:

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5 Moribund Federal Environmental Protection Agency, Presently Replaced by NESREA

6 In 1987, approximately 3,880 metric tons of toxic and hazardous e-waste originating from Italy were transported in five shiploads and illegally dumped in Koko, Delta State, Nigeria. This operation was carried out by a foreign company working with Nigerian businessmen. Koko is a town located along the Benin River within the western Niger River Delta. This incident served as a wake-up call for Nigeria regarding environmental protection issues. Consequently, an Environmental Protection Act was enacted in 1988 alongside the establishment of the Federal Environment Protection Agency (FEPA). Following this development, Nigeria's Ministry of Environment was established in 1999 to oversee environmental protection efforts nationally; FEPA then became part of this new ministry.

7 Blacks' Law Dictionary, 7th edition. This definition was adopted in the cases of *Attorney General of Lagos State v. A.G. of Federation and 35 others.* 2003 FWLR Pt. 168, 909 at 946

- The physical environment (natural and constructed), which includes land climate, vegetation, wildlife, the surrounding, land uses and the critical character of an area, imposture, public sources, air, noise and water pollutions.
- The social environment, which include community facilities, services and the character of the community facilities and services and the character of the communities.
- The aesthetic environment- scenic area, vistas, vicious including architecture character of findings.
- The economic environment which includes employment, land ownership pattern and land values.[8]

The above definition is a broader one and encompasses both the natural state of environment and man-made environment. A more simplified definition is that given by Professor Atsegbua where he defined environment as: "the system of abiotic, biotic and socio-economic components with which man interacts and simultaneous to which he adapts and transforms and uses in order to satisfy his needs."[9]

Finally, the National Environmental Standards and Regulation Enforcement Agency NESREA[10] defined environment to include water, land and all plants and human beings or animals living there in and the inter relationship which

[8] Omare, Omaka Chukwu, "*The Nigerian Conservation Law*" (Lagos, Lions Unique Concept, 2004), 5.

[9] Atsegbua Lawrence et al, '*Environmental Law in Nigeria, Theory and Practice* 2nd ed. (Benin City Ambik Press 2000), 4.

[10] Establishment Act, LFN 2007.

exists among them.[11]Significantly, environments include all the natural and artificial forces in our surrounding and the interaction of same.

To put it simply, environmental infractions are behaviours that harm the environment. Human factors, land use and soil conservation, water resource management, forestry, wildlife and reserves, marine and coastal resources, sanitation and waste management, mining, air and noise pollution, and other activities are all impacted by these infracting activities. The consequences of environmental violations are essentially environmental pollution, which includes air, water, land, and noise pollution. There are two types of environmental violations: criminal and civil, the provision of the Oil in Navigable Water Act[12] explicitly clarifies such act that constitutes the

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[11] S. 35 interpretation section NESREA Act, 2007.

[12] The Oil in Navigable Waters Act is concerned with the discharge of oil from ships. The following sections are significant provisions of the Act which expressly prohibits the discharge of oil from a Nigerian ship into territorial waters or shorelines. The Act makes it an offence for a ship mater, occupier of land, or operator of apparatus for transferring oil to discharge oil into Nigerian Waters. It also requires the installation of anti-pollution equipment in ships, such violation makes the offender punishable for such discharge with a fine of ₦2, 000 (Two thousand naira).[12] The provision of the Act requires the records of occasions of oil discharge. The oil in Navigable Waters Act, 2004, through more specific and comprehensive, still has some loopholes. For instance, offences created under the Act are of such complex nature that they cannot be handled effectively by the courts which are often overcrowded with pending cases. Magistrate court jurisdiction over offences under the Act ought to be curtailed.[12] This is because the enforcement of penalties can only be done by a High court. In practical terms therefore, where an offender is unable to pay a fine imposed on him, the prosecution will have to commence separate proceedings for enforcement at a High Court with its entire attendant protractedness. Moreover, the nature of cargo, the saving of which justifies discharge of damaging pollutants into water is not specified. Furthermore, the defense of accident, which exculpates a polluter if he can prove that the pollutant escaped accidentally as a result of damage to his vessel or leakage there from, and that all urgent and reasonable steps were taken to contain the discharge and reduce its impact on the environment can be easily pleaded by an offender even if it happens as a result of gross negligence on his part. Another problem associated with the Act is that the defenses allow, and the imprecise nature of the punishment prescribed under the Act make it very clear that it would be practically difficult; if not possible to secure the conviction of any person under the Act. Again section 6 of the Act provides that any charge relating to contravention of the Act can only be initiated with the consent of the Attorney general of the federation this statutory regulation makes adequate regulations on waste emanating

infraction on the environment. The majority of laws allow for penalties in cases of environmental violations.

II. Approach to International Environmental Management and Governance

In most situations, laws and regulations must be created with the intention of being implemented effectively, and the provisions of international environmental laws frequently serve as guidelines for how they should be implemented[13]. According to Sand, the most successful approaches to international environmental management and/or governance to date still seem to be, cutting-edge mechanisms for implementing environmental standards, which are frequently incorporated into the treaty itself[14]. The innovative use of selective incentives, differential obligations, regionalization, and innovation are some of the most crucial tactics for successful international environmental management and governance in practice[15].

- **Strategies Incentives*:*** To convince a party to engage in a program or standard that it would otherwise find unacceptable, this tactic offers some perks. For instance, the 1987 Montreal Protocol, the 1992

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from oil production and exploration and its potential consequences to the environment. With regards to some of the legislation discussed above the provisions relating to the enforcement organs under the various laws show significant overlap of functions between the different organs set up by the different laws for the same type of offence. For example, Special Tribunal (Miscellaneous Offences) Act, Criminal Justice (Miscellaneous provisions) Act and Petroleum Production and Distribution (Anti-sabotage) Act, the punishment prescribed by the three Acts are separate and distinct from each other, it depends on which of the laws the accused is charged. There is therefore no uniformity in terms of punishment in respect of the offence of sabotage or oil theft.

[13] Okorodudu-Fubara, M. T., *Law of Environmental Protection: Materials and Text*, (Ibadan, Nigeria: Caltop Publication Ltd, 1998) 34.

[14] Sand, P. H., the *Effectiveness of International Environmental Agreements*: A Survey of Existing Legal Instruments, Cambridge, UK: Cambridge University Press, 1992) 54.

[15] Luken, R., and Grof, T. "The Montreal Protocol's multilateral fund and sustainable development," *Ecological Economics,* 56 (2), (2006).241-255.

Convention on Climate Change,[17] the 1992 Convention on Biological Diversity (CBD)[17], and the 1971 Convention on Wetlands (Ramsar Convention) all contain provisions pertaining to selective incentives in international regimes. Specifically, Nigeria has ratified and signed the Ramsar Convention[18], and as of right now, 11 locations totaling 1,076,728 hectares of surface area have been named Wetlands of international importance[19]. Following the implementation of the Ramsar Convention, Nigeria received significant international financial support under the "Selective Incentives" from donor organisations like Birdlife International, the Royal Society for the Protection of Birds, the Ramsar Convention Secretariat, and Wetlands International. Nigeria has benefited from selective incentives (rewards) for signing or adhering to several multilateral environmental agreements (MEAs) during the last ten years.

- **Differential Treatments*:*** The term "differential treatment" describes the application of standards that give some states different treatment, and under differential obligations, each party is treated differently based on the unique circumstances of that nation under the treaty.[20] Given the actual disparities between states (political, economic, and other), the goal of differential treatment in "international environmental laws" is to encourage developing nations' involvement. International

[17] Shine, C., S. Johnston, el ta "VIII. Natural Resource Management and Conservation," *Yearbook of International Environmental Law,* 13 (1)., (2003)354-433.

[17] *Ibid.*

[18] Uluocha, N. O., and Okeke, I. C. "Implications of wetlands degradation for water resources management: Lessons from Nigeria," *Geojournal,* 61 (2), (2004).151-154.

[19] *Ibid.*

[20] Rajamani, L., *Differential Treatment in International Environmental Law*, (Oxford: Oxford University Press, 2006). 67.

environmental agreements (IEAs) are rife with standards for differential treatment.[21] These include the use of incentives, such as different standards, longer compliance periods, and more financial and technical support.[22] Differential treatment is the most controversial and effective strategy, according to Rajamani. Some countries have shown some degree of success in their involvement in global environmental governance because of developed countries' pledges to transfer technology and provide financial resources[23]. Therefore, it is crucial to remember that sustainable development goals pertaining to global environmental issues cannot be accomplished without the support of developed countries and the involvement of developing countries in IEAs.

- **Regionalization*:*** Africa countries are face with significant challenges in combating oil pollution, driven by weak governance, economic dependence on oil, environmental vulnerabilities, and cross-border complexities. The Bamako Convention, established to address hazardous pollution, though, provides a unique regional mechanism for tacking environmental related hazard, including oil-related pollutants has fail to meet the end result due to the challenges of regionalism fraction in African countries, desperate policies, and enforcement mechanisms that tend to hinder collective action plans. Grouping nations to implement regional agreements (custom-asymmetrical

[21] Sand, P. H., *The Effectiveness of International Environmental Agreements: A Survey of Existing Legal Instruments*, (Cambridge, UK: Cambridge University Press, 1992).54.

[22] *Ibid.*

[23] Drumbl, M. A., "Northern Economic Obligation, Southern Moral Entitlement, and International Environmental Governance," *Columbia Journal of Environmental Law,* 27, (2002).363-382.

regimes) is known as regionalisation[24]. Under regionalisation, trade-offs, including economic ones, can be used to offset asymmetries. Regionalisation may not be the solution to every global environmental issue, even though it appears to be a good strategy under asymmetrical standards. Prior to the Basel Conventions, toxic wastes from developed nations were transported into third-world nations that lacked protection.[25] In comparison, the 1991 Bamako Convention, which was regionally organised under the Organisation of the African Unity, was less successful than the Basel Convention.[26] More so, many African countries have not ratified the Convention reducing its effectiveness, even among signatories, enforcement mechanisms is weak. The Bamako Convention offers a vital regional framework, but its potential remains underutilized. [27]By strengthening enforcement, expanding its scope, and fostering regional collaboration, the convention can play a pivotal role in mitigating oil pollution infracting directly on environmental resources and protecting African's environment.

- **Innovations in implementation:** For instance, training programs for environmental enforcement officials, information sharing about criminal violations of oil pollution standards through the International Criminal Police Organisation, mutual recognition of import and export

[24] United Nations Environmental Assessment of the Niger Delta, 2011.

[25] Organization of African Unity, *Bamako Convention on the Ban of the Import into Africa and the Control of Trans boundary Movement and Management of Hazardous Wastes Within Africa: Adopted 30 January 1991, Bamako Mali*, Addis Ababa, Ethiopia: Organization of African Unity (OAU), 1991

[26] Executive Board of Clean Development Mechanism, First Report of the Executive Board of the Clean Development Mechanism (2002-2002), Geneva, Switzerland: United Nations, 2002

[27] Bamako Convention, Convention on the Ban of the import into African and the Control of Transboundary Movement Hazardous Waste within Africa, 1991

permits under the Convention on International Trade in Endangered Species of Fauna and Flora (CITES), or coordination of ship inspections by port states under the Paris Memorandum of Understanding on Port State Control are all examples of how national administering agencies collaborate to implement international environmental agreements.[28] In "Lessons Learnt in Global Environmental Governance," Sand explicitly addresses several innovations in the application of international environmental law, including mutual recognition, model diffusion, alert diffusion, complaints, and custodian action.[29] For example, environmental treaties facilitate the mutual recognition of licenses and permits by competent national authorities.[30] Additionally, various national regulatory mechanisms such as environmental permits, impact assessments, and labels are acknowledged across borders.[31] In line with this principle of mutual recognition, Nigeria enacted the Endangered Species (Control of International Trade and Traffic) Decree in 1985 after joining CITES in July 1975. Moreover, even before implementing the Environmental Impact Assessment Decree in 1992,[32] Nigeria's petroleum industry was already utilizing the EIA process established under the U.S.'s National Environmental Policy Act of 1969 a practice now recognized globally within international environmental law. The custodian procedure has emerged as one of the most crucial tools for

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28 Dzidzornu, D. M., and Tsamenyi, B. M. "Enhancing International Control of Vessel-Source Oil Pollution under the Law of the Sea Convention, 1982: A reassessment," *University of Tasmania Law Review,* 10, (1990)269-291

29 Sand, P. H., the Effectiveness of International Environmental Agreements: A Survey of Existing Legal Instruments, (Cambridge, UK: Cambridge University Press, 1992) 89

30 *Ibid.*

31 Strock, J. M., "Environmental Criminal Enforcement Priorities for the 1990's," *The George Washington Law Review,* 59, (1990).916-937

31 *Ibid*

32 Anadu, P. A., "Progress in the Conservation of Nigeria's wildlife," *Biological Conservation,* 41 (4)., (1987) 237-251

implementing environmental standards set by the European Economic Community (EEC) in recent decades[33]. Generally speaking, once international standards are established, a number of institutions are required to approve or forbid activities that fall under the standards and to enforce penalties for noncompliance.

Over the last fifty-five years, Nigeria's economy has greatly profited from petroleum exploration and production in the Niger Delta region, along with oil and gas exports by the petroleum industry. Nevertheless, inefficient governmental policies on petroleum development, unsustainable practices of multinational oil companies, and corruption within the sector have been cited as causes for environmental pollution issues that pose risks to human health or lead to socioeconomic problems linked with these operations.[34] This study has also shown that there are some gaps in Nigeria's environmental regulations that have been taken advantage of by international oil corporations without consulting the environment or the host communities that produce the oil. However, multinational coil companies are increasingly recognizing that preventing pollution is profitable while allowing it is not. Due to pressure from stakeholder groups, oil companies now routinely incorporate environmental impact assessments into their corporate responsibility efforts.[35]

Over the past two decades, there have been notable advancements in institutional developments, international cooperation agreements, and public engagement[36]. However, justice for victims remains elusive due to severe

[33] Luken, R., and Grof, T. "The Montreal Protocol's Multilateral Fund and Sustainable Development" Ecological *Economics*, 56 (2) (2006).241-255.
[34] *Ibid.*
[35] *Ibid.*
[36] *Ibid.*

petroleum pollution and environmental degradation caused by oil industry activities in the Niger Delta. Over the last 40 years, under the auspices of the United Nations and other international organizations, more than 24 global environmental protection treaties with worldwide impact have been established alongside numerous regional agreements. For sustainable development of oil and gas resources in the Niger Delta to be realized, both government entities and multinational oil companies must adopt environmentally friendly technologies and cleaner production methods. Additionally, the international legal framework must be effectively implemented to help mitigate the related issues of pollution and environmental degradation. In both the short and long term, environmental principles are crucial for achieving sustainable development, robust governance, and effective management and protection of the environment in the Niger Delta region[37]. Embracing sustainable reforms will encourage responsible petroleum exploration and production that positively influences economic growth within oil-producing communities while safeguarding human health and ecological systems. It is vital to establish comprehensive legislative frameworks alongside institutional structures focused on environmental protection to enhance regulatory measures related to the petroleum sector. It is imperative to review Nigeria's 1999 Constitution and other national laws promptly to create an efficient system for regulation, set long-term environmental objectives, and ensure enforcement mechanisms are in place.

Support networks that enable human and other species' existence are collectively referred to as the environment. It consists of the air we breathe, the ground beneath our feet, the water we drink and the energy that heats our homes

[37] *Ibid.*

and powers our society. The environment is not only the tangible elements of earth, air, water and energy, but can also extend to local or global environmental concern. The challenge in planning for the environment is to anticipate how these processes and interactions are affected by human activity and to act so that their integrity can be preserved under changing conditions.[38]

The research will look at the environment from the physical perspective. The physical environment has been defined (natural and constructed) to include: land and climate, vegetation, wildlife, the surrounding land uses and the physical character of an area, infrastructure, public services, air, noise and water pollutions.[39] In simpler terms, the environment consists of the natural habitat of man and all other living organisms, [40]wherein man and all living organisms sustain and fend for themselves in a way that either maintains, improves or depletes the quality of the natural habitat[41].

Since the discovery of Nigeria's vast petroleum reserves in the 1950s, oil has become a crucial component of the country's economy. In 1970, oil revenues were 219 million naira, but by 1979, they had grown to 10.6 billion naira. Many of Shell Oil Company's oil facilities are in Nigeria's oil-rich delta. An ethnic group in the Delta, the Ogonis, have protested that the production of shell oil has not only ruined the local environment but also the region's ability to support local producers and farmers. In contrast, the federal government of Nigeria has been accused of neglecting to draft and implement environmental protection

[38] Ottawa.ca/en/official-pna-0/24-maintainning-environmental-integrity (Last Visited at 12: 28 pm on 7th April 2024).
[39] http://www.air.com.au/industry/factrefine.html (Last Visited at 12: 18 pm on 25th February 2024).
[40] Biotic and non-biotic organisms.
[41] *Ibid.*

legislation to prevent oil damage caused by Shell and other oil companies. Additionally, the federal government has harassed and even killed a number of Ogonis for planning protests and threatening to sabotage oil facilities[42].

The indigenous peoples who live in the vicinity of oil extraction have suffered grave environmental and human consequences as a result of Nigeria's oil production.[43] Twelve per cent of Nigeria's land is used to produce the 12 million barrels of oil that the country exports each day, but indigenous minority communities in these areas do not profit economically. The environmental damage caused by oil production and the absence of proper regulation of multinational corporations further impoverish indigenous groups, making them more susceptible to food shortages, health risks, land loss, pollution, forced migration, and unemployment.

Oil production has had significant negative social and environmental effects. They include devastation of biodiversity and wildlife, loss of fertile soil, contamination of drinking water and air, degradation of farmland, and harm to aquatic ecosystems, all of which have resulted in major health issues for the people who live in the oil production axis. Around 75% of gas production is

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[42] the Ogoni Nine were a group of nine activists from the Ogoni region of Nigeria, including outspoken author and playwright Ken Saro-Wiwa, Saturday Dobee, Nordu Eawo, Daniel Gbooko, Paul Levera, Felix Nuate, Baribor Bera, Barinem Kiobel, and John Kpuine (Tripathi, p.189), who were executed by hanging in 1995 by the military dictatorship of General Sani Abacha and buried in Port Harcourt Cemetery. The executions provoked international condemnation and led to the increasing treatment of Nigeria as a pariah state until General Abacha's mysterious death in 1998. Saro-Wiwa had previously been a critic of the Royal Dutch Shell oil corporation, and had been imprisoned for a year prior to the executions in November 1995. At least two witnesses who testified that Saro-Wiwa was involved in the murders of the Ogoni elders later recanted, stating that they had been bribed with money and offers of jobs with Shell to give false testimony – in the presence of Shell's lawyer. In 1996, the Center for Constitutional Rights sued Shell for its complicity in human rights abuses against the Ogoni people, such as colluding with the Nigerian government to bring about the arrest and execution of the Ogoni Nine. In June 2009, on the eve of trial, the parties agreed to a settlement providing a total of $15.5 million to compensate the plaintiffs, establish a trust for the benefit of the Ogoni people, and cover some of the legal costs and fees associated with the case

[43] *Ibid.*

flared each year, causing significant ecological and physical harm to other resources like land/soil, water, and vegetation. Other sources of pollution include pipeline leaks, oil waste dumping, oil spills, and gas flaring[44]. Gas flares, which frequently occur near villages, wash away produce shoots, and the blank, ink-like water that runs off roofs is thought to contain chemicals that negatively impact soil fertility. Land that was formerly used for agriculture has also suffered irreversible damage as a result of gas pipelines.[45] To lessen the chance of fracture and spills, these pipes ought to be buried. Nevertheless, the pipes are frequently buried and pass straight through villages, where oil spills have made the land unusable for economic purposes.

Observations have been made regarding the insufficient actions taken by both the Nigerian government and multinational oil companies operating in the Niger Delta to tackle unsustainable practices and environmental contamination from petroleum. This neglect directly impacts the ecosystem, human health, and the sociocultural and socioeconomic welfare of local communities. Petroleum-related matters fall exclusively within the jurisdiction of the Federal Government.[46] It is widely recognized that various factors influence environmental pollution, health risks, and socioeconomic challenges associated with global petroleum industry operations.[47] These factors include the geological and geographical features of oil-rich host communities;[48] stages such as exploration, development, and production processing; demographics

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44 *Ibid.*

45 *Ibid.*

46 Ownership and control of oil and gas and mineral resources is vested in the federal Government by the constitution. Section 44 of the 1999, also issues bordering on mineral resources are provided for in the exclusive legislative list.

47 Odeyemi, O., and. Ogunseitan, O. A "Petroleum Industry and its Pollution Potential in Nigeria," Oil Petrochemical Pollution, 2 (3), (1985) 223-229.

48 *Ibid.*

and socioeconomic activities of local populations; cultural heritage considerations;[49] corporate governance structures; and political economy dynamics.[50] Nonetheless, a few of the global oil corporations that operate in the Niger Delta have not implemented legal strategies for risk reduction, sustainable development, and environmental regulation compliance[51].

For the past fifty-five years, successive governments have overlooked the environmental pollution[52], socioeconomic challenges, and devastating effects on wildlife and habitats associated with both onshore and offshore petroleum exploration and production in the Niger Delta region[53].

This study critically examined the impact of hydrocarbon pollution on the Niger Delta's environment, highlighting challenges in enforcing and implementing existing legal and institutional frameworks. It explored the Nigerian government's role in executing petroleum-related environmental policies in this region as well as analyzed how multinational oil companies contribute to environmental degradation. Additionally, it summarized Nigeria's primary environmental laws related to the petroleum industry, its international obligations under various multilateral environmental agreements (MEAs), and the resulting ecological damage from unsustainable petroleum exploitation.

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49 Bantekas, I., "Corporate Social Responsibility in International Law, "*Boston University International Law Journal*, 22, (2004)309-348.

50 Ite, U. E., "Multinationals and Corporate Social Responsibility in Developing Countries a Case Study of Nigeria," Corporate Social Responsibility and Environmental Management, 11 (1), (2004).1-11.

51 Ite, U. E., "Changing times and Strategies: Shell's Contribution to Sustainable Community Development in the Niger Delta, Nigeria," Sustainable Development, 15 (1)., (2007) 1-14

52 Aghalino, S. O., and Eyinla, B. "Oil Exploitation and Marine Pollution: Evidence form the Niger Delta, Nigeria," *Journal of Human Ecology*, 28 (3). (2009);177-182.

53 Idemudia, U., Corporate Partnerships and Community Development in the Nigeria Oil Industry Strengths and Limitations, *Geneva: UNRISD: Copenhagen Business School*, (2007), 45.

Additionally, it will highlight most environmental regulations pertaining to petroleum as well as potential future legal development directions in both the national and international contexts.

III. Recommendations

The environmental integrity of the Niger Delta communities as well as the socioeconomic and political well-being of Nigeria is seriously threatened by the environmental effects of oil pollution and the resulting destruction of the country's environment. Considering the, this article suggests the following:

- **Self-Regulation,** Environmental law is often the subject of government regulation, but it can also be the subject of business self-regulation. Businesses prefer self-regulation environmental issues for the same reasons business prefer self-regulation in other area: because business usually considers self-regulation to be more effective and less intrusive than government regulation. Self-regulation on environmental matters is conducted at various levels: individual companies, industry association, and independent testing institutions. Of course, the standards for all of these forms of environmental self-regulation must exceed the requirements of the most stringent applicable regulations.
- **By individual companies:** First, individual companies sometimes engage in self-regulation on environmental issues because they find it easiest from a technical point of view to establish the same global operational standard throughout their organization, even for environmental matters. Companies adopting this form of self-regulation tend to do so for two reasons. First, maintaining single operation standards, including environmental matters, offers some cost savings. With the same global operational standards, a company can save costs by interchanging the same designs, equipment and

personnel between the company's various locations. Second, maintaining the same global operating standards offers benefits in terms of consistent product quality. In an era of global customers and global sourcing, it is important for a company to offer same quality in its product from its various locations. Some companies have found that it is not possible to maintain consistently high product quality among different locations without the same operating standards, including environmental matters.

- **Second**, individual industries often engage in environmental self-regulation both nationally and internationally. Environmental self-regulation at the industry level, typically through the industry association, affords individual companies all the benefits of self-regulation at the company level. In addition, an industry-wide program offers at least two advantages over individual programs.
- First, individual companies avoid the potential cost disadvantage of instituting their own environmental self-regulation. Adopting industry policies also costs less for the individual companies than formulating their own policies but of course does not obviate the need to implement those policies at the company level. Second, industry associations can advertise and otherwise promote their environmental regulations to important corporate constituencies more effectively and less expensively than individual companies can do so. Such advertising and promotion can be important because environmental matters are a major concern for governments and general publics. Government allows business self-regulation on environmental matters at the industry levels, both nationally and internationally, because governmental competition regulators do not consider environmental matters to be commercial issues giving rise to competition within an industry.

- **By independent testing agencies:** Finally, independent third-party testing agencies, particularly the international standards organization (ISO) in Switzerland have become involved in non-governmental regulation on environmental matters. Self-regulation is not the correct term to describe ISO's involvement in environmental matters because they adopt and monitor environmental standards for other industries, not for themselves. In fact, ISO's independence gives creditability to its standard and certifications. The ISO's standing in this area, as well as the importance of environmental self-regulation, is illustrated by the fact that many companies undertake to obtain ISO environmental certification in response to customer's requests.
- Proactive steps and a strong institutional and legislative framework for the environment to enhance rules governing the petroleum sector. Nigeria escapes punishment as operators swiftly take advantage of the deluge of defences at their disposal. Canada's legal framework for reducing oil and gas pollution is extensive and comprehensive. It is a developed economy that respects the environment and forbids the exploration and exploitation of gas and oil resources at the expense of biodiversity and the environment.
- To establish an effective framework for regulation, sustainable environmental goals, and enforcement within the constitutional laws of places like the United States and Canada—which ensure citizens' rights to a healthy environment free from pollution—it is crucial to review various national laws along with Nigeria's 1999 Constitution concerning hydrocarbon pollution. This approach embraces both citizen rights and the principle of subsidiarity.
- That Oil Industry should be made to pay or it license be withdrawn for any form of hydrocarbon pollution on the environment whether at the upstream or downstream level of its operational activities.

- Just like in the UK, environmental offences involving violations of environmental laws and regulations ought to be treated as strictly punishable crimes.

IV. Conclusion

Environmental degradation raises numerous human rights issues, such as the right to privacy, a healthy environment, life, and self-determination. A worrying factor is the environmental damage caused by many multinational corporations exploiting natural resources like oil, minerals, timber and more in developing countries like Nigeria. The scope of human rights violations resulting from oil production in Nigeria cannot be quantified accurately.

To sustainably manage the environment in oil-rich communities of the Niger Delta, existing laws and regulations for environmental protection within Nigeria's petroleum industry appear grossly inadequate and ineffective. Multinational oil companies are not mandated to follow specific standards prescribed by Nigerian environmental law to safeguard soils, groundwater, marine life, and terrestrial environments in the region. Furthermore, it is nearly impossible to comply with and enforce the statutes and regulations because they are written in such vague and general terms. The five main statutory flaws that significantly impede effective environmental regulation and the extralegal justifications for Nigeria's inability to effectively regulate the operations of multinational corporations have been covered in great detail in the research. Nigerian environmental regulations are frequently impacted by public opinion, industry support, and technological limitations. Community involvement in environmental decision-making is a relatively new practice in Nigeria's Niger Delta, and it frequently fails to achieve sustainable development objectives.

Due to the higher costs associated with meeting environmental regulations, some multinational oil companies operating in the Niger Delta have not consistently implemented sustainable best practices for petroleum exploration and production. As a result, pollution resulting from unsustainable extraction activities has continued over several years despite comprehensive regulatory systems being enacted. Consequently, it can be argued that for many years, the region has faced significant hazardous environmental impacts including pollution and degradation as well as risks to human health due to inadequate practices in environmental protection and management along with insufficient corporate responsibility towards preserving the environment.

The importance of law in promoting effective environmental governance cannot be underestimated. The legislative arm of government can be useful tool and a powerful agent of change in sustainable environmental governance. Therefore, is a need for a principal statute for the management of the Nigeria environment. Nigeria needs an integrated and coherent framework for her environmental management. Nigeria needs a strong legislative system if she is to achieve her environmental commitment and goals. Consideration for a reformed regime, considering both the economic and social benefits of preserving the environment needs to be investigated. Nigeria therefor needs a more robust all-encompassing and well-focused environmental regime to serve as a core principle legislation on the management of the Nigeria environment.

The capacity of the Nigeria legislature needs to be strengthened not only to enable it legislates for sustainable environmental governance, but also to enable it to promote institutional reforms that will bring about sustainable environmental governance. Environmental sustainability should be made an integral part of economic planning at all levels of governance and integrated

into all policies in Nigeria. Economic policies which aim at balancing sustainability initiative backed by conscious efforts to safeguard and protect the environment should also be made use of.

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EXPANDING THE DEFINITION OF TERRORIST UNDER THE UAPA: AN EVALUATIVE SOCIO-LEGAL INTERPRETATION

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Abstract

India as a democratic nation has always striven to provide equal rights to every person. The Chapter on Fundamental Rights clearly stipulates that every person in the territory of India is endowed with the freedom of speech and expression. However, this Chapter is to be read with the Chapter of Fundamental Duties. The need for the introduction of Anti-Terror Laws in India was felt as early as on the eve of the independence of the country, for the simplistic reason that various sectarian, anti-nationalistic forces arose and gave rise to the terrorist activities which were not a part of nationalistic discourse. To curb such practices and to control such tendencies, the Government since the time of independence has been bringing in a slew of anti-terror laws. The Unlawful Activities (Prevention) Act 1967, in short, the UAPA is one such legislation. The constitutionality of the UAPA has been upheld in several cases by the Apex Court of the country. The ambit of the UAPA has been growing since the past decades. The present discourse has attempted to focus on this legislation, and on the definition of terrorist. Charting out the history of anti-terror laws in general and moving forward to highlight the basic features of the Act, the judicial interpretation of the Unlawful Activities (Prevention) Act 1967; along with the socio-legal impact of the same has been discussed by the authors.

Keywords: *Anti-terror laws; Terrorist; Unlawful Activities (Prevention) Act 1967; fundamental rights; jurisprudential discourse.*

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I. Introduction: Conceptual Note on Terrorism and Extremism

"It is wrong not to lay the lessons of the past before the future.[1]" –

Winston Churchill

Since the advent of the human society, men have always tried to protect three major rights of their own namely, the right to life, the right to liberty and the right to property. For this purpose, State and its functionaries started cropping up and gave rise to the concept of Divine Law of Thomas Hobbes and Austin, the concept of elections and "referendums[2]" of John Locke and the concept of "General Will[3]" of Rousseau. "This concept of protection of rights is inherent to each human being who exists on this planet. But some individuals, since time immemorial have tried to sabotage this requirement of the living being for the purpose of ensuing infightings[4]".

The initial infightings between the tribes and different nations are well understood and covered under the "various conventions[5]" that deal with the effect and consequence of the same. However, terrorism is a totally different concept from this. It neither seeks to protect any right, nor does it strive to

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[1] Courage for Life, available at: https://courageforlife.org/blog/dont-let-your-past-decide-your-future/ (last visited at 1:00 pm on Apr 16, 2025).

[2] Stanford Encyclopedia Of Philosophy, available at: https://plato.stanford.edu/entries/locke/ (last visited at 1:30 pm on Apr 16, 2025); John Locke, Two Treatise of Government (1689); John Locke, An Essay Concerning Human Understanding (1689); John Locke, A Letter Concerning Toleration (1689); John Locke, Some Thoughts Concerning Education (1693); John Locke, The Reasonableness of Christianity (1695); John Locke, Of the Conduct of Understanding (1706); Philip Abrams, John Locke: Two Tracts of Government (1967);

[3] University Of Tennessee at Martin, available at: https://iep.utm.edu/rousseau/ (Last visited at 2:00 pm on Apr 16, 2025).

[4] Memorial University of Newfoundland, available at: https://research.library.mun.ca/8099/1/thesis.pdf (Last visited at 2:00 pm on Apr 16, 2025); University of Tennessee at Martin, available at: https://iep.utm.edu/rousseau/ (Last visited at 2:00 pm Apr 16, 2025).

[5] International Red Cross, https://www.icrc.org/ (Last visited at 2:00 pm on Apr 16, 2025).

protect any land[6]. It simply means putting oneself interest over and above the other's so much so that one forgets the basic premise of humanity. Terrorism and insurgencies have been rising around the world at an alarming pace, now a days.

"It has become so prevalent now that not even a single continent is free from it[7] ". Terrorism does not only exist in the form of a group of terrorists, but it can exist as a lone-wolf attack[8] as well. The Governments of various nations have been trying very hard since several decades now, to control the said menace. The sociological and psychological thinking[9] of the terrorists is so extreme and radicalized that curing it is, as difficult as curing rust. Now, even the so-called westernized and civilized societies are also facing the threat of terrorism, which they used to deny so easily back in the previous millennium.

The dilemma in fighting terrorism is well explained by "Kofi Annan, the former UN Secretary General in his speech on 18th November, 1999[10]", *"We are all determined to fight terrorism and to do our utmost to banish it from the fact of the earth. But the force we use to fight it should always be proportional and focused on actual terrorist. We cannot and must not tight them by using their*

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[6] *Ibid*.

[7] Global Terrorism Index, available at: https://www.visionofhumanity.org (last visited at 1 pm on Apr 16, 2025); Vision Humanity, available at: (last visited on Apr. 16, 2025).

[8] Observer Research Foundation,available at: https://www.orfonline.org/ (last visited on Apr. 16, 2025); U.S. Department of Justice: Office of Justice Programmes: Lone Wolf Terrorism in India, available at: https://www.ojp.gov/ncjrs/virtual-library/abstracts/lone-wolf-terrorism-america (last visited at 2 pm on Apr. 16, 2025); Understanding the Motivations of 'Lone-Wolf' Terrorists Attacks, available at: https://www.jstor.org/stable/27007294?seq=1 (last visited at 3 pm on Apr. 16, 2025); ICCT: Lone Wolf Terrorism-available at: https://icct.nl/sites/default/files/2023-02/ (last visited at 3:30 pm on Apr. 16, 2025).

[9] Office Of Justice Program, available at: https://www.ojp.gov/pdffiles1/nij/grants/208552.pdf (last visited at 3 pm on Apr 16, 2025).

[10] Former UN Secretary General in his Speech on 18th November 1999.

own methods -by inflicting indiscriminate violence and terror on innocent civilians, including children.[11]*"*

II. Historical Background of Anti-Terror Laws: An Insightful Perspective

"Human rights and national security are both very important for progress of a nation. Minorities and marginalized groups also command equal importance. Without taking care of all these or either of these, a nation cannot walk on the path of development. And more importantly, human rights should not be traded for security, ever. This is the sure shot recipe for national and global disasters. Undermining the strength of the international human rights law places on certain forms of executive power leads to more destruction[12]". And this is the exact reason why fighting terrorism is both a necessity but more so a tactic that has to be employed in the best sense possible.

Defining terrorism is not an easy task. Each country and even the United Nations have their own definition of terrorism that suits their own understanding of the concept. "The Resolution of the UNGA 49/60[13]" (adoption date: 9 December, 1994), titled "Measures to Eliminate International Terrorism," has a provision which describes terrorism by stating that: "*Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.*[14]*"* It has been argued specifically that, a century

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[11] Shruti Bedi, Indian Counter Terrorism Laws (2016).

[12] 26 Paul Hoffman, Human Rights and Terrorism, Human Rights (2004).

[13] Definitions-Terrorism, available at: https://dema.az.gov/sites/(last visited at 4 pm on Apr 16, 2025); UN General Assembly Resolution 49/60.

ago, terrorist codes on targeting victims closely resembled professional military codes, in that they respected the distinction between soldiers and officials on the one hand, and innocent civilians on the other (e.g., the targeted assassination of Archduke Franz Ferdinand of Austria[15] on 28 June 1914) (Walzer, 1977, pp. 197- 234).

"This had been continuing since the mid-nineteenth century when killing an enemy became easier and more indiscriminate[16]". In terms of terrorist strategy, a useful way to conceptualize the evolution of modern terrorism as a resort to revolutionary violence is provided by "David Rapoport's[17]" influential concept of the "waves" of terrorism (The Four Waves of Terrorism). For instance, "there is an anarchist wave which is the late nineteenth century or early twentieth century wave." And on the other hand, there is another wave which is the "anti-colonial wave[18]". Tactics employed during these were mirroring the tactics of "armed conflict" itself.

"The wave theory particularly sates that terrorist groups rise and fall and can dissolve when they cannot inspire another or others to carry on the violent resistance. This point also suggests that terrorism and its motivations are clearly impacted by the conditions of and changes in social and political cultures.[19]"

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[14] Gurmeet Kanwal & N. Manoharan, India's War on Terror; Definitions-Terrorism, available at: Https://Dema.Az.Gov/Sites/Default/Files/Publications/ (last Visited at 3 pm on Apr 16, 2023); Un General Assembly Resolution 49/60; Terrorism: What We Investigate, available at: https://www.fbi.gov/investigate/terrorism (last visited on Apr. 16, 2025); Definition of Terrorism: Canadian Context, available at: https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr09_6/p3.html (last visited at 3 pm on Apr 16, 2025); OHCHR and the Context of Terrorism, available at: https://www.ohchr.org/en/terrorism (last visited on Apr at 4 pm 16, 2025);

[15] UNODC The Doha Declaration, available at: https://www.unodc.org/documents (last visited at 4 pm on Apr 16, 2025).

[16] *Ibid*.

[17] The OECD, available at: https://www.oecd.org/ (last visited at 7 pm on Apr 17, 2025).

[18] The OECD, available at: https://www.oecd.org/(last visited at 7:30 pm on Apr 17, 2025); The United Nations Office on Drugs and Crime, The Doha Declaration, https://www.unodc.org/ (last visited at 8 pm on Apr 17, 2025).

"On the other hand, Parker, and Sitter state that violent terrorist situations occur around the world in waves, but terrorist actors are motivated in varied ways through four goals such as: socialism, nationalism, religious extremism, or exclusionism. These are not chronological in sequence and follow a rise and fall pattern. They often work parallelly or overlap, etc.[20]"

Preventive Detention laws signify that a person is detained for the offence that he has not yet committed and that the same has been done to prevent any kind of harm to national security. "This can be done to protect the maintenance of land and order and security of the State. The law of preventive detention has been defined under various legislations of post-independence India but the same has also been given a specific place in the now operational Constitution of India. Such a detention of the person is carried away without giving that person any right to trial and the only remedy, if not taken away, is the writ of the habeas corpus[21]".

Earliest traces of the preventive detention law, that can be found in the East India Company Act 1780. "By the East India Company Act 1784, the Governor General was further empowered to secure and detain any person or persons suspected of carrying correspondence or activities prejudicial to the peace and safety of the British settlements.[22]" "If he was not released, then that person on the discretion of the Governor-General was allowed to be tried wither in India or in England. Fort St. George at Bombay was also given the similar powers[23]". The British in India did not really deal with real terrorism threats but only Indian revolts, yet their laws were undemocratic. Their laws curtailed the liberty

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[19] The UNODC Doha Declaration, available at: https://www.unodc.org/documents/ (last visited at 1 pm on Apr 16, 2025).

[20] The UNODC The Doha Declaration, https://www.unodc.org/ (last visited at 3 pm on Apr 16, 2025).

[21] *Ibid*.

[22] S.K. Ghosh, The Law of Preventive Detention in India (1969).

[23] Shruti Bedi, Indian Counter Terrorism Laws (2016).

of the people so casually that there was no way out for Indians to get their liberty back. The East India Company act 1793 provided, *"it shall and maybe lawful for the Governor of Fort William aforesaid for the time being to issue his warrant under his hand and seal, directed to such peace officers and other persons as he shall think fit for securing and detaining in custody any person or persons suspected of carrying on mediately or immediately any of the British settlements or possession in India with any of the Princes, Razas or Zamindars or any other person or persons having authority in India by an European Power or any correspondence contrary to the rules and orders of the said company or of the Governor General in Council at the Fort William.* "[24]

"This power of detention and arrest without trial was provided for in various subsequent Acts as well such as "The Act of 18122[25]", "The Act of 1818[26]", "The Madras Prisoners Regulation II of 1819[27]", etc.". A similar Act was made for the prisoners of Bombay and Madras and the same was known as the "State Prisoner's Act 1859[28]". In addition to it, the "Indian Council Act 1861[29]" also made similar provisions. "The Defence of India Act 1915" was another draconian law adopted under the Emergency Code, while the first world war was going on. "The Defense of India (Criminal Law Amendment) Act, 1915

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[24] Priti Saxena, Preventive Detention and Human Rights, 2007.
[25] The Bengal Regulation, 1812.
[26] The Bengal State Prisoners' Regulation 1818
[27] The Madras State Prisoners Regulation 1819*; Bangaru Laxman v State* 2012 (1) SCC 500; Available at: https://legaldata.in/supreme-court/judgments/bangaru-laxman-v state-tr-c-b-i--20184 (Last visited at 3 pm on Apr 29, 2024); *Yakub Abdul Razak Memon v State of Maharashtra*, 2013 (13) SCC 1; Available at :https://www.advocatekhoj.com/library/judgments/announcement.php?WID=3296 (Last at 4 pm visited Apr 23, 2024).
[28] The Bombay State Prisoners State Regulation XXV, 1827.
[29] Indian Council Act, 1861.

(No. 4)", was the analogue of the "English Defense of the Realm Acts[30]". "It was introduced and passed through all its stages at Delhi on March 18, 1915, and its provisions, though adapted to Indian circumstances, were obviously largely suggested by and based upon the provisions of the English Acts. It was temporary in its operation and remains in force during the continuance of the war and for a period of six months afterwards."

Section 2, which is general in its application, and which came into force at once, gave the Governor General in Council power to make rules " for the purpose of securing the public safety and the defense of British India and as to the powers and duties of public servants and other persons in furtherance of that purpose." Many other Acts such as the "National Security Act 1980", "Armed Forces Act 1950", the "Maintenance of Internal Security Act 1971", et al. are all but examples of anti-terror laws that continued the basis and foundation of pre-independence laws as well as made protecting internal security easier for the successive ruling governments.

III. Analysing the Need for the Unlawful Activities (Prevention) Act 1967 (UAPA): An Interpretative Critique

According to the basic objectives of the lawmakers, "the UAPA (Unlawful Activities-Prevention) Act 1967 was conceived as an enactment to impose reasonable restrictions on freedom of speech and expression, etc." According to various resources and literature available, "the focus of the Act was to tackle the growth of regionalism and hence the Sixteenth Constitution Amendment Act 1963 based on the recommendations of the Committee on National Integration and Regionalism appointed by the National Integration Council,

[30] The State Prisoners Act 1850.

was made[31]". "The Act has been amended seven times[32]". "The seventh amendment in the year 2019, prior to 2019 this law has been amended six times i.e., 1969, 1972, 1986, 2004, 2008, 2013, substantial amendments were made in the years 2008 and 2013. There have been several criticisms as well as parallel justifications to the enactment of the Act mainly in connection with the 2019 amendment.[33]"

"The specific criticisms of the Act are examined with counter justifications. UAPA deals with two kinds of acts: - unlawful acts and terrorist acts. The 1967 UAPA only talked about unlawful activities and unlawful organizations[34]". The law will punish any individual committing unlawful activities and if an organization is an unlawful organization the central government will issue a notification and ban this unlawful organization. Then the scope of UAPA was expanded to cover terrorist acts as well. Now UAPA also bans terrorist organizations.[35]"

"Unlawful activity is defined under Section 2(0) of the UAPA if an individual commits an act that is against the unity, integrity, and sovereignty of the nation but this individual commits this act not through bombs not through ammunition not through weapons not through firearms but through words whether these words are spoken or written.[36]" "It has been upheld that the Parliament was competent to enact the said Act under its powers of residuary powers.

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[31] Shruti Bedi, Indian Counter Terrorism Laws (2016).
[32] *Ibid.*
[33] *Ibid.*
[34] The Unlawful Activities (Prevention) Act 1967.
[35] Paul Priyadarshini R., Unlawful Activities Prevention Act, available at: https://legalserviceindia.com/ (last visited at 4 pm on Apr 23, 2025).
[36] *Ibid*.

Therefore, the entries listed in the Schedule must be given widest possible meaning.[37]"

"Terrorist organization, it may be noted, is akin to an unlawful association. Going by the definition of terrorist organization, defined by Section 2(m) of the UAPA Act (as the same stands today), it becomes clear that a terrorist organization would mean an organization mentioned in the Schedule to the UAPA or an organization operating under the same name as an organization so listed. Committing terrorist act is one of the acts attributed to such an organization[38]". "Apart from committing terrorist act, preparations for terrorism, or promoting or encouraging terrorism, or otherwise involvement in terrorism, are some other features of a terrorist organization. An organization, however, dreadful, cannot be termed as a terrorist organization unless it has been added, as such, in the Schedule to the UAPA[39]".

"Thus, if an organization has been added in the Schedule to the UAPA, it can be termed as a terrorist organization and penal consequence would ensue from the very membership of such an organization unless, of course, the organization's name, after a statutory review, under Sections 36 and 37 of the UAPA is de notified[40]". "A recent amendment in the Unlawful Activities Prevention Act is that of the year 2019[41]". According to the amendment, even

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37 Re The Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act 1938 (1939 FCR 18); available at: https://www.lawyerservices.in/In-The-Matter-of-The-Central-Provinces-and-Berar-Sales-of-Motor-Spirit-and Lubricants-Taxation-Act-1938-1938-12-02 (last visited at 1 pm on Apr 23, 2025); Ahmad Ali Akhtar v Union of India, 1993 SCC OnLine Pat 61.

38 The Unlawful Activities (Prevention) Act 1967.

39 *Ibid*.

40 *Redaul Hussain Khan v National Investigating Agency* 2010 (1) SCC 521, https://www.casemine.com/judgement/in/56b49089607dba348fffa2b2 (last visited at 2 pm on Apr 23, 2025).

41 *Jamat-E-Islami Hind v Union of India*, 1995 (1) SCC 428; available at: https://main.sci.gov.in/jonew/judis/11079.pdf (Last visited at 2 pm Apr. 30, 2025).

the individuals can be designated as terrorists under the Act. The various features of the Amending Act are:

- *"***Who may commit terrorism**: Under the Act, the central government may designate an organization as a terrorist organization if it: (i) commits or participates in acts of terrorism, (ii) prepares for terrorism, (iii) promotes terrorism, or (iv) is otherwise involved in terrorism. The Bill additionally empowers the government to designate individuals as terrorists on the same grounds.[42]"
- *"***Approval for seizure of property by NIA**: Under the Act, an investigating officer is required to obtain the prior approval of the Director General of Police to seize properties that may relate to terrorism. The Bill adds that if the investigation is conducted by an officer of the National Investigation Agency (NIA), the approval of the Director General of NIA would be required for seizure of such property.[43]"
- **Investigation by NIA**: "Under the Act, investigation of cases may be conducted by officers of the rank of Deputy Superintendent or Assistant Commissioner of Police or above. The Bill additionally empowers the officers of the NIA, of the rank of Inspector.[44]"
- **Insertion to schedule of treaties***: "The* Act defines terrorist acts to include acts committed within the scope of any of the treaties listed in a schedule to the Act. The Schedule lists nine treaties, including the Convention for the Suppression of Terrorist Bombings (1997), and the Convention against Taking of Hostages (1979). The Bill adds another treaty to the list. This is

[42] PRS Legislative, The Unlawful Activities (Prevention) Amendment Bill 2019. PRS Legislative; available at: https://prsindia.org(Last visited at 1 pm Apr. 30, 2025).
[43] PRS Legislative, available at: https://prsindia.org (Last visited at 1:30 pm Apr. 23, 2025).
[44] *Ibid.*

the International Convention for Suppression of Acts of Nuclear Terrorism (2005).[45]"

Stand taken by the government on the enlarging powers of the Act and the various agencies is defined below, as discussed in the Parliamentary debates of the said year. "In all cases of NIA, the process of filing the charge sheet in the court has been done under the law and till date no one has got free due to not filing a charge sheet. The cases filed by NIA against terrorism are very complex. There is less chance of getting evidence in them, because these cases are interstate and international. My argument regarding declaring an individual as a terrorist is that the organization is formed by the person, not by its constitution. If we ban an organization, then they open another organization. The terrorist activity is not executed by the organization; it is executed by person. But due to the shortcomings of law, these people keep changing the names of organizations. Unless an individual is declared as a terrorist, it is impossible to stop their activity and intentions. In many countries and the United Nations, an individual is declared as a terrorist."[46]

"The Act of 1967 already has ample powers to deal with persons who support terrorist organizations and unlawful activities as Section 35 of the Unlawful Activities (Prevention) Act 1967 deals with the Government's powers where the Government can notify any organization if it believes that the organization is involved in terrorism. Such organizations can be included in the First schedule of the Act which has *33* names so far.[47]" "Any person who is associated with an organization included in the First Schedule as a member,

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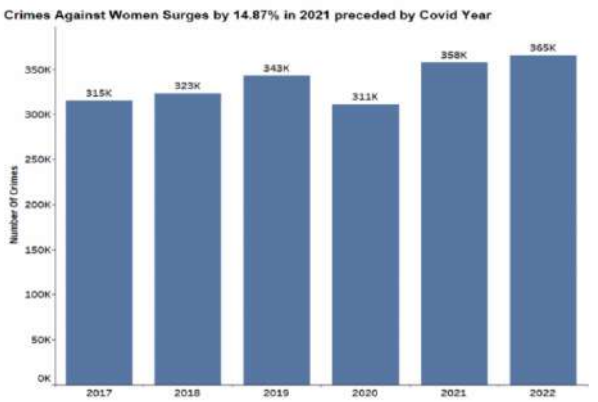
[45] *Ibid*.
[46] Rajya Sabha, Synopsis of Debate, Government Bills.
[47] The Unlawful Activities Prevention Act, 1967 Sch. 1.

supporter or fund raiser can be punished as per the existing provisions of Sections 38,39 and 40.[48]" Recently, the National Crimes Records Bureau has also released the data under the UAPA. In this context, it is pertinent to state the lines of the Magna Carta "No free man shall be seized, imprisoned, dispossessed, outlawed, exiled, or ruined in any way, nor in any way proceeded against, except by the lawful judgement of his peers and the law of the land."[49] "To no one will we sell, to no one will we deny or delay right or justice"[50]. "According to the data released by the National Crime Records Bureau, the number of cases for investigaion have been rising at the rate of more than 14% under the Unlawful Activities (Prevention) Act 1967.[51]" A look at the following graph tables will put forward the issue more explicitly.

Figure 1: Major States Contributing the UAPA Cases (2023)[52]



[48] The Unlawful Activties Prevention Act 1967, Sec. 38, 39, 40.
[49] U.K. Parliament, Magna Carta, available at: https://www.parliament.uk/about/living-heritage/evolutionofparliament/originsofparliament/birthofparliament/overview/magnacarta/magnacartaclauses/ (last visited at 1 pm on Apr. 30, 2025).
[50] U.K. Parliament, Magna Carta, available at: https://www.parliament.uk/about/living-heritage/evolutionofparliament/originsofparliament/birthofparliament/overview/magnacarta/magnacartaclauses/(last visited at 1 pm on Apr. 30, 2025).
[51] National Crime Records Bureau Report.
[52] Statista, Number of Active UAPA Cases on The Rise, available at: https://www.statista.com/chart/22931/number-of-active-cases-uapa-india/ (last visited at 1 pm on Apr. 30, 2025).

"The UAPA Act of 2019, an amendment to the 1967 Act, empowers the Union government to designate an organization or individual as a terrorist on specific grounds. Despite concerns raised by opposition parties in Parliament about its draconian nature and potential for misuse, the Bill was passed in both Houses and received the President's assent in August 2019. The surge in UAPA cases is part of a broader increase in crimes against the state, totaling 5,610 cases in 2022, up from 5,164 in the previous year. Crimes categorized under UAPA alone witnessed a staggering 23% rise, as per the NCRB data.[53]"

"UAPA is a special criminal law that vests extraordinary investigative and prosecutorial powers in the executive not available to it under ordinary law in the Code of Criminal Procedure (CrPC) and the Indian Evidence Act (IEA). [54] "

"The burden of proof to get bail under the Unlawful Activities (Prevention) Act 1967 lies on the accused, who is already reeling under the pre-conceived notions on allegations. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act.[55]"

"Under the Code of Criminal Procedure (CrPC), bail is the rule, jail is the exception.[56]" "In light of the fundamental right to liberty, the presumption of innocence as a due process right, and high rates of undertrial incarceration,

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[53] News click, available at: https://www.newsclick.in/- (last visited at 2 pm on Apr. 30, 2025).
[54] Radhika Chitkara, "Indian Constitutional law, and Philosophy", available at: https://indconlawphil.wordpress.com/(last visited at 2 pm on Apr. 30, 2025).
[55] *National Investigating Agency v Zahoor Ahmad Khan Watali*, 2019 (5) SCC 1, available at: https://main.sci.gov.in/supremecourt/2019/40158/40158_2019_32_1501_25867_Judgement_01-Feb-2021.pdf. (Last visited at 3 pm on Apr. 30, 2025).
[56] The Code of Criminal Procedure, 1973.

Supreme Court jurisprudence has increasingly held that judicial discretionshould usually be exercised in favor of the grant of bail.[57]" "Discretion here is to be guided by the triple-test[58]", where bail may be refused only on three conditions such as flight risk issue, the issue of tampering with evidence, and influencing witnesses. "This matrix prioritizes the liberty right of the accused, to be burdened only by the needs of investigation and judicial processes. Judges may account for offence-based grounds, such as the gravity or nature of allegations, as only one among other factors.[59]"

Thus, even though some might argue that the provisions of the Unlawful Activities (Prevention) Act 1967 are very stringent and they are, as a matter of fact. But still, the very intent behind bringing these in and the recent 2019 amendment act must be read in consonance with each other. The Act, per se is not diluting any of the rights of the accused, because wherever they have been getting diluted there are as a matter of fact no convictions and discharges and acquittals are taking place. Thus, the judicial interventions and more than often, procedural following have thus far, not put any question on the constitutionality of the provisions. The implementation at some places might seem to be faulty, but it has maintained its own good ground. Therefore, the principles of natural justice are being balanced by the effective implementation of the national security policy.

IV. Conclusionary Note: Suggestions and Way Forward

There are very few laws that are bad in the eyes of natural justice and the same have been timely declared unconstitutional by the respective Courts of Justice.

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[57] The Code of Criminal Procedure, 1973.

[58] Radhika Chitkara, Indian Constitutional law and Philosophy, available at: https://indconlawphil.wordpress.com (last visited at 3 pm on Apr. 30, 2025).

[59] Apurva Vishwanath, Reading Section 43 D ((5), available at: thttps://indianexpress.com/article/explained (last visited at 4 pm on Apr. 30, 2025).

However, the Unlawful Activities (Prevention) Act 1967 is not an unconstitutional law, as it has been upheld several times by the Supreme Court itself, in all its wisdom. However, certain tweaks and changes can help in balancing the Act.

"The UAPA 1967 was an enabling legal instrument to deal with unlawful activities and associations operating against national integrity and sovereignty. This law was enacted when the Naxalite movement was spreading and there were rebellions in the troubled Northeast of India. Since then, a host of other counter-terror laws have been enacted -National Security Act 1980 (NSA), Terrorist and Disruptive Activities (Prevention) Act 1985 (TADA) which was superseded by Prevention of Terrorism Act 2001 (POTA) and the National Investigation Agency Act of 2008 -2019 (Amendment).[60]" "Recently the UAPA 1967 was amended enabling law enforcement agencies to unilaterally declare an individual as a terrorist. The government of India has called the amendment consistent with similar global legal instruments necessary for waging the war on terror. India promptly named Masood Ashar, Zaki-ur-Rehman, Dawood Ibrahim, and Hafiz Sayeed as terrorists under the new amendment to UAPA 1967. This was long overdue, as the US had done this much earlier. Therefore, there was a situation which required the present law.[61]"

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[60] UAPA 2019, Striking A Balance, Synergia Foundations, available at: https://www.synergiafoundation.org/insights/analyses-assessments/uapa-2019-striking-balance (last visited at 4 pm Apr. 30, 2024*); National Investigating Agency v Zahoor Ahmad Khan Wata*li, 2019 (5) SCC 1, https://main.sci.gov.in/supremecourt (last visited at 4 pm on Apr 30, 2025).

[61] *Ibid*, UAPA 2019, Striking A Balance, Synergia Foundations, available at: https://www.synergiafoundation.org/insights/analyses-assessments/uapa-2019-striking-balance (last visited at 7 pm Apr. 30, 2024*); National Investigating Agency v Zahoor Ahmad Khan Watali*, 2019 (5) SCC 1, Available at: https://main.sci.gov.in/supremecourt (last visited at 7 pm on Apr 30, 2025).

The definition of terrorism and terrorist activities must be declared in clear and unambiguous terms. Defining the same in ambivalent tones is creating ripples in already muddy waters. Along with this, the international committees and organizations which work in this field must come to a conclusive definition of terrorist activities and list down acts that can constitute terrorist acts because then the issue of designating terrorist of an individual personality and the rejection of the same by other countries, will not take place that frequently, as it is taking place now. The issues, if investigated and if the suggestions are accepted, then the Act itself and various concerns that are attached to it can be solved and the associated problems can be dealt with an iron hand. If this is carried out, it is only then that the country's internal and external security can be maintained with full confidence without any unwanted interference.

Conclusively, it must be understood that enlarging the definition of terrorist under the Act is important and inevitable to deal with the growing challenges of the present-day world. However, the inability of the world leaders and innumerable international organizations to not to arrive at a singular definition of terrorism or a terrorist can lead to further confusions as well. Therefore, the first step must be to arrive at a particular definition, possibly define in concrete terms what a terrorist or terrorism is and then finally formulate laws which can act as model laws for the whole world. This will not only deter the terrorist organizations from carrying out attacks on any singular or a group of countries but will also give a definitive standing to all countries to resist terrorism at its best.

The issue of not supporting blacklisting of terrorist organizations by selective countries for their own personal interests will also wither away in no time. Till then, the existing laws which are at par with all legal standards and safeguards must be executed with full zeal and vigor to save the nation's external and

internal boundaries. Then, one can and one will hope for a reformed and an extremist free world whereby rights and responsibilities will be divided not because of power dynamics but based on collective goal of achieving peace and prosperity, worldwide.

COMPASSIONATE APPOINTMENTS FROM THE LENS OF A WELFARE STATE: A CONSTITUTIONAL PERSPECTIVE

Ashutosh Hajela[*] *and Rahul Arora*[**]

Abstract

The governance in India has shifted from a paternal governance to a maternal one whereby the State is supposed to focus its care and attention to the populace in all aspects of life, be it food, shelter, livelihood or any other allied aspects making up to the dignity of the populace. Ensuring means of livelihood, sustenance of the means of livelihood and reaching out to persons in case of undeserved want and financial stress happens to be a prominent area where the State and its instrumentalities need to be concerned, stepping into the shoes of a 'mother' in the scheme of maternal governance. Life is very unpredictable and with unexpected deaths or medical invalidation of the human body, loss of earnings happens to be a natural corollary. As such, the aggrieved persons, naturally, look up to the State for an immediate relief to overcome the sudden crisis, more specifically on the financial side. It is, thus that the State has come up with the idea of offering compassionate appointments to the aggrieved families whose bread earner has gone. However, when the State does so, it does so at the cost of somebody else whose right to employment gets delivered to someone on humanitarian grounds and also with a compromise on the rigours of merit-based selection. This also explicitly goes against the obligation of the State to maintain equality in matters of public employment. It is, thus, the duty

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assumed by the state needs to be exercised with utmost circumspection and based on sound and transparent policies. In practice, there have been witnessed inconsistencies in the implementation of the compassionate jurisprudence which need to be sorted out in the best interest of good governance and satisfied populace.

I. State as a welfare State

India is an old country with a newly achieved independence, having declared it to be Sovereign Democratic Republic.[1] She has traversed a long way from a Police State to the modern-day notion of 'Welfare State'. India has adopted the ideal of welfare state from Britain which has been recognised as the birthplace of 'Welfare State'[2]. Crudely stating the idea of welfare state is that the state must be a carrier of human welfare. To better understand the idea of a welfare state, Aristotle's notion comes helpful whereby he remarked that "the State came into existence to make life possible but continues for the sake of good."[3] The idea of goodness as is manifest in Aristotle's belief from the perspective of State is directly attributable to the social values, social philosophy of the people. It needs to be appreciated that the State as an Institution is meant not only to cater for the physical welfare of man but also for his comprehensive welfare on moral, humanitarian and compassionate grounds. If we look back to

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[1] See Preamble to the Constitution of India: "WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens...."

[2] Wincott, Daniel. "Images of Welfare in Law and Society: The British Welfare State in Comparative Perspective." *Journal of Law and Society*, vol. 38, no. 3, 2011, pp. 343–75. *JSTOR*, Available at: http://www.jstor.org/stable/23030405, (Last Visited at 12:00 pm on 4 May 2023).

[3] Satybrata Ghosh, "Some Theoretical Implications of a Welfare State in India." *The Indian Journal of Political Science*, vol. 15, no. 4 (1954), 327–38. *JSTOR*, Available at: http://www.jstor.org/stable/41853818, (Last Visited at 12:05 pm on 4 May 2023).

the *Agni Purana*[4], it projects the State as an Institution depicting moral association with the king (government in the contemporary phase) as the primary instrument for taking abundant care of the welfare of people. The State owes a duty towards the populace for their welfare which needs to be reflected in the policies framed by it.

It has been correctly pointed out that "In any decent political philosophy, the state is not an end in itself but an instrumentality to be appraised in terms of its contribution to the welfare of the individuals who compose the national community."[5] The earlier existing philosophy of minimal interference of the State does no longer serve the purpose; a new philosophy has supplanted the 'hands off' approach of the State for causing greater social (and economic) good of the populace. The welfare attributes of the State, if generally enumerated, may be manifest in the State regulating privately[6] owned economic activities or even taking over the sick business enterprises of individuals or private corporations, in the State catering for employment to its citizenry,

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[4] *Ibid.*

[5] Jones, Harry W. "The Rule of Law and the Welfare State." *Columbia Law Review*, vol. 58, no. 2, 1958, pp. 143–56. *JSTOR*, Available at: https://doi.org/10.2307/1119825, (Last Visited at 12:10 pm on 4 May 2023).

[6] Though the Supreme Court has come up with certain reservations about the ambit of material resources of the community in *Property Owners Association* v. *State of Maharashtra*, 2024 SCC Online SC 3122 to the extent that "Not all private properties are 'material resources of community' under Art. 39(b) for state to equally distribute; Supreme Court rules in landmark 7:2 verdict." See Dissent by Justice Nagarathna- "a privately owned material resource can be transformed and can indeed acquire a status of "material resource of the community... the act of distributing a private material resource, cannot proceed in isolation from such preliminary steps to first incorporate such private material resource into the community's pool. Thus, acquisition, nationalization, and vesting by operation of law are instances of actions that bring a private material resource into the community's collective domain, rather than being termed as methods of distributing such resources."

offering them retirement benefits, sickness insurance, accident benefit, affordable housing, pensions and the like. The State needs to be armed up to cater for such primary requirements of the citizens and in the absence of such competence, it cannot qualify to be called as a welfare state.

II. Imperative/Desirability of Welfare

Now, if we try to delve into the philosophy of welfare, we come across different conceptions in place. One idea is a 'needs-based concept of justice' and the other happens to be a 'theory of rights and obligations.' The first theory tends to justify State action (intervention) on moral factors and directly pops up from the understanding of the needs of the community and a desirable action on the part of the State. The second approach which is a rights based approach demands that the State must acknowledge its wholesome responsibility towards the citizenry and work on the same to the extent of recognising a right of the citizens to this effect. [7] The latter approach tending to get a legally enforceable right (of compassionate treatment) at the hands of the State happens to be more strong definitely but the path of the State in getting this done is set with all sorts of practical difficulties. [8]

It must be honestly admitted that both needs and rights (claims)[9] are an indispensable component of the foundational value of justice, both of them

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[7] Jayal, Niraja Gopal. "The Gentle Leviathan: Welfare and the Indian State." *Social Scientist*, vol. 22, no. 9/12, 1994, pp. 18–26. *JSTOR*, Available at: https://doi.org/10.2307/3517911, (Last Visited at 12:11 pm on 3 May 2023).

[8] O'Neill, Onora, Faces of Hunger, Allen and Unwin, London, 1988 cited in Jayal, Niraja Gopal. "The Gentle Leviathan: Welfare and the Indian State." *Social Scientist*, vol. 22, no. 9/12, 1994, pp. 18–26. *JSTOR*, Available at: https://doi.org/10.2307/3517911, (Last Visited at 12:15 pm on 4 May 2023).

[9] See Hothfield's analysis of Rights-An Essential Approach to a Conceptual and Practical Understanding of the Nature of Rights- Nikolai Lazarev, Available at: https://classic.austlii.edu.au/au/journals/MurUEJL/2005/9.html, (Last Visited at 12:16 pm on 4 May 2023).

falling in the public sphere and wanting State response. However, there is a striking dissimilarity between the enforceability of the two and all the needs may not qualify to be converted into legally accruable and enforceable rights. Additionally, in order to fulfil the needs of the citizens, the State may on moral considerations practise something in the nature of 'charity'; however, it might be virtuous to reach out to the people in need and distress without there being even a moral imperative to do that. [10]

III. Constitutional Provisions in support of welfare notions

The Constitution of India imposes obligations on the State which are dual in nature. Part III of the Constitution, by and large, imposes negative obligations upon the State, meaning thereby that the State has to refrain[11] from doing certain things in its dealings with the populace (citizens as well as non-citizens).[12] On the other hand, Part IV of the Constitution of India imposes positive obligations upon the State, meaning thereby that the State has to ensure certain things in its dealings with the populace.[13] However, there lies a variation in the justiciability of the provisions running in both Parts of the Constitution

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[10] *Supra n 5.*

[11] The Constitution of India, art. 18: "Abolition of titles. — (1) No title, not being a military or academic distinction, shall be conferred by the State.
Art. 16. Equality of opportunity in matters of public employment. — (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."

[12] Some Articles in Part III of the Constitution of India appeal to citizens only like the entitlement of Article 19; whereas some are applicable to persons, like the entitlement of Article 21.

[13] The Constitution of India, art. 49: "Protection of monuments and places and objects of national importance. —It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be."
Art. 39. Certain principles of policy to be followed by the State. —The State shall, in particular, direct its policy towards securing— (a) that the citizens, men and women equally, have the right to an adequate means of livelihood."

of India; Part III strengthened by the auspices of Article 32[14] offering a 'guarantee' for the enforcement of provisions contained in that Part and Part IV qualified by Article 37[15], making the entire part non enforceable in a court of Law.

On a basic reading of the explicit provisions in Part III and Part IV of the Constitution of India, it looks that the State is mandated to cater for the 'welfare oriented' activities depending upon its priorities, purses, administrative conveniences and allied features and that the Courts of Law will not interfere in the domain reserved for the Government of the day to take an appropriate call.[16] This clearly makes us lean in the favour of the needs based approach and not the rights based approach to be followed by the State in its dealings with the populace. Speaking particularly, India does not recognise welfare as a legally enforceable right as the Constitutional support and backing for it finds mention in Part IV of the Constitution of India. [17]

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[14] The Constitution of India, art. 32: "Remedies for enforcement of rights conferred by this Part. — (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed."

[15] The Constitution of India, art. 37: "Application of the principles contained in this Part. —The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws."

[16] One line of thought has been that India may not be actually called as a welfare state; it may be instead termed as an 'interventionist' state. See Jayal, Niraja Gopal. "The Gentle Leviathan: Welfare and the Indian State." *Social Scientist*, vol. 22, no. 9/12, 1994, pp. 18–26. *JSTOR*, Available at: https://doi.org/10.2307/3517911, (Last Visted at 12:25 pm on 3 May 2023). "The Indian state may be more appropriately characterised as an interventionist rather than as a welfare state. Interventionism can subsume a welfarist orientation, but being a vastly more encompassing concept, suggests the legitimacy of state intervention for a variety of tasks, not all of which need be justified in terms of welfare objectives. The primary purpose of interventionism, and indeed its inspiring and guiding force, was developmentalist."

[17] Jayal, Niraja Gopal. "The Gentle Leviathan: Welfare and the Indian State." *Social Scientist*, vol. 22, no. 9/12, 1994, pp. 18–26. *JSTOR*, Available at: https://doi.org/10.2307/3517911, (Last Visited at 12:20 pm on 3 May 2023).

The Constitution of India speaks through its Article 38 that "the State shall strive to promote the welfare of the people and cater for social justice"[18]. The State is likewise mandated to justify its welfare credentials by directing its policy(s) to ensure that that "childhood and youth are protected against exploitation and against moral and material abandonment."[19] The State has been enjoined with a duty to reach out to the masses within its economic means "in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."[20]

IV. Idea behind Compassionate Appointments

The Government has conceived the idea of reaching out to the needy persons in cases of untimely deaths or medical incapacitation of the sole bread earners by devising suitable policies. The very objective[21] of such a reach-out of the government is that no family must face a financial crisis and come in a situation

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[18] The Constitution of India, art.38: "State to secure a social order for the promotion of welfare of the people. —1 The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. 2 The State shall strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

[19] The Constitution of India, art. 39(f): "Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing— (a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; (d) that there is equal pay for equal work for both men and women; (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

[20] The Constitution of India, art. 41: - "Right to work, to education and to public assistance in certain cases.—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

of being destitute due to such an adverse situation. Additionally, the State tends to create an impression that the family is not at the mercy of the State rather some of their eligible family members can earn for the family in place of the deceased employee to maintain the livelihood and dignity of the family. This also leads to strengthening the confidence of the family as well as the ability to swim across the adverse tide.[22] The Courts have been of the view in matters of compassionate appointment that in case of death of the bread earner of the family, it is quite natural and obvious that the family, in lieu of the services rendered by the employee, looks at the concerned department on compassionate grounds for some favour and the Employer in the process of helping out the employee must not project the assistance to be in the form of mercy. [23]

The Hon'ble Supreme Court of India has once again brought about the objective behind compassionate appointments in very legible expression in one of its judgments. It has categorically stated that,

> "The majesty of death is that it is a great leveller for, it makes no distinction between the young and the old or the rich and the poor. Death being as a consequence of birth at some point of time is inevitable for every being. Thus, while death is certain, its timing is uncertain.

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[21] "The object of the Scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency." See SCHEME FOR COMPASSIONATE APPOINTMENT UNDER CENTRAL GOVERNMENT dated 2nd Aug 2022, Available at: https://dopt.gov.in/sites/default/files/Information%20document%20on%20compassionate%20appointment.pdf, (last visited at 12: 27 pm on 9 December 2024).

[22] See *Umesh Kumar Nagpal* v. *State of Haryana*, 1994 (2) S.L cited in Arora, Trilok Nath. "DYING IN HARNESS: LAW OF COMPASSIONATE APPOINTMENTS." *Journal of the Indian Law Institute*, vol. 38, no. 1, 1996, pp. 38–57. *JSTOR*, Available at: http://www.jstor.org/stable/43951622, (Last Visited at 12:10 pm on 6 May 2023).

[23] *P. Jeram Sindhal* v. *G.S.R.TC.,* 1994 (3) S.L.R. 213 at 216.

> Further, a deceased employee does not always leave behind valuable assets; he may at times leave behind poverty to be faced by the immediate members of his family. Therefore, what should be done to ensure that death of an individual does not mean economic death for his family? The State's obligation in this regard, confined to its employees who die in harness, has given rise to schemes and rules providing for compassionate appointment of an eligible member of his family as an instance of providing immediate succour to such a family. Support for such a provision has been derived from the provisions of Part IV of the Constitution of India, i.e., Article 39 of the Directive Principles of State Policy." [24]

Similarly, the apex court has held in *Umesh Kumar Nagpal v. State of Haryana* that "the object of granting compassionate employment is to enable the family of a deceased government employee to tide over the sudden crisis by providing gainful employment to one of the dependants of the deceased who is eligible for such employment."[25]

In a similar vein, the apex court has analytically deliberated in *Mumtaz Yunus Mulani* v. *State of Maharashtra,* that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis.[26]

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[24] *The State of West Bengal* v. *Debabrata Tiwari & Ors. Etc*. 2023 Live Law (SC) 175, Available at: https://www-livelaw-in.svkm.mapmyaccess.com/pdf_upload/175-state-of-west-bengal-v-debabrata-tiwari-3-mar-2023-462576.pdf, (Last Visited at 01:10 pm on 3 May 2023).
[25] *Umesh Kumar Nagpal* v. *State of Haryana*, (1994) 4 SCC 138.
[26] *Mumtaz Yunus Mulani* v. *State of Maharashtra* (2008) 11 SCC 384.

It is, thus that the notions of 'welfare'[27] are brought into action by the State through suitable policies whenever the families of the employees face an unexpected situation resulting from death or physical incapacitation of their bread earners.

V. Concerns in awarding Compassionate Appointments

The employers, government and even private ones, have documented policies to cater for the compassionate appointments to aggrieved persons/families. Claims are filed by the wives, sons, daughters, even married daughters, brothers and sisters of the deceased employee and are adjudged based on the policies of the departments.

- **Equality in matters of Public Employment**

There are two broad concerns about the grant of compassionate appointments. First, that it strikes at the root of a mandate on the State to ensure equality in matters of public employment. Article 16 of the Constitution of India mandates that "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."[28] It needs to be understood that whenever such appointments are made, the 'regular' processes that ought to be followed are bypassed to accommodate persons from aggrieved families and this might be done with compromise on rigours of merit assessment.[29]

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[27] See *Radhika Thirumalai A.* v. *Hindustan Aeronautics Limited*, 1995 (2) ALT 699: "in consonance with the concept of Welfare State, in recent times, the employers both in private and public sectors have evolved schemes providing for compassionate appointments to the legal heirs and the dependents on account of the untimely death of an employee in harness."

[28] The Constitution of India, art. 16.

For the sake of an illustration, the Scheme for Compassionate appointments in the Registry [30]of the Supreme Court of India mentions that the "Compassionate appointments are exempted from the requirements of ordinary/normal recruitment procedure."[31] Likewise, it also states that "Hon'ble The Chief Justice of India can relax educational qualifications/upper age limit or any other requirement as prescribed in the relevant recruitment rules/guidelines/orders. "[32]

This might create issues in the contemplation of prospective incumbents to the post/office/employment and particularly when the applicants take undue advantage of the welfare policy of the State to get an appointment out of the way even when they may not be requiring it, technically speaking.

- **Abuse/Misuse/Non-Use of Discretion**

Secondly, the departmental policies generally hover around several points as to what posts may be offered under compassionate employment, what must be the minimum eligibility, limitation on the time period to file application, whether families of casual (not regularised) employees must be given the benefit, so on and so forth. All of this confers a discretionary power on the employers which might create some sort of irregularities in the grant or denial of the compassionate benefits. But one thing is sure that appointment/employment on compassionate grounds cannot be treated as a

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[29] Office Memorandum No. 14014/l/77-Estt. (D), Government of India, dated November 25, 1978. It provides that Secretaries or Joint Secretaries in the Ministries/Departments are competent to appoint, in relaxation of the procedure of recruitment through the Staff Selection Commission or Employment Exchange, but subject to the other requirements set out therein.

[30] Also See Supreme Court's scheme for Compassionate Appointment in the Registry of the Supreme Court, 2006.

[31] Para 7 A, Exemptions, Supreme Court's scheme for Compassionate Appointment in the Registry of the Supreme Court, 2006.

[32] Para 7 B, Relaxations, Supreme Court's scheme for Compassionate Appointment in the Registry of the Supreme Court, 2006.

vested right. The grant (or refusal) of it hinges on several material considerations. The Supreme Court has time and again re-iterated that "Compassionate appointment is not a vested right".[33]

VI. Case Based Analysis

- ***Auditor General of India* v *G. Anantha Rajeshwar Rao***[34] **(Ground of Descent)**

In the instant case, the Apex court had to apply its mind as to if granting of appointment to the son of the deceased employee amounts to violation of Article16 (2) of the Constitution of India which prohibits employment on the ground of descent. The High Court in the matter had held that the appointment of son/daughter/near relative (widow) of the erstwhile employee of the Government would be tantamount to appointment on descent and therefore is violative of Article 16(2). The Supreme Court, allowing the appeal in part, laid down that "the appointment on grounds of descent clearly violates Article 16(2) of the Constitution but if the appointments are confined to the son/daughter or widow of the deceased government employee who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread-winner to relieve the economic distress of the members of the family, it is unexceptionable."[35] The apex court categorically laid down that in all other cases it cannot be a rule to take advantage of the Memorandum to appoint the persons to these posts on the ground of compassion alongside ruling that the appointment on compassionate

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[33] *The State of West Bengal v. Debabrata Tiwari & Ors*. Etc. Etc. 2023 Live Law (SC) 175, Available at: https://www-livelaw-in.svkm.mapmyaccess.com/pdf_upload/175-state-of-west-bengal-v-debabrata-tiwari-3-mar-2023-462576.pdf, (Last Visited at 01:11 pm on 3 May 2023).
[34] 1994 (1) SCC 192.
[35] *Ibid.*

grounds to a son, daughter or widow but also to a 'near relative' is vague or undefined and cannot be put to use. This is how the variance between appointment on grounds of descent and descent simpliciter was established.

- ***MCD* v *Shri Jai Singh***[36] **(Other Earning Members in the Family)**

In a matter dealing with claim of compassionate appointment in the Municipal Corporation of Delhi, the applicant was denied appointment on compassionate grounds on the death of his father since three of the four sons of the deceased were employed, reflecting that the deceased died in harness or that his family was left in a penurious condition. The Delhi High Court, on evidence adduced, found that the three brothers were living separately and were employed in class-IV jobs, having to fend for themselves and their families. The Court ruled that the brothers cannot be said to have income sufficient to maintain their own family and render financial assistance to the widow of the deceased employee of the petitioner, thus ruling in favour of the applicant.

- ***Radhika Thirumalai A. v. Hindustan Aeronautics Limited***[37]**(Lack of Vacancy)**

Since the respondent company refused to consider her candidature for eight long years, the petitioner filed writ petition in this Court in the year 1991 seeking a writ of Mandamus to the respondent company to provide her any suitable appointment under the scheme, claiming that the inaction is totally arbitrary, illegal and violative of Article 14 of the Constitution. The employer, on the other hand states that since it was running surplus on the labour, there was imposed a ban on future recruitment due to which the application of the petitioner could not be acted upon. The Andhra Pradesh High Court ordered

[36] 142 (2007) DLT 581.
[37] 1995 (2) ALT 699.

the Company to consider the candidature of the petitioner for appointment on compassionate ground to any suitable post in Class III or Class IV services if she was found suitable and eligible.

- ***The Chairman, Odisha Gramya Bank v. Abdul Ahad***[38] **(Vacancy un-notified)**

In the instant matter, the petitioner filed an application seeking compassionate appointment upon the death of his father, 49, a driver in the Bank. The bank, having had no vacancy existing at the time of receipt of the application, the same was rejected. It was, however, soon after that a vacancy occurred but the Bank did not consider his application as it had been already rejected. The High Court directed the Bank to consider the application for compassionate appointment as well as issued directions for the payment of compensation to the petitioner. The direction was upheld in the writ appeal, as well.

- ***R. Jayamma*** **v.** ***Karnataka State Electricity Board, Bangalore***[39] **(Claim of married daughter)**

In this matter, the claim for compassionate appointment from a married daughter was rejected by the State Electricity Board since the rules[40] mentioned only unmarried daughters to be eligible. Upon inquiry, it was found out that her husband had been mentally deranged, left the house and was not traceable for the past eight or nine years. The Karnataka High Court found refusal by the Electricity Board to be discriminatory and violative of Article 14; as well as of

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[38] 2019 (II) ILR-Cut 477, Available at: https://www.orissahighcourt.nic.in/uploads/ilr_cuttack/1575869881.pdf, (Last Visited at 01:11 pm on 12 May 2023).

[39] ILR 1992 KAR 3416.

[40] "As per Mysore, Letter No. DCA/AAO/AG-8/18569 dated March 12, 1991, and Secretary, K.E.B. Bangalore, Letter No. K.E.B./35/721/90-91. dated June 25, 1990, only the widows/son/unmarried daughter/near relative of deceased Board employee who dies while in service, are eligible for appointment on compassionate grounds in K.E.B."

Article 15 which goes on to prohibit discrimination on the ground of sex. The Court strongly ruled that

> "This discrimination, in refusing compassionate appointment on the only ground that the woman is married is violative of constitutional guarantees. It is out of keeping with the trend of times when men and women compete on equal terms in all areas."

- ***Smt. Bhuvaneshwari V. Puranik v. State of Karnataka***[41] **(Lack of interest by son-rival interest by married daughter)**

Here, too, the claim of a married daughter for compassionate appointment on her father's death in harness was rejected by the Karnataka Government based on the Rules[42] applicable to the civil servants. The rejection was made despite the fact that the son of the deceased had shown his disinterest in the job, being well placed in a private one as well as expression of a similar disinterest by the widow of the deceased, citing deteriorating health. The application claim was pressed with the fact that the widow of the deceased was then living with the applicant married daughter. The Karnataka High Court, coming down heavily on the State, declared the impugned rule to be illegal and violative of Article 14 and 15 of the Constitution of India.

- ***Ch. Dhanlaxmi v. Divisional Manager A.P.S.R.T.C. Vishakhapatnam***[43] **(Elasticity in Required Qualifications)**

This case centres around the application of the widow for appointment on compassionate grounds at the murder of her husband, the sole bread earner by one of the employees of the Corporation. The employee was survived by his

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[41] Date of Order-15th December 2020, WRIT PETITION No.17788/2018 (S – RES).
[42] Rule 2(1)(a)(i), Rule 2(1)(b) and Rule 3(2)(i)(c) of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996.
[43] 1994 (5) S.L.R. 128.

two minor sons, dependant parents and widow. The Corporation did not favourably respond to the application/representations of the widow and rather offered monetary benefits in lieu of the job since the widow was only 8th Standard pass which was not even making the eligibility criteria for clerk/typist. The court relied on *Sushma Gosain* v *Union of India*[44], categorically laying down that "If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."[45] The court held that in order to achieve the goal of the scheme, in a given circumstance, the educational qualification may well be exempted.

- ***BF Manavi v. MDSRTC*** [46] **(Creation of Posts)**

In this matter, the deceased employee had been working as a Traffic Controller in K.S.R.T.C., at the time of occurrence of casualty. He had died on December 6, 1990, leaving behind him, his widow and four sons. The petitioner claims to be the eldest son of deceased Fakir Appa Manvi and alleged that he has been shouldering the responsibility of looking after his widowed mother and two younger brothers that had fallen on his shoulders on the demise of his father Sri Fakirappa Manvi. Regional Manager, K.S.R.T.C., Hubli Division, refused to grant appointment to the petitioner for the reason that second son of the deceased was in service though he had been appointed in the lifetime of the father Fakir Appa Manvi on the basis of his selection on merits.

The High Court, allowing the petition, held that the employer had illegally refused to render compassionate appointment to the applicant, having had mis-constructed and mis-applied the scheme. Additionally, the Court categorically ruled that the department can't take an excuse of non-availability

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[44] 1989 (9) SCC 468.
[45] *Ibid.*
[46] ILR 1994 KAR 2020.

of posts against an application for compassionate appointments. Referring to the Office Memorandum, the Court pointed out that posts commensurate with the merits need to be provided and if necessary, supernumerary posts may also be created.

- ***Prahallad Mohanty v. D.G.P, CRPF***[47] **(Delay in Claim Filing)**

In the current matter, Compassionate appointment was sought by the son of the medically incapacitated and consequently off-loaded employee in the Central Reserve Police Force after he became major incurring a delay of five years. Application herein was rejected because of the delay of five long years, the department finding solace in a Standing Order[48] imposing time limit of up to five years in processing compassionate appointments on medical invalidation reasons. The Court, herein, ruled that if in the cases of compassionate appointments upon death, applications are acceptable even beyond five years, the standing order imposing a restriction of five years in disposing off the applications on medical grounds violates Articles 14[49] and 21[50] of the Constitution of India.

- **Sister replacing brother for compassionate appointment**[51]

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47 2019 (II) ILR - CUT- 563.

48 Clause VI (h)No.5 of 2001 issued by the CRPF: "request for compassionate appointment where the death of the Government servant took place long back, say five years or so, may be entertained, but however, in all other cases such as invalidation on medical ground etc. will not be entertained after completion of five years from the date of retirement."

49 The Constitution of India, art. 14: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

50 The Constitution of India, art. 21: "No person shall be deprived of his life or personal liberty except according to procedure established by law."

51 Rosy Sequeira, "Sister replacing brother for compassionate appointment", Times of India, May 11, 2023, Available at: http://timesofindia.indiatimes.com/articleshow/100143578.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst, (last visited at 3:04 pm on 4 December, 2024).

In the current matter, the petitioner's father died in harness upon which her brother applied for compassionate appointment. It was four years that the claim of brother did not materialise and he had been placed at wait list position throughout these years. The petitioner made an application to the employer seeking to replace her brother's name with hers with due consent of her brother since he had already got a job, elsewhere and also because she was required to look after her old mother. However, the same was declined by the department citing a Government Resolution that permitted replacement only in instances of death of the wait-listed candidate. The Bombay High Court directed the department to substitute the name of the petitioner as pleaded, finding no reason for the department to have disallowed the claim.

- ***Mukesh Kumar v. UOI (Claim of children of second wife)***[52]

In this matter, the issue under consideration was the entitlement or not of the children born from the second marriage of the deceased, Hindu by religion for compassionate appointment. There was challenged in this petition a denial by the Railway Board to the aforementioned claim, placing reliance on a Circular to the effect that appointment on compassionate grounds cannot be granted to the children born out of a second marriage unless and until the marriage was permitted by the Administration in the light of applicability of personal laws and similar other factors. The State defended its action on the premise that the State, in furtherance of its policy of discouraging bigamy, had restricted the benefit of compassionate appointment to the family comprising and constituted from the first wife only. The Court found that the very purpose of granting compassionate appointments stands defeated by the Railway Board Circular

[52] CIVIL APPEAL NO. OF /2022 ARISING OUT OF SLP(C) NO. 18571/2018 decided on February 14, 2022.

since, destitution may be faced by even the children born from the second marriage of the deceased employee. The Court went on to rule that the State in exercise of its rule making power cannot come up with a rule or a scheme that runs contrary to the spirit of equality enshrined in Article 14 of the Constitution of India by discriminating between one class of legitimate beneficiaries, the legitimate children. The court categorically ruled that when the Hindu Marriage Act, 1955, through its Section 16[53], regards a child born from a second marriage during the subsistence of the earlier marriage to be legitimate, the State cannot exclude such a child from deriving a benefit accruable from a policy.[54]

- ***Umesh Kumar Nagpal v. State of Haryana (Procedural Rigour)[55]***

The apex court has ruled categorically that as a matter of principle, all the appointments to public services must precede with open invitation of applications and merit. It has strongly mandated that "No other mode of appointment nor any other consideration (in public services) is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post."[56]

The Supreme Court has, nonetheless, created a caveat in the issue to the effect that in the best interests of justice and to attend to unseen contingencies, an appropriate relaxation may be carved out in favour of the dependants of an

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[53] The Hindu Marriage Act, 1955- "Section 16. Legitimacy of children of void and voidable marriages.--(1) Notwithstanding that a marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act."

[54] Based on *Union of India v. V.R. Tripathi*, (2019) 14 SCC 646.
Also, See *Namita Goldar and Anr. v. Union of India and Ors.* (2010) 1 Cal. LJ 464.

[55] [(1994) 4 SCC 138: 1994 SCC (L&S) 930: \ (1994) 27 ATC 537].

[56] (SCC pp. 139-40, para 2) WWW.LIVELAW.IN 36.

employee dying in harness and leaving his family in penury and without any means of livelihood. The Court has stated that in cases, wherein the situation is such that unless the family receives some source of livelihood from the State authorities, dignified survival would be an issue, a suitable provision in the Rule book may be crafted to accommodate and absorb an eligible dependant family member in some sort of gainful employment purely on humanitarian grounds. The Court has further clarified that the very purpose of granting such an employment is to handhold the family and facilitate it to tide over a sudden hurricane. The room, thus created, is "not to give a member of such family a post much less a post for post held by the deceased."[57]

- ***Tinku v. Haryana[58] (Limit of standing claim)***

The Supreme Court of India came across yet a different situation wherein the deceased employee[59] was survived by a minor son at the time of his death[60]. A post was reserved[61] for grant of employment to the appellant on the basis of his application at the age of 7 years. However, upon his attaining the age of majority eleven years down the line and upon pressing his claim for granting him appointment then on compassionate grounds was rejected on the grounds of the same being time barred. The rejection was challenged before the Punjab and Haryana High Court wherein the respondents cited a change in the policy

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[57] (SCC pp. 139-40, para 2) WWW.LIVELAW.IN 36.
[58] 2024 INSC 867.
[59] Son of a deceased constable in Haryana Police.
[60] The policy which dated 08.05.1995 was in force at that time which provided for ex-gratia appointment confined to Class III and IV posts. The widow of Balwan Singh, the other police constable, who died along with the father of the Appellant, was granted compassionate appointment as a constable upon her application. The mother of the Appellant, being illiterate, could not seek an appointment for herself and therefore applied for compassionate appointment for her son.
[61] A letter from the Director General of Police, Haryana dated 15.04.1998 was received by the Superintendent of Police on 20.04.1998 directing the name of the Appellant, Tinku, son of deceased Constable Jaiprakash, to be entered in the Minor's Register No. 47.

of the year 1999 allowing maximum three years waiting period to minor dependant-applicants from the date of the death of the employee. The appellant sought the bar of promissory estoppel, which was rejected by the court, stating that a mere direction to enter the applicant's name in the minor's register did not constitute a promise.

The apex court while dealing with the issues has categorically stated that any claim for compassionate appointment stands as an exception to the general process of appointment which requires a proper advertisement and a settled selection process in place. It has further laid down that compassionate appointment cannot be pressed as a vested right inherent in an applicant as well as the fact that the right can't be seen as a condition of service of an employee who dies in harness. The Court has emphasised that the claim of compassionate appointment can't be disposed of without any kind of scrutiny or some appropriate selection process and that the same has to be done subject to the claimant fulfilling the requirements as laid down in the policy, instructions, or rules for such a compassionate appointment. Speaking on the rationale behind the State's policy, the court has stated that the same is to "help a family come out of a sudden pecuniary financial destitution, to help it get out of the emerging urgent situation where the sole bread earner has expired, leaving them helpless and maybe penniless." The court, thus, approved the idea of a ceiling of three years as contained in the policy of 1999 and found the waiting period of eleven years to be unjustified.

It is humbly submitted that the apex court has been quite sound in its reasoning and conclusion to not elevate the nature of compassionate appointment to that of a vested right. It is admittedly correct that the deceased's family must have emerged out of the sudden turmoil by the death of the sole bread earner in the long period of eleven years and granting an employment after such a long delay

frustrates the sole purpose of compassionate appointments. The State cannot and must not violate the sanctity of appointments keeping itself within the Constitutional framework.

- ***Tinku v. Haryana[62] (Ex Gratia payment versus compassionate appointment)***

The Supreme Court ordered in the above-mentioned case the entitlement of a lump sum ex gratia payment to the widow of the deceased employee who died in harness. This was ordered by the court after denying the claim of compassionate appointment because of a gap of eleven years from the death.

It is humbly submitted that the apex court proceeded with a very balanced approach in passing the above order maintaining the sanctity of the welfare notions of the State as well as maintaining the sanctity of public employments to be carried out by the State. The said gesture upholds and sustains the trust of the common man in the State in times of crisis and adversity as well as maintains a fair process in the field of public employments, not depriving any person of his legitimate entitlement to seek employment on merit and through a defined process.

- ***WB v. Debabrata Tiwari[63] (Delay and laches)***

The Supreme Court of India has addressed the impact of inordinate delay in the disposal of claims for compassionate appointments in the case of State of West Bengal v Debabrata Tiwari. The court has categorically ruled that in cases where prolonged delay of several years has been caused in the disposal of the

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[62] 2024 INSC 867.

[63] CIVIL APPEAL NOS. 8842-8855 OF 2022, Available at: https://www.livelaw.in/pdf_upload/203662020315014253 0judgement03-mar-2023-462500.pdf, (Last visited at 4:00 pm on 6th December 2024).

applications for the grant of compassionate appointment, either, on the part of the applicant or that of the department, since the element of immediacy is lost, no entitlement of compassionate appointment must be awarded. The Court, explaining the logic of action[64], has laid down that in cases of prolonged delay, the bereaved family must have had sustained itself financially by one or the other means and that processing of the claim of compassionate appointment in such a scenario would tantamount to treat the policy as an inherited right based on a line of succession.

VII. Road ahead

The Indian State as a welfare state must be appreciated for its compassionate inclination towards the citizens in a situation of undeserved want. The said inclination of the State when it comes to granting employment in public services is likely to raise objections because of the Constitutional mandate[65] of reflecting equality of opportunities in matters of public employment and particularly with reference to Article 16(2)[66] of the Constitution of India which creates an embargo on any sort of appointment to be made on the grounds of descent. However, as has been laid down by the Supreme Court of India in quite clear terms in *Kesavananda Bharati* v. *State of Kerala*[67] that Part III and Part

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[64] "Entertaining a claim which was made in 2005-2006, in the year 2023, would be of no avail, because admittedly, the Respondents-Writ Petitioners have been able to eke out a living even though they did not successfully get appointed to the services of the Municipality on compassionate grounds. Hence, we think that this is therefore not fit cases to direct that the claim of the Respondents-Writ Petitioners for appointments on compassionate grounds, be considered or entertained." See CIVIL APPEAL NOS. 8842-8855 OF 2022 https://www.livelaw.in/pdf_upload/203662020315014253 0judgement03-mar-2023-462500.pdf, (Last visited at 3:00 pm on 9 December 2024).

[65] The Constitution of India, art. 16(1): "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State."

[66] The Constitution of India, art. 16(2): "No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."

[67] AIR 1973 SC 1461.

IV of the Constitution speaking about Fundamental Rights and Directive Principles of State Policy act as supplementary and complimentary to each other in the establishment of a welfare state governed by the Rule of Law, there remains no antithesis between the mandate of Articles 14 and 16 on one hand and Articles 38[68] and 41[69] on the other hand speaking about the State's role in promoting the welfare of people. The State may move outside the strict rigours of Articles 14 and 16 in cases warranting a compassionate approach on the basis of a guided policy. The policy(s) are already in place at the central and state levels as well as at the level of departments to do justice to the populace, by and large. The State has been absolutely in the right spirit while imposing reasonable riders on the grant of compassionate employments. The employments cannot be made to all the levels of posts.[70] Likewise, the State may allow certain relaxations, for example that in terms of age requirements,[71] or educational requirements[72] ; it may also allow some leeway in terms of

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[68] The Constitution of India, art.38(1): "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."

[69] The Constitution of India, art.41: "The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

[70] See Point 5, Information document on compassionate appointment issued by the Government of India Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) dated 02.08.2022.

[71] Upper age limit could be relaxed wherever found to be necessary. The lower age limit should, however, in no case be relaxed below 18 years of age. See Point 7B. Information document on compassionate appointment issued by the Government of India Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) dated 02.08.2022.

[72] In case of appointment of a widow not fulfilling the requirement of educational qualification, against the post of MULTI TASKING STAFF, she will be placed in minimum of Pay Level 1(Rs. 18,000-56,900) directly without insisting on fulfilment of educational qualification norms, provided the appointing authority is satisfied that the duties of the post against which she is being appointed can be performed with help of some on job training. This dispensation is to be allowed for appointment on compassionate ground against the post of MULTI TASKING STAFF only. See Point 7B.

processes to be followed in the employment. [73] The authorities are expected to use their discretionary powers in all fairness so as not to disturb the fine balance between eligibility and merit on one hand and the unwarranted situation of the claimants. Likewise, it also needs to be received by the common man as an inherent duty[74] to first explore self-dependence before leaning on the state shoulders to cope up with the financial crisis, they might have been engulfed, in because of the untimely demise of their bread earner. The claimants must be self-analytical and introspective to understand that getting appointed in place of their parents or others as per the case should not be treated as a matter of right but only a concession from the State and that too on the fulfilment of certain essential criteria and conditions, the primary one being their state of being financially destitute. The Supreme Court of India speaking on the sanctity of Fundamental duties enshrined under Part IVA of the Constitution of India in *AIIMS Students Union* v. *AIIMS*[75] has rightly laid down that "any reservation in favour of one, to the extent of reservation, is an inroad in the right of others to work and to learn." It has gone on to suggest that "any reservation, apart from being sustainable on the Constitutional anvil, must also be reasonable to be permissible……It has likewise cautioned that reservation unless protected by the Constitution, is subversion of fraternity, unity and integrity and dignity of the individual". The claimants of compassionate appointments must live the spirit of the apex court's observation, as such. They must not press an unreasonable demand for a compassionate appointment at the hands of the State

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[73] Compassionate appointments are exempted from observance of the following requirements: - (a) Recruitment procedure i.e. without the agency of the Staff Selection Commission or the Employment Exchange. (b) Clearance from the Surplus Cell of the Department of Personnel and Training/Directorate General of Employment and Training. (c) The ban orders on filling up of posts issued by the Ministry of Finance (Department of Expenditure). See Point 7A.

[74] Fundamental Duties under the Constitution of India. See Article 51A (h) "It shall be the duty of every citizen to develop the scientific temper, humanism and the spirit of inquiry and reform."

[75] AIR 2001 SC 3262.

authorities unless and until there is no other way to sustain themselves, financially; they have to be, themselves, thoughtful of the impact of such an appointment on someone else's legitimate eligibility of getting appointed.

It shall not be an exaggeration to humbly suggest that such action of the State, in reaching out to the family of the persons dying in harness, is to be imitated by the non-State actors as well depending upon their budgetary permissions to sustain social security of the employees working there. This is how the Constitutional goal of welfare of India's people shall be achievable by living the spirit of *parens patriae*. [76] The Supreme Court of India has laid down in *Charan Lal Sahu v. Union of India*[77] that "Conceptually, the *parens patriae* theory is the obligation of the State to protect and take into custody the rights and the privileges of its citizens for discharging its obligations. Our Constitution makes it imperative for the State to secure to all its citizens the rights guaranteed by the Constitution and where the citizens are not in a position to assert and secure their rights, the State must come into picture and protect and fight for the rights of the citizens. The Preamble to the Constitution, read with the Directive Principles, articles 38, 39 and 39A enjoins the State to take up these responsibilities."[78]

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[76] Historically, it has referred to the king as father and protector of his people. See George B. Curtis, The Checkered Career of Parens Patriae: The State as Parent or Tyrant? 25 DePaul L. Rev. 895 (1976) Available at: https://via.library.depaul.edu/law-review/vol25/iss4/5, (last visited at 02:30 pm on 11th December, 2024).

[77] AIR 1990 SC 1480.
See *Gaurav Kumar Bansal* v *UOI* AIR 2015 SC 2062 to the same effect,
Also See *Common Cause (A Regd. Society)* v. *Union of India* AIR 2018 SC 1665,
Also See *Tejaswini Gaud* v *Shekhar Jagdish Prasad Tewari* AIR 2019 SC 2318.

[78] AIR 1990 SC 1480 para 35.

CONSUMER PROTECTION AND PRODUCT LIABILITY IN INDIA AND FINLAND: ISSUES AND CHALLENGES

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Abstract

Product liability law ensures that producers and sellers are held accountable for harm caused by defective goods, thereby safeguarding consumers. India and Finland both maintain such regimes, though their legal structures differ. In India, the Consumer Protection Act 2019 introduced a dedicated chapter (Sections 82–87) that allows consumers to claim compensation not only for defective goods but also for deficient services. Responsibility is broadly defined to include manufacturers, traders, service providers, and advertisers. Finland's system is governed by the Product Liability Act 1990, which implements EU Directive 85/374/EEC. It adopts a strict no-fault standard, meaning liability arises once a defect and resulting harm are proven, without requiring proof of negligence. While Finland's approach reflects the European model, India extends liability to cover services and misleading advertisements. This paper compares the two systems, examining rights, remedies, and challenges, and evaluates their effectiveness in protecting consumers while suggesting areas for reform.

Keywords: *Product, Product Liability, Consumer, Manufacturer, Seller, Service Provider.*

I. Introduction

In India, the product liability is a new provision by the CP Act 2019 under which a manufacturer, a service provider and a seller must compensate if the goods or services cause injury or harm to the consumer in the event that the goods or services turn out to be defective or shoddy. Before the CP Act 2019,

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product liability was comparatively governed by principles of the Law of Torts, the Indian Contract Act 1872, the Sale of Goods Act 1930, the Drugs and Magic Remedies (Objectionable Advertisement) Act 1954, the Consumer Protection Act 1986 and the principle outlined in *Donoghue v. Stevenson*[1].

The Finnish Product Liability Act 1990[2] was enacted to implement the EU Product Liability Directive (85/374/EEC), which harmonised product liability rules across member States. This legislation forms the backbone of product liability law in Finland and reflects the European commitment to ensuring a uniform level of consumer protection.[3] The 1990 Act establishes a system of strict (no-fault) liability, meaning that manufacturers and other responsible parties can be held liable for harm caused by a defective product regardless of negligence. What matters is not the producer's conduct, but the existence of a causal link between the product's defect and the damage suffered, with the aim of protecting consumers' interests.

II. Statement of Problem

Global markets, online shopping and more sophisticated products have increased risks to the consumer. Both India and Finland have implemented detailed frameworks, India with the Consumer Protection Act 2019, and Finland with the Product Liability Act 1990, both of which correspond to the EU law. Nevertheless, there are still feasible challenges despite these measures. In India, the systemic barriers tend to undermine statutory remedies

[1] [1932] UKHL 100, a landmark Court decision in Scots delict law and English tort law by the House of Lords. *Lord Atkin* handed down a judgment that the manufacturers have a legal duty of care to the ultimate consumers of their products if it is not possible for defects to be identified before the goods are received.

[2] Act no. 694 of 1990.

[3] Adopted in July 1985, the Council Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products introduced a harmonised strict liability regime across the then-European Communities.

by delaying the processes, uneven execution of the orders, ignorance, and poor access to forums. Consumer compensation is further retarded or watered down by lack of technical expertise and resistance of the business. Finland has a stronger framework that is expensive to implement. The principle of loser pays puts financial risks to the litigants that lose, deterring claims. Defects must be proven through expensive technical evidence and compensation is limited to personal injury and even personal property only and not to general losses. Accordingly, both systems expose a difference between the rights and the actualisation of the law. It is important to reduce the costs, waiting time, and documentation challenges to make sure that the contemporary digitalised marketplace offers significant consumer protection.

III. The Object of The Consumer Protection and Product Liability

The main objective of consumer protection and product liability legislation is to offer consumers effective remedies to their harms in case of defective products or lack of services at the hands of the producer, seller or service provider, and the point of responsibility is not crucial. In India, the Consumer Protection Act, 2019, puts the weaker party in a stronger position by ensuring the rights of the parties, establishing the consumer dispute redressal commission and imposing strict liability on manufacturers and sellers. Finland, Consumer Protection Act, 1978 was in accordance with the EU guidelines, and it aims to bring fairness, transparency, safety of products, as well as high standards of regulatory control. The ultimate intention of both frameworks is to make sure that consumers' and the market's trust is secured.

IV. Hypothesis

- The strength of consumer protection and product liability regimes is conditioned by the availability of enforcement as well as legal framework;

the insurer-based and institutional redresses used in Finland offer better consumer protection than the litigation-based framework used in India.

- The issue of globalisation and the emergence of digital products are similar in India and Finland, where finding manufacturers, sellers or service providers are generally problematic, meaning that more enforcement of cross-border and liability regulation should be made in both areas.

V. Research Methodology

This study adopts a systematic approach to examine Consumer Protection and Product Liability in India and Finland, with particular focus on their issues and challenges. The methodology is grounded in the analysis of legal mechanisms and frameworks, relying primarily on secondary data. The primary focus is on two key statutes: the Consumer Protection Act 2019 of India, and the Finnish Product Liability Act 1990. Secondary data has been collected from the University of Turku's online library resources, including books, academic journals, case law, and other reliable online sources.

VI. Important Definitions

"Product" means any article or goods or substance or raw material or any extended cycle of such product, which may be in gaseous, liquid, or solid-state possessing intrinsic value which is capable of delivery either as wholly assembled or as a component part and is produced for introduction to trade or commerce, but does not include human tissues, blood, blood products and organs.[4]

[4] The Consumer Protection Act, 2019, s. 2 (33)

Part I of the U.K. Consumer Protection Act 1987 defines a product to include goods, electricity, and items used as raw materials, components, or in any other form within another product. The scope of this definition has also been interpreted to cover human blood. This was clarified in the landmark case *A and Others* v. *National Blood Authority and Another*[5], where the Queen's Bench Division held that consumers are entitled to expect that blood supplied to them is safe. Since the blood in question was contaminated, it was deemed defective, and the statutory defence under Section 4(1)(e) was held to be inapplicable to the circumstances.

According to the Finnish Product Liability Act 1990 a product is deemed *defective* when it fails to provide the level of safety that the public is entitled to expect. This assessment considers factors such as the circumstances of the product's marketing, its reasonably foreseeable use, the adequacy of instructions and warnings, and the point in time when the product was placed on the market.[6]

The Act covers personal injury including death and bodily harm and damage to consumer property. However, its scope is limited:

- Excluded are damage to the defective product itself and losses affecting property used mainly for business or public purposes.
- Included is damage to property primarily intended for private, non-commercial use.

In terms of definition, the Act specifies that a "product" means all movable property, as well as electricity. It also extends to movables or materials

[5] [2001] 3 All ER 289.

[6] Available on Product Liability Act (Tuotevastuulaki 694/1990, as amended) finlex.fifinlex.fi (Unofficial English translation via Finlex) last visited at 10:54 pm on 24 August 2025.

incorporated into other goods or into real property. Thus, a defective component built into a house or machine may still trigger liability. Conversely, land, buildings, and real estate as such are excluded.[7]

One limitation of the 1990 Act, however, is that intangible digital items such as software and data are not explicitly recognised as "products." This omission has become increasingly significant in the modern digital economy and is now addressed in forthcoming reforms under the revised EU Product Liability Directive.

"Product Liability" means the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by a deficiency in services relating thereto.[8] Product liability means the legal liability of manufacturers and sellers when consumers are harmed due to defective products. Product liability laws will govern these types of cases and will determine if manufacturers, designers, or sellers should be held accountable and forced to pay damages for injury and losses.

A *product liability action* refers to a complaint filed before the District, State, or National Consumer Commission seeking compensation for harm resulting from a defective product. A *product manufacturer* is broadly understood as any person who:

1. Produces a product or any of its components:
2. Assembles products or parts made by others;
3. Affixes their own mark, brand, or identity on a product manufactured by someone else;

[7] The Product Liability Act, 1990, s. 1 (2)
[8] The Consumer Protection Act, 2019, s. 2 (34)

4. Engages in making, selling, distributing, leasing, installing, packaging, labeling, marketing, repairing, maintaining, or otherwise placing a product for commercial use;
5. Designs, constructs, fabricates, or re-manufactures a product before it reaches the market; or
6. Acts as a seller but is also directly involved in the manufacturing of that product.

A *product seller* is defined as any person who, in the course of business, imports, sells, distributes, leases, installs, packages, labels, markets, repairs, maintains, or otherwise places a product into the commercial stream. This definition also covers manufacturers who sell products directly and service providers. However, certain categories are excluded, such as:

- Sellers of immovable property, except those engaged in housing construction or sale;
- Providers of professional services where the product is only incidental to the service (for example, where expertise or skill is the essence of the transaction);
- Persons acting solely in a financial capacity, those not engaged in the chain of distribution (manufacturer, wholesaler, retailer, direct seller, or online service provider), and lessors of products who have no reasonable opportunity to inspect or control the product.

A *product service provider* is simply one who renders services in relation to a product. The overall purpose of these provisions is to ensure that consumers have the right to initiate a claim for compensation where harm is caused by a defective product, whether manufactured, sold, or serviced by any of the parties mentioned above. The chapter applies to all such claims brought under the framework of product liability.

VII. Product Liability in India

Under Indian law, a consumer can initiate a product liability claim against a manufacturer, service provider, or seller if harm arises from a defective product. The nature of liability depends on the role of the party and the type of defect involved.

(1). Liability of Manufacturers

A manufacturer may be held liable if a product contains a manufacturing defect, suffers from design flaws, deviates from established specifications, fails to comply with express warranties, or lacks adequate instructions and warnings for safe use. Significantly, such liability can arise even when the manufacturer is able to demonstrate that there was no negligence or fraudulent intent in making representations about the product.

(2). Liability of Service Providers

Service providers may also be held liable when the service they render is defective, deficient, or falls short of the standards required by law or contractual obligations. Liability may further arise where harm is caused due to negligence, omission, or the deliberate withholding of relevant information. In addition, a service provider may be responsible if adequate instructions or warnings necessary to prevent harm are not issued, or if the service fails to conform to the terms of express warranties or contractual commitments.

(3). Liability of Sellers

Even if a seller is not directly involved in the process of manufacturing, liability may still arise in certain circumstances. A seller may be held responsible where they exercise substantial control over the design, testing, or packaging of a product, or where they alter or modify it in a manner that

contributes to the harm caused. Similarly, liability can attach if the seller issues independent warranties that the product fails to fulfill, if the identity or presence of the manufacturer is unknown or beyond the jurisdiction of Indian law, or if the seller neglects reasonable care in assembling, inspecting, or maintaining the product. Furthermore, a seller may also be liable if they fail to convey the manufacturer's instructions or warnings regarding safe usage to the consumer.

(4). Exceptions to Liability

The law also sets out specific circumstances in which liability for defective products cannot be imposed. For instance, where a product has been misused or altered at the time of the harm such as adapting a generator for use in an unsafe vehicle the seller will not be held responsible. Similarly, in claims based on failure to warn, a manufacturer may escape liability if sufficient warnings or instructions were provided to an employer in workplace settings, if the product was sold as a component with appropriate directions but the harm resulted from its use in the final product, or if the product was intended exclusively for use by qualified experts who had already been given adequate guidance. In addition, no liability arises where the consumer, while using the product, was under the influence of alcohol or non-prescribed drugs. Finally, manufacturers are not expected to provide warnings about dangers that are obvious, well known, or reasonably foreseeable to the average user.

VIII. Product Liability in Finland

The Finnish Product Liability Act 1990 confirms that the main responsibility of indemnifying against the damage caused by flawed production belongs to the manufacturer, but the whole supply chain can be held accountable. Importers that bring products into the European Economic Area are

considered producers, and companies that resell goods under their names or brands are also liable. In case of failure to use the original producer or importer, the distributors or retailers are liable unless they avail the information of the guilty party promptly. This system allows consumers to always have avenues of always make claims against at least one recognisable entity in either Finland or the EU. One who has suffered personal injury or damage to personal property as a result of a defective product could bring an action to the District Court, and in certain instances, to the Court of Appeal and, in very rare instances, to the Supreme Court. In minor contractual disputes involving repairs, replacements, or refunds, the Consumer Disputes Board provides a different mechanism, but severe product liability cases have to be addressed in court[9].

In Section 5 of the Act, the liable parties are identified as the manufacturer, the importer into the EEA, or any other entity introducing the product into the market on its own brand.[10] Section 6 states that in cases when the manufacturer cannot be found, the seller or distributor is considered to be liable unless such disclosures are made[11]. The law is strictly liable, such that there is no need to prove negligence or fault. The claimant has to demonstrate that the product was defective and that the harm resulted of this defect. As provided in Section 3, a product is said to be defective when it does not offer the amount of safety that is reasonably expected at the time when it is made available[12]. The compensable damages are bodily injury and property damage assessed based on the general torts in Finland. Claims of personal injury can be in terms of medical bills, lost income and pain and suffering. Only losses

[9] Available on https://www.finlex.fi/fi/lainsaadanto/1990/694 (last visited at 12:49 pm on 11 September 2025).
[10] The Finnish Product Liability Act (694/1990), s. 5
[11] The Finnish Product Liability Act (694/1990), s. 6
[12] The Finnish Product Liability Act (694/1990), s. 3

of a property more than a statutory amount (about 395 euros) are compensable, whereas small losses are not covered by the Act, but the sellers are still fully liable under the Consumer Protection Act in cases involving defective goods.

The defences are established in Section 7. The defendant can be excused by proving, such as, that the product was not sold in the course of its business, that the defect was caused by observance of some mandatory regulations or that the product was not defective when it was delivered out of his possession by the producer. They can also prevent liability when the defect is caused during the design of the final product or the instructions of the manufacturer, which can be given to the component suppliers. Besides strict liability, Chapter 5 of the Consumer Protection Act provides consumers with contractual remedies, where the consumers are entitled to repair, replacement, reduction of price or damages. In most cases, any damages directly relating to the product are brought against the retailer, with any general damages coming under the Product Liability Act[13].

Section 9 imposes time restrictions: the consumer should act within three years after acquiring knowledge about the damage, defect and the party incurring the liability or in any circumstance, within a period of ten years of entry of the product into the market[14]. The EU courts always interpret the Act in a manner that is consistent with the EU Product Liability Directive. Terms of the contract which restrict or do not impose liability are invalid. Although the consumer and safety regulators (e.g. Competition and Consumer Authority and Tukes) can provide advice on compliance and oversee it, they

[13] The Finnish Product Liability Act, (694/1990), ch. 5.
[14] The Finnish Product Liability Act (694/1990), s. 9.

have no right to compensate. Finally, unsolved conflicts should be resolved in this case in court.

IX. Issues in Product Liability in India and Finland

The product liability problems are highly prone in India since the majority of the consumers are not informed of their rights. There are cases when the error in products is not noticed at the initial point, but at a later period, they are complicated. The *Donoghue v. Stevenson*[15] the first historical case that involves liability of manufacturers is the Stevenson case, and Lord Atkin ruled that the manufacturer (Stevenson) had a duty to ensure that he did not cause Mrs. Donoghue to suffer injuries due to their product.

The court provided three major reasons for this decision:

1) Negligence is itself a significant section of the tort law.
2) It is also possible to have a duty of care, though there is no contract between the individuals.
3) The manufacture of products by a product manufacturer should be done in a way that safeguards the users.

The HOL believed that the defendant manufacturer was guilty of negligence since it was his responsibility towards the plaintiff to ensure that no harmful substances were present in the bottle, and in case he neglected his responsibility and caused damages to the plaintiff, he would be held responsible. The court made its judgment that the manufacturer of food products, medicines or other goods of the kind owes their ultimate purchasers or consumers the legal responsibility to ensure that they are free of these defects which are likely to bring about any damages to their health. HOL appreciating a new obligation; product liability is as follows: “A person who makes products and sells them in such a form that they will demonstrate his

[15] 1932 AC 562.

intention to deliver them to the final consumer in the form, in which he received them and that in which he has been leaving, and who knows that failure to exercise reasonable care in the preparation or putting up of the products will as a consequence cause an injury to the life or property of the consumer will have an obligation to be in a position to assume the reasonable care. The relevant important issues include:

(1). Issues of Misleading Advertisement

Although Finland has a well-developed legal framework and regulatory institutions to curb misleading advertising, fresh challenges have surfaced with the growth of digital platforms, influencer-driven promotions, and environmental marketing claims. Addressing these issues effectively demands ongoing regulatory vigilance, closer cooperation within the EU, and enhanced consumer awareness initiatives to secure fair and transparent marketing practices. In the UK advertising is mainly controlled and regulated through codes of practice. The code that must be applied will depend on the industry or medium of advertisement. In the UK there is a specific law on the Control of Misleading Advertisements Regulations 1988 that backs up the codes of practice and covers various types of advertising and media. Also, the Advertising Standards Authority (ASA) regulates the advertising industry. Grievances about most adverts are dealt with by the ASA. It is up to advertisers to prove any claims they make. If they cannot do so, the advertisement can be reserved or modified.

In India Misleading advertisement is a very serious issue in product liability in relation to any product or service, an advertisement, which is falsely described, gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or

conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or deliberately conceals important information is misleading advertisement under the CP Act, 2019.[16] During COVID-2019, unfair trade practices are going on with each and every product of teas, soaps, toilet cleaners, Sanitisers, Immunity buster drinks, and hand wash are going to be herbal, immunity buster and claim to kill 99.99% of viruses and germs.

(2). Issues in deciding Compensation

The second issue is that the standard measurement technique should be developed for deciding compensation in the matter of product liability. The basic issue is who and how much relief compensation could be provided. The quantity of compensation is not the same in similar cases of product liability, different amount of compensation is provided by different courts.

(3). Issues of dilemma of Pendency of Cases

Most of the courts in India are overburdened by cases including consumer cases. The number of cases, pending in the different courts, causes delays in the disposal of these cases. So, there is an urgent need to increase the number of courts. Since 25 August 2025 total 599,000[17] cases are pending in Consumer Courts in India. In India, the core problem arises from the sheer volume of cases, limited institutional capacity, and recurring procedural delays. In Finland, the difficulty is less about numbers and more about the lengthy process required in cases involving complex technical evidence or cross-border enforcement, although overall pendency remains relatively low. Both jurisdictions demonstrate that delays—whether caused by excessive

[16] The Consumer Protection Act, 2019, s. 2 (28)
[17] As per statistical data of NCDRC of India, New Delhi.

backlog or case complexity—erode the consumer's right to receive prompt justice in product liability matters.

(4). Issue of dilemma in deciding against who is actually responsible for product liability during e-purchasing of products and services

The fourth issue is the standard measurement technique should be developed for deciding compensation in the matter of product liability under CP Act 2019. The basic issue is who and how much relief compensation could be provided. The quantity of compensation is not the same in each similar case of product liability. In India, a major concern is finding the right balance between safeguarding consumer rights and the limited liability of online platforms, especially when products are sold by foreign entities. In Finland, the challenge is primarily linked to cross-border enforcement and securing consumer access to a liable local party when the actual producer is located overseas. In both countries, the digital marketplace complicates traditional distinctions between manufacturer, importer, and seller, leaving consumers uncertain about which party should be held accountable when defective products cause harm.

(5). Issue of No-Fault Liability

A product manufacturer shall be liable in a product liability action even if he proves that he was not negligent or fraudulent in making the express warranty of a product. In India, the main difficulty lies in implementation. Slow judicial proceedings, weak enforcement of orders, and low consumer awareness reduce the effectiveness of no-fault liability provisions. In Finland, the concerns are more about scope and cost—although liability is strict, compensation is narrowly defined, and the "loser pays" principle makes litigation financially risky for consumers. Both jurisdictions show that while

no-fault liability is designed to protect consumers, practical obstacles continue to limit its ability to deliver timely and sufficient remedies.

X. Challenges in Product Liability in India and Finland

There are a number of challenges in product liability cases in India especially on the burden of cases on Consumer Courts; providing compensation to consumers; Undue financial and mental burden on consumers; identifying the actual manufacturer, service provider and seller in the global market; etc.

(1). Burden of Cases on Consumer Courts

In India, the challenge lies in volume and backlog, with consumer courts overburdened by large numbers of cases. In Finland, the challenge is complexity, as fewer but more technical cases require extensive evidence and expertise. Both Indian and Finnish systems reveal that without better resources, technical capacity, and alternative resolution mechanisms, consumer courts struggle to efficiently handle product liability claims.

(2). Burdens of Proof and Causation

Under Finnish product liability law, consumers must prove the product's defect, the harm suffered, and the causal link between them. While simple in theory, this burden is often difficult in practice, especially with complex or technical products. Consumers rarely have access to manufacturers' internal data and usually depend on costly expert evidence to establish a defect. The challenge is even greater with advanced technologies like AI systems, pharmaceuticals, or chemicals, where causation is difficult to demonstrate. Recognizing these obstacles, the forthcoming EU Product Liability Directive proposes presumptions to ease the burden of proof and strengthen consumer protection.

(3). Providing Compensation to Consumers

In India, obtaining compensation in product liability cases is hindered by long judicial delays, weak enforcement of consumer forum decisions, and limited public awareness of legal rights. Many cases remain unresolved for years, and businesses often exploit appeals to postpone compliance. The lack of affordable legal aid and high litigation costs further discourage consumers, particularly those from rural or economically weaker backgrounds, from pursuing claims. In Finland, barriers are largely financial and technical. The "loser pays" principle exposes consumers to significant cost risks, making litigation unattractive unless success is almost certain. Additionally, proving product defects often requires specialized technical evidence, which is costly and difficult for individual claimants. Compensation is also limited, as the Finnish Product Liability Act excludes recovery for the defective product itself and for business-related property damage. Both countries demonstrate that strict liability laws exist in theory, but practical obstacles restrict timely and fair compensation.

(4). Undue financial and mental burden on Consumers

Consumers in both India and Finland encounter difficulties when seeking remedies under product liability law, though the nature of these challenges differs. In India**,** the major obstacles are procedural delays, enforcement gaps, and prolonged adjudication in Consumer Dispute Redressal Commissions. Cases often remain unresolved for years, and even after favorable rulings, businesses may delay compliance by filing appeals. These hurdles impose financial strain through legal costs and wasted time, while the long uncertainty creates mental stress for consumers. Thus, despite the availability

of statutory product liability under the Consumer Protection Act, 2019 the practical accessibility of justice is limited.

In Finland**,** the burden stems less from delays and more from the financial risks of litigation**.** Under the "loser pays" rule, an unsuccessful claimant must bear the opposing party's costs, discouraging individuals from filing unless success seems highly likely. Product liability cases also demand technical expertise to establish defects and causation, creating psychological pressure for claimants against resourceful multinational producers. Overall, both jurisdictions demonstrate the persistent power imbalance between consumers and producers**.** Strict liability laws exist to protect consumers, but practical barriers India's procedural inefficiency and Finland's litigation costs can undermine access to justice. Effective protection requires remedies that are affordable, timely, and enforceable**.**

(5). To identify the actual manufacturer, service provider and seller in the global market

Both India and Finland attempt to shield consumers by holding importers, own-branders, and sellers accountable if the true manufacturer is unknown. Yet, in the era of global trade and e-commerce, gaps remain in ensuring accountability. Stronger cross-border enforcement mechanisms, clearer obligations for online marketplaces, and enhanced disclosure requirements are needed to protect consumers in both systems.

(6). Digital Product Liability

A major challenge in recent years is the application of product liability law to the digital sphere. Both the Consumer Protection Act 2019 (India) and the Finnish Product Liability Act 1990 are primarily tied to tangible movable

goods. This raises questions about whether software, digital content, and AI systems can be treated as "products" whose defects may trigger liability. Under the current Indian and Finnish frameworks, stand-alone software such as a downloaded app or a firmware update does not clearly fall within the scope unless it is embedded in a physical product.

A major challenge in the digital era is defining compensable damage. Existing Finnish law covers personal injury and property loss but excludes data loss and privacy breaches. Thus, harms like erased personal files or data breaches fall outside traditional "property damage." The new EU Product Liability Directive expands compensation to include non-professional data loss or corruption, reflecting the growing value of digital assets such as photos and documents. Finland is expected to adopt this approach, giving consumers remedies for defective software or AI. These reforms modernise liability for the digital economy, strengthening consumer protection and increasing producer accountability.

XI. Comparison of 2025 Product Liability Case in India and Finland

Statistics Is Based on Publicly Accessible Online Sources

India and Finland have some commonalities and significant differences in product liability law as compared. India has a very high number of consumer disputes in terms of volume, but very little of them involves product liability. Finland, on the other hand, has very minimal product liability litigation every year, and the majority of these relate to insurance arrangements or alternative dispute resolution agencies. The juridical systems are also different. The Consumer Protection Act 2019 in India has not only increased the liability of defective products but also the lack of certain services and misleading advertisements, which pose a liability on both manufacturers, sellers as well

and advertisers. The system used in Finland is narrower and stricter because it uses a model of no-fault liability that only takes into account defective products.

The two countries are also different in terms of standards of proof. Technical evidence is at the centre of success in India, where consumer forums are likely to insist on expert analysis and laboratory reports to prove the existence of a defect. Under EU standards, Finnish courts will need to prove that a defect and its association with the damage incurred exist, but need not prove negligence. The two jurisdictions offer compensation for property loss and personal injury. Punitive damages are also allowed in India, but are rarely granted. Finland, in its turn, strengthens consumer protection by not excluding the development risks defence, hence guaranteeing the compensation of victims even in complicated or innovative cases. Moving ahead, the product liability regime in India is still in the process of consolidation, on the basis of the 2019 Act, where increased efficiency and consumer awareness should be prioritized.

Finland, in its turn, is ready to implement the new directive of the EU, which increases the liability to include digital technologies like software, artificial intelligence, and damage associated with data. The Indian system may be said to be developing yet gradually increasing in 2025, with a larger participation of the consumer and with more perception by the judiciary. Finland has a stable but well-developed framework with little litigation and high legal certainty, which is further enhanced by the Philips decision and the upcoming EU reforms. On the whole, two countries demonstrate the different ways to one direction, which is to find the balance between consumer protection and market stability. India emphasizes the importance of a convenient forum

system and awareness campaigns to enforce consumer rights, whereas Finland illustrates the success of a strict liability regime, including insurance cover and harmonization at EU level. The two systems are adjusting to emerging issues due to globalization and digitalization, leaving the consumer without protection in a changing marketplace.

Measured	India	Finland
Governing Law & Forums	The Consumer Protection Act 2019, governs product liability in India. Cases are mainly heard by District, State, and National Consumer Commissions, while civil courts remain rarely used.	The Product Liability Act 1990[18] Cases heard in general District Courts. Consumer Disputes Board offers ADR for consumer product disputes cases.
Total Product Liability Cases Filed	In 2025, explicit product liability cases in India formed only a few hundred nationwide, a small fraction of 170,000 consumer complaints, most pursued instead as defect or service deficiency claims.[19] majority are in other categories)[20]	Very low volume on the order of 5–10 cases filed in courts annually historically 8 in 2014, 4 in 2015[21] and similar single-digit figures in recent years. Product liability is rarely litigated; most claims resolved by insurance.
Cases Resolved/Decided in 2025	In 2023, consumer commissions disposed of 109% of cases[22], and by 2025 many maintained over 100% monthly disposal[23], clearing backlogs. Product liability cases were resolved at filing rates, with simple disputes targeted for resolution within 3–5 months.[24]	In Finland, product liability cases face no backlog, usually follow normal civil timelines, and many settle out of court. Consumer Disputes Board issues recommendations within months, though these are non-binding.
Common Sectors & Examples	In Finland and India, product liability disputes often concern defective automobiles (e.g., airbag failures), faulty electronics or appliances, pharmaceuticals, medical devices, and poor-quality e-commerce goods. Such claims are frequently pursued as cases of defective goods or deficient services under consumer protection law rather than solely through tort	In Finland, product liability cases often involve household appliances or electronics causing fires or injuries, such as the Philips coffee machine case. Automotive claims are rare due to compulsory insurance, and medical device disputes are infrequent. Most claims concern personal injury or property damage, typically managed through insurers.[26]

[18] available at https://castren.ficastren.fi. (last visited at 9:45 pm on September 01, 2025).
[19] available at https://pib.gov.inpib.gov.in (last visited at 11:00 am on September 05, 2025).
[20] available at https://nhrc.nic.in (last visited at 10:00 am on September 01, 2025).
[21]available at https://julkaisut.valtioneuvosto.fijulkaisut.valtioneuvosto.fi (last visited at 10:20 am on September 01, 2025).
[22] available at https://storyboard18.com (last visited at 10: 05 am on September 01, 2025).
[23] *Supra* note 14 at https://pib.gov.in (last visited at 11:15 am on September 05, 2025).
[24] *Ibid* at https://pib.gov.in (last visited at 11:30 am on September 05, 2025).

	actions.[25]	
Significant Developments 2025	Digital case platform (e-Jagriti) launched, improving access and expediting consumer product claims[27]. Courts mandated expert evidence for product defect claims, leading to stricter proof requirements (e.g. NCDRC rulings in car defect/airbag cases).[28] High disposal rate by NCDRC and several states resolved more cases than received[29] indicating better efficiency in handling complaints including product cases.	Finnish courts, guided by CJEU, confirmed trademark owners can be liable as "producers" for defective products[30] strengthening consumer recourse. Finland began work to implement the new EU Product Liability Directive by 2026[31] signalling future changes. No surge in claims product liability remains a niche area with few cases, and most disputes continue to be resolved via insurance or the Consumer Disputes Board rather than litigation.

XII. Consumer Protection and Product Liability Remedies

In the United Kingdom, producers of consumer goods are legally required to ensure that only safe products are introduced into the market. They must also notify the relevant authorities if risks are identified and take suitable corrective measures to address any unsafe items already distributed. These responsibilities are primarily governed by the General Product Safety Regulations. Within this framework, recalling a product is treated as a measure of last resort, with alternative corrective steps being considered adequate when appropriate to the situation.

In the U.S.A. the remedies available in product liability lawsuits vary by state and are generally compensatory, typically including pecuniary losses and non-pecuniary losses. In the U.S.A. many states impose statutory caps on recovery of certain damages, like loss of consortium or pain and suffering. Claimants

[26] available at https://logaraslaw.com (last visited at 12:15 pm on September 12, 2025).
[25] available at https://pib.gov.inpib.gov.in (last visited at 11:37 am on September 05, 2025).
[27] Super note 20 at https://pib.gov.in (last visited at 11:40 am on September 05, 2025).
[28] available at https://iclg.comiclg.com (last visited at 08:00 pm on September 06, 2025).
[29] *Supra* note 20 at https://pib.gov.in (last visited at 11:45 pm on September 05, 2025).
[30] *Supra* note 21 at https:// logaraslaw.comlogaraslaw.com (last visited at 12:20 pm on September 12, 2025).
[31] available at https://mondaq.comcastren.fi (last visited at 12:27 pm on September 12, 2025).

can also recover punitive or exemplary damages, although the standard for showing entitlement to these damages is much greater than for product defect or negligence.

Defective or unsafe products account for thousands of injuries annually in the United States, and the governing legal framework for such claims is known as *product liability law*. This body of rules is distinct from ordinary personal injury law because it imposes responsibility not only on the manufacturer but also on all parties within the distribution chain who place a defective product in the hands of a consumer. The central principle is that products must satisfy the reasonable expectations of consumers. When an item contains an unexpected defect or concealed danger, it is deemed not to meet this standard.

The United States does not have a single federal product liability statute. Instead, liability is determined under state law, generally through claims based on negligence, strict liability, or breach of warranty. The doctrine of strict liability was famously recognized in *Greenman* v. *Yuba Power Products, Inc*[32], where the California Supreme Court held a manufacturer strictly liable for injuries caused by a defective power tool, even in the absence of negligence. Earlier, Justice Traynor in his concurring opinion in *Escola* v. *Coca Cola Bottling Co.*[33], had argued for imposing strict liability on manufacturers to better protect consumers. In addition, state commercial codes, modeled on the Uniform Commercial Code (UCC), provide warranty provisions such as implied warranties of merchantability and fitness for purpose which significantly influence product liability litigation across jurisdictions.

[32] 59 Cal. 2d 57 (1963),
[33] 24 Cal. 2d 453 (1944)

(1). Consumer Protection and Product Liability Remedies in India

India's consumer protection and product liability framework has become more comprehensive with CPA 2019. The introduction of statutory product liability, collective redress mechanisms, and the CCPA's regulatory powers represents a significant step forward. However, practical challenges limited awareness, enforcement hurdles, and judicial delays still limit its effectiveness. Strengthening awareness campaigns, streamlining procedures, and ensuring strict compliance are essential for making consumer rights a practical reality.

Indian courts continued to clarify standards in product liability disputes. A key theme is the demand for expert evidence. In *Mercedes-Benz India v. Revathi Giri* case[34], the NCDRC held that a statutory expert test report is essential to prove an inherent defect. Similarly, in *Honda Cars India Ltd. v. Ushat Gulgule case*[35], the Commission ruled that failure of airbags to deploy could not be treated as proof of a defect without authorised laboratory testing. These rulings show that consumer forums require technical proof, not just anecdotal claims, to establish liability.

At the same time, commissions remain willing to grant compensation where clear evidence exists. For example, in 2025, a district forum awarded damages when a dealer and manufacturer failed to correct recurring car defects, treating it as a deficiency in service. This illustrates that many complaints are still framed under service deficiency rather than the product liability chapter, but they nonetheless provide relief to consumers.

(A) *Punishment for False or Misleading Advertisements*

[34] CC 26/2015 Telangana State Consumer Dispute Redressal Commission, Hyderabad.
[35] 2024 SCC OnLine NCDRC 49.

The Consumer Protection Act, 2019 (CP Act) prescribes penalties for manufacturers or service providers who issue advertisements that are false or misleading and thereby harm the interests of consumers. For a first offence, the penalty may include imprisonment of up to two years along with a fine that can extend to ₹10 lakh. In the case of repeat offences, the punishment becomes more stringent, with imprisonment of up to five years and a fine of up to ₹50 lak.

(B) ***Punishment for Products Containing Adulterants***

The Act also provides for enhanced punishment in cases where products containing adulterants are manufactured, stored, sold, distributed, or imported. These offences may also attract suspension or cancellation of the offender's licence. The severity of the penalty depends on the consequences of the adulteration:

- If no injury results, imprisonment may extend to six months with a fine of up to ₹1 lakh.
- If injury is caused but does not amount to grievous hurt, the punishment may extend to one year of imprisonment and a fine up to ₹3 lakh.
- If grievous hurt is caused, imprisonment may extend to seven years with a fine up to ₹5 lakh.
- If the act results in the death of a consumer, imprisonment shall not be less than seven years and may extend to life imprisonment, along with a fine of not less than ₹10 lakh.

Additionally, offences involving grievous hurt or death are classified as cognizable and non-bailable. In such cases, the court may suspend the licence

of the offender for up to two years upon first conviction, and in the event of subsequent convictions, the licence may be permanently cancelled.

(C) ***Punishment for Spurious Goods***

The CP Act, 2019 further penalizes the manufacture, storage, sale, distribution, or import of spurious goods. The punishment, once again, depends on the degree of harm caused:

- Where injury does not amount to grievous hurt, imprisonment may extend to one year with a fine up to ₹3 lakh.
- Where grievous hurt results, imprisonment may extend to seven years with a fine up to ₹5 lakh.
- Where the consumer's death occurs, imprisonment shall not be less than seven years and may extend to life imprisonment, accompanied by a fine of at least ₹10 lakh.

As with adulterated products, offences involving grievous hurt or death caused by spurious goods are treated as cognizable and non-bailable. Furthermore, courts may suspend an offender's licence for up to two years on the first conviction, and in the case of repeat offences, the licence may be cancelled altogether.

(2). Consumer Protection and Product Liability Remedies in Finland

In Finland, the effectiveness of product liability law depends not only on its legal framework but also on the ability of consumers to enforce their rights. Like many jurisdictions, Finland faces practical obstacles: litigation is often costly, time-consuming, and procedurally complex. The civil procedure system applies the "loser pays" rule, meaning unsuccessful claimants risk covering the opponent's legal costs, which can discourage individuals especially when the potential compensation is modest from pursuing claims.

To address these barriers, Finland has developed several complementary mechanisms to support consumer remedies.

(A) ***Insurance and Subrogation***

A distinctive feature of the Finnish system is the central role of insurance. Consumers typically claim compensation first from their own insurance, such as home or accident policies. The insurer then uses subrogation to recover damages from the responsible producer or importer, reducing the burden on the individual consumer. Notably, Finnish law obliges importers to help injured parties communicate with foreign producers, including translation support. Failure to do so can result in the importer bearing translation costs—an uncommon but consumer-friendly rule designed to ease cross-border enforcement.

(B) ***Collective Redress***

Finland does not permit broad, US-style class actions. However, the Class Actions Act 2007 allows the Consumer Ombudsman to bring group claims on behalf of consumers with similar grievances. Participation is voluntary (opt-in), and usage has remained rare, partly due to the strict limitation that only the Ombudsman may initiate such actions. Nevertheless, it provides a tool for addressing widespread consumer harm where individual claims would be impractical.

(C) ***Consumer Ombudsman and ADR***

The Consumer Ombudsman also plays a proactive role by negotiating with companies and issuing injunctions against unlawful conduct, such as misleading practices after a product recall. Alongside this, the Consumer Disputes Board functions as an alternative dispute resolution forum. While its

recommendations are not legally binding, they often guide settlements in consumer cases, offering a low-cost option outside the courts.

(D) ***Regulatory Enforcement***

Finland's Safety and Chemicals Agency (Tukes) enforce product safety regulations. Dangerous products can be recalled or withdrawn from the market, and Finland participates in EU-wide alert systems, ensuring coordinated cross-border enforcement. Though this does not directly compensate victims, regulatory findings strengthen subsequent liability claims.

Despite these mechanisms, challenges persist: consumers may lack awareness of their rights, and smaller losses often remain uncompensated. Still, the combination of insurance, potential collective actions, ADR, and active regulators creates a layered enforcement environment. These tools work together to ensure that product liability in Finland operates as a practical safeguard, not just a theoretical legal right.

XIII. Repair or Replacement Rights of Consumers in India and Finland

India and Finland both acknowledge repair and replacement as essential consumer rights. In India, these remedies are largely exercised through Consumer Dispute Redressal Commissions, but the process is often slowed by procedural delays and litigation. In contrast, Finland ensures a more direct and preventive approach, where sellers themselves are obliged under consumer contract law to repair or replace defective goods, with oversight from strong regulatory authorities. In both jurisdictions, when repair or replacement cannot be carried out effectively, consumers are entitled to alternative remedies such as refunds or financial compensation. When a

product is faulty or not as expected, consumers have the right to ask for it to be repaired or replaced. These rights are protected under consumer protection laws in many countries.

The Right to Repair concept began in the United States, with Massachusetts being the first state to pass the Motor Vehicle Owners' Right to Repair Act, 2012. This law required car makers to share repair information and manuals so that anyone could fix their vehicles. The main aim of the movement is to give customers access to spare parts, tools, and repair details to extend product life and reduce repair and replacement costs. It applies not just to physical parts but also to components like batteries, memory, and processors.[36] The Right to Repair movement encourages better product quality and motivates manufacturers to create items that are more durable, repairable, and upgradeable. It also empowers consumers by giving them the freedom to repair and modify their own products as they choose.[37]

XIV. Limitation of Actions: India and Finland

Section 69 of the Consumer Protection Act, 2019 provides that in India, a complaint should be made within two years from the date of the cause of action. Nevertheless, Consumer Dispute Redressal Commissions (District, State, or National) can receive complaints after this time on the condition that the delay has a justifiable cause and has to be written. Section 9 of the Product Liability Act, 1990 in Finland provides that a claim must be brought within three years of the date on which the injured party has suffered or would reasonably have suffered damage and defect, and the party responsible.

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[36] Kumar, Dr. Rajesh, Malik, Dr. Ausaf Ahmad, Singh, Dr. Jageshwar Nath and others, Right to Repair Is a Child of the 21st Century: A Critical Study. Russian Law Journal, Volume X I Issue 3 2023, s.1047-1059.
[37] *Id.* at p. 1056.

Also, the product has a rigid ten year long stop after which no action can be taken in relation to the date when the product was initially introduced into circulation. Comparatively, India has a shorter limitation period but permits flexibility by condonation of delay, whereas Finland does not impose strict time constraints but has a strict ten-year bar. The manufacturers, sellers and service providers of the defendant are also wider in India as compared to Finland, whose Act mainly focuses on manufacturers, importers and suppliers. The exclusion of commercial losses in both jurisdictions highlights the fact that the two laws were created with the primary intention of protecting consumers.

XV. Conclusion

The liability of products has become a significant source of consumer protection, as faulty products and dishonest business activity can put the health, safety and property at risk. Contemporary consumer law is no longer confined to the review of the fault itself and damage caused, but instead it is questioning how the product was advertised and whether advertisements had a false or unrealistic expectation. This is indicative of a broader role of consumer protection in transactions, but also the truthfulness of information, consumer trust, and accountability of business. Comparative examination reveals that there is a huge variation within jurisdictions. The Consumer Protection Act of 1987 puts the responsibility on the producers and suppliers in the United Kingdom in relation to the damage caused by defective goods or poor service. When a defect is established, it is established that there is no upper cap on compensation in the event of death or personal injury, obligation to pay is independent of negligence.

In the meantime, the US has come up with one of the most vigorous product liability systems under the tort law. Strict liability implies that manufacturers are liable for defective products without necessarily showing negligence. The product liability insurance is used by businesses owing to the size of litigation and the damages that are likely to be incurred. India's position has evolved. The Consumer Protection Act 1986 did not have a statutory basis of product liability; however, the Consumer Protection Act 2019 has added Chapter VI (Sections 82–87) in which claims against manufacturers, sellers and service providers can be made. The liability can be supported by the unsafe designs, faulty goods, false advertising, or insufficient services. Compensation may be provided in personal injury, death, illness, property loss and even mental distress. Notably, the responsibility of accuracy also lies in the hands of the endorsers and advertisers, thus furthering the responsibility along the supply chain. The District, State and National Consumer Commissions system provides the consumer with various levels of redress that can be accessed.

Finland, on the other hand, operates in the system of an established EU. Strict no-fault liability was introduced by the Product Liability Act 1990, but only requires showing a defect and causation, but not negligence. The Consumer Protection Act offers more compensation on faulty products. The interpretation of these provisions by Finnish courts is always in accordance to the EU directives, and Finland has been rather pro-consumer by making no exception to the defence of development risks. The EU single market offers harmonised protection and cross-border enforcement to its members. Moving ahead, the EU Product Liability Directive 2024/2853 will apply the concept of liability to software, artificial intelligence, and information-related damage, as it is a way to guarantee that consumers are not harmed by digitalisation. Overall, both India and Finland mirror the trend that is taking place all around

the world: product liability in the modern context also applies to services, advertising, and technologies. The government of India updated its system in 2019, whereas the EU-based system in Finland has proven its decades-old maturity. The combination of the two has brought out an international shift toward more robust consumer rights, high accountability on manufacturers and legal frameworks that can handle new technological demands.

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ENVIRONMENTAL RULE OF LAW AND CIVIC ENGAGEMENT IN THE CONSERVATION OF THE GREAT INDIAN BUSTARD

Saman Narayan Upadhyay[*]

Abstract

The Great Indian Bustards (GIBs) are critically endangered species found in the grassland and arid regions of southern and western India, potentially spanning over around 90,000 square kilometers of Rajasthan, Maharashtra, Gujarat, and Karnataka. The Indian State of Rajasthan is the homeland of GIBs. Recent research reveals a sure extinction of GIBs due to expansion of overhead power line transmission and wind turbines in the region of GIBs habitat. This research paper examines the incorporation of environmental rule of law within the Indian environmental legal frameworks to explore the equilibrium between the human right to development and human rights of the environment informed by international environmental laws. This research paper finds that the expert reports are not in favour of converting overhead power line transmission into underground power line transmission for several reasons, as well as the geospatial capacity of the region for wind energy generation cannot be abandoned to shift from fossil-based energy. The solutions to protect GIBs are ex-situ incubation of GIBs, incentivizing civic engagement in the conservation of GIBs, banning cattle grazing over the GIBs habitat region, banning use of pesticides in agricultural fields near the GIB priority areas, and installation of bird diverters on the overhead power transmission lines.

Keywords: *modalities of GIBs conservation, causes of GIBs extinction, overhead power transmission lines and wind turbines, civic engagement, ban on cattle grazing and use of pesticides.*

I. Introduction

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The debate over conservation of the Great Indian Bustard (GIB) has re-begin after appointment of seven member expert committee by the Supreme Court on 21st March 2024 to explore the possibility of transforming overhead power lines into underground power lines and installation of renewable energy generation alternatives balancing GIB conservation measures in the priority areas of Rajasthan, Maharashtra, Gujarat, and Karnataka.[1] The GIB (scientific name is *ardeotis nigriceps*) is one of the rarest bird in the world belonging to avian species that is profoundly found in the grassland and arid regions of southern and western India potentially spanning over around 90,000 square kilometers area of Rajasthan, Maharashtra, Gujarat, and Karnataka. The State of Rajasthan is homeland of GIB with largest population of 150 GIB.[2] Due to rapid and steady decline in the GIB population, the International Union for Conservation of Nature (IUCN) [3] has declared the GIB a 'critically endangered species' in 2011 and it is listed in Schedule I of the Wildlife (Protection) Act-1972 (WPA-1972) as protected bird. The WPA-1972 prohibits hunting of GIB[4] and declares hunting, keeping or dealing in GIBs punishable with imprisonment not less than one year that may extend to seven years and with a fine not less than ten thousand rupees.[5]

The GIBs lay their eggs on open grasslands and scrublands land for nearly one month. They have wide sideways vision to detect predators precisely at the cost low frontal vision that eventually led to non-detection of overhead power lines

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[1] Ajoy Sinha Karpuram, "How Supreme Court is overseeing conservation of the Great Indian Bustard," *The Indian Express*. March 27, 2024. Available at: https://indianexpress.com/article/explained/explained-law/supreme-court-conservation-great-indian-bustard-9234896/ (Last Visited at 12: 08 pm on 15th December 2025).

[2] Wildlife Institute of India, Habitat improvement and conservation breeding of great Indian bustard: an integrated approach. Available at: https://wii.gov.in/campa_gib (Last Visited at 12: 10 pm on 15th December 2025).

[3] *Supra* note 1.

[4] The Wildlife (Protection) Act, 1972. Sec-9.

[5] *Ibid*. Section 51.

and wind turbines while flying even at a close distance and results into their death due to collision with power wires and wind turbines. The Wildlife Institute of India (WII) reports death of around 16 GIB per year due to collision with overhead power lines and wind turbines that are the major reason of unsustainability of GIB and becoming sure reason for its extinction.[6] Overhead power lines and wind turbines have added into traditional threat to the survival of GIBs that includes conversion of grasslands and scrublands into agricultural fields, use of pesticides, hunting and poaching, and predation etc.

The Government of India has introduced the National Guidelines for Recovery of Bustards-2013 in the GIBs inhabitation States. The guideline incorporates a multi-pronged approach such as strict safeguards and maintenance of breeding cages based on research, cohabitation with beneficial land uses and mitigation of unfavorable land uses in priority habitats of nearby landscapes that have been scientifically identified, community involvement in conservation through awareness along with incentives and captive population development as a safeguard against extinction and potential restoration.

This research paper examines environmental rules of law to developmentalimacy of civic engagement in the conservation of critically endangered GIBs exploring rights of people to actively participate in the developmental activities, right to get timely information related to environmental impacts supposed to be caused by proposed developmental activities.

II. The Anatomy of Environmental Rule of Law

[6] Wildlife Institute of India 2018 Power-Line Mitigation Measures. Second edition (2020). Available at: https://wii.gov.in/images//images/documents/publications/rr_2020_GIB%20Power-line_mitigation_conserve_bustards.pdf (Last Visited at 12: 10 pm on 15th December 2025).

The rule of law is a pre- Aristotelian era principle of legality that represents existence of certain essential, unchangeable and ubiquitous features in a legal system to operate regardless of space and time. Aristotle argued for 'rule of law' over the 'rule of men' in his seminal book *'Politics'* to establish and maintain social order that maximizes wellbeing of people and their ability to achieve the good.[7] Aristotle was aware of the fact that a rule is inherently lifeless unless applied by a set of human interventions that enables men to control the rule but not vice-versa.[8] Nevertheless, he preferred rule of law over the rule of man since a rule of law is a careful logical and rational scheme of governance that is applied to all societies in all situations. Relying upon Aristotelian idea that rule of law is better than the rule man, Flores and Himma (2013) present a popular expression that no one is higher than law; the rule of law shall prevail, not the rule of people; and the rule of law is nothing but a set of orders created by the law.[9] Similarly, Lord Bingham (2007) warns that greater governmental discretion poses greater scope for subjection and arbitrariness and that is antithesis to the rule of law.[10]

The dominating discourse of rules of law includes restriction on arbitrary use of power and formal legality of a legal system. It has been considered essential for the good governance and protection of human rights across the world. There had been great deal of discourse on the agreement over the essential components of the rule of law to formally legalize a legal system. With the

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[7] Courtney Taylor Hamara, "The Concept of the Rule of Law," in I. B. Flores, K. E. Himma (eds.), *Law, Liberty, and the Rule of Law* 11–26 (Springer Netherlands, Dordrecht, 2013), xviii.
[8] J. Hampton, "Democracy and the rule of law," in I. Shapiro (ed.), *The Rule of Law Nomos XXXVI* (New York University Press, London, 1994).
[9] Imer B. Flores and Kenneth Einar Himma, "Introduction," in I. B. Flores, Kenneth E. Himma (eds.), *Law, Liberty, and the Rule of Law* 1–9 (Springer Netherlands, Dordrecht, 2013), XVIII. Available at: https://doi.org/10.1007/978-94-007-4743-2_1 (Last Visited at 12: 11 pm on 15th December 2025).
[10] Lord Bingham, "The Rule of Law," 66 *The Cambridge Law Journal* 67–85 (2007). Available at: https://doi.org/10.1017/S0008197307000037 (Last Visited at 12: 12 pm on 15th December 2025).

passing of time the concept of rule of law has received universal clarity and acceptance. The rule of law has become a powerful rhetorical tool in the contemporary society.[11] The United Nations (UN) has referred rule of law as a principle of governance in which all persons, institutions and public-private entities including State are equally accountable to laws that are publicly manifested, uniformly enforced, and independently adjudicated and that are in consonance with the international human rights norms and standards. Per the UN, the rule of law entails strict adherence with the principles of supremacy of law, equality before the law, separation of powers, civic participation in policy-making, certainty of law, absence of arbitrariness and biasness, fairness of law, procedural and legal transparency, and accountability to law.[12] Accordingly, the United Nations presents a sum of criteria for the rule of law that is symmetrical to the Fuller's eight typical criteria of legality of law. Fuller's seminal list of legality criteria of law includes (1) the law should be general, publicly promulgate and clear; (2) the law should not demand something that is impossible to perform; (3) the law should come into effect with prospectively; (4) the law should be understandable by prudent persons; (5) the law should be free from contradictions; (6) the law should be relatively stable and congruent; (7) the law should be consistent and constantly applicable equally to all persons in all cases; and (8) there should be a congruence between official action and declared rules.[13]

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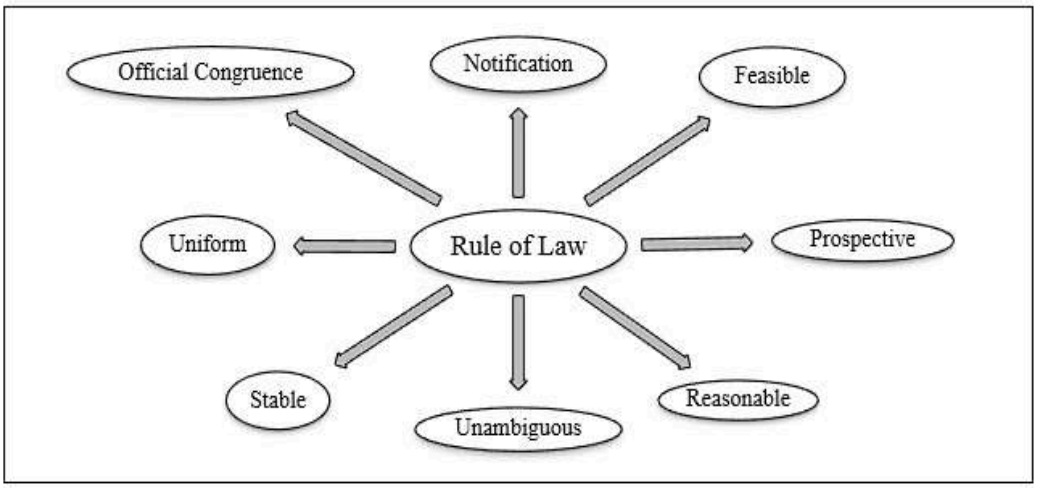
[11] Courtney Taylor Hamara, "The Concept of the Rule of Law," in I. B. Flores, K. E. Himma (eds.), *Law, Liberty, and the Rule of Law* 11–26 (Springer Netherlands, Dordrecht, 2013), xviii.
[12] United Nations Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* 1–24 (United Nations Security Council, New York, 2004).
[13] Lon L. Fuller, *The Morality of Law*, Rev. ed (Yale University Press, New Haven, 1977).



Rule of law is critically considered necessary for environmental protection and sustainable development, and it emerges as 'rule of law for nature'[14] or 'environmental rule of law' that reflects one of the paradigms of environmental constitutionalism.[15] Environmental rule of law is distinct from environmental governance. Later covers a broad range of principles and approaches concerned with environmental decision making and implementation; whereas former is anxious for implementation, compliance and enforcement of environmental laws.[16]

The UN Environmental Program (UNEP) has developed concept of environmental rule of law forming a part of its normative agenda in 2012 in the Rio+20 Conference.[17]

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[14] Christina Voigt (ed.), *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law* (Cambridge University Press, Cambridge, United Kingdom, 2013).

[15] Louis J. Kotzé, "Six Constitutional Elements for Implementing Environmental Constitutionalism in the Anthropocene," 1st ed., in E. Daly, J. R. May (eds.), *Implementing Environmental Constitutionalism* 13–33 (Cambridge University Press, 2018). Available at: https://doi.org/10.1017/9781316691588.003 (Last Visited at 12: 14 pm on 15th December 2025).

[16] United Nations Environment Programme, *Environmental Rule of Law: Tracking Progress and Charting Future Directions* 15 (United Nations Environment Programme, 2023). Available at: https://doi.org/10.59117/20.500.11822/43943 (Last Visited at 12: 15 pm on 15th December 2025).

Rio+20 Conference.[17] The UNEP has considered and declared the environmental rule of law central to sustainable development. Rule of law does transparent and sustainable management natural resources, which is engine for SD and a platform for the peace and justice.[18] The UNEP has made an appeal to the global community in March 2015 to adopt seven core elements of environmental rule law (ERL) for environmental justice (EJ) and sustainable development (SD) to all through a just, efficient and translucent institution. The UNEP (2015) identifies **seven core constituents of environmental rule of law** that includes:[19]

- **Fair, clear and implementable environmental laws:** environmental laws should be fair and non-discriminatory in their development, application and impact, it should be unambiguously understandable and could be implemented to effectively address institutional, cultural and economic context of the nation.
- **Right to information, civic involvement and right to justice:** right to information enables citizenry to identify environmental violations and determine the methodology to get engaged. Civic involvement in

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[17] United Nations Environment Programme, *Environmental Rule of Law: Tracking Progress and Charting Future Directions* 17 (United Nations Environment Programme, 2023). Available at: https://doi.org/10.59117/20.500.11822/43943; Carl Bruch, *Environmental Rule of Law: First Global Report* (United Nations Environment Programme, Nairobi, 2019)., (Last Visited at 12: 16 pm on 15th December 2025).

[18] United Nations Environment Programme, *Environmental Rule of Law: Critical to Sustainable Development (Issue Brief). (March 2015).* (United Nations Environment Programme. 2015). Available at: https://wedocs.unep.org/handle/20.500.11822/10664 , (Last Visited at 12: 18 pm on 15th December 2025).

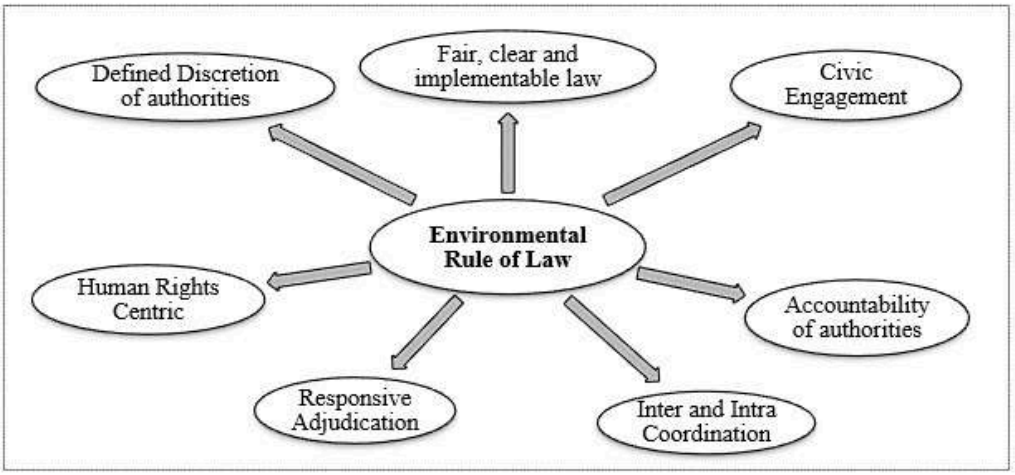
[19] United Nations Environment Programme, *Environmental Rule of Law: Tracking Progress and Charting Future Directions* 17 (United Nations Environment Programme, 2023). Available at: https://doi.org/10.59117/20.500.11822/43943 , (Last Visited at 12: 24 pm on 15th December 2025).; UNEP. (2015). United Nations Environment Programme, *Environmental Rule of Law: Critical to Sustainable Development (Issue Brief). (March 2015).* (United Nations Environment Programme. 2015). Available at: https://wedocs.unep.org/handle/20.500.11822/10664 , (Last Visited at 12: 28 pm on 15th December 2025).

environmental decision-making contributes in formulation of fair and implementable laws and improves public support and compliance. Right to justice calibrates right to environmental information, per Principle 10 of the Rio Declaration, and civic participation and access of people to the adjudicating authorities for enforcement of their rights and resolving disputes.

- **Accountability and integrity of institutions and decision makers:** environmental institutions must demonstrate accountability, transparency and integrity to ensure public support and compliance and to deliver effective environmental protection.
- **Clear and coordinated mandates and roles, across and within institutions:** environmental governance is carried out through multiple normative agencies (statutory, customary, and religious), levels (international, national and local) and sectors (air, water, forest, agriculture, waste management etc.) resulting in institutional overlap and gaps. Clear mandates and cross-sectoral coordination are essential for effective implementation of environmental laws.
- **Accessible, fair, impartial, timely and responsive adjudication:** dispute resolution and enforcement mechanisms that are fair, impartial, timely and responsive increase compliance with environmental regulations and support environmental initiatives and civic trust in the judicial process.
- **Recognition of the mutually reinforcing relationship with human rights:** environmental rule of law has a mutually reinforcing relationship with constitutional, human and other rights. A healthy environment is necessary for realizing rights to life, property and health as well as cultural, economic and political rights. Constitutional, human and other

rights including both substantive and procedural rights provide tools for strengthening and enforcing environmental protection. And

- **Specific criteria for the interpretation on environmental law:** clear and detailed guidance on environmental laws enable implanting agencies to adopt consistent regulations and enforcement practices and facilitate compliance on the part of regulated communities and the public.



III. Civic Rights to Participate in Developmental Activities

Development is the pre-condition of human survival.[20] Right to development has been recognized in the Universal Declaration of Human Rights, 1948 (UDHR) in three different manners; first, individuals are entitled to socio-economic-cultural rights within their national resources for their dignity and free development of personality;[21] secondly, State has duty to formulate educational policies that must direct full development of human personality and

[20] Saman Narayan Upadhyay, "Global Legal Norms on Environment and Sustainable Development in 21st Century," in R. Prasad, M. K. Jhariya, *et al.* (eds.), *Advances in sustainable development and management of environmental and natural resources.* 59–107 (Apple Academic Press, Palm Bay, FL, USA, 2022), II.

[21] The Universal Declaration of Human Rights, 1948. Article 22. Available at: https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf, (Last Visited at 12: 38 pm on 15th December 2025).

strengthen respect for human rights,[22] and thirdly, individuals shall perform their duties to their communities for free and full development of their personality.[23] The right to socio-economic-cultural development of the individuals has been centrally dealt in the International Covenant on Social, Economic and Cultural Rights, 1966 that typically recognizes right of self-determination of people to pursue their socio-economic-cultural development[24] and duty of State to formulate technical, vocational and training programmes as well as maintain healthy working conditions[25] improve food production, consumption and distribution efficiently utilizing natural resources[26] and provide progressive education.[27] The United Nations Declaration on the Right to Development, 1986 (UNDRTD) declares right to development an inalienable human rights[28] and human beings to be the central subject of development and active participants and beneficiary of the development[29] that is carried out, individually or collectively, considering human rights norms[30] within the national developmental policies formulated by the States[31] exercising their right to self-determination over the natural resources.[32] The UNDRTD holds responsibility of the States' to create international and national development

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[22] *Ibid*. Article 26.
[23] *Id*. Article 29 (1).
[24] The International Covenant on the social, economic and cultural rights, 1966. Article 1 (1). Available at:https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights , (Last Visited at 12: 38 pm on 15th December 2025).
[25] *Ibid*. Article 6(2).
[26] *Id*. Article 11(2)(b).
[27] *Id*. Article 13(2)(e).
[28] The United Nations Declaration on the Right to Development, 1986. Article 1(1). Available at: https://www.ohchr.org/sites/default/files/rtd.pdf , (Last Visited at 12: 38 pm on 15th December 2025).
[29] *Ibid*. Article 2(1).
[30] *Id*. Article 2(2).
[31] *Id.* Article 2(3).
[32] *Id.* Article 1(2).

conditions,[33] formulate policies,[34] eliminate apartheid laws,[35] afford equal opportunity to access basic resources-education-health services-food-hosing-employment,[36] and encourage civic participation in the developmental activities.[37]

Active civic engagement in developmental activities is integral part of the environmental rule of law that has been declared core right in the UNDRTD. The civic engagement is coupled with civic responsibility to carry out development in the pursuit of their right to self-determination utilizing natural resources subject to the national policies in consonance with the International human rights laws.

The environmental rule of law does recognize people's right to active participatory development with environmental care that suffices needs of present generation without compromising developmental ability of future generation to meet their needs under Principle 2 of the United Nations Conference on Human Environment (UNHCE)-1972, and Principles 10, 20 to 22 of the Rio Declaration-1992.[38]

IV. Civic Rights to Information Relating to Environmental Impacts of Developmental Activities

Right to information has emerged as a potent democratic tool for the maintenance of transparency and accountability in the performance of legal

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[33] *Id.* Article 3(1).
[34] *Id.* Article 4(1).
[35] *Id.* Article 5.
[36] *Id.* Article 8(1).
[37] *Id.* Article 8(2).
[38] Saman Narayan Upadhyay and Milendra Singh, "Community participation in wildlife conservation to promote environmental constitutionalism and sustainability in India," 10 *International journal for Innovative Research in Multidisciplinary Field* 224–32 (2024). Available at https://doi.org/10.2015/IJIRMF/202401036 , (Last Visited at 12: 30 pm on 15th December 2025).

liabilities by the public authorities that garner peoples' confidence in the pursuit of legitimacy of law. The international community has devised the process of environmental impact assessment (EIA) of proposed economic activities. The EIA procedure builds timely information to the stakeholders relating to the environmental impacts that are likely to occur due to proposed economic activities. The United Nations Conference on Environment and Development-1992 (UNCED) delivers for the people's right to timely information about the environmental impacts of a proposed economic activity asking signatory States to develop necessary national legal instruments under Principle 17 of the Rio Declaration-1992.[39] The Agenda 21 and the Rio Forest Principles also require the EIA process in trade, business and industries for the achievement of SD and mitigation of health stresses.[40] The Rio Declaration, Agenda 21 and Rio Forest Principles are non-binding international environmental instruments. The UNCED has delivered two binding international environmental instruments: the Convention on Biological Diversity and the United Frameworks and Climate Change. These two binding environmental laws prescribe for mandatory EIA processes to adverse effects of economic activities along with civic engagement.[41]

V. Government Plans for The Conservation of GIBs

The Central Government through its Ministry of Environment, Forest and Climate Change (MoEFCC) has introduced several plans for the conservation of GIBs. It includes the National Guidelines for Recovery of Bustards-2013; launching of the Bustard Recovery Project in 2016 in collaboration with

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[39] Saman Narayan Upadhyay and Milendra Singh, "Environmental clearance and sustainable development: changing paradigm of environmental constitutionalism in Indian" *The Journal of Multidisciplinary Research* 8–18 (2024). Available at: https://doi.org/10.37022/tjmdr.v4i1.560 (Last Visited at 12:32 pm on 15th December 2025).

[40] *Ibid.*

[41] *Id.*

Government of Rajasthan; signing of tripatie agreement between MoEFCC, Government of Rajasthan and Wildlife Institute of India (WII) in 2018. The National Compensatory Afforestation Fund Management and Planning Advisory (CAMPA) Council funds State Governments, local NGOs and research organizations to recover GIBs, carry out ex-situ incubation of their eggs, release adult GIBs in the wild, track movement of GIBs through telemetry and involve local communities in the conservation of GIBs improving habitat of the GIBs.[42]

VI. Judicial Observation on the Conservation of GIBs

The Supreme Court of India has sincerely considered issue of deaths and extinction of GIBs caused by overhead power lines and wind turbines in *M.K. Ranjitsingh v. Union of India*.[43] The court had appointed expert committee on 19th April 2021 to find out possibility of shifting overhead power transmission line into underground and issued orders to immediately install bird diverters on the overhead power transmission lines and wind turbines existing in the priority of potential area of GIB until overhead power lines are converted into underground. The court restricted new expansion of overhead power transmission lines wind turbines in the priority of potential area of GIB. Owing to the impossibility of transforming overhead power transmission lines into underground and necessity to shift from fossil based energy production to renewable energy production for the sake of controlling climate change under India's international commitment, the Ministry of Environment, Forests, and Climate Change, the Ministry of Power, and the Ministry of New and

[42] *Supra* note 2.
[43] Writ Petition (Civil) No. 838 of 2019 along with Civil Appeal No. 3570 of 2022. Available at:https://main.sci.gov.in/supremecourt/2019/20754/20754_2019_1_25_51677_Judgement_21-Mar-2024.pdf (Last Visited at 12:32 pm on 15th December 2025).

Renewable Energy filed IA No. 149293 of 2021 to modify direction issued by the court on 19th April 2021.

The court noted India's commitment to combat with climate change under the international conventions. India has signed the Kyoto Protocol, being a party to the United Nations framework Convention on Climate Change (UNFCCC), and undertaken globally acknowledge common but differentiated responsibility to take steps to reduce human induced global warming to protect the climate system that shall benefit the present generation and generations to come in future as well as to a healthy ecosystem. Precautionary and preventive measures are the key steps in this field of ecological accountability. India, being signatory to the 18th Conference of the Parties (COP) at Doha in 2012, agreed to conclude a binding universal agreement to set timeline for the reduction of level of greenhouse gases (GHGs) emission that is required for prevention of global temperature from increasing more than 2^0 Celsius above the temperature before the industrial revolution. COP 21 in 2015 eventually brought this binding universal agreement with Paris Agreement that required signatory States to submit their nationally determined contribution (NDC) to reduce the emission of GHGs periodically at the interval of five years. India has submitted its NDC in 2015 and pledged to take steps to convert fossil-based energy sector into non-fossil renewable energy sectors by 2030.

The preamble of the Paris Agreement has recognized interconnection between climate change and human rights that is reproduced here under

> *"Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in*

vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity."

The court has further noted the significance of clean and healthy environment for the enjoyment of right to life guaranteed under article 21 of the Indian Constitution and duty of State not only to protect the environment bit also improve the environment taking necessary actions.[44]

The court recognized the geographically arid desert of Rajasthan and Gujarat as the most suitable spot for solar power generation that is free from cloud cover and precipitation necessary for uninterrupted solar power generation.

Followed by above observations and serious concern for the conservation of GIBs, the court left the issue of shifting overhead power transmission lines to underground lines with government agencies and experts. However, the court recorded several other reasons for the decline of GIBs population that includes hunting and poaching, loss of GIB's habitat due to conversion of grasslands and scrublands into agricultural fields, grazing of GIB's fodder by animals etc.

VII. Concluding Remarks

GIBs are peculiar indicators of biological diversity and ecological health of the region that they occupy. They are part and parcel of nature. Their conservation is essential for the conservation of environment and nature. Though the developmental programs pose threat to survival of GIBs, we can neither stop the development nor turn the clock back. The courts have limited space to oversee such technical issues and deliver certain concrete solutions to the problems like shifting overhead power transmission lines into underground power transmission lines and transforming energy generation from fossil fuels

[44] The court has already ruled in Virender Gaur v. State of Haryana, (1995) 2 SCC 577 that *"The State, in particular has duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment."*

to renewable sources such as solar panels and wind turbines. The court can suggest fixing bird diverter devises on the overhead power lines and wind turbines as well as strengthening community involvement programs only. However, the programs launched by the Central and State executives have been remarkably effective for the conservation of GIBs in the region. However, there are certain suggestions for the conservation and recovery of GIBs that are listed below:

- Habitat of the GIBs should be protected and improved by incentivizing local community members;
- Habitat of the GIBs should be protected from the predators by capturing and trans-locating predators from the habitat areas of the GIBs;
- Domestic animal grazing should be banned within the region declared for the habitat of GIBs;
- Use of pesticides in the agricultural fields should discouraged by awaking and incentivizing peasants nearby the habitat of GIBs;
- Incentivizing local farmers to use their lands in a manner that is bustard-friendly;
- Local community members should be encouraged and involved to collect eggs of GIBs outside the GIBs sanctuaries and return them to the captive incubation centers.
- Installation of bird diverting tools on the overhead power transmission line and wind turbines should be promoted and caliberized periodically and effectively.
- Captive GIBs breading and incubation should be advanced at the ex-situ centers established and managed by the government agencies or private centers that are controlled by the government agencies; and
- Installation of bird diverters on the overhead power transmission lines and wind turbines.

VIII. Prospects of Future Research and Development

Vulnerability to the GIBs is caused by numerous factors, overhead power transmission line and wind turbines are one of them. The WII and some NGOs are studying in this field; nonetheless there is dearth of literature and data on the conservation of GIBs. The ecological significance of GIBs and contemporary compelling demand for the development in various sectors including energy sectors offers research and development opportunities to find out a balancing approach to conserve the GIBs and promote safe and clean energy.

FROM DEPARTURE TO DISTRESS: UNRAVELLING THE CAUSES OF AIRLINE INSOLVENCY

Dr. Parineeta Goswami[*]

Abstract

One of the industries with the highest capital requirements is aviation, where costs are higher due to high taxation, aviation turbine fuel costs, and airport fees. The aviation sector, whose overall contribution to our GDP is $72 billion, is one of the worst hit by the current COVID-19 outbreak. Keep in mind that the previous two significant airline bankruptcies in India (Kingfisher and Jet) resulted in enormous losses for stakeholders, including creditors, unpaid employee salaries, etc. To prevent the interests of stakeholders from being adversely affected, it is crucial to pay extra attention when it comes to the rules governing airline insolvencies and the flaws associated with them, especially at this time. The goal of this article is to present a summary of the legislation of airline insolvencies while also examining the current Indian stance and the issues with it.

Keywords: *Aviation, Insolvency, Bankruptcy, Legislation and Stakeholders*.

I. Introduction

The Government of India established the Insolvency and Bankruptcy Code, 2016 (the Code), a novel piece of law, to speed up the process of winding up, liquidating, and resolving debt-ridden businesses. This legislation has been a significant advancement for the "Ease of Doing Business" mission. The Hon'ble National Company Law Tribunal, the Adjudicating Authority under the Code, is where creditors of the firm may apply in the occurrence of a default, according to the Code. The petitions under the Code may be submitted per

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Section 7 of the Code, Section 9 of the Code, or both by the Corporate Debtor and the Operational Creditors of the Company under Section 10 of the Code.

One of the key elements of the Code is Section 14, which calls for the establishment of a moratorium after the Adjudicating Authority accepts the aforementioned application against the Corporate Debtor. The moratorium is in effect from the time the Adjudicating Authority accepts the application until the end of the Corporate Insolvency Resolution Process (CIRP) or the passing of 180 days, whichever occurs first. No legal action can be taken against the Corporate Debtor during the moratorium for payment, the enforcement of security interests, the sale or transfer of assets, or the termination of crucial contracts. It's crucial to remember that the Adjudicating Authority will be required to order the corporate debtor's liquidation if a Resolution Plan is not submitted within the CIRP term.

The Indian Insolvency Laws also apply to the aviation industry. It should be highlighted that the Indian aviation industry ranks among the most capital-intensive industries, requiring large financial capital infusions with only limited returns for investors in the event of effective operation.

According to the available seat kilometres, the domestic aviation sector's capacity decreased by 73% year-on-year in the Financial year 2021. (ASKM). This will lead to a 60% year-on-year drop in domestic capacity in Financial Year 2021 when combined with the Ministry of Civil Aviation's (MoCA) limitations on capacity deployment to stop the spread of the COVID-19 virus, as well as various state-specific restrictions and quarantine requirements.

The price that fleet operators pay to lease aeroplanes is another crucial cost aspect for airline operators to be aware of at this point. The three main fleet lessors in India are Avolon, GE Capital Aviation, and BBAM, and over 80% of the total fleet used by airline operators is leased.

There were numerous bankruptcies of airlines in the United States of America between the 1980s and 1991. (US). The oldest aviation adage, "What goes up, must come down," was reported to have been definitively verified at the time by the American air carrier sector.[1] Around 1,10,000 passengers were left stranded abroad after Monarch Airlines of the United Kingdom (UK) went into administration on October 2, 2017, and over 3,000 bookings for future vacations were lost, affecting an additional 750k people.[2] Closer to home, Kingfisher Airlines ceased operations in 2012, and the Directorate General of Civil Aviation (DGCA) revoked its licences in 2013, accusing the promoters of multiple counts of wilful debt default. A political economy's influence on the law, according to proponents, facilitated the 2016 Code**.** Three years after the Code's adoption, another significant airline has declared bankruptcy. Jet Airlines (India) Limited (Jet Airways) stated on April 17 that it would suspend operations, and the company's CIRP got underway on June 20. As the first airline insolvency under the Code, this one is certain to raise particular problems related to insolvency in the aviation industry. To provide a broad perspective of the future, we examine some of these difficulties in this article, evaluate how such insolvencies are handled in other countries like the US and the UK, and analyse the situation in India.

II. Complications in the Aviation Sector

When compared to other industries, airline insolvencies present far more complexities. Some things are responsible for this.

First off, the aviation industry requires a lot of finance. Keeping the airline fleet grounded for an extended time during insolvency proceedings would result in

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[1] Sabino, A. (1992), "Flying the Unfriendly Skies: A Year of Reorganizing Airlines, Aircraft Lessors, and the Bankruptcy Code", J. Air L. & Com. 57, 841.

[2] Department of Transport, London, "Airline Insolvency Review, (March 2019)", Available at: https://assets.publishing.service.gov.uk/media/5cd1a8c940f0b6332070f283/airline-insolvency-review-report.pdf (last visited at 10:00 am on 6th April 2025)

significant losses and a decline in the value of the company's assets, which would ultimately have an impact on the creditors.

Passenger interests are the second element that adds to the complexity of airline insolvencies. Passengers must be safeguarded from losses in the event of an airline company's bankruptcy. Generally speaking, these losses fall into one of two categories:

i. financial loss resulting from paying for tickets, and
ii. welfare loss from being stuck abroad.

The UK government's Civil Aviation Authority was forced to personally handle a £60 million operation to repatriate nationals who were left stranded abroad when Monarch Airlines, the country's fifth-largest airline, went out of business at the expense of taxpayer money.

The third feature that sets airline bankruptcy apart from most other industries is the global mobility of capital assets. The aircraft and related equipment may be located in locations where the creditor's rights cannot be enforced at the time of default.

III. International Developments

1. US and Protection of Secured Creditors

The US Congress determined that increased protection for secured creditors and aircraft lessors was necessary due to the high cost of transportation equipment, as well as the relative financial fragility of the transportation sector. So, debtor airlines are required to make judgments on their most valuable asset. their aircraft, early on in the reorganisation process, per Section 1110 of the Federal Bankruptcy Code (US Code). Furthermore, included in this section are

aircraft engines, propellers, appliances, and spare components.[3] It provides that a secured party holding a security interest in the equipment including aircraft or a lessor or conditional vendor of such equipment, shall have the right to take possession of the equipment pursuant to a security agreement, lease, or conditional sale contract. And to exercise and enforce any other rights or remedies available under such instruments, including the right to sell, lease, retain, or otherwise dispose of the equipment..[4] The fulfilment of all obligations by the airline company under the security agreement, lease, or conditional sale contract within 60 days after the order for relief under the US Code constitutes an exception to such exercise of rights by the secured creditor.

2. UK and Treatment of Consumers

The UK established an Airline Insolvency Review following the Monarch airline scandal to evaluate consumer protection in the event of an airline or travel firm insolvency. As was said above, consumers who have pre-purchased airline tickets suffer losses as a result of an airline's bankruptcy. The review's final report includes suggestions that include the following, among others:

- the creation of a statutory repatriation protection programme to shield any traveller with a ticket for a return flight who left from the UK and whose airline has financial trouble while they are already abroad;
- improving the availability of rescue fares and making it easier for passengers to use them;
- the implementation of a more comprehensive regulatory toolkit that would, among other things, include:
    - Yearly certification to certify the company's financial soundness;

[3] 11 U.S.C. § 1110(a)(3) (2022).
[4] 11 U.S.C. § 1110(a)(1) (2022).

- creation of repatriation plans and availability of data as necessary;
- a UK airline's board must inform the Civil Aviation Authority of any materially detrimental change to its financial status;
- has the power to issue a temporary special purpose licence to a carrier to allow it to carry out a repatriation operation even if the carrier has no future.

- Enhancement of current refund protection through increased consumer awareness and use, reduction of pointless duplication of protection, and facilitation of quick and simple claim submission for passengers.

India may take inspiration from the Review's views when handling consumer disputes, even though the recommendations have not yet been enacted into legislation.

On July 1st, 2008, India adopted the Convention on International Interests in Mobile Equipment and the Protocol on Issues Particular to Aviation Equipment. On October 8th, 2018, a draft of the Cape Town Convention Act and these were posted on the website of the Ministry of Civil Aviation, seeking public comments.

The legislative aim behind the draft bill's proposal is described in the explanatory notes. It indicates that achieving effective financing of diverse equipment, such as engines, helicopters, and aeroplanes, is one of the goals of introducing the measure. This remark shows that the objective of ratifying the convention and putting up the draft legislation is to lower the entire cost of airline financing. It also encompasses the reduction in the cost of leasing aircraft and other related equipment, such as engines and helicopters.

The enormous amount of leases that must be paid to the lessors is one of the main problems the Indian aviation industry is dealing with. This expense is connected to the risk that lessors take on when renting out equipment to airline operators. The Insolvency and Bankruptcy Law, 2016, prohibits lessors of any property from reclaiming such property while it is in the corporate debtor's ownership or use during the CIRP. The ability of the lessors to de-register the aircraft and equipment from the operators' possession has been severely hampered by the Insolvency and Bankruptcy Code Rules, which have resulted in a high rate of equipment depreciation.

The Cape Town Bill seeks to mitigate the adverse effects of the Insolvency & Bankruptcy Code (IBC) on aviation stakeholders. As an interim relief mechanism, it introduces essential default remedies such as deregistration and the export of aircraft to lessors—even during the moratorium period. Consequently, the Bill reduces the financial risks faced by aircraft lessors and financiers, leading to a decrease in leasing costs. These cost benefits are expected to be passed on to passengers and end-users within the aviation industry.

For the effective implementation of the Bill, corresponding amendments to existing domestic laws impacting the aviation sector such as the Code of Civil Procedure, 1908, the Companies Act, 2013, and the Code will be necessary. Notably, the Cape Town Bill accords primacy to its provisions over conflicting domestic legislation governing aviation operations. This is particularly important, as Section 14 of the IBC, which imposes a moratorium on asset recovery, may otherwise impede the realization of the Bill’s objectives.

As an alternative, the Resolution Professional shall, during the CIRP of a Corporate Debtor, either cure all defaults of the Corporate Debtor under the Agreement before the commencement of the CIRP or return the aircraft to the

lessor within 60 days of the commencement of the CIRP, or on any date on which the Lessor becomes liable to such possession of the aircraft or the aircraft object under the Agreement, whichever is earlier. It is important to note that if the corporate debtor's failures, excluding those caused by the initiation of bankruptcy proceedings, have been paid off within 60 days of the start of the proceedings and the corporate debtor has agreed to faithfully If all potential future commitments are fulfilled, a second waiting time won't be necessary for the event that any of those future duties are not fulfilled as agreed.

Owners and lessors of the fleet that is leased to Indian airline operators are relieved by the Cape Town Bill. Due to the high cost of the equipment and aircraft employed by the sector, the lessees must make the best use possible of these assets. With the adoption of the Code, it is now very hard for the lessors or the owners to reclaim control of such equipment due to the moratorium in place under Section 14 of the Code once an application under Sections 7, 9 or 10 was admitted by the Adjudicating Authority. Due to the lessees' or insolvency professionals' inability to maintain the equipment and guarantee optimal use of the assets, there is a high depreciation of that expensive equipment. After the Cape Town Bill is put into effect by the GOI, it will make sure that lessors have the option of either receiving the money owed to them by the Corporate Debtors within 60 days of the CIRP's start date or legally deregistering any leased equipment and taking custody of it. The measure will have the power to supersede existing laws, meaning its provisions will take precedence over those of the Code. It will ensure that the bill is implemented effectively after being introduced by eliminating the impact of the moratorium period on the airline equipment that the Corporate Debtor has leased.

The Protocol on Issues Particular to Aviation Equipment (PAEP) and the Convention on International Interests in Mobile Equipment (CT Convention) were both finalised in Cape Town on November 16, 2001. (Protocol).[5]

were both finalised in Cape Town on November 16, 2001. (Protocol).[5] The Convention and the Protocol's main objective is to tackle the issue of securing specific and contested rights to high-value aviation assets, which by their very nature have no fixed location, such as airframes, aircraft engines, and helicopters. The absence of a permanent location for such mobile assets results in a lack of predictability for financiers and lessors in enforcing their proprietary and contractual rights. The enforcement of rights by such financiers/lessors may depend on some factors, including:

- Location where the asset is located;
- Where the insolvency proceedings are conducted; and
- Level of coordination of proceedings is there between the above two points, if they are not being conducted in the same place?

This lack of predictability stems from the divergence in legal frameworks regulating leases and security interests in various jurisdictions worldwide. These uncertainties make it difficult to finance these aircraft assets and raise the cost of borrowing. When read in conjunction with its Protocol, the Cape Town Convention confers upon creditors specific rights of relief. These include:

- Taking possession or control of any charged property;
- Selling or granting a lease of such property;
- Collecting or receiving any income or profits derived from the management or use of the property;

[5] Convention on International Interests in Mobile Equipment, Nov. 16, 2001, 2307 U.N.T.S. 285, Available at; https://www.unidroit.org/instruments/security-interests/cape-town-convention, (Last Visited at 11:00 am on 9th April 2025)

- Obtaining the de-registration of an aircraft, where the debtor has consented to such de-registration under the conditions specified in the Convention; and
- Securing the export and physical removal of the property, subject to the debtor's prior agreement and the circumstances outlined in the Convention.

The Cape Town Convention has parties from 65 nations and has passed legislation adopting its contents. India is a signatory to the Cape Town Convention as well, but its domestic law has not yet incorporated any of its provisions.

IV. The Indian Law

Under the IBC, the insolvency resolution process for airlines is the same as that for other entities. It generally comprises four key stages: first initiation of the Corporate Insolvency Resolution Process (CIRP) upon the occurrence of a default; appointment of an Interim Resolution Professional and imposition of a moratorium on all recovery actions; submission and evaluation of resolution plans by prospective resolution applicants; and approval of the final resolution plan by the Adjudicating Authority or, failing that, commencement of liquidation proceedings. However, as will be covered in more detail in the following sections, there are several drawbacks to IBC resolution when it comes to airline insolvencies.

The Cape Town Convention, 2001 (also known as the Convention on International Interests in Movable Equipment) and the Protocol on Issues Particular to Aircraft Equipment are crucial instruments within the international aviation framework for facilitating aircraft financing and leasing in this regard. It also includes clauses addressing airline bankruptcy. The Civil Aviation Ministry has introduced the "Cape Town Convention Bill, 2018, to fulfil the

treaty requirements and take advantage of the benefits post-admission to the treaty". India is a signatory to this convention and protocol. The law has not yet been passed by the Parliament, nevertheless.

Following a notification from the Ministry of Civil Aviation, India has said that it will adopt Article XI, Option A of the Protocol in 2018. Article XI of the Protocol deals with "Remedies on Bankruptcy," and according to Option A to Article XI, if the defaults are not resolved after the 60-day waiting period, the debtor shall give the creditor who has an international interest in the relevant aviation object back control of it.

India's aviation sector significantly contributes to the country's economy (GDP)**.** It currently makes up about 72 billion USD of the GDP.[6] According to a 20-year forecast by the International Air Transport Association (IATA)**,** India's aviation industry will develop faster than that of the UK and will have 278 million passengers in 2026, making it the third largest in the world. IATA has additionally forecast that by 2035, the Indian aviation sector will need to accommodate 442 million passengers.[7] When we consider that India has already experienced a 14.1% increase in passenger traffic during the past five years, these predictions seem plausible.[8] Additionally, the central government has unveiled the Regional Connectivity Scheme (RCS) - UDAN (Ude Desh ka Aam Nagrik), which aims to link up 31 currently unserved airports with 27 currently served airports, 12 underserved airports, and 27 currently served airports while also capping airfare at Rs. 2500 for roughly an hour of flight. 28

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[6] Invest India, Civil Aviation Sector, *Invest India* (last updated 2nd January, 2026), Available at: https://www.investindia.gov.in/sector/civil-aviation (last visited at 12:00 pm on 11th April 2025)

[7] International Air Transport Association, "Realizing India's Aviation Potential (October 21, 2016)- Press Release No.: 63."

[8] Economic Diplomacy and States Division, "Ministry of External Affairs, India Surging Ahead, (August 2019)" Available at: https://ibbi.gov.in/uploads/whatsnew/2019-10-11-191223-exc18-2456194a119394217a926e595b537437.pdf (Last Visited at 12:10 pm on 14th April, 2025)

airports have already started operating flights under the programme. Despite the foregoing, India is one of the most expensive countries in the world to operate a fleet of aeroplanes due to higher taxes, airport fees, and aviation turbine fuel costs.[9] The increased competition from low-cost airlines has been added to the mix, further reducing the margins for full-service carriers. In addition to increasing demand for air travel, low-cost airlines have also forced full-service carriers to offer competitive rates while incurring large expenses. Kingfisher Airlines and Jet Airways were determined to be the airlines most likely to go bankrupt in recent years, according to research by Kolte et al. (2017) using the Altman Z Score Model to forecast airline insolvencies in India. The Code was created to be a general rule that applies to all businesses (except for financial service providers) on an all-inclusive basis, much like other important commercial laws like the Companies Act of 2013, the Indian Contract Act of 1872, or the Sale of Goods Act of 1930. Yet, the adaptability and flexibility of the CIRP are being put to the test as businesses from all industries go through the insolvency process. Achieving the rigorous deadlines imposed by the Code, maintaining an airline business as a going concern during the CIRP, or handling the plethora of lessor claims resulting from such insolvencies have all raised new legal issues that the Code must address.

V. Shortcomings of IBC for Airline Insolvencies

Many factors, including the nature of operations, the complexity of financing aircraft, and asset protection, make it challenging to handle insolvencies in the aviation industry. We talk about a few of these concerns in this section.

1. Aircraft Financing

[9] Kingfisher – "King of Good Times Forced to Leave the Sky Castle, MarketLine (2014)."
[10] Kolte et al. (2017). "Predicting Financial Distress of Firms. A Study on Bankruptcy of Kingfisher Airlines, 10th Annual Conference of the EuroMed Academy of Business, EuroMed Press."

An aviation company's main assets are its aeroplanes. Owning an aeroplane, though, is frequently not an option for many businesses. As a result, airlines enter into quite intricate financing agreements with both financial institutions and the actual aircraft manufacturers.[11] Being on the short end of the transaction, airline firms frequently offer substantial collateral to financiers in such agreements, increasing the burden on their already-limited assets. Aircraft can also be purchased through leasing. These leases could either be operational leases or finance leases. Depending on the conditions of the lease agreement, the title to the aircraft may or may not transfer to the airline business upon engaging in a financial lease. As a result, it is possible that in the event of default, the lessor would exercise its proprietary interest in the aircraft and seize ownership of it, further reducing the airline's available assets. There is also the difficulty of classifying claims made under such leases as financial and operational debt and confirming claims, which may include expedited rent payments when the company is undergoing CIRP. Also, there is a lack of understanding of how to handle charges, expenses, and potential losses when dealing with such claims. All claim amounts are admitted as of the insolvency commencement date of the CIRP. This might, however, conflict with the lessors' contractual rights, and it is still unclear whether the Code will take precedence over such rights.

2. Legal Requirements for Running the Company as a Going Concern

The aviation sector demands a specialised collection of abilities, education, and information. As a result, permits, guidelines, and other necessities for operating an airline as a going concern have been developed. For instance, an airline must get an Air Operator Certificate following Schedule XI of the Aircraft

[11] Ripple, G. (2002). "Special Protection in the Airline Industry] The Historical Development of Section 1110 of the Bankruptcy Code, 78. Notre Dame Law Review. 281."

Regulations, as per the Aircraft Rules, 1937 (Aircraft Rules). When the aircraft stops flying, the DGCA may, at its discretion, revoke this certificate. Without such a certificate, the airline is unable to operate. The airline must appoint Responsible Management to remain qualified to have a certificate of this kind. The airline's airline is completely under the control of the Accountable Manager. Due to her power during CIRP, the Resolution Professional assumes the role of Responsible Manager and is responsible for all associated risks and obligations as set forth by the DGCA. Also, the Responsible Manager must have a team of qualified, skilled, and skilled employees who must be hired during CIRP if they stop working there at the start of CIRP. To fulfil its responsibility of managing the Company as a going concern, it is essential for the Adjudicating Authority to have access to a group of qualified specialists and to ensure compliance with all relevant laws and regulations. Quite frequently, the Resolution Professional or the organisation she works for may lack internal experience in this field. At this point, the Resolution Professional must be able to persuade top management of the airline company to remain in the entity's employ to maintain regulatory compliance.

3. Assets Preservation

The aircraft, airport slots, and traffic rights that an airline has are its most important assets. Each of these assets has some issues that need to be resolved to maintain their worth. For instance, for an aeroplane to fly, it must first be registered with the central government. The issue of deregistration during the CIRP is the main worry with regard to such aircraft. According to Rule 30(7) of the Aircraft Rules, if an application is received from the holder of an Irrevocable Deregistration and Export Request Authorization, the registration of the aircraft may be cancelled within five working days without requesting permission or any other documentation from the operator of the aircraft or any

other person (IDERA)'**.** The courts must make a firm determination about whether the execution of such an IDERA would be subject to the moratorium under the Code's ban. Slots and traffic rights are assigned to an airline business following a specified method and are not the airline firm's sole property when it comes to the other assets of the airline. There is a chance that these slots and traffic rights will be given to thriving, competitive airlines once the airline stops operating. The existing civil aviation regulations do not outline a fair procedure for the return of those rights to the reorganised airline. The Resolution Professional must therefore start up conversations for the ad hoc preservation of such slots and traffic rights with the DGCA, the Ministry of Civil Aviation, and airport authorities. The Ministry of Civil Aviation and DGCA are more inclined to think about protecting these airline company assets if a workable business strategy is possible for the airline firm. However, the lack of these assets during the CIRP and the associated ambiguity may deter prospective applicants from resolution and could negatively impact the aviation company's resolution. Because the feasibility of asset preservation depends on the asset's initial preservation, the situation is cyclical.

4. Treatment of Claims

Consumer claims make up a sizable component of the claims made against an insolvent airline firm, in addition to those based on debts owed to financiers and lessors. Consumers suffer two types of losses if the airline industry goes bankrupt: (a) money loss (since they paid for tickets that are now worthless); and (b) personal welfare losses if they are left stranded abroad (this could be on account of delay and disruption, discomfort, anxiety and stress, and in some cases even health and employment problems). A consumer's circumstances may lead to more loss. To verify and review claims made when filing claims, one needs to consider where the ticket was purchased. A customer can buy an

airline ticket in one of two ways: either directly from the airline at one of its physical counters, online, or via a mobile application. The other option is to use a travel agency. Customers who bought tickets directly from an airline may have a claim against the bankrupt airline corporation. Yet if the customer bought a ticket via a travel agency, they might ask for a refund and damages against the agency (subject to the cancellation policy of the travel agency).

In this situation, the travel agency will submit a claim to the airline company on behalf of the consumer for the amount claimed. In addition to the aforementioned options, Indian travel agents can ask the IATA for a refund. Depending on the national bankruptcy laws and the characteristics of the airline's membership with IATA, the BSP (Billing and Settlement Plan)', an IATA settlement service between airlines and travel agents, may permit IATA to reimburse travel agents for funds submitted to the airline.[12]

The airline company can then be the target of a claim from IATA. If the customer used a credit card to buy the ticket, the credit card company is another organisation from whom she might request a refund or reimbursement. A claim could then be made with the airline company by the credit card company. Given the vast number of such claims and the potential for claims for the same transaction to be duplicated, determining the scope, type of debt, and quantity of such claims may prove to be a difficult task for the Resolution Professional under the Code.

5. Cross-Border Implications

[12] Airline Bankruptcy and Passenger Protection (2018). "International Air Transport Association" Available at: https://www.iata.org/contentassets/2e46aace261040b9a47fb7b9da18efc9/airline-bankruptcy-position-paper.pdf (Last Visited at 12:30 pm on 18th April 2025)

A circumstance where the company's assets may be located in more than one jurisdiction results from the very nature of an airline company's activity. Insolvency proceedings may be started in multiple jurisdictions in such circumstances. This is the case with Jet Airways' bankruptcy. It is simpler to predict how such situations will be handled if the jurisdictions concerned have a legislative framework for handling cross-border insolvency. Yet, this will depend on how these jurisdictions interact with one another. The processes heavily rely on the voluntary cooperation of the Resolution Professionals, administrators, and judicial fora of such jurisdictions where a legal framework for cross-border insolvency is not itself present in either of the jurisdictions. When an airline's aircraft is located in either jurisdiction, things become even more problematic. In this scenario, not only are the company's operations negatively impacted, but there is also a chance that the creditors of the country where the aircraft is grounded will receive payments from the proceeds of a sale or auction held in that country, while the insolvent's estate relative to the other creditors will decline.

6. Sensitive Timelines

Aircraft lose value extremely quickly if they are not consistently flown and maintained. Additionally, pilots are in high demand as professional workers with specialised technical expertise, and delays in resolution may lead to these pilots being hired by rival airlines. From the standpoint of possible resolution applicants, both of these aspects of running an airline are likely to harm the company's worth. Hence, all stakeholders must prioritise protecting these two crucial components of operating an aviation business. In addition to the aforementioned jobs, statistics indicate that the aviation industry supports 8 million jobs. The preservation of these workers' interests during CIRP should likewise be given top priority. If we take Jet Airways as an example, the

company's bankruptcy harms 20000 of its employees. This is a matter of national importance, according to the National Company Law Tribunal (NCLT).[13] Given the foregoing, a decision to settle or liquidate an airline must be made quickly. Some jurisdictions have created or are in the process of creating legal provisions aimed specifically at addressing insolvencies in the airline industry in response to the distinctive problems highlighted above. We examine some of these jurisdictions' legal systems and practices in the next section.[14]

VI. Jet Airways Case

By elevating creditors and their interests, the IBC has changed the bankruptcy resolution process and sped up the CIRP in India. However, the IBC has weaknesses in handling bankruptcy processes when it comes to particular industries, such as the aviation industry, as was shown during Jet Airways' insolvency in 2019.

Since airline assets are highly capital-intensive, grounding them for extended periods results in substantial financial losses, significant maintenance costs, and deterioration in asset value. In this context, insolvency proceedings under the IBC pose distinctive challenges. The CIRP is limited to 180 days, extendable by an additional 90 days, during which a moratorium is imposed under Section 14(d) of the Code. During this period, aircraft owners, lessors, and other creditors are prohibited from enforcing their security interests, thereby creating uncertainty regarding leased aviation assets.

Although Section 20 of the IBC requires the Interim Resolution Professional to "protect and preserve the value of the corporate debtor's property and manage

[13] *State Bank of India v. Jet Airways (India)Limited,* C. P. 2205 (IB)/MB/2019.

[14] "This section only covers legal provisions/recommendations for legal provisions to be made specifically in the context of airline insolvencies. All other provisions of the existing insolvency and bankruptcy laws, which are not specific to the airline industry, have not been described."

the operations as a going concern," practical implementation has proven difficult. The case of *Jet Airways (India) Ltd.* illustrates this challenge, as all of its aircraft remained grounded for over a year due to severe liquidity constraints, resulting in significant asset depreciation.

In contrast, the Cape Town Convention and its Protocol provide a more creditor-friendly framework. Under Article XI, a waiting period of two calendar months is prescribed, after which the security holder may repossess the asset. This shorter timeframe reduces potential losses for creditors, particularly those with interests in high-value capital assets such as aircraft.

Most aircraft used by airlines are procured through capital or financial leases, given the substantial cost of aviation equipment. Such arrangements often involve complex financial structures, including special purpose entities, aircraft manufacturers, and financial institutions. Typically, these agreements allow lessors to repossess the aircraft upon default in payment. While these arrangements are recognized under Article XI of the Cape Town Convention, enforcement in India becomes problematic due to the 180-day moratorium under the IBC, which effectively delays asset recovery and exposes lessors to financial risk.

Another significant challenge in the insolvency of airlines in India relates to cross-border bankruptcy resolution. As previously noted, most operating aircraft are obtained through cross-border financial leases that extend beyond a single jurisdiction. Sections 234 and 235 of the IBC were incorporated to facilitate cooperation with foreign courts and authorities in such cases. However, despite their inclusion, the absence of operational bilateral or multilateral agreements has hindered their implementation. Consequently, India continues to lack an effective mechanism for resolving cross-border

airline insolvencies, leaving foreign lessors and financiers without adequate recourse.

In *Jet Airlines v. SBI* (Jet Airways bankruptcy case), the National Company Law Tribunal (NCLAT) permitted parallel insolvency processes to take place in India and the Netherlands, and the Dutch administrator was permitted to attend Committee of Creditor meetings for Jet Airways. When the parties were able to agree, the National Company Law Appellate Tribunal allowed a cross-border insolvency protocol and ordered the Interim Resolution Professional to work with the Dutch creditors and the Committee of Creditors. There are still many unsolved problems regarding cross-border bankruptcy remedies, even though this case serves as a model. For example, what would happen if the Committee of Creditors is unable to reach an agreement with the foreign creditors? The ambiguities and delays in the resolution process brought on by improper cross-border interest clauses are detrimental to the interests of the creditors. Taking into account the fact that the current frameworks of various governments were insufficient to sustain secured asset-based financing, which further attracts global participation, the Cape Town Convention and Protocol were put into effect in 2001. Hence, the federal government might address this problem by implementing this measure.

VII. Concluding Remarks

The recent COVID-19 lockdown and restrictions harmed some industries, many of which are on the verge of collapse. Airlines particularly suffered greatly from the pandemic's consequences because of the numerous countries that implemented travel restrictions and the decline in passenger volume. As a result, approximately 23 significant airline businesses have already filed for bankruptcy, and the financial stability of many more enterprises is dubious. Reviewing the present insolvency rules in this industry and its related issues is

crucial in such a situation. Due to the high expenses associated with purchasing gasoline, for example, the airline sector in India is particularly unstable. Using IBC in aviation insolvency settlements has numerous issues, as was previously highlighted. In such a case, it is crucial for India to either update the IBC or look to other successful jurisdictions for inspiration, such as the UK, which recently attempted to change its aviation insolvency rules in the wake of the Monarch fiasco and the current Thomas Cook insolvency. As was mentioned, putting into practice the Cape Town Convention and Protocol would also address many of the problems with IBC.

To align the Aircraft Rules, 1937, with the provisions of the Cape Town Convention and its Protocol, the Ministry of Civil Aviation undertook necessary amendments to the regulatory framework governing civil aviation in India. These modifications were intended to facilitate the deregistration and export of aircraft in accordance with the requirements of the Cape Town Convention and its associated Protocols.[15] The Ministry of Civil Aviation has also suggested passing the Cape Town Convention Bill due to various inconsistencies between current laws and the Cape Town Convention and Protocol. Despite being proposed in 2018, the Bill has not yet been enacted. The Code's sector independence, as was already said, presents a unique set of difficulties. Every day that passes in the CIRP of Jet Airlines is likely to bring up new concerns regarding insolvencies in this industry, and it is necessary to come up with particular solutions to some of these concerns. To determine whether this industry needs a specific insolvency-related legislative framework like the US or as contemplated in the UK for dealing with the issues specific to

[15] Draft Cape Town Convention Bill, 2018, Press Release, Ministry of Civil Aviation, Government of India, Oct. 8, 2018, Available at: https://prsindia.org/files/bills_acts/bills_parliament/2019/Press%20Release-%20Draft%20Cape%20Town%20Convention%20Bill%2C%202018.pdf (Last Visited at 10:00 am on 22nd April 2025)

the aviation sector, policymakers and lawmakers may find it helpful to consult with stakeholders and the resolution professional dealing with the insolvency of an airline. What is crucial, though, is the requirement to recognise the distinctiveness of this industry. The Code contains a non-obstante clause that makes it clear that, in the event of a dispute with another law, the Code will take precedence. Yet, it's possible that the aviation industry needs to go beyond the non-obstante clause and that changes to civil aviation rules and regulations are necessary to ensure that an aircraft can fly without interference. The airline can continue trading as a going concern even during insolvency proceedings. Hence, it is implied that the aviation business is not the same as other industries that are capable of being placed under the IBC when evaluating the nature and style of operations of the sector. It is also clear from the fact that the Cape Town Convention Bill, 2018, was also introduced by the Indian Ministry of Civil Aviation to apply the Cape Town Convention and Aircraft Protocol in India. In addition, Indian courts have used the Cape Town Convention and Protocol. Because aviation sector assets require a lot of capital, keeping them idle for a lengthy time during insolvency procedures under the IBC would result in financial loss and significant maintenance costs. As a result, it is evident that the insolvency processes of an airline firm should not be included in the IBC's purview and that there should be a separate legal framework to address insolvency in the aviation industry.

ANALYZING THE IMPACT OF CLIMATE INDUCED INTERNAL DISPLACEMENT ON THE MARGINALIZED SECTOR: A SOCIO LEGAL STUDY

Bidit Mukherjee[*] and Souvik Roy[**]

Abstract

India has been a witness to the aftermath of partition in 1947 after independence. Several people migrated to Pakistan and vice versa. The idea of this paper is not to specifically target cross border migration, but to highlight the people internally migrating after getting displaced from their place of habitat, due to natural disasters or climate change. There is a huge void in the comprehensive policy framework to aid the internally displaced people. They are not given due recognition legally after getting displaced as there is lack of legal policies binding on them within the framework. The stakeholders have had a negative approach when it came to addressing this issue globally as an emergency arose for the displaced people to be relocated and provide a permanent solution to their issues and provide for legal protection as displacement from their place of habitat violates their basic human rights. The basic human rights of the climate affected people have been violated as they face one of the worst possible outcomes, i.e. displacement, which grossly affects their source of livelihood and existence. The stakeholders to this entire issue have failed to curate a proper responsive measure as the existing legislations fail to deter the issues of disaster based internal displacement spurred by the slow onset of climate change, Hence the researcher intends to study the human rights violation of internally displaced people enhanced by natural disasters and analyze the possibility of drafting a legal protective mechanism for their security.

Keywords: *IDP, migration, climate change, natural disasters*

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I. Introduction

In the last ten years the quality of environment across the global arena has deteriorated significantly due to the impacts of climate change, the sudden shifts in temperature and alterations in the pattern of weather reflect on the atmosphere as there has been a sharp spike in the rate of floods, cyclones, and volcanoes which in turn threatens the existence of mankind. The marginalized sector of society, especially the scheduled tribes and the other backward classes face existential crisis due to exposure to frequent natural calamities and thereby they face the fate of internal displacement and their basic right to livelihood takes a hit. One of the most trusted sources for reporting statistical data is the Internal Displacement Monitoring Centre (IDMC), the IDMC states that India is quite familiar with the issues of internal displacement which is primarily triggered due to natural disasters. The Bhopal Gas tragedy in 1986 was one of the significant events which resulted in widespread displacement though it was not induced by any kind of natural calamities, yet there is no coherent legal policy framework to address the issues of the displaced sector. Displacement is impacted by the effects of climate change. There has been a rise in the average temperature globally by 0.74 centigrade which indicates that there is a fast-warming trend in the history of the earth. The northern part of India has been majorly affected due to the melting of glacial snow in the Himalayas which has resulted in increasing floods and landslides. Approximately around 2.5 million have been displaced in the year 2022, social vulnerabilities re exacerbated because of human mobilities in the light of climate related disasters. mobility is being framed to act as a response to disasters which are somewhere masking the underlying systemic issues which analyze the interdependence of climate change, disasters and internal displacement. The concept of internal displacement was given birth by the term of involuntary displacement.

There are primarily five types of displacement in the context of society, i.e. displacement due to natural calamities, displacement due to political, racial, and social upheavals. development based displacement, and displacement due to social inequalities and displacement based due to physical and psychic factors. Internal displacement induced by disasters is a global phenomenon and it has crippled the economic stability of third world countries and also developing countries like India, which in turn threatens the economic livelihood of a single individual who has faced displacement, it is the downtrodden and the people belonging from below the poverty line who are widely affected due to the after effects of a major spree of displacement.

Every year natural calamities displace millions of people and one of the primary hotspots is the Asia Pacific as it records the greatest number of natural catastrophes, the expanding population is a matter of concern as financial insecurities and poverty add to the woes of displacement within the nation. The major issue is the lack of resources to create a responsive force against natural disasters; the coastal settlements and the farms lack enough financial resources and hence the poor and the downtrodden faces risk of displacement due to poor signaling and warnings given. The urban areas which are densely populated are more vulnerable to outcomes of climate change as rapid urbanization is converting metropolitan cities into a concrete jungle, deforestation leads to major environmental issues which enhances the vulnerability of urban population. In areas which face significant environmental damage there have been cases of water logging and land clearing for agriculture which reduces the effectiveness of natural defenses, increasing the chances of landslides and

thereby triggering the chances of internal displacement. [1]. There is an absence of legal recognition of IDP's and is not enforceable by law, the onus of implementing and curating a separate legislation along with the "Environmental Protection Act" lies exclusively upon the national governments. The IDP's have been denied several rights are devoid of basic facilities and relief and rehabilitation by the stakeholders, and are merely restricted to a definitive term on paper.[2] There is a dearth of coherent legal policy and framework to provide them with basic protective measures, which would uphold their rights of rehabilitation and get access to all the basic amenities without facing any discrimination by violating their human rights.

II. Who Are Internally Displaced People?

The ICJ advisory opinion on climate change quoted that "Climate change poses severe risks of displacement, both within national borders and across them, threatening the enjoyment of fundamental human rights.[3]" As per the UN Human Rights Council Report Climate change is fast becoming the leading cause of internal displacement, yet internally displaced persons remain among the least protected populations, internal displacement caused by environmental degradation should be treated as a human rights issue, not merely an environmental or developmental problem. [4] The onslaught of climate change not only compelled people to migrate to different countries or states, but there was an added category of Internally Displaced Persons as well, Francis Deng defined IDP's as The impact of armed conflicts, situations of widespread

[1] Nafees Ahmad, 'Internally Displaced Persons and International Refugee Law: Protection Gaps, Challenges and Implementation in Practice' available at: https://ssrn.com/abstract=3087777 (last visited at 21:00 pm on May 22, 2025).
[2] *Ibid.*
[3] Advisory Opinion on Obligations of States in Respect of Climate Change, Advisory Opinion, 378, Int'l Ct. Justice (July 19, 2025).
[4] U.N. Human Rights Council, Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons, Cecilia Jimenez-Damary, U.N. Doc. A/HRC/50/43 (May, 2022).

violence, human rights violations, natural or manmade disasters which compels people to leave their shelters, and who has not migrated across the border are identified as internally displaced persons (IDPs). [5]

In across 148 countries around 32.6 million people were displaced internally by natural calamities in 2022, the number reaching the highest in ten years. Within the year 2012 - 2021 around 23.1 million people were displaced on a yearly average basis, with an increase of around 40%. The displacements accorded for around 98%, resulting due to weather related calamities with the highest number of displacements occurring in Asia. Around 8.7 nations at the end of 2022 were displaced by disasters, with the number ranging from 5.9 million at the end of 2021. Climate-related disasters led to displacement on a wide scale as families were separated, networks were lost and society became more susceptible to violence, these instances were on the rise due to the impact of climate change. The requirements of IDP's and refugees are same, as they are not recognized under International Law and receive no protection. There are numerous treaties with respect to refugee law, but there is an absence of a clear law that applies specifically to IDP's and due to a dearth of research by social scientists there is no availaible legislative protection to Internally Displaced People. [6]

III. Analyzing Disaster Induced Displacement

The United Nations Independent Human Rights Expert Ian Fry stated "The effects of climate change are becoming more severe, and the number of people

[5] U.N. Comm'n on Hum. Rts., Guiding Principles on Internal Displacement, annexed to the Report of the Representative of the Secretary-General, Mr. Francis M. Deng, Submitted Pursuant to Commission Resolution 1997/39, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb., 1998).
[6] Internal Displacement Monitoring Centre (IDMC), Global Report on Internal Displacement 2023 (May 2023) available at: https://www.internal-displacement.org/global-report/grid2023/ (last visited at 12:00 pm on May 23, 2025).

displaced across international borders is rapidly increasing.[7]" The then Chief Justice of the Supreme Court Justice D.Y. Chandrachud stressed on the need and importance of a clean environment and free from the effects of climate change, he quoted "Without a clean environment which is stable and unimpacted by the vagaries of climate change, the right to life is not fully realized. The destruction of their lands and forests or their displacement from their homes may result in a permanent loss of their unique culture."[8]A sudden calamity which brings loss and destruction, loss of life and damage to property can be stated to be a "disaster. The intensity of damage caused depends upon the nature, geographical location and the socio-economic status of the potential victims. The onslaught of climate change has resulted in global warming and disasters becoming more fatal and unpredictable.

Families living beside riverbanks, coastal areas, nearby mountain cliffs and in dense forests are often disassociated with their families and break apart the community support system, resulting in the creation of more marginalized section in society. Social crimes like domestic violence, human trafficking and exploitation takes a spike and it forces children to drop out of their school, thereby a series of events follow after a disaster disrupts everyday life resulting in a series of impacts ranging from biophysical to economic, the result of disaster induced displacement is multi-dimensional since it leads to increment in domestic violence, human trafficking and exploitation which eventually

[7] Ian Fry (Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change), U.N. Expert Warns Climate Change Displacement on the Rise, Calls for Greater Protection for Affected Persons (June 28, 2023) available at: https://news.un.org/en/story/2023/06/1138147 (last visited at 12:30 pm on May 24,2025).
[8] Supreme Court of India, M.K. Ranjitsinh v. Union of India, Writ Petition (Civil) No. 838 of 2019, ¶ 67 (Apr. 6, 2024), quoted in Hindustan Times (Apr. 6, 2024) available at: https://www.hindustantimes.com/india-news/climate-crisis-impacts-citizens-right-to-life-sc-101712515361460.html (last visited at 10:00 am on May 24, 2025).

leads to drop outs from school, especially for young female children. Natural calamities disrupt regular life of people in vulnerable disaster-prone areas which have multiplicity of consequences on material, financial and environmental objects, including loss of human lives, cattle and other resources.[9]

An entire community is victim of the extreme circumstances of climate change and other natural calamities. An involuntary planned relocation process results in displacement of disasters and can challenge the resilient nature of the society. Any kind of displacement occurring within the same country is stated as Internal Displacement and across the country lines is known as cross border migration.[10] Himachal Pradesh experienced one of the most devastating years in the year 2023, as extreme weather events created havoc across the state, monsoon rains triggered flash floods, cloud bursts and widespread landslides.

There were lot of fatalities and injuries, around 400 people lost their lives, and many other people were injured, disasters caused significant damage to the livestock and housing infrastructure resulting in homelessness and to add more to this around 10,000 individuals got displaced from their homes requiring assistance for rehabilitation and reintegration into their families. Out of the entire state the most affected states were Kullu, Mandi, Shimla, Sirmaur, Solan, Chamba which bore the brunt of continuous rains and geological instability. The pattern of disaster displacements occurred through various forms, one being involuntary planned relocation where there were organized movement of people from unsafe areas. evacuation in terms of coercive displacement due to

[9] Eric Neumayer and Thomas Plümper, 'The Gendered Nature of Natural Disasters: The Impact of Catastrophic Events on the Gender Gap in Life Expectancy' (2007) 97(3) Annals of the Association of American Geographers 551.

[10] Internal Displacement Monitoring Centre (IDMC), Global Report on Internal Displacement 2023 (May 2023).

immediate threats, lastly spontaneous departure is when individuals flee on their own to escape departure.

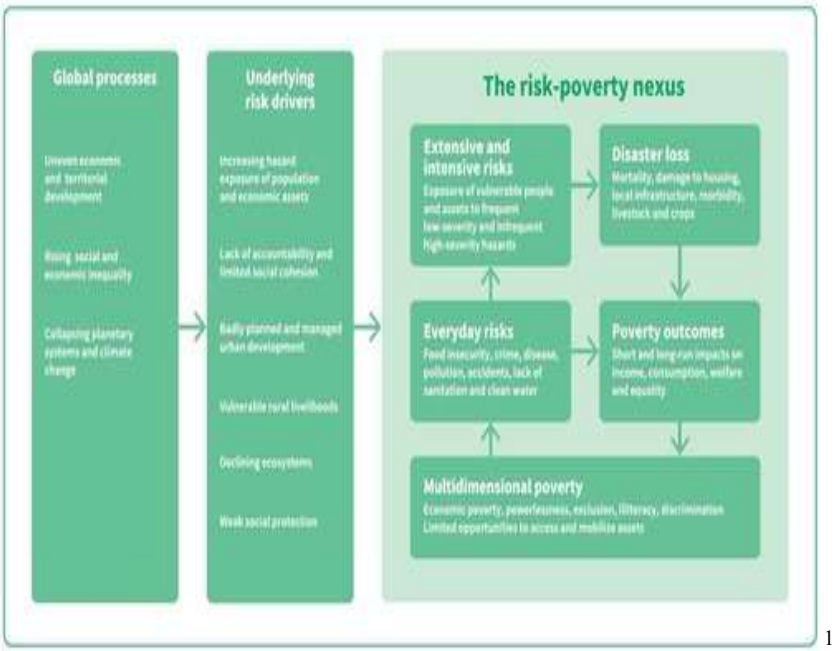
Whenever displacement is caused primarily within the state, such events lead to cross border disaster displacement in extreme areas. The series of disasters in Himachal Pradesh stresses for the urgency of enhanced climate resilient and adaptive strategies, a much more improved and refined disaster management systems, sustainable urban and rural planning to mitigate risks and comprehensive policies to support displaced populations. [11]

IV. Effect of Displacement on Marginalized Sector

Heavy capital investments on industries and major heavy projects widens the socioeconomic gap, and thereby increasing the chances of disaster. Inequality exists across geographical boundaries and it ranges right across cities and localities and the relationship between the people directly affected by disasters and the population below the poverty line has a distinct connection, which makes it more prominent that people belonging from the marginalized communities face the wrath of a natural disaster which is impacted by the onset of a climate change. Renowned Economist Joseph E. Stiglitz quoted on the impact of disasters on marginalized communities "As the scale of climate change impresses itself increasingly on us, we are going to need bolder things. When the time comes and we are frying and somebody says: 'How do we get out of the frying pan?' this annual SDR allocations is one way of doing so". It

[11] 'Preliminary Analysis of 2023 Disaster across Himachal Pradesh | Environics Trust' (2023) Environics Trust, available at: https://environicsindia.in/2023/09/08/preliminary-analysis-of-2023-disaster-across, (last visited at 11:30 am on May 22, 2025).

signifies how Third World countries face severe consequences and is in need of more cooperation and support. [12]



[13]

Disaster And Risk Poverty Nexus: Source - UNDRR 2015

V. Legal Policy Framework on Disaster Induced Displacement

Due to its enormous population and geographical size, India is facing a wide range of catastrophic outbreaks like drought, floods, heavy rains and excessive heat, which is becoming more frequent and intense in the entire nation. India was among the top ten nations which are prone to climatic disasters, ranking

[12] Joseph E. Stiglitz, quoted in Larry Elliott, Poorest Countries Should Get $300bn a Year to Fight Climate Crisis, Says Joseph Stiglitz, The Guardian , available at: https://www.theguardian.com/environment/2023/oct/13/poorest-countries-should-get-300bn-a-year-to-fight-climate-crisis-says-joseph-stiglitz (last visited at 11:00 am on May 24, 2025).

[13] Abhas K. Jha & Erik Duyne, Disaster Risk–Poverty Nexus fig.1 (2010), reproduced in ResearchGate, available at: https://www.researchgate.net/figure/Disaster-Risk-Poverty-Nexus-Source-Jha-Duyne-2010_fig1_288181400 (last visited at 11:15 am on May 24, 2025).

seventh in 2021 Global Climatic Risk Index (CRI). There have been a considerable change in weather patterns in approximately 45% Indian districts, an around 75% of the districts have been identified as climate hot spots for extreme weather conditions. India accounts for more than landmass of 58.6% and it is extremely vulnerable to moderate to high intensity earthquakes, and 12% of its land is susceptible to floods and river erosion. [14] To add more to this, the possibility of nuclear, biological, chemical and radiological threats cannot be ruled out, the probability of disasters rises with the change in climate, socio economic situations and demographics. Irrational deforestation and illegal constructions make certain areas more vulnerable to disasters, the recent landslides and flashfloods in Uttarakhand, North Bengal, Darjeeling reflect the impact of climate change. Professor Walter Kälin and Nina Schrepfer has made groundbreaking research on the topic which has showcased that human migration is not the result of climate change, there is difficulty in proving a connection between climatic event and storm and human displacement.[15]

In the year 2005 The Disaster Management Act was passed by the Indian Government; the national disaster management authority (NDMA) was the creation by this act. The body is headed by the Prime Minister and supported by the National Executive Committee, comprising department heads and secretaries from several ministries. The Disaster Management Act was passed by the Indian government in 2005. The National Disaster Management Authority (NDMA) was created by the Act. The Prime Minister along with the heads and secretaries of various other departments is instrumental in the

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[14]Forecasting of Natural Calamities' (2025) Press Information Bureau available at: https://pib.gov.in/newsite/PrintRelease.aspx?relid=112453 (last visited at 10:45 am on May 22, 2025).

[15] Walter Kälin & Nina Schrepfer, Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches, Legal and Protection Policy Research Series, U.N. High Commissioner for Refugees (Feb. 2012), https://www.unhcr.org/4f33f1729.pdf (last visited at 10:20 am on May 25, 2025).

execution of the National Executive Committee which prepares the planning and monitoring of guidelines on disaster management which is emulated by the State Disaster Management Authority. The ministries of various departments should approve the national plan preparedness for disaster and prevent them and recommend guidelines. The Chief Ministers of states of various state executive committees establish federal disaster management policies with the assistance of District Disaster Management Authority, the District Magistrate and Collector overseeing the operations.

The local govt. representatives actively participate in the disaster management process. To enhance strong disaster management processes, the disaster management act suggests a four-tier administrative structure at the national, state and district levels and at the taluka level to a decent extent. It proposes an education institute for disaster management education, training and research, thereby naming it as National Institute for disaster management. The National Disaster reaction force has been established, which specializes in sudden responses including Central Paramilitary Forces trained troops. Certain necessary measures for disaster preparedness have been curated under this act, which are imposed by the government and other relevant agencies. The Disaster Management Act does not stress importance of resettlement and rehabilitation of the displaced population. The National Policies are specifically extremely short termed, providing for compensation amount for reconstruction of their houses in safer locations, providing access to drinking water, sanitation, roads education and viable livelihood systems and health care, but with respect to law and policy for protecting the human rights India lacks a dedicated legislative provision for protecting the rights of internally displaced people. There is an existence of a dedicated national framework with respect to displacement induced by armed conflicts and developmental projects, but the framework remains silent on disaster induced displacements. People, it can be

either accommodated under the existing legal provisions, or a separate legislation can be introduced protecting the rights of IDP's and climate migrants.[16]

VI. Introduction of The Climate Migrants (Protection and Rehabilitation) Bill 2022

On December 9, 2022, a private bill was introduced by Member of Parliament Pradyut Bordoloi, for identification of migrants displaced due to climatic events and natural disasters and secure their right to life and livelihood and ensuring proper rehabilitation. The Guiding Principles of Internal Displacement which was introduced in 1998 acted as a source of inspiration for the introduction of this bill, listing principles of protection from displacement and during displacement assisting them in rehabilitating them into their original place of residence, if the need requires so the principles and policies can be curated as per the Indian Legal system and applied to climate migrants and internally displaced persons. Climate Change is associated with extreme climatic conditions, natural calamities, and risks involving fluctuations of natural flow of downstream of rivers, this has been defined as the climate induced factors. The definition of "climate migrants" are a person, group of persons, households or entire community who have been permanently or temporarily,— (i) forcibly displaced due to climate induced factor; or (ii) evacuated by government on account of untenable and risk prone habitats; or (iii) who migrate voluntarily due to worsened living conditions and livelihood opportunities on account of climate events, slow onset or quick onset, from their area of habitual residence as a result of disasters or stress caused by climate-induced factors or slow-onset

[16] Renuka, "Disaster Induced Displacement in India, Policy and Practise" (2023), available at: https://hpnlu.ac.in/journal-article.aspx?ref-id=44&article-id=404 (last visited at 11:10 am on May 22, 2025).

climatic processes"[17] . It provides an inclusive definition of "climate migration" as including processes of displacement, migration and planned relocation. It offers a broad definition of "climate migration," encompassing planned relocation, migration, and displacement processes.

To give more importance and attention to the plight of climate migrants a private member bill was introduced by Member of Parliament Pardyut Bordoloi on 9th December 2022. The bill doesn't accommodate all kinds of natural calamities , but it gives prime importance to displacement induced by disasters, in the preamble it has been stated that the bill has been introduced since India is a signatory participant to the Guiding Principles on Internal Displacement (1998), which outlines measures with respect to humanitarian assistance, resettlement, reintegration and protection from displacement. There is a growing need to ascertain the harmonization, consolidation and streamlining of various practices and policies and certain standards which apply to climate migrants in India. The law purports that natural calamities and extreme weather conditions are instances of climate induced factors. "climate migrants" are a person, group of persons, households or entire community who have been permanently or temporarily,— (i) forcibly displaced due to climate induced factor; or (ii) evacuated by government on account of untenable and risk prone habitats; or (iii) who migrate voluntarily due to worsened living conditions and livelihood opportunities on account of climate events, slow onset or quick onset, from their area of habitual residence as a result of disasters or stress caused by climate-induced factors or slow-onset climatic processes". The definition of "climate migration" has been broadly defined including planned relocation, migration and processes of displacement. [18]

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[17] The Climate Migrants (Protection and Rehabilitation) Bill, Bill No. 160, § 2(c), as introduced in Lok Sabha, India, available at: https://sansad.in/getFile/BillsTexts/LSBillTexts/Asintroduced/160%20OF%202022%20AS12122022113734AM.pdf?source=legislation (last visited at 10:50 am on May 22, 2025).

VII. Conclusion

Sudden Impact Disasters include floods, earthquakes, tidal waves, tropical storms, landslides and volcanic eruptions. Flash floods force people to migrate to different areas in large numbers, earthquakes affect them and pose damage to the overall infrastructure. Protection from displacement is a complicated process of general circumstances, which comes from discharging national responsibilities. There has been lack of proper methodical approach to provide protection from the effects of natural disasters like earthquakes, floods, tornadoes and tsunamis. The states have a responsibility to provide protection against the effects impacted by natural occurrences. During the World Conference on Disaster Reduction in Kobe, Japan in January 2005 the "Hyogo Declaration" it was categorically stated that the with the availability of resources, states have a primary duty to safeguard to protect their citizens from danger and prioritizing risk reduction in national policies. Thousands of people relocate every year due to floods, landslides and earthquakes are extremely frequent. The two primary categories are natural and manmade disasters which helps in identifying classification of disasters, Man made exigencies are very different from industrial hazards and disasters and are categorized in three subcategories, which are sudden impact, delayed onset and epidemic diseases. The primary reason for displacement and migration is natural disasters, and India is a vulnerably fragile nation right now when it comes to impact of climate change. The impacted families and communities are disrupted from their place of habitat and the social fabric binding families, relatives, neighbors are affected due to voluntary relocation, which disassociates their connections, this voluntary integration sparks off a new debate hinting towards cultural and demo-graphical alterations. The concept of 'Disaster induced Displacement'

[18] *Id. at 16.*

has not been explained under the Disaster Management Act 2005, the actaddresses regional, national regulations and programs. The impact of Tsunami in 2004 displaced around 10,000 people, disasters in 2020 caused 40.5 million internally displaced people in around 149 countries and territories. India faced a record displacement of 3.9 million people, which had a severe impact on the economy as well the countries internal structural system, several internally displaced people were not given protection, right from the Bhopal Gas Tragedy in 1986, India lacks a proper dedicated strategy to safeguard Disaster induced Internally Displaced People, which is exposes the gap in the legal framework and the fallacies of the legal system. These displaced people were exposed in a toothless situation during the 2020 Vizag gas leak incident, exposing the lack of protection policy for internally displaced people. These instances reflect the intensity of destruction climate change induced migration can bring to the social and economic fabric of any country thus adversely affecting the human rights of such migrants. If no exigent action is taken, these migrants will thus become a part of urban poor and add to the economic poverty. To confront this impending crisis, social workers must engage in policy formation to formulate flexible policies and institutions which can cater to the diversity of the migrants. These policies can be formulated with the backdrop of 2030 Agenda for sustainable Development and the 2015-2030 Sendai framework for disaster risk reduction. The need of the hour is timely intervention to avert this impending and inevitable crisis.[19]

India is a land of diverse culture and multi-party system, refugees do have an impact on the country's political stability, and the added issue of climate refugees is worrisome and has a negative impact on the country's demographic

[19] Parkhi Saxena, Climate Induced Migration and Protection of Human Rights of the Migrants: Analysing the Role of Social Workers in Averting the Impending Crisis in the Indian Subcontinent

structure. The recognition of climate refugees is a feasible alternative, but it is incomplete without the drawbacks. The country must be prepared enough to integrate them within the legal framework to recognize climate refugees, but the process involved will be a slow process in coming years as the border states are more prone to the impact of climate change which intensifies the influx of refugees in the near future.[20] Hence disaster induced displacement is a major concern for the country as the rate of global warming increasing over the years, the intensity of natural disasters have increased which acts a threat to the poor and the marginalized sector of the society, not only do they face issues of detachment from their family and displacement from their place of residence, but discrimination in terms of receiving of aid from the govt. and while receiving humanitarian relief and rehabilitation measures. The resettlement and rehabilitation act provides for compensation and relief to the displaced people affected by development projects, but there is an absence of a coherent legal framework to tackle the issues faced by a internally displaced people displaced due to the onslaught of a natural disaster, a deterrent force should be curated to negate the tremors forced upon the climate migrants. We can conclude by admitting the fact that this is the need of the hour and once we can introduce a separate set of legislative norms and policies the burning issue of internal displacement across the nation as well as across the border can be dealt strongly, as the current legal framework lacks enough teeth to counter these issues, thereby we are hopeful that the lawmakers will curate a new legislative framework to address the issues of climate migrants or the internally displaced people affected by natural disasters.

[20] Arindam Basu & Shimul Dutta, Environmental Refugees – A Quest for Justice, 2(1) Indian Journal of Law and Human Behavior 43 (2016).

CASE COMMENTARY ON M.K. RANJITSINH V. UNION OF INDIA 2024 SCC ONLINE SC 570

Raushan Tara Jaswal[*]

The defining principle of various debates around the topic of climate change can be fundamentally reduced to a single question: *should developmental needs prevail over climate concerns, especially in nations of the 'Global South'?* Grappling with this question is the cornerstone of climate negotiations and jurisprudence at both the international and domestic levels. While grappling with these competing realities, the Indian Supreme Court, through its precedent in M.K. Ranjit, has marked a decisive moment in environmental and constitutional jurisprudence. The legal tensions between biodiversity conservation, climate mitigation, and the expansion of renewable energy led to a stalemate between these two conflicting public goods. *Whether the protection of critically endangered species such as the Great Indian Bustard (GIB) and Lesser Florican (LF) could prevail over India's large-scale transition to renewable energy infrastructure, especially in line with its Nationally Determined Contributions (NDCs) and international commitments?*[1] This is where the Indian Constitution has played a pivotal role in recognising the right to be free from adverse effects of climate change, grounded primarily in Articles 14 and 21.[2] Climate change was thereby elevated to a rights-based

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[1] Press Information Bureau, Government of India, 'India's Climate and Renewable Energy Commitments' (Press Release, PRID No 2146355, 2024) https://www.pib.gov.in/PressReleasePage.aspx?PRID=2146355&reg=3&lang=2 (Last Visited at 12:32 pm on 15th December 2025).

[2] Constitution of India, art. 14, 21.

constitutional issue in the context of environmental harm, and it was not viewed in silos as merely a policy issue or an abstract scientific concept.[3]

The petition, born out of the need to protect the GIB, whose population has sharply declined due to habitat fragmentation and collisions with overhead power transmission lines, which was a leading cause of mortality for the species, especially in their priority habitats in Rajasthan and Gujarat.[4] Initially, the relief was granted in the form of converting overhead lines to underground lines and prohibiting the installation of any new overhead lines.[5] However, the Government sought a modification of the Order, arguing that blanket undergrounding of transmission lines was technologically complex, financially burdensome, and inconsistent with India's renewable energy targets under international climate commitments.[6] Within this dichotomy lies the duality of India's climate problem, which needs to be prioritised, given India's unique socio-economic vulnerabilities and how to balance conservation of endangered species with renewable energy needs?[7]

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[3] Parul Kumar and Abhayraj Naik, 'India's New Constitutional Climate Right: Examining the Significance of *M K Ranjitsinh and Others v Union of India and Others* for Climate Litigation in India' (2024) *Verfassungsblog* Available at : https://verfassungsblog.de/indias-new-constitutional-climate-right/ Last Visited on 15 December 2025, doi:10.59704/a03c6e7b7b3cc925; M.K. Ranjitsinh & Others v. Union of India & Others. 2024 SCC OnLine SC 570, Available at :https://api.sci.gov.in/supremecourt/2019/20754/20754_2019_1_25_51677_Judgement_21-Mar-2024.pdf,(Last Visited at 12:35 pm on 15th December 2025).

[4] *M.K. Ranjitsinh & Others v. Union of India & Others*. 2024 SCC OnLine SC 570, Available at :https://api.sci.gov.in/supremecourt/2019/20754/20754_2019_1_25_51677_Judgement_21-Mar-2024.pdf, Last Visited at 12:36 pm on 15th December 2025.

[5] *M K Ranjitsinh v Union of India* (Supreme Court of India, order dated 19 April 2021).

[6] *M.K. Ranjitsinh & Others v. Union of India & Others*. 2024 SCC OnLine SC 570, Available at :https://api.sci.gov.in/supremecourt/2019/20754/20754_2019_1_25_51677_Judgement_21-Mar-2024.pdf, (Last Visited at 12:37 pm on 15th December 2025).

[7] *M.K. Ranjitsinh & Others v. Union of India & Others*. 2024 SCC OnLine SC 570, Available at :https://api.sci.gov.in/supremecourt/2019/20754/20754_2019_1_25_51677_Judgement_21-Mar-2024.pdf, (Last Visited at 12: 38 pm on 15th December 2025).

By relying on its own jurisprudence[8], this judgment extends this logic into the era of lived realities of climate change and proactively extends the rationale to environmental degradation in the form of climate change as well. However, the current pollution-centric framework might not adequately capture the extent of climate change. In fact, by focusing primarily on disproportionate climate impacts and expanding beyond mere invocation of Article 21, the Supreme Court takes a further step to underscore the competing interests under Article 14, aligning itself with emerging international climate justice jurisprudence grounded in vulnerability, intergenerational equity, and distributive fairness.[9] The Court modified its earlier directions, limiting the underground transmission lines to priority GIB habitats spanning approximately 13,163 square kilometres, subject to technical feasibility assessments by a reconstituted expert committee.[10] Outside these areas, alternative mitigation measures such as bird diverters were permitted.

While the judgment is a positive step in the right direction, especially in the evolving jurisprudence of climate governance at the international level,[11] it is not without limitations.[12] As it places India alongside Germany and the Netherlands in the articulation of climate rights with constitutional baking, it strengthens the legal legitimacy and aligns with the jurisprudence of the

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[8] *M C Mehta v Union of India* (1987) 1 SCC 395.

[9] Lavanya Rajamani, 'Human Rights and Climate Change: From Theory to Adjudication' (2021) 10 *Transnational Environmental Law* 1.

[10] *M.K. Ranjitsinh & Others v. Union of India & Others*. 2024 SCC OnLine SC 570, Available at :https://api.sci.gov.in/supremecourt/2019/20754/20754_2019_1_25_51677_Judgement_21-Mar-2024.pdf, (Last Visited at 12: 38 pm on 15th December 2025).

[11] Aparna Chandra, 'Toward Operationalising the New Climate Right in India' (2024) . *The India Forum,* Available at : https ://www.theindiaforum.in/climate-change/toward-operationalising-new-climate-right-india (Last Visited at 12: 39 pm on 15th December 2025).

[12] Parul Kumar and Abhayraj Naik, 'India's New Constitutional Climate Right: Examining the Significance of *M K Ranjitsinh and Others v Union of India and Others* for Climate Litigation in India' (2024) *Verfassungsblog* Available at : https://verfassungsblog.de/indias-new-constitutional-climate-right/doi:10.59704/a03c6e7b7b3cc925: (Last Visited at 12: 40 pm on 15th December 2025).

International Court of Justice.[13] The absence of clear standards for enforcement raises concerns about the justiciability and effectiveness of remedies.[14] Hence, the dichotomy still stands, and exploring international law would help resolve the broader tension in environmental and climate adjudication between urgent ecological protection and long-term climate policy.[15]

Usually, the cost of climate regulations is borne by developing nations, often at the cost of their developmental trajectory. In climate treaties, the recognition of principles such as restitution, common but differentiated responsibilities, and climate justice has highlighted the issue as an ethical and intergenerational concern, driven by movements led by countries from the Global South through norms of equity, urgency, and responsibility.[16]

Countries like India[17], for instance, have incorporated climate targets into domestic planning, partly due to reputational incentives and the need to be seen

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[13] International Court of Justice, *Advisory Opinion on the Obligations of States in Respect of Climate Change* (23 July 2025) Available at : https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf (Last Visited at 12: 43 pm on 15th December 2025).

[14] Environmental Law Alliance Worldwide (ELAW), 'India: Supreme Court Recognises Right to Be Free from the Adverse Effects of Climate Change' (21 March 2024); Varun Chhachhar et al, *Right Against Climate Change in India with Special Reference to M.K. Ranjitsinh and Ors. v. Union of India* (2025) 13 *Journal of Law and Sustainable Development* 4348 Available at : https://ojs.journalsdg.org/jlss/article/view/4348 (Last Visited at 12: 46 pm on 15th December 2025), https://elaw.org/resource/in_gib_21march2024 (Last Visited at 12: 46 pm on 15th December 2025).

[15] Shibani Ghosh, 'MK Ranjitsinh v Union of India: The Supreme Court's Sophie's Choice Moment' (2024) *Bar & Bench* Available at :https://www.barandbench.com/columns/mk-ranjitsinh-v-union-of-india-the-supreme-courts-very-own-sophies-choice-moment (Last Visited at 12: 46 pm on 15th December 2025).

[16] United Nations, Office of Legal Affairs, 'Outline of General Course on Public International Law by D. Hey' (UN, n.d.) Available at : https://legal.un.org/avl/pdf/ls/Hey_outline%20EL.pdf, (Last Visited 12:48 pm on 14th June 2025).

[17] Government of India, *India's Updated First Nationally Determined Contribution Under Paris Agreement* (UNFCCC, 26 August 2022) Available at : https://unfccc.int/sites/default/files/NDC/202208/India%20Updated%20First%20Nationally%

as responsible global actors, an insight that aligns well with liberal theories of norm diffusion and soft compliance. Principles such as the Common But Differentiated Responsibilities (CBDR)[18] would be more inclusive and cannot be purely reduced to economic logic alone. In the case of climate change and environmental harms, the Supreme Court has adopted a middle ground and recognised the need to be an approach that inevitably facilitates the commodification of environmental harms and rights, while also acknowledging the lived realities of biodiversity loss, cultural land loss, or indigenous livelihoods.[19]

Third World Approaches to International Law (TWAIL) has highlighted how international environmental and climate agreements have imposed compliance burdens on developing nations, often at the expense of their developmental trajectory, without providing adequate financial or technological support.[20] As global legal systems evolve to respond to ecological collapse, transnational inequalities, and contested sovereignties, a pluralist and justice-centred approach, one that critically engages but does not capitulate to economic reasoning, will be essential to reimagining the law's function in an era of climate crisis.

20Determined%20Contrib.pdf, **,** (Last Visited 12:40 pm on 14th June 2025); Government of India, *National Action Plan on Climate Change* (PIB,30 June 2008) Available at : https://static.pib.gov.in/WriteReadData/specificdocs/documents/2021/dec/doc202112101.pdf, (Last Visited 12:50 pm on 14th June 2025).

[18] Lavanya Rajamani, 'The Principle of Common but Differentiated Responsibility and the Balance of Commitments under the Climate Regime' (2000) 9 Rev Eur Comp & Intl Envtl L 120.

[19] J. B. Ruhl and James Salzman, 'Currencies and the Commodification of Environmental Law' (2000) 53 *Stanford Law Review* 607, Available at : https://scholarship.law.vanderbilt.edu/faculty-publications/462/**,** (Last Visited 12:55 pm on 14th June 2025). Lavanya Rajamani, *Differentiated Responsibilities in International Law* (OUP 2006).

[20] Sumudu Atapattu and Carmen Gonzalez, 'TWAIL, Climate Change and the North–South Divide' (SSRN, 6 August 2024), Available at : https://doi.org/10.2139/ssrn.4918356**,** (Last Visited 12:58 pm on 14th June 2025).

Book Review

Constitutional Interpretation

Edited by Sujit Choudhry, Catherine O'Regan, and Carlos Bernal-Pulido

(Edward Elgar Publisher; December 2025. Print ISBN: 9781800371736)

Reviewed by *Pawan Kumar*[1]

Constitutional interpretation edited by Sujit Choudhry, Catherine O'Regan, and Carlos Bernal-Pulido is a recently published one and is distinct from the available literature as it discusses not only the conceptual frameworks of interpretation and constitutionalism but also includes the country practices and the emerging norms in constitutional interpretation. Editors set the narration in the introduction chapter titled 'Constitutional Interpretation in the Third Wave: the importance of text and context. Citing them, constitutional interpretation is a central feature of modern constitutional practice.[2] Here, editors argue the importance of constitutional interpretation and how is this is the central feature of modern constitutional practice. They also make the case that courts, government actors and non-state actors all engage in

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[2] cf Sujit Choudhry, Catherine O'Regan, and Carlos Bernal-Pulido, Constitutional Interpretation in the Third Wave: the importance of text and context, page 1

constitutional interpretation and comparative study of constitutional interpretation is a core area of comparative constitutional law.

This review examines the volume's principal contentions, with a dedicated focus on the constitutional milieu of countries mentioned, the development of its interpretive jurisprudence, and its comparative distinctiveness. The book's thematic area is constitutional interpretation as well as the constitutional context which also aligns with regional human rights systems and public international law.

The book is divided into two parts. Part I encompass constitutional interpretation in the third wave; Part II is on constitutional context, where legal culture, political context and constitutional mission are discussed chapter-wise. The book has 34 chapters divided into 575 pages. While Part I has 23 chapters, Part II has 11 chapters written mostly by the sitting or former heads of the constitutional court judges. For example, chapter 29 is authored by Justice Dr DY Chandrachud, sitting Chief Justice of India (as he then was).

The Theoretical Framework: Text and Context

A principal contribution of this handbook resides in its critical analysis and expansion of Philip Bobbitt's renowned modalities of constitutional interpretation, namely, textual, historical,

structural, doctrinal, ethical, and prudential.[3] The editors contend that while these modalities retain their relevance, they prove inadequate for encompassing the intricate nature of post-authoritarian or post-colonial constitutions prevalent in the Global South. Within these jurisdictions, the constitutional context is characterised by a specific mandate: the repudiation of an undemocratic antecedent or the comprehensive reconstruction of a fragmented society.

The book posits that constitutions emerging from the Third Wave, which is also the focus of the work, such as those of India, South Africa, Kenya, Poland, Canada, Brazil, Australia, Germany, the UK and Colombia, are fundamentally mission-driven. In contrast to the Constitution of the United States, which is frequently conceptualised as a preservative instrument designed to uphold a status quo of liberty, the Indian Constitution along with other countries' constitutions, is presented as an engine for profound social transformation.

Section B of Part I deals with legal culture, political context and constitutional mission. In this part, the book brilliantly discusses

[3] For more on constitutional interpretation, including that of Bobbit, please refer to 'Ways to Interpret the Constitution', published by Library of Congress, USA. https://constitution.congress.gov/browse/essay/intro-8-1/ALDE_00001302/%5B'Article',%20'I,',%20'Section',%20'3d',%20'Cl.',%20'6'%5D

the role of the legal professional culture in constitutionalinterpretation. The book is unique in making the case for interpretation by other professionals. Other methods of constitutionalism, including aversive constitutionalism, social transformation of the constitution, popular constitutionalism, anti-authoritarian constitutional interpretation and the role of comparative materials in constitutional interpretation are beautifully added.

Constitutional Interpretation

A compelling section of the book deals with anti-authoritarian constitutional interpretation, contrasting India's experience with democratic decay in other regions. Chapter by Tom Gerald Daly uniquely examines anti-authoritarian constitutional interpretation.[4] Professor Justice Kate O'Regan makes the case of Constitution being the bridge between an authoritarian past and an emancipatory future.[5]

The handbook analyses the *Kesavananda* decision not just as a legal doctrine, but as a strategic response to an executive bent on capturing the judiciary. The book frankly acknowledges the limitations of this doctrine; while *Kesavananda* established a

[4] Chapter 15
[5] Chapter 32

theoretical shield, it failed to prevent the suspension of rights during the Emergency of 1975.

However, the volume argues that this failure was generative. The post-Emergency Supreme Court, seeking to regain legitimacy, developed Public Interest Litigation and expanded socio-economic rights as a form of institutional redemption. For example, Gautam Bhatia in his chapter titled 'social transformation' argues that it actually is progressive change. For him, social transformation means an alteration of social structures and institutions with the objective of securing greater substantive freedom of equality for individuals and groups.[6]

This trajectory from formalist acquiescence in *Gopalan*, to structural resistance in *Kesavananda*, to expansive transformation in the PIL era demonstrates the book's core thesis: constitutional interpretation is inextricably linked to the political survival of the court and the democratic order it guards.

Part II of the book is on country studies and the editors have chosen countries such as Australia, Brazil, Canada, Colombia, Germany, India, Kenya, Poland, South Africa, the UK and the USA. Choosing these countries with a history of the transformative and evolving nature of constitutionalism. While a

[6] Cf Gautam Bhatia, Social Transformation, Chapter 13, pp 261

few studies are available on India, the UK and the USA comparative constitutional interpretation, adding other countries makes the book a must-read for scholars and practitioners engaged in constitutional law to understand the global constitutional law.

Conclusion

The *Research Handbook on Constitutional Interpretation* furnishes a timely, globally oriented, and comparative analysis that transcends West-centric perspectives. It investigates the mechanisms by which superior courts of countries endeavour to reconcile the fixed text of a constitution with evolving socio-political realities.

The book runs into 590 pages and had 34 chapters, along with country studies. The book is written for nuanced audiences, professors, and scholars involved in advanced constitutionalism. The Handbook underscores the Supreme Court of India's pioneering and influential interpretive methodologies, which are indispensable for the governance of a vast, diverse, and developing nation and the book will find readership among the Indian audience.

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