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KASHMIR UNIVERSITY
LAW REVIEW

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With Best Compliments From

Prof. Mohammad Hussain

Head and Dean
School of Law,
University of Kashmir

Kashmir University Law Review
Volume XXIX (2022)

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Prof. Nilofer Khan
Vice Chancellor



PATRON'S MESSAGE

On behalf of the University of Kashmir, it is my profound honor to extend a warm greeting to all the esteemed readers, contributors, and members of the academic community who have come together to foster a vibrant intellectual exchange through the "Kashmir University Law Review." This scholarly journal, a proud publication of the School of Law, represents not only the academic rigor and excellence that our institution embodies but also the enduring spirit of inquiry and the pursuit of justice that stands at the core of legal education and practice.

The legal landscape is ever-evolving, reflecting the dynamic interplay between society's foundational norms and the aspirations of its people. It is within this context that the "Kashmir University Law Review" emerges as a critical platform for the dissemination of legal scholarship, offering insights that are both locally grounded and globally relevant. By embracing a wide array of perspectives, from constitutional law to international human rights, environmental law, and beyond, this journal seeks to contribute meaningfully to the discourse on legal challenges and advancements.

Our commitment to nurturing critical thinking, analytical rigor, and a compassionate understanding of the law's role in society is reflected in the pages of this publication. The contributions found within this volume-ranging from scholarly articles and essays to case comments and book reviews-are a testament to the intellectual vitality and diversity of thought that the School of law, University of Kashmir, encourages and promotes.

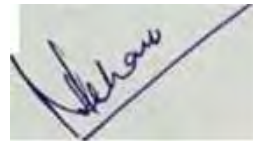
I extend my heartfelt gratitude to the editorial team, whose dedication and expertise have been instrumental in bringing this edition to fruition. To our contributors, your scholarly work not only enriches this journal but also plays a pivotal role in advancing the frontiers of legal knowledge and practice. And to our readers,

may you find within these pages not just information, but inspiration-a call to engage with the law in ways that are thoughtful, innovative, and geared towards the betterment of society at large.

As we look to the future, let us continue to uphold the highest standards of scholarship and integrity, forging new paths of understanding and advocacy in the service of justice. The "Kashmir University law Review" stands as a beacon of this endeavor, and

I am immensely proud to support its mission of enlightening minds and inspiring a new generation of legal scholars and practitioners.

With warm regards

A handwritten signature in blue ink, appearing to read 'N Khan', is written on a light-colored rectangular background.

Prof. Nilofer Khan

Chief Editor's Message

It is with immense pride that we present to you the latest issue of the Kashmir University Law Review. This journal stands as a testament to the scholarly environment fostered by the School of Law at the University of Kashmir, where critical thinking and legal inquiry are encouraged and celebrated.



In this issue, we have curated a selection of articles that reflect the diverse and evolving landscape of legal studies. Our authors, ranging from seasoned scholars to emerging voices in the legal community, offer nuanced analyses and innovative solutions to some of the most pressing legal challenges of our time.

As the Chief Editor, I am honored to be a part of this intellectual journey and to contribute to the rich tradition of legal scholarship in Kashmir. I am confident that the research presented here will not only enrich academic discourse but also contribute to the pursuit of justice and equity in society.

We thank our contributors for their rigorous work and our readers for their continued engagement. Together, we forge a path toward a more just and enlightened future.

Professor Mohammad Hussain
Chief Editor
Kashmir University Law Review

Recurrent Offence and Apathetic Administration: A Look at the Repeated Acts of Acid Throwing in Kashmir Valley.

Syed Musaib*
Zaid Mehraj**

Abstract

The aim of this paper is to critically analyze the implementation of the directions issued by the Hon'ble Supreme Court of India in the case of **Laxmi vs. Union of India (UOI) and Ors**¹ in the Union Territory of J&K, in view of the recent acid attack in Srinagar city. It brings to fore the limited attention commanded by incidents of violence against women in a system replete with legal provisions for their protection.

I. Introduction

Violence against women in Kashmir has been unaddressed and unadmitted to a considerable degree and detriment. While the scale of violence is indistinguishable, to a considerable degree, from the other parts of the country², this phenomena goes on about in silence and remains less talked about when it comes to Kashmir. The factors leading to such violence are diverse and multi-faceted and too nuanced to be confined to particularities. Having said that, large part of where this violence originates from, is the assumption by men of the divine right to control and mold the life of a woman, before and after marriage. This ugly mixture of religion and power dynamics is manifested in the use of religious scriptures as delegating to such men, an authoritarian power in their households. All this is brought about by misquoting and misinterpreting the verses of the Holy Quran, which when taken out of context, morph into violence enabling provisions. The perpetrator of domestic

¹2014 SCC 4 427

²<https://www.trust.org>spotlight>The-worlds-most-dangerous-countries-for-women-2011/&ei=z59N1rug>.

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abuse wields the enabling power, first to silence women into submissiveness and later uses that submissiveness to his unfettered advantage. The slickness of the method is evident from the near majority of the women in the Kashmir consenting actively to such violence and sanctioning its use on women who are too traumatized to voice their opinion³.

The recent acid attack is a manifestation of this malaise, embedded deep into the psyche of its men. What is more troubling is the steep rise in such incidents which a decade back were unheard of⁴. More trouble follows when unsolicited justifications and levelling narratives come to fore, reinforcing the abusive societal status quo. The gender disparity creates conditions for the sustenance of brutality and in some cases even endorsed openly. Needless to say, the violence against women outside of the households is a systemic problem. What can and does happen in personal space cannot be allowed to happen in public space, by a State which otherwise is ever vigilant when it comes to other form of violence. The recent acid attack has re-kindled an old debate on the easy availability of acid in the market and the administration's utter failure to ensure implementation of the Supreme Court order regulating unchecked sale of acid. The scope of this paper is to expose the fault lines, within the state administration and the laxity of its approach in creating conditions for deterring violence against women⁵.

II. Constitutional And Other Legal Provisions For Women

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants

³ <https://www.hindustantimes.com/india-news/survey-shows-30-women-across-14-states-uts-justify-men-beating-their-wives-101638095695758.html>

⁴ <https://www.greaterkashmir.com/todays-paper/front-page/kashmir-saw-4-acid-attacks-on-girls-in-last-8-years>.

⁵ <https://www.greaterkashmir.com/todays-paper/front-page/10-increase-in-crime-against-women-in-jk-ladakh-ncrb>

equality to women, but also empowers the State to adopt measures for positive discrimination in favor of women neutralizing the socio-political and Economic disadvantages faced by them. Within the framework of a democratic polity, laws, policies and programs have aimed at women's advancement in different spheres. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), ratified by India on 9th July, 1993⁶.

By accepting the Convention, States commit themselves to undertake series of measures to end discrimination against women in all forms, including:

to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;

to establish tribunals and other public institutions to ensure the effective protection of women against discrimination;
and

To ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

In the constitutional scheme, provisions are incorporated for the protection and upliftment of women, as a class, discriminated against, by a system lacking women-centric perspective. The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in

⁶https://www.legalserviceindia.com/helpline/woman_rights.htm#:~:text=the%20Indian%20Constitution-,The%20principle%20of%20gender%20equality%20is%20enshrined%20in%20the%20Indian,discrimination%20in%20favour%20of%20women.

favor of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard.

Laws related to women are classified under two major categories⁷:-

A. Indian Penal Code

Rape (Sec. 376 IPC): A rapist, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

Kidnapping & Abduction for different purposes (Sec.363-373) :any person who is abducting a minor for purpose of begging or kidnapping minor/women for prostitution or illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC): Where the death of a women is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her in laws or husband, for or in connection with, any demand of dowry, such death shall be called —dowry death. Whoever commits dowry death shall be punished with

⁷Legal Provisions For Women Empowerment In India, *Dr.SabaYunus, and Dr.SeemaVarma*; International Journal of Humanities and Management Sciences (IJHMS) Volume 3, Issue 5 (2015) ISSN 2320-4044 (Online)

imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life.

Torture, both mental and physical (Sec. 498-A IPC):

Husband or relative of husband of a women subjecting her to cruelty, shall be punished with imprisonment of eitherdescription for a term which may extend to three years, and shall also be liable to fine.

Molestation (Sec. 354 IPC): Whoever assaults or uses criminal force to any women, intending to outrage orknowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of eitherdescription for a term which may extend to five years, and shall also be liable to fine.

Sexual Harassment (Sec. 509 IPC): Whoever, intending to insult the modesty of a woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such gestures or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Acid attack (Sec. 326A IPC): Whoever causes permanent or partial damage or deformity to, or bums or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid⁸ on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine.

⁸Criminal Law (Amendment) Act, 2013

B. Special Laws

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some acts which have special provisions to safeguard women and their interests are:

The Dowry Prohibition Act 1961 prohibits the request, payment or acceptance of a dowry "as consideration for the marriage", where "dowry" is defined as a gift demanded or given as a precondition for a marriage. Gifts given without a precondition are not considered dowry, and are legal, per section 3(2). Asking for or giving of dowry can be punished by imprisonment of up to six months, a fine of up to Rs. 15000 or the amount of dowry (whichever is higher), or imprisonment up to 5 years. It replaced several pieces of antidowry legislation that had been enacted by various Indian states.

The Immoral Traffic (Suppression) Act (SITA) (1956) is the primary law dealing with the status of sex workers. According to this law, prostitutes can practise their trade privately but cannot legally solicit customers in public. Organised prostitution (brothels, prostitution rings, pimping, etc.) is illegal. As long as it is done individually and voluntarily, a woman can use her body in exchange for material benefit. In particular, the law forbids a sex worker to carry on her profession within 200 yards of a public place. Unlike as is the case with other professions, sex workers are not protected under normal labour laws, but they possess the right to rescue and rehabilitation if they desire and possess all the rights of other citizens.

The Protection of Women from Domestic Violence Act 2005 is an Act of the Parliament of India enacted to protect women from domestic violence. Primarily meant to provide protection to the

wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women living in a household such as sisters, widows or mothers. Domestic violence under the act includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a legislative act in India that seeks to protect women from sexual harassment at their place of work. The Act will ensure that women are protected against sexual harassment at all the work places, be it in public or private. This will contribute to realisation of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth. Under the Act, which also covers students in schools and colleges as well as patients in hospitals, employers and local authorities will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine of up to 50,000 rupees.

III. The Inchoate Crimes Against Women In Kashmir

Crime against women, in the form of physical violence have been ever present⁹. The usage of words, such as, 'increase, steep rise', etc., with the topic of crime, indicates merely the modification in the frequency of its occurrence. In other words, there is a basic recognition and acceptance to the presence of crime and ensuing

⁹<https://www.bmj.com/company/newsroom/1-in-3-women-in-india-is-likely-to-have-been-subjected-to-intimate-partner-violence/>

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violence in our society.¹⁰ Such crimes committed against women found their justification in the evolutionary advantage that men possessed over women, in terms of physical attributes¹¹. The *status quo* through such advantage would have continued had it not been for the modern nation states and their recognition of a *Grundnorm*, in the shape of a constitution, for the preservation of values, consensually deemed to be worth preserving and promoting. The values being the preservation of life, dignity and a social order where the rule of arbitrariness is superseded by the rule of law. The worth of an individual post-constitutional development, came to be established not on the basis of who could co-opt and keep hold of power but on the value which each individual brought to the newly formed, democratic nation states, based on rule of Law. As such, capacity to be violent was relegated to being a modern day vice, in fact duly punishable under the Law.

In Kashmir, violence against women was largely an incidence of marital relations and as such confined within that sphere. It ceased to be so, once women actively sought educational and employment opportunities, venturing beyond domestic space. With this change in their role, women started encountering incidents of sexual harassment in public spaces and at work place, violence which until that point, was all part of the abuse within the domestic confines. It is unfortunate that the Supreme court of India in *Om Prakash V. State of U.P.*¹² had to explicitly state that, “Every citizen in this country has right to live with dignity and honor which is a fundamental right guaranteed under article 21 of the constitution of India. Sexual harassment like eve teasing of women amount to violence of rights guaranteed under Article 14 and 15”.

¹⁰<https://www.risingkashmir.com/J-K-sees-increase--in-women-violence-in-last-five-years--Survey--96032>

¹¹Shafi, Aneesa. (2002). Working Women in Kashmir: Problems and Prospects.

¹²(2006) 9 SCC 787.

The recent history of acid attacks in Kashmir, is a culmination of inchoate offences against women. These inchoate offences, such as, stalking, eve teasing, go unpunished to a considerable degree due to reluctance on part of the victims in reporting such offences¹³. Apathetic and unwilling administration also adds up to this reluctance. These inchoate offences often act as a prelude to acts of extreme deviance. The offence of acid throwing is not a spontaneous act, at least not from the point of view of how it is conceived in the mind of the offender. There is a period of emboldening of the deviants by acts of stalking and eve-teasing, left unaddressed. Normalization of such behavior makes the obvious transition from inchoate act to an even macabre act. It helps the criminal if the society acts as a passive resistance, resisting only at the post-commission stage. Some of the immediate measures as directed by Supreme Court to be taken to tackle the commission of such inchoate offences¹⁴:

(1) All the State Governments and Union Territories are directed to depute plain clothed female police officers in the precincts of bus-stands and stops, railway stations, metro stations, cinema theatres, shopping malls, parks, beaches, public service vehicles, places of worship etc. so as to monitor and supervise incidents of eve-teasing.

(2) There will be a further direction to the State Government and Union Territories to install CCTV in strategic positions which itself would be a deterrent and if detected, the offender could be caught.

(3) Persons in-charge of the educational institutions, places of worship, cinema theatres, railway stations, bus-stands have to take

¹³Eve teasing as a form of violence against women: A case study of District Srinagar, Kashmir. *International Journal of Sociology and Anthropology*.

¹⁴The Deputy Inspector General of Police and Ors. Vs. S. Samuthiram: AIR2013SC 14.

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steps as they deem fit to prevent eve-teasing, within their precincts and, on a complaint being made, they must pass on the information to the nearest police station or the Women's Help Centre.

(4) Where any incident of eve-teasing is committed in a public service vehicle either by the passengers or the persons in charge of the vehicle, the crew of such vehicle shall, on a complaint made by the aggrieved person, take such vehicle to the nearest police station and give information to the police. Failure to do so should lead to cancellation of the permit to ply.

(5) State Governments and Union Territories are directed to establish Women' Helpline in various cities and towns, so as to curb eve-teasing within three months.

(6) Suitable boards cautioning such act of eve-teasing be exhibited in all public places including precincts of educational institutions, bus stands, railway stations, cinema theatres, parties, beaches, public service vehicles, places of worship etc.

(7) Responsibility is also on the passers-by and on noticing such incident, they should also report the same to the nearest police station or to Women Helpline to save the victims from such crimes.

(8) The State Governments and Union Territories of India would take adequate and effective measures by issuing suitable instructions to the concerned authorities including the District Collectors and the District Superintendent of Police so as to take effective and proper measures to curb such incidents of eve-teasing.

Breakdown of recurrent and most familiar crimes against women in Kashmir¹⁵

Year	Rape	Kidnapping of women	Molestation	Eve teasing	Cruelty by Husband	Dowry Deaths	Total
2006	119	526	815	233	18	0	1711
2007	142	514	824	253	48	1	1782
2008	91	471	759	196	26	2	1545
2009	102	579	823	259	35	3	1801
2010	66	446	723	162	24	0	1421
Total	520	2563	3944	1103	151	6	8260

JUDICIAL RESPONSE TO THE PHENOMENA OF ACID ATTACK

In the case of *Parivartan Kendra vs. Union of India (UOI) and Ors*¹⁶, the court made the following observations while reiterating the prompt compliance with the directions issued in the *Laxmi case*¹⁷:

Before we proceed further, we would like to go through the orders passed by the Apex Court in the case of W.P. (Crl.) No. 129 of 2006 titled as Laxmi v. Union of India, dealing with a similar case of acid attack victim. On 18.07.2013, this Court passed the following order:

6. The Centre and States/Union Territories shall work towards making the offences under the Poison Act, 1919 cognizable and non-bailable.

¹⁵Aadil Bashir, ShabanaKhurshid: Eve Teasing and Molestation – A Case Study of District Srinagar. *International Journal of Science and Research (IJSR) (Vol.2, No. 12)*

¹⁶(2016)3SC C 571

¹⁷(2014) 4 SCC 427

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7. In the States/Union Territories, where rules to regulate sale of acid and other corrosive substances are not operational, until such rules are framed and made operational, the Chief Secretaries of the concerned States/Administrators of the Union Territories shall ensure the compliance of the following directions with immediate effect:

(i) Over the counter, sale of acid is completely prohibited unless the seller maintains a log/register recording the sale of acid which will contain the details of the person(s) to whom acid(s) is/are sold and the quantity sold. The log/register shall contain the address of the person to whom it is sold.

(ii) All sellers shall sell acid only after the buyer has shown:

a) A photo ID issued by the Government which also has the address of the person.

b) Specifies the reason/purpose for procuring acid.

(iii) All stocks of acid must be declared by the seller with the concerned Sub-Divisional Magistrate (SDM) within 15 days.

(iv) No acid shall be sold to any person who is below 18 years of age.

(v) In case of undeclared stock of acid, it will be open to the concerned SDM to confiscate the stock and suitably impose fine on such seller up to Rs. 50,000/-

(vi) The concerned SDM may impose fine up to Rs. 50,000/- on any person who commits breach of any of the above directions.

8. The educational institutions, research laboratories, hospitals, Government Departments and the departments of Public Sector Undertakings, who are required to keep and store acid, shall follow the following guidelines:

(i) A register of usage of acid shall be maintained and the same shall be filed with the concerned SDM.

(ii) A person shall be made accountable for possession and safe keeping of acid in their premises.

(iii) The acid shall be stored under the supervision of this person and there shall be compulsory checking of the students/personnel leaving the laboratories/place of storage where acid is used.

9. The concerned SDM shall be vested with the responsibility of taking appropriate action for the breach/default/violation of the above directions.

10. Section 357A came to inserted in the Code of Criminal Procedure, 1973 by Act 5 of 2009 w.e.f. 31.12.2009. Inter alia, this Section provides for preparation of a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

The Court¹⁸ then went on to reiterate directions regarding ban on sale of acid across the counter, and to supplement such directions with an administrative procedure which ensures a proper mechanism is put in place for sale, use and stocking of such substances.

10. On 3rd December, 2013, in Laxmi's case (supra), when the affidavit of State of Haryana was placed before the Bench, this Court further directed the Chief Secretaries of the States and Administrators of the Union Territories to issue necessary instructions to the Police Stations within their respective State/Union Territory that as and when an FIR is lodged with the police relating to acid attack, the concerned Police Station will send a communication to the jurisdictional S.D.M. about receipt of

¹⁸Supra note 15.

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such information. Upon receipt of such information, the jurisdictional S.D.M. shall then make inquiry into the procurement of acid by the wrong doer and take appropriate action in the matter.

Again reliance was placed on the directions issued by the Court in *Laxmi case*, to the Secretary in the Ministry of Home Affairs and Secretary in the Ministry of Health and Family Welfare with respect to the sale of acid:

20. With regard to the banning of sale of acid across the counter, we direct the Secretary in the Ministry of Home Affairs and Secretary in the Ministry of Health and Family Welfare to take up the matter with the State Governments/Union Territories to ensure that an appropriate notification to this effect is issued within a period of three months from today. It appears that some States/Union Territories have already issued such a notification, but, in our opinion, all States and Union Territories must issue such a notification at the earliest.

The Court¹⁹ came down heavily on the lapses of the respective states in formulating a policy aimed specifically at deterring the distribution of substances which are weaponised for inflicting grievous harm:

13. We have come across many instances of acid attacks across the country. These attacks have been rampant for the simple reason that there has been no proper implementation of the Regulations or control for the supply and distribution of acid. There have been many cases where the victims of acid attack are made to sit at home owing to their difficulty to work. These instances unveil that the State has failed to check the distribution of acid falling into the wrong hands even after giving many directions by this Court in this regard. Henceforth, a stringent action be taken against those

¹⁹*Ibid.*

erring persons supplying acid without proper authorization and also the concerned authorities be made responsible for failure to keep a check on the distribution of the acid.

IV. Need for a Separate Offence

Acid attack as an offence was not defined in the Indian Penal Code, till 2013. The sections of Indian Penal Code which did apply to such an act, dealt with the offence of causing 'grievous hurt'. The need to classify 'acid attack' or attempt thereof, as a separate offence was felt after the rising incidents of acid attacks, and particularly after the case of acid attack on Laxmi, later known as the *Laxmi case*²⁰. The Justice J.S. Verma Committee Report instituted by the Government of India in 2013 while suggesting reforms in the criminal justice system considered the issue of acid attack and observed as under.

The committee recommended that acid attack to be included as an offence under IPC. It observed,

*[t]he gender specificity and discriminatory nature of this offence does not allow us to ignore this offence as yet another crime against women. We recommend that acid attacks be specifically defined as an offence in the IPC, and that the victim be compensated by the accused. However in relation to crimes against women, the Central and State governments must contribute substantial corpus to frame compensation fund. We note that the existing Criminal Law (Amendment) Bill, 2012, does include a definition of acid attack.*²¹

The committee also observed,

²⁰ 2014 SCC 4 427

²¹ <https://nalsa.gov.in/acts-rules/preventive-strategic-legal-services-schemes/nalsa-legal-services-to-victims-of-acid-attacks-scheme-2016>

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[i]n a certain sense, the aggressor is conscious that self-worth and self-esteem of a woman often lies in her face, which is a part of her personality. The dismemberment of the face or the body is not merely an offence against the human body but will cause permanent psychological damage to the victim. What happens when there is permanent physical and psychological damage to a victim, is a critical question and law makers have to be aware that offences are not simply based on the principle of what might be called offence against the body, i.e., damage of the body, but they must take into account the consequences on the right to live with dignity which survives the crime. This is an important consideration both in the fields of criminology and also in the field of sociology.²²

Report 226 of The Law Commission of India, titled '*The Inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a law for Compensation for Victims of Crime*²³', in light of the heightened consciousness regarding the acts of acid attack, summarized the inadequacy of the existant laws in dealing with such incidents:

It has been contended by those working for these victims that the Criminal law relating to grievous hurts in Sections 320, 322, 325 and 326 of the Indian Penal Code (I.P.C) is insufficient to deal with the phenomenon of acid attacks. Section 320 deals with grievous hurt and reads as under:-

Section 320 (Grievous hurt). - *The following kinds of hurt only are designated as "grievous":-*

First.-Emasculation.

²²Justice J.S. Verma, *Report of the Committee on Amendments to Criminal Law*, 147, para 5 (January 2013).

²³Report 226 of the Law Commission of India.

Secondly. - Permanent privation of the sight of either eye.

Thirdly.- Permanent privation of the hearing of either ear,

Fourthly.- Privation of any member or joint.

Fifthly.-Destruction or permanent impairing of the powers of any member or joint

Sixthly.-Permanent disfiguration of the head or face.

Seventhly.- Fracture or dislocation of a bone or tooth.

Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

This definition of grievous hurt has been criticized as the definition does not take within its purview the various kinds of deliberate hurt that is inflicted on important parts of a female's body nor does this definition apply to offences like acid attack in which multiple types of grievous hurts occur.

Section 322²⁴ IPC defines voluntarily causing grievous hurt and Section 325²⁵ IPC provides for punishment for grievous hurt. The offence is punishable by imprisonment upto seven years and is cognizable, bailable, and compoundable as well as being triable by a first class Magistrate. The offence of grievous hurt is not

²⁴**Section 322. Voluntarily causing grievous hurt.-** Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said to "voluntarily to cause grievous hurt."

Explanation. - A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind; he actually causes grievous hurt of another kind.

²⁵**Section 325. Punishment for voluntarily causing grievous hurt.-** Whoever, except in the case provided for by section 335 (Voluntarily causing grievous hurt on provocation), voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

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caused unless the offender both causes grievous hurt and intends, or knows himself to be likely, to cause grievous hurt.

Section 326 of the Indian Penal Code which applies in cases of voluntarily causing grievous hurt by means of any corrosive substance is punishable with imprisonment for life or with imprisonment of either description for a term which may extend to 10 years and fine²⁶. Thus, punishment for voluntarily causing grievous hurt even by corrosive substances like Acid can be imprisonment for life or with imprisonment for a term which may extend to 10 years. It has been argued that this period of punishment does not match the gravity of the offence.

After the recommendations of the Law Commission, the Criminal Law Amendment Act, 2013 was passed, creating a separate offence under Section 326A to deal with the menace of 'Acid Attacks'. Section 326A lays down the contours of the offence and the requisite mental element required to constitute the offence of *voluntarily causing grievous hurt by use of acid*'. It criminalizes throwing or administering or attempting to throw acid on any person, irrespective of gender, with the intent to disfigure or maim that person causing him permanent or partial damage.

Under Section 326A punishment for administering an acid attack is a minimum ten years which may extend to life imprisonment upon the court's discretion. The punishment for attempting to throw acid on a person is punishable for a time period of 5-7 years under

²⁶**Section 326 Voluntarily causing grievous hurt by dangerous weapons or means-** Whoever , except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale , to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 326B irrespective of the nature of the damage caused to the victim. The victim is liable for compensation, up to Rs. 3 lakhs. The compensation should be payable in addition to the payment of the fine by the culprit.

326-A²⁷. Voluntarily causing grievous hurt by use of acid, etc.—Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

All this is supplemented by Sections 114²⁸ and 119²⁹ of Evidence Act. Section 114 carries a presumption where the court presumes the existence of certain facts, taking into consideration the normal course of events, the conduct of human being, and public and private business depending upon the facts of a particular case. Section 119 is very noteworthy with regard to the victims of acid attacks. It talks about dumb witnesses, that is, people who are

²⁷ Inserted by Criminal Law Amendment Act, 2013.

²⁸Section 114, Evidence Act, 'The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case'.

²⁹Section 119 Evidence Act, 1872: Dumb witnesses.—A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

unable to give their testimony in the open court. Evidence Act allows such persons, and the testimony of such persons to be taken either through writing or gestures, signs or in any other manner in which it is intelligible. People who are victims of acid attacks are unable to speak due to their pitiable condition, deformity, etc., and their evidence is very much admissible through this section in the open court. Apart from this, under the Poisons Act, 1919, Model Rules have also been framed to regulate sale of acids and other corrosive substances in the schedule to the Model Poisons (Possession and Sale) Rules, 2013. List of poisons have also been provided in the schedule to the Rules, 2013. The punishment is also provided for the persons selling the poison in violations of the provisions of the Poison Act, 1919. The punishment is, for first time, imprisonment for one month and for succeeding offences it may extend to six months³⁰.

V. Implementation Of Guidelines In The Erstwhile State Of J&K

Post the judgment pronounced in *Laxmi v. Union of India and others*³¹, the Ministry of Home Affairs, Government of India issued directions to State of J&K, among others, to regulate sale of acid/corrosive substances in the State, until such time the rules under the Jammu and Kashmir Poisons Act, 1977 are framed by the State Government. Vide Circular No. Home/240/OWP/2012 61050/2013m dated 24.09.2013, Home Department, following directions were issued:

“It is accordingly enjoined upon all the DMs, Sub Divisional Magistrates and Tehsildars to give wide publicity to the following directions after translating into local language through print and

³⁰Goswami S, Handa RK. The Peril of Acid Attacks in India and Susceptibility of Women. *Journal of Victimology and Victim Justice*. 2020; 3(1):72-92.
doi:10.1177/2516606920927247

³¹Writ Petition (CrI) No. 129/2006.

electronic media for information of public at large and also ensure strict compliance of these directions in letter and spirit in exercise of powers vested under Section 144, CrPC:-

- (i) Over the counter, sale of acid is completely prohibited unless the seller maintains a log/register recording the sale of acid which will contain the details of the person(s) to whom acid(s) is/are sold and the quantity sold. The log/register shall contain the address of the person to whom it is sold.*
- (ii) All sellers shall sell acid only after the buyer has shown:
 - a) A photo ID issued by the Government which also has the address of the person.*
 - b) Specifies the reason/purpose for procuring acid.**
- (iii) All stocks of acid must be declared by the seller with the concerned Sub-Divisional Magistrate (SDM) or to the territorial Tehsildars where there are no SDMs, within 15 days. No acid shall be sold to any person who is below 18 years of age.*
- (iv) In case of undeclared stock of acid, it will be open to the concerned SDM to confiscate the stock and suitably impose fine on such seller up to Rs. 50,000/-*
- (v) The concerned SDM may impose fine up to Rs. 50,000/- on any person who commits breach of any of the above directions.*

In addition, the educational institutions, research laboratories, hospitals, Government Departments and the departments of Public Sector Undertakings, who are required to keep and store acid, shall follow the following guidelines:-

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- (i) *A register of usage of acid shall be maintained and the same shall be filed with the concerned SDM/Tehsildar.*
- (ii) *A person shall be made accountable for possession and safe keeping of acid in their premises.*
- (iii) *The acid shall be stored under the supervision of this person and there shall be compulsory checking of the students/personnel leaving the laboratories/place of storage where acid is used.”*

Thereafter, by way of a public notice, the following was notified:

Whereas, the Hon'ble Supreme Court in W.P. (Cr.) No. 129 of 2006 Laxmi v. U.O.I. and other, on 18/7/2013 had passed certain directions regarding the sale of acid/corrosive substances;

Whereas, the Jammu and Kashmir State is yet to notify the appropriate Poison Rules under the Poison Act, 1977.

As per the directions of the Hon'ble Supreme Court, it is hereby brought to the notice of the general public which includes individuals, educational and research institutions, hospitals, industries, Government Departments and Department of Public Sector Undertakings or sellers of the following acids and corrosive substances, namely that henceforth their sale would be regulated until the new Poison Rules are promulgated. Acetic acid (beyond 25% concentration by weight), Acetic Anhydride, Sulphuric acid (H₂SO₄) (beyond 5% concentration by weight), Hydrochloric acid (HCL) (beyond 5% concentration by weight) Phosphoric acid (H₃PO₄), Hydrofluoric acid (HF), Perchloric acid (HC₁O₄), Formic acid (beyond 10% concentration by weight), Hydrocyanic acid except substances containing less than 0.1 percent weight in weight of Hydrocyanic acid, Nitric acid, except substances containing less than 5 percent weight in weight of Nitric acid, Oxalic Acid, Per chloride of Mercury (Corrosive sublimate),

Hydrogen Peroxide (beyond 50% concentration by weight), Formaldehyde (beyond 25% concentration by weight), Phenol (beyond 3% concentration by weight), Potassium Hydroxide except substances containing less than 2 percent weight in weight of Potassium Hydroxide, Sodium Hydroxide except substances containing less than 2% weight of Sodium Hydroxide.

4. *It is hereby declared that-*

It then reproduces the above mentioned directions, as per the circular of Home Department.

Post abrogation of the special status of State of J&K, through the re-organization act³², number of state legislated acts came to be abrogated. Table 3 of the Fifth Schedule of the Act lists the State acts which shall be deemed to be repealed after the abrogation of the special status. The directions issued, pursuant to the Home Department circular dated 24.09.2013, by the erstwhile State of J&K regarding regulation of sale of acidic substances were to be an interim measure subject to the adoption of appropriate rules under the *The Jammu and Kashmir Poisons Act, Samvat 1977*. After the repeal of the Act and the non-application of the corresponding central act (*The Poisons Act, 1919*) to the UT of Jammu and Kashmir and Ladakh, has created a legal vacuum. After the recent acid attack³³ in Srinagar city, the District Magistrates of Srinagar and Pulwama issued an Order dated 04.02.2022 calling for strict measures against unauthorized sale of acid/corrosive substances. The Order issued by District Magistrate, is once again, an interim measure, an after-thought. There remains no rule on the books against the open sale and ready availability of acidic substances.

VI. Conclusion

³²<https://egazette.nic.in/WriteReadData/2019/210407.pdf>

³³<https://www.indiatoday.in/cities/srinagar/story/srinagar-acid-attack-case-jk-police-to-soon-file-charge-sheet-1909942-2022-02-07>

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For laws to work, it is the duty of the State, through the executive, to ensure the implementation and adherence of the letter and spirit of the law. Bereft of such adherence, there is no value to the addition of laws and creation of more offences. Supreme Court caught hold of this problem and laid down precise guidelines to be followed by persons dealing with acidic substances. Ironically, those guidelines when adopted also become the law and like all laws, are devoid of any strict adherence in a State which does not believe in nipping the crime at its initiation. Despite the guidelines, the UT of J&K has done little to allay the anxieties of women, being victims of gruesome acts. The Acid attack, unlike other offences, involves for the commission, a substance without which the injury as intended cannot be effected. The attacks have been recurrent for the simple reason that there has been no proper implementation of the Regulations or control on the supply and distribution of acid. Despite the limited allocation of resources required for preventive measures, there is hardly any indication of positive steps being taken. The State seems to be content with legislating and then hoping against hope that the laws so adopted are followed by the people without need of an implementing mechanism. The extensive power of positive discrimination in favor of women, conferred by the Constitution on the State, to adopt measures for betterment of women as a class will lose all significance if there is continued abdication of all constitutional duties by the State.

The Legal Imperative of International Standards: Exploring the World's Common Language

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Abstract

This article explores the essential role of standards and standardization in our global context. Every October 14th, Standards Day commemorates the work of Standards Development Organizations, which forge common ground in our diverse global marketplace. Standards are the cornerstone of product consistency, interconnectivity, and universal understanding. The paper delves into the history and development of standards, spotlighting organizations like the IEC and ISO that paved the way for seamless global trade. National standards bodies also play a vital role in setting industry benchmarks, certifying products, and representing their countries in international contexts. Standards act as the world's common language, fostering interchangeability, compatibility, and technology transfer. They break down trade barriers by harmonizing requirements and improving global communication through standardized signage and protocols. These standards benefit consumers, businesses, governments, and society by ensuring quality, safety, and environmental protection. Despite challenges in some domains, the role of standards in facilitating international business and projecting a global image remains paramount in our increasingly interconnected world.

Keywords: Global Commerce, Interconnectivity, International Standards Bodies, Standards, Standardization

I. Introduction

On October 14 each year, the world comes together to celebrate Standards Day,³ a day dedicated to honoring the tireless efforts of

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those who have devoted their expertise and time to the development of standards within Standards Development Organizations. These standards may seem unremarkable in our daily lives, often operating behind the scenes, but they form the backbone of a world that would be unimaginably different without them. Picture, for a moment, a world devoid of common standards. It is a world where customers, no matter where they are on the globe, would find it extraordinarily challenging to engage in transactions with suppliers of similar products. Why? Because, without standards, products would vary significantly in terms of taste, size, and function. The global marketplace would be a bewildering labyrinth of diversity, where the simple act of purchasing a familiar item becomes an unpredictable adventure.⁴

Consider, for example, the ubiquitous Coca-Cola, a beloved beverage enjoyed worldwide. In this world without standards, a bottle of Coca-Cola produced in South Africa would be strikingly distinct from one manufactured in Tanzania.⁵ The taste, the size, the packaging, and even the ingredients might vary drastically, leaving consumers in a perpetual state of confusion and disappointment. This inconsistency in the very products we rely on daily would create immense barriers to trade and international cooperation. In such a world, even technological marvels like the mini laptops produced by Apple would be vastly different from one another. A customer who purchased a particular model in one part of the world would find it nigh impossible to replace certain parts,

³ ISO - World Standards Day, ISO, <https://www.iso.org/world-standards-day.html> (last visited Oct 13, 2023).

⁴ David Hoyle, *Chapter 27 - Production and Service Provision*, in ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 517 (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B978185617684200027X> (last visited Oct 13, 2023).

⁵ Christian Valery Tayo Tene, Alexander Yuriev & Olivier Boiral, *Adopting ISO Management Standards in Africa: Barriers and Cultural Challenges*, in ISO 9001, ISO 14001, AND NEW MANAGEMENT STANDARDS 59 (Iñaki Heras-Saizarbitoria ed., 2018), https://doi.org/10.1007/978-3-319-65675-5_4 (last visited Oct 13, 2023).

such as a malfunctioning keyboard or screen, through local authorized dealers.⁶ Every product, no matter how similar in appearance, would be a unique and heterogeneous entity, differing significantly from other products, whether from the same manufacturer or a different one.

It is through the dedication of those who develop and maintain standards that we are spared from this chaos. Standards provide us with a common language, a shared understanding that transcends borders, languages, and cultures. They ensure that the Coca-Cola you enjoy in South Africa tastes just as expected in Tanzania or any other part of the world. They guarantee that your Apple laptop, no matter where you are, can be serviced and repaired with ease, and its components are interchangeable.⁷ Standards are the unsung heroes of our modern world, silently working in the background to maintain consistency and order. They are the cornerstone of progress, underpinning international trade, safety, and innovation. On Standards Day, we celebrate not just the standards themselves but also the individuals and organizations dedicated to their development, the architects of a world where we can rely on the familiar, no matter where we are.

⁶ David Hoyle, *Chapter 26 - Purchasing*, in ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 493 (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000268> (last visited Oct 13, 2023).

⁷ Cots Santi & Casadesús Martí, *Implementing Service Management Standards: Motivations and Key Factors*, in ISO 9001, ISO 14001, AND NEW MANAGEMENT STANDARDS 83 (Iñaki Heras-Saizarbitoria ed., 2018), https://doi.org/10.1007/978-3-319-65675-5_5 (last visited Oct 13, 2023).

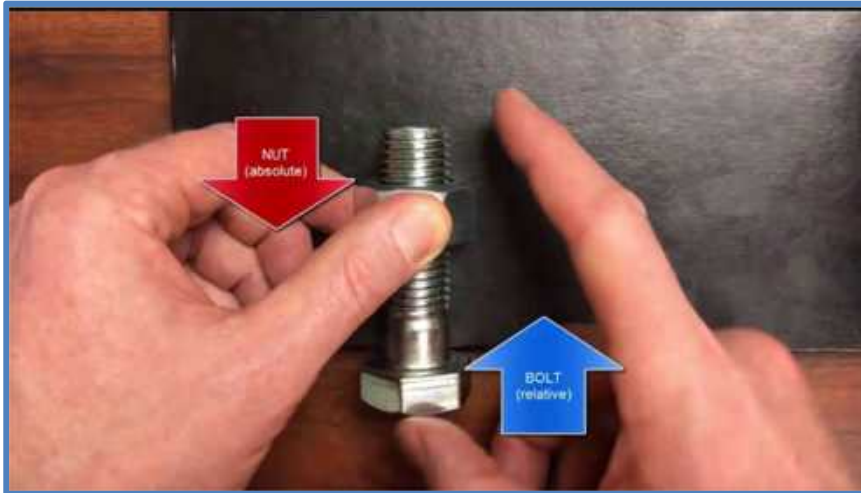


FIGURE I. With Standards, you can buy bolts in England and nuts in Tanzania and be sure they fit.⁸

II. What is an Internatinal Standard?

ISO, which stands for the International Organization for Standardization, is a global body that develops and publishes international standards to ensure the quality, safety, and efficiency of products, services, and systems.⁹ ISO standards cover a wide range of areas, including technology, manufacturing, healthcare, environmental management, and more. These standards are developed through a consensus-based process involving experts and stakeholders from around the world.

ISO standards provide specifications, guidelines, and best practices in various fields, helping to:

⁸ The rule is that the grade of the nut should always be the same as the bolt grade or one grade higher so: a grade 8.8 bolt should be fitted with a grade 8 or grade 9 nut. A grade 12.9 bolt should be fitted with a grade 12 or grade 14 nut. See Metric Nuts and Bolts | THOMSONRAIL, <https://thomsonrail.com/metric-nuts-and-bolts/> (last visited Oct 13, 2023).

⁹ Juan-José Tarí et al., *The Internalization of a Sectorial Standard for Quality Management: A Qualitative Analysis in Tourism*, in ISO 9001, ISO 14001, AND NEW MANAGEMENT STANDARDS 97 (Iñaki Heras-Saizarbitoria ed., 2018), https://doi.org/10.1007/978-3-319-65675-5_6 (last visited Oct 13, 2023).

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- a. ISO standards help organizations meet quality and safety requirements, enhancing consumer confidence.
 - b. Standards can make products and systems more compatible and interchangeable, reducing friction in various industries.
 - c. ISO has developed standards for environmental management and sustainability, helping organizations reduce their impact on the environment.
 - d. ISO standards often provide guidance on optimizing processes and workflows.

Many ISO standards focus on safety and risk management, ensuring that products and services are safe for consumers and the environment.¹⁰ These are just a few examples, as ISO has published thousands of standards covering a wide array of industries and areas.

Some well-known ISO standards include:

ISO 9001-Quality Management Systems

ISO 9001 is an internationally recognized standard for quality management systems.¹¹ It provides a framework for organizations to establish and maintain effective quality control and quality assurance processes.¹² ISO 9001 focuses on ensuring customer satisfaction, improving product and service quality, and enhancing overall operational efficiency. Organizations that implement ISO 9001 often benefit from increased customer trust, reduced defects, and a systematic approach to continual improvement.

¹⁰ Iñaki Heras-Saizarbitoria, Olivier Boiral & Erlantz Allur, *Three Decades of Dissemination of ISO 9001 and Two of ISO 14001: Looking Back and Ahead*, in *ISO 9001, ISO 14001, AND NEW MANAGEMENT STANDARDS 1* (Iñaki Heras-Saizarbitoria ed., 2018), https://doi.org/10.1007/978-3-319-65675-5_1 (last visited Oct 13, 2023).

¹¹ Tarí et al., *supra* note 9.

¹² David Hoyle, *Chapter 31 - Measurement and Monitoring of Products and Processes*, in *ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 607* (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000311> (last visited Oct 13, 2023).

ISO 14001-Environmental Management Systems

ISO 14001 is a global standard for environmental management systems.¹³ It helps organizations identify, manage, and reduce their environmental impact. Companies that adopt ISO 14001 commit to environmental responsibility by setting environmental objectives, monitoring performance, and complying with applicable environmental laws and regulations.¹⁴ The standard promotes sustainable practices and can lead to reduced environmental incidents, resource efficiency, and a positive environmental reputation.¹⁵

ISO 27001- Information Security Management Systems

ISO 27001 is a standard for information security management systems.¹⁶ It outlines best practices for managing and protecting sensitive information within an organization. ISO 27001 helps companies identify information security risks, implement safeguards, and establish a robust framework for managing data security. This standard is crucial in today's digital age, as data breaches and cyber threats continue to pose significant risks to businesses and individuals.

¹³ Thomas Zobel, *ISO 14001 Adoption and Environmental Performance: The Case of Manufacturing in Sweden*, in ISO 9001, ISO 14001, AND NEW MANAGEMENT STANDARDS 39 (Iñaki Heras-Saizarbitoria ed., 2018), https://doi.org/10.1007/978-3-319-65675-5_3 (last visited Oct 13, 2023).

¹⁴ David Hoyle, *Part 6 Complying with ISO 9001 Section 7 Requirements on Product Realization*, in ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 403 (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000530> (last visited Oct 13, 2023).

¹⁵ Hoyle, *supra* note 12.

¹⁶ Heras-Saizarbitoria, Boiral, and Allur, *supra* note 10.

ISO 45001- Occupational Health and Safety Management Systems

ISO 45001 is a standard for occupational health and safety management systems.¹⁷ It provides a systematic approach to identifying and managing workplace risks to prevent accidents and health issues among employees. Organizations that adhere to ISO 45001 demonstrate their commitment to ensuring a safe and healthy working environment.¹⁸ This can lead to reduced workplace accidents, improved employee well-being, and legal compliance with occupational health and safety regulations.

ISO 3166-Country codes and codes for subdivisions

ISO 3166 is a standard that defines codes for the names of countries and their subdivisions, such as states, provinces, or territories.¹⁹ These codes are used in international commerce, travel, and various data systems to uniquely identify geographic entities. ISO 3166 codes are invaluable for addressing, classifying, and referencing countries and regions, and they are widely used in databases, addressing systems, and international trade.²⁰

ISO 8601- Date and time representation

ISO 8601 is a standard for representing dates and times in a consistent and unambiguous format.²¹ It provides a structured way

¹⁷ Tari et al., *supra* note 9.

¹⁸ David Hoyle, *Chapter 22 - Work Environment (6.4)*, in *ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION)* 395 (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000220> (last visited Oct 13, 2023).

¹⁹ ISO - ISO 3166 — Country Codes, <https://www.iso.org/iso-3166-country-codes.html> (last visited Oct 13, 2023).

²⁰ Karen Patrias & Dan Wendling, *ISO Country Codes for Selected Countries*, in *CITING MEDICINE: THE NLM STYLE GUIDE FOR AUTHORS, EDITORS, AND PUBLISHERS [INTERNET]*. 2ND EDITION (2007), <https://www.ncbi.nlm.nih.gov/books/NBK7249/> (last visited Oct 13, 2023).

²¹ International standard date and time notation, <https://www.cl.cam.ac.uk/~mgk25/iso-time.html> (last visited Oct 13, 2023).

to express dates, times, and time intervals, which is essential in various applications, including computer systems, databases, and international communications. ISO 8601 minimizes confusion and simplifies data exchange across different regions and platforms.

ISO 4217(Currency codes)

ISO 4217 is a standard that defines three-letter codes for world currencies.²² These codes are used in international finance, banking, and commerce to denote specific currencies and facilitate currency exchange and financial transactions. ISO 4217 codes are essential for cross-border trade, foreign exchange markets, and financial reporting.

ISO 639: Language codes

ISO 639 is a standard that defines codes for the representation of names of languages. These codes are crucial in internationalization and localization efforts, as they help software developers, content creators, and translators identify and tag languages accurately. ISO 639 codes enable multilingual support in software, websites, and documentation, making it easier for people around the world to access information in their preferred languages. These ISO standards play vital roles in various industries and aspects of daily life, ensuring consistency, safety, and efficiency in international communication, business operations, and environmental sustainability.

ISO standards help organizations and governments ensure that products, services, and processes are safe, reliable, and efficient on a global scale. A standard, as defined, is not merely a piece of paper with technical specifications; it is a meticulously crafted document with a purpose that extends far beyond its physical form.

²² Currency codes (ISO 4217), https://docs.1010data.com/1010_data_ReferenceManual/DataTypesAndFormats/currencyUnitCodes.html (last visited Oct 13, 2023).

Standards are not haphazardly created but rather meticulously designed through a rigorous process characterized by strict procedures and consensus-building. These documents are not just arbitrary guidelines; they are the backbone of numerous industries and areas of human activity, meant for communal and repetitive use. At their core, standards are crafted to instill order and clarity within a specific context. They serve as a blueprint, a set of rules and guidelines, meticulously developed and refined to ensure that every participant in a particular field, industry, or endeavor is on the same page. The value of standards lies in their ability to minimize confusion and uncertainty. They act as universal reference points, allowing different parties to communicate and collaborate effectively. Standards are not developed in isolation; they are the result of collective efforts and consensus-building. This consensus doesn't just arise from arbitrary decisions; it emerges from rigorous discussions and debates, underpinned by a commitment to finding the best possible solutions. The standards development process often involves experts, stakeholders, and representatives from various relevant fields, all working together to create a document that reflects the collective wisdom and experience of those involved.

When a standard is finally approved by an authorized institution, it carries significant weight and authority. It becomes a reliable source of information, a benchmark for quality and performance. The impact of a standard on the market is substantial because it is the product of market-driven structural consensus decision-making. In other words, it reflects the demands and needs of the market itself. This market-driven approach ensures that standards are not arbitrary impositions but rather solutions to real-world problems and challenges faced by industries and society. Furthermore, standards are approved based on the strictest of criteria. They must meet rigorous quality and performance benchmarks to gain the

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trust and confidence of the market. This ensures that standards are not just empty words but are documents with real-world applicability.

Founded in 1906 in London, the International Electrotechnical Commission (IEC) was established as the world's first national standards body that dealt with standardizations in the electronic and electric fields. Standardizations in other fields were mostly addressed by the International Federation of the National Standardizing Association (ISA) which was founded in 1926 with its initial focus on mechanical engineering. It closed down in 1942 due to its bad business performance. At the conference in London in 1946, representatives from 25 countries decided on a new international organization. As a result, the International Organization for Standardization (ISO) was formed in 1947.²³



FIGURE II. (ISO was formed on February 23, 1947, in London, United Kingdom)

²³ JEANNE DUPENDANT, *International Regulatory Co-Operation and International Organisations: The Cases of the OECD and the IMO*, 11 (2016), https://www.oecd-ilibrary.org/governance/international-regulatory-co-operation-and-international-organisations_9789264225756-en (last visited Oct 13, 2023).

The establishment of international standardization organizations was closely intertwined with the emergence of national standards bodies, and this interconnection makes it challenging to define clear temporal boundaries between the two. These organizations sprang into existence under the influence of the national and regional dynamics prevalent at the time. Some prominent national standards organizations that emerged in the 20th century include the American National Standards Institute (ANSI) in 1918, the Italian Organization for Standardization (UNI) in 1921, the Swedish Standards Institute (SIS) in 1922, the Industrial Standards Committee of China in 1931, and the Tanzania Bureau of Standards (TBS) in 1975. The primary functions of these national standards organizations encompass the formulation and dissemination of national standards, product certification, and the representation of their respective countries in international standards-related activities and forums.

III. Common Language

Standards and standardization quietly assume the role of architects in the complex tapestry of our modern globalized world, acting as a universal language that transcends boundaries and cultures, providing the foundation for trade, technology, and communication.²⁴ In today's intricately interdependent global landscape, this common language holds profound significance. At the forefront of international trade, standards act as a shared language, ensuring that products, whether it's a smartphone, machinery, or agricultural goods, meet uniform criteria of quality, safety, and interoperability. This uniformity streamlines trade and fosters trust in the goods exchanged. Consider, for instance, the metric system, a universally recognized language in international trade that facilitates seamless transactions and contributes to

²⁴ Heras-Saizarbitoria, Boiral, and Allur, *supra* note 10.

breaking down trade barriers, such as differing product specifications, ultimately promoting economic growth and cooperation. In the realm of technology, standards are the linchpin for interoperability, ensuring that diverse networks, whether in telecommunications or emerging technologies like the Internet of Things and 5G, can seamlessly integrate and scale on a global level. Without these standards, we'd face a tower of Babel, with incompatible protocols and devices hindering progress and connectivity.²⁵

Moreover, standards play an instrumental role in fostering global collaboration and knowledge transfer, with researchers, engineers, and innovators relying on standardized protocols to ensure their work is comprehensible and replicable worldwide. Whether it's in healthcare or environmental science, this common language accelerates scientific and technological advancement, promoting a shared global knowledge pool.

Furthermore, standards act as guardians of public health and consumer protection, rigorously developed and enforced to ensure safety and efficacy in products and services. When you board an airplane or consume pharmaceuticals, you place your trust in this system of standards that transcends national boundaries, providing reassurance that products adhere to internationally recognized safety norms.²⁶ In essence, standards and standardization form the universal bridge that unites the diverse fabric of our globalized world. They not only simplify international trade, ensure technological interoperability, and facilitate knowledge exchange

²⁵ Iñaki Heras-Saizarbitoria et al., *Drivers, Obstacles and Benefits of the Adoption of SA8000: A Survey in Italian Companies*, in ISO 9001, ISO 14001, AND NEW MANAGEMENT STANDARDS 109 (2018), https://link.springer.com/chapter/10.1007/978-3-319-65675-5_7 (last visited Oct 13, 2023).

²⁶ Alexander Yuriev & Olivier Boiral, *Implementing the ISO 50001 System: A Critical Review*, in ISO 9001, ISO 14001, AND NEW MANAGEMENT STANDARDS 145 (Iñaki Heras-Saizarbitoria ed., 2018), https://doi.org/10.1007/978-3-319-65675-5_9 (last visited Oct 13, 2023).

but also stand as sentinels of safety and consumer trust. In an increasingly interconnected world, the role of this common language in advancing progress and cooperation cannot be overstated. Standards are the language of unity, enabling humanity to communicate, innovate, and prosper together on a global scale.

The relationship between international trade standards and the legal framework provided by the World Trade Organization (WTO) is of paramount importance. The General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS) are integral elements within this framework. GATT, dating back to 1947, primarily addresses trade barriers, particularly tariffs, and adheres to non-discrimination principles. Harmonizing product specifications and quality through standardization is key in facilitating compliance with GATT, reducing technical and regulatory obstacles, and promoting fair competition. GATS, established in 1995, extends these principles to the service sector. Standardization plays a pivotal role in GATS as well, enabling the adoption of international standards for services, ensuring compatibility with regulatory requirements, and enhancing cross-border service trade. The synergy between standardization and these WTO agreements creates a robust foundation for international trade, promoting both economic growth and compliance with legal obligations.²⁷ Several key factors elucidate why standards are rightfully referred to as the world's common language:

Interchangeability

Standards are the bedrock upon which interchangeability is built. They enable processes, products, or services to be seamlessly exchanged or used together, even when they originate from different countries or manufacturers. Consider, for instance, the

²⁷ *Id.*

electric sockets designed by different brands - thanks to standards, they can be used interchangeably in the same cables. Shaving blades from diverse brands are engineered to fit the same razor, and batteries from various manufacturers, each with their unique brands, can be slotted into the same mobile phone. This interoperability ensures that consumers and industries can select products based on their preferences, needs, and budget without worrying about compatibility issues.

Quality Assurance

Standards also serve as a yardstick for quality.²⁸ They provide a common framework for evaluating the quality of products and services, irrespective of their origin. When consumers see a product adhering to a recognized standard, it instills confidence in its quality and reliability. This, in turn, fosters trust in the global marketplace. Safety and Regulations: Standards often include safety and regulatory guidelines. They establish critical benchmarks that products and processes must meet to ensure the safety of consumers, workers, and the environment. For example, safety standards in the automotive industry set requirements for crash tests, emissions, and other critical factors, thereby safeguarding lives and the planet.

Global Trade

In the realm of international trade, standards simplify the complex process of importing and exporting products. When products adhere to recognized international standards, they can cross borders with ease. This not only facilitates trade but also helps in

²⁸ Konstantinos Iatridis & Effie Kesidou, *What Drives the Quality of Certifiable Management System Standards Implementation? Insights from the ISO 9001 Standard, in ISO 9001, ISO 14001, AND NEW MANAGEMENT STANDARDS 17* (Iñaki Heras-Saizarbitoria ed., 2018), https://doi.org/10.1007/978-3-319-65675-5_2 (last visited Oct 13, 2023).

harmonizing regulations among countries, reducing trade barriers, and spurring economic growth.²⁹

Innovation and Progress

Standards are not static; they evolve with technology and society's changing needs. They drive innovation and continuous improvement, encouraging industries to push the boundaries of what is possible while maintaining global compatibility. This adaptability enables swift responses to emerging challenges and opportunities.

IV. Dynamic Standards and Nurturing Across Innovation

The dynamic role of standards takes a central position in nurturing innovation and progress across various domains, including intellectual property,³⁰ investment law, investor-state dispute (ISD) resolutions, patents, and international business.³¹ These standards are far from static; they continuously evolve to keep pace with the swiftly changing technology landscape and the evolving needs of society. This dynamism serves as a catalyst for growth, motivating industries to push their boundaries while maintaining global compatibility, ultimately fostering innovation and driving continuous improvement.

In the realm of intellectual property, standards act as the common language of innovation.³² They provide the framework that ensures new technologies are not only groundbreaking but also compatible with existing systems. This alignment expedites the adoption of

²⁹ Tarí et al., *supra* note 9.

³⁰ Intellectual Property Rights (IPR) Policy – PDF Association, <https://pdfa.org/intellectual-property-rights-ipr-policy/> (last visited Oct 13, 2023).

³¹ David Hoyle, *Chapter 25 - Design and Development*, in ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 449 (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000256> (last visited Oct 13, 2023).

³² Standards and Patents, <https://www.wipo.int/patent-law/en/developments/standards.html> (last visited Oct 13, 2023).

new ideas, spurring further creativity, and reinforcing the rights of intellectual property owners. By harmonizing innovation with standardized protocols, intellectual property laws can efficiently protect and nurture the fruits of human ingenuity.

Within the domain of investment law and ISD resolutions, standards play a pivotal role in facilitating international business. Their adaptability allows investment laws to keep pace with the dynamic nature of global commerce. Standards create a common foundation for businesses operating across borders, ensuring that investments meet consistent criteria of quality and safety. In cases of disputes, ISD mechanisms rely on internationally recognized standards to ensure that investments are treated fairly and equitably. This framework safeguards the interests of both investors and host states, thereby promoting foreign direct investment and spurring economic growth.³³

Patents and standards are intricately linked, with the latter providing the landscape for the effective deployment of patented innovations.³⁴ By aligning patented technologies with global standards, inventors can ensure that their creations are not only groundbreaking but also compatible with existing systems, enabling a swift entry into the market. This synergy between patents and standards creates an environment conducive to innovation, where the incentive to create is met with the opportunity for widespread implementation.³⁵

³³ David Hoyle, *Chapter 24 - Customer-Related Processes*, in ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 425 (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000244> (last visited Oct 13, 2023).

³⁴ ISO - ISO Standards and Patents, ISO, <https://www.iso.org/iso-standards-and-patents.html> (last visited Oct 13, 2023).

³⁵ David Hoyle, *Chapter 23 - Planning Product Realization Processes*, in ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 407 (David Hoyle ed., 2009),

In international business, the key to success is global compatibility. Standards play a critical role in ensuring that products and services can be seamlessly introduced into diverse markets, thus fostering international trade and business expansion. By adhering to standardized protocols, businesses can efficiently navigate complex regulatory landscapes, reduce trade barriers, and promote economic growth. This harmonization forms the foundation upon which international businesses thrive, enabling companies to adapt and compete on a global scale.

In essence, standards are the silent architects of our modern interconnected world, promoting compatibility, safety, quality, and efficiency. They transcend language barriers and national boundaries, creating a universal framework for progress and cooperation, thus rightfully earning their title as the world's common language.

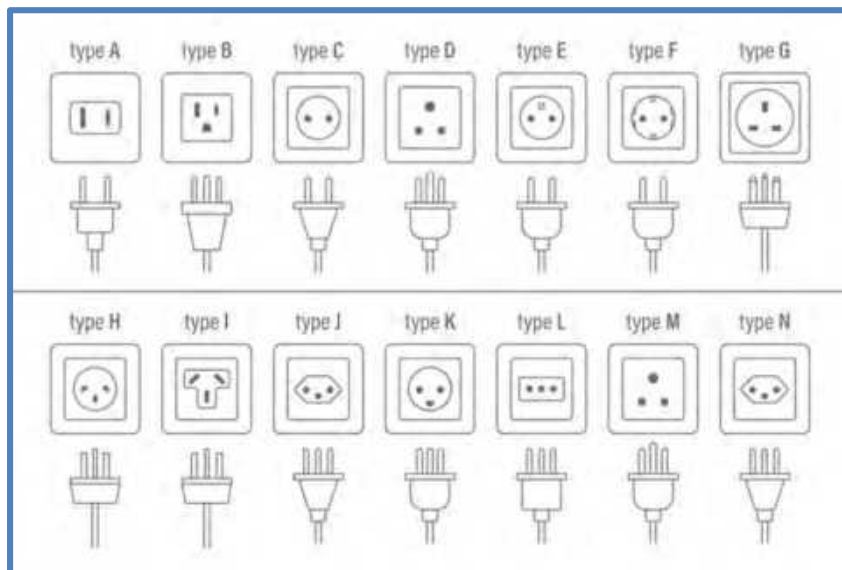


FIGURE III. Standards make it possible for the socket from one manufacturer to be used by the cable from the other manufacturer.

<https://www.sciencedirect.com/science/article/pii/B9781856176842000232> (last visited Oct 13, 2023).

The Legal Imperative of International Standards: Exploring

In the early days of electrification, the world witnessed the birth of electrical plugs with just two simple tabs, lacking the safety feature of a ground pin. Engineers, however, recognized the need for improved safety in the 1920s, giving rise to the concept of the ground pin. While many nations swiftly embraced these grounded plugs as a safer alternative, they didn't consistently enforce them as a universal standard. An excellent case in point is the United States, which began using grounded plugs for specific appliances but didn't adopt them as a standard for residential use until 1971.

This inconsistency in the adoption of electrical plug innovations underscores a broader challenge: different countries adopted such innovations at different times, resulting in a medley of plug types in use across the world. As a result, travelers, tech enthusiasts, and anyone dealing with electronic devices often find themselves grappling with the need for various plug adapters.

The idea of establishing a single, global standard for electrical plugs, given the interconnected nature of the modern world, seems not only logical but also immensely convenient. Imagine a world where you could plug your device into any socket worldwide without the hassle of carrying a bag full of adapters. However, the reality is far more complex. While the convenience of a universal standard is undeniable, its implementation is a colossal undertaking. It requires countries that have not yet adopted the standard to make substantial investments. Billions of dollars would be needed to retrofit existing outlets, overhaul building infrastructure, and even alter the manufacturing processes for specific appliances.³⁶ Understandably, these countries often have more pressing financial priorities and are reluctant to divert

³⁶ David Hoyle, *Chapter 20 - Human Resources, in ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION)* 367 (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000207> (last visited Oct 13, 2023).

significant resources towards standardizing electrical plugs. The desire for a global standard might be shared by many countries, but the resistance to change their existing infrastructure and practices remains a formidable barrier.³⁷ The bottom line is that while nations may support the notion of a global standard, none are eager to be the first to make the significant investments and endure the logistical challenges involved in transitioning. As a result, the world continues to grapple with a patchwork of plug types and the need for adapters, especially when embarking on international travel. For the foreseeable future, the humble plug adapter remains an essential travel accessory, a symbol of the persistence of local customs and infrastructure in a world that, in many ways, strives for universal standards and seamless global connectivity.

IV. Compatibility

Standards have made it suitable for processes, products or services to be used together under specific conditions to fulfill the relevant requirements without causing unnecessary interaction.³⁸ For example in electronic data processing, information has to be coded for storage, transmission, and retrieval in electronic pulses. To make the code recognizable for any machine and at all times, it has to be standardized. Such standardization helps to establish compatibility between various machines or subsystems and permits expansion features and information exchange amongst different systems.

³⁷ David Hoyle, *Chapter 21 - Infrastructure (6.3)*, in ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 387 (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000219> (last visited Oct 13, 2023).

³⁸ David Hoyle, *Chapter 19 - Determining and Providing Resources*, in ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 359 (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000190> (last visited Oct 13, 2023).

Transfer of Technology.

Standards act as a good vehicle for technology transfer between nations. Since standards incorporate the results of advances in science, technology, and experience, they reflect the state of the art in technical development. As standardization is a dynamic process, standards are updated as new technologies are developed. Standards have played a great role in making the world a single village through sharing and mutual use of innovations and technologies from different parts of the world.

Removal of Trade Barriers

Restrictions on the export of processes, products, or services by introducing some technical barriers to trade, such as arbitrary product requirements, are being viewed with great concern. The introduction of Standards prevents such non-tariff barriers to trade by harmonizing requirements in a manner that promotes fair competition. For example, beef should fulfill certain international standards commonly agreed upon in its preparation and packaging processes before exporting.

Harmonizing International Trade

The removal of trade barriers, the World Trade Organization (WTO), and the International Organization for Standardization (ISO) are interrelated concepts vital for the facilitation of international trade.³⁹ Trade barriers, such as tariffs, non-tariff barriers, and trade restrictions, obstruct the flow of goods and services across borders. Efforts to remove these barriers through negotiations and agreements promote economic growth and consumer choice. The WTO, established in 1995, serves to

³⁹ David Hoyle, *Part 5 Complying with ISO 9001 Section 6 Requirements on Resource Management*, in ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 355 (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000517> (last visited Oct 13, 2023).

promote the elimination of trade obstacles, establish trade rules, and resolve disputes, fostering a fair global trading environment. Concurrently, the ISO, a non-governmental body, develops international standards across various sectors, ensuring product and service quality and safety meet global standards, simplifying cross-border trade. Together, these elements create a foundation for efficient and equitable international trade.

Better Communication and Understanding.

It is difficult to spell how cumbersome it would be to communicate in public places of a foreign country such as in airports,⁴⁰ railway stations, and highways, where the language is a barrier.⁴¹ Through the application of standards, some universal standardized signs and graphics play this important role.⁴² Whenever the transfer of goods and services is involved, standards spell out what means of communication are to be used between different parties. Since standards contain recorded information in a precise and documented form, they contribute to better communication and understanding in various settings.

⁴⁰ David Hoyle, *Chapter 5 - A Practical Guide to Using These Standards*, in ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 77 (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000050> (last visited Oct 13, 2023).

⁴¹ David Hoyle, *Chapter 17 - Responsibility, Authority and Communication*, in ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 323 (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000177> (last visited Oct 13, 2023).

⁴² Patrias and Wendling, *supra* note 20.



(Standardized signs are used in airports for better communication and understanding)

V. ISO Standards in WTO Trade Harmonization

The World Trade Organization (WTO) and the International Organization for Standardization (ISO) are distinct entities with diverse roles,⁴³ yet they exhibit notable intersections in the realm of trade harmonization.⁴⁴ ISO, as a major player in standardization, crafts international standards spanning numerous products, services, and systems. These standards function as a linchpin for trade harmonization by establishing universal specifications and requirements, thereby streamlining the cross-border exchange of goods and services. They assure that products and services align with global benchmarks of quality, safety, and efficiency, making

⁴³ Dave Bennett, *ISO and the WTO: A Report to the International Confederation of Free Trade Unions' Working Party on Health, Safety, and Environment*, 11 NEW SOLUT 197 (2001).

⁴⁴ David Hoyle, *Chapter 39 - System Certification*, in *ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 745* (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000396> (last visited Oct 13, 2023).

it more convenient for businesses to comply with the international trade regulations set forth by organizations like the WTO.⁴⁵

The WTO, on the other hand, is primarily tasked with the regulation of international trade. It aspires to construct a more transparent, predictable, and harmonized global trading environment. While the WTO's domain primarily revolves around trade policies, agreements, and the resolution of trade disputes, it frequently draws upon international standards, with ISO standards serving as significant reference points for trade-related matters.⁴⁶ For instance, in trade disputes, the WTO may utilize ISO standards to evaluate compliance or mediate conflicts regarding product specifications, quality, or safety.⁴⁷ Thus, ISO standards play a pivotal role in trade harmonization by providing a shared reference framework for the WTO and its member nations in their trade-related endeavors.

Furthermore, ISO standards operate as a tool for businesses and nations to ensure adherence to WTO agreements and trade regulations.⁴⁸ By adhering to ISO standards, businesses can substantiate that their products and services meet global standards of quality and safety. This compliance with internationally recognized criteria simplifies their engagement in global trade, mitigating the risk of encountering trade barriers. In another

⁴⁵ David Hoyle, *Chapter 40 - Beyond ISO 9001 Certification*, in ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 761 (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000402> (last visited Oct 13, 2023).

⁴⁶ David Hoyle, *Chapter 3 - The Importance and Role of Stakeholders*, in ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 39 (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000037> (last visited Oct 13, 2023).

⁴⁷ David Hoyle, *Chapter 16 - Quality Objectives and Planning*, in ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 309 (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000165> (last visited Oct 13, 2023).

⁴⁸ Bennett, *supra* note 43.

context, ISO standards offer a solid foundation for trade negotiations. When countries align their product specifications and regulations with universally acknowledged ISO standards, they create a common ground for negotiation.⁴⁹ This approach can streamline trade negotiations by circumventing conflicts stemming from disparate national standards.⁵⁰ The potential outcome is the removal of trade barriers and the promotion of more accessible and efficient international trade, a goal that strongly resonates with the WTO's mission.⁵¹

Therefore, ISO standards play a multifaceted role in trade harmonization by furnishing a universal language and a set of criteria that facilitate the exchange of goods and services across international borders.⁵² While the primary sphere of the WTO revolves around trade policies and agreements, ISO standards serve as valuable reference points in ensuring compliance and resolving trade-related disputes.⁵³ The synergy between ISO standards and the WTO reinforces the harmonization and advancement of international trade, further underscoring their interconnectivity.

⁴⁹ David Hoyle, *Chapter 15 - Quality Policy*, in ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 297 (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000153> (last visited Oct 13, 2023).

⁵⁰ Iñaki Heras-Saizarbitoria, Ander Ibarloza & Alberto Díaz de Junguitu, *Conflicts Arising in the Generation Process of the ISO 45001 Standard*, in ISO 9001, ISO 14001, AND NEW MANAGEMENT STANDARDS 177 (Iñaki Heras-Saizarbitoria ed., 2018), https://doi.org/10.1007/978-3-319-65675-5_10 (last visited Oct 13, 2023).

⁵¹ Bennett, *supra* note 43.

⁵² Frank Wiengarten et al., *A Supply Chain View on Certification Standards: Does Supply Chain Certification Improve Performance Outcomes?*, in ISO 9001, ISO 14001, AND NEW MANAGEMENT STANDARDS 193 (Iñaki Heras-Saizarbitoria ed., 2018), https://doi.org/10.1007/978-3-319-65675-5_11 (last visited Oct 13, 2023).

⁵³ Panos Delimatsis, *Global Standard-Setting 2.0: How the WTO Spotlights ISO and Impacts the Transnational Standard-Setting Process*, SSRN ELECTRONIC JOURNAL (2018).

Significance of having standards

Frankly speaking, standards serve as an indispensable foundation for progress in our interconnected world, offering a multitude of benefits to consumers, businesses, governments, society at large, and even our planet.⁵⁴ To deliberate deeper into the various ways, standards contribute to enhancing different aspects of our lives and the global landscape.

For Consumers

Standards act as the guardians of consumer interests. When products and services conform to international standards, consumers are assured of their quality, safety, and reliability. Whether it's the safety of a child's toy or the quality of the food we consume, standards provide consumers with the peace of mind that they deserve.⁵⁵ They eliminate uncertainty and ensure that the products they choose meet a minimum level of quality.

For Businesses

International standards offer businesses a powerful tool for expanding their horizons. By aligning their product and service development with widely accepted specifications, businesses can confidently enter international markets.⁵⁶ The global acceptance of these standards allows businesses to compete on a larger scale, opening doors to opportunities they might not have ventured into otherwise. This not only boosts their growth but also fosters healthy competition, which, in turn, benefits consumers.

⁵⁴ Heras-Saizarbitoria et al., *supra* note 25.

⁵⁵ Iker Laskurain, German Arana & Iñaki Heras-Saizarbitoria, *Adopting ISO/TS 16949 and IATF 16949 Standards: An Exploratory and Preliminary Study*, in ISO 9001, ISO 14001, AND NEW MANAGEMENT STANDARDS 131 (Iñaki Heras-Saizarbitoria ed., 2018), https://doi.org/10.1007/978-3-319-65675-5_8 (last visited Oct 13, 2023).

⁵⁶ David Hoyle, *Chapter 2 - Defining and Characterizing Quality*, in ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 23 (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000025> (last visited Oct 13, 2023).

For Governments

Standards are the invisible scaffolding that supports the framework of health, safety, and environmental legislation.⁵⁷ They provide the scientific and technological foundations upon which governments can build regulations that protect the well-being of their citizens and the environment. This means that standards are instrumental in ensuring the safety of products and services, from pharmaceuticals to industrial machinery, and in preserving the environment through measures like air and water quality standards.⁵⁸

For Society

Standards contribute significantly to the quality of life. Whether it's the vehicles we use for transportation, the machinery we operate in industries, or the tools we employ in our daily lives, standards ensure that these are not only efficient but also safe and reliable.⁵⁹ They are the invisible hand that guides innovation and ensures that progress doesn't come at the cost of safety.

For the Planet

Environmental standards are pivotal in the battle to preserve our planet. They set the bar for air and water quality, emission levels, and soil contamination. These standards are essential in our

⁵⁷ David Hoyle, *Part 7 Complying with ISO 9001 Section 8 Requirements on Measurement, Analysis and Improvement*, in ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 553 (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000554> (last visited Oct 13, 2023).

⁵⁸ David Hoyle, *Part 8 System Assessment Certification and Continuing Development*, in ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 723 (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000578> (last visited Oct 13, 2023).

⁵⁹ David Hoyle, *Key Messages Key Messages from Part 6*, in ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 550, 6 (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000542> (last visited Oct 13, 2023).

collective efforts to mitigate climate change, protect ecosystems, and sustain a habitable environment for future generations. They provide a regulatory framework that encourages industries to adopt eco-friendly practices and reduce their environmental footprint.⁶⁰

Thus, while there are cases where standardization might not be feasible due to various factors like cultural differences or specific production requirements, standards remain a cornerstone for international business.⁶¹ They promote a unique international image, build trust, and facilitate trade. In an ever-globalizing world, standards are the unifying language that helps bridge gaps and promote cooperation among nations. They are not just documents; they are the underpinning of a modern, interconnected world where quality, safety, and sustainability are paramount. Standards, indeed, are the silent heroes of our progress.⁶²

VI. Conclusion

In a nutshell, the celebration of Standards Day each year serves as a reminder of the vital role that standards and standardization play in our globalized world. These standards are not merely technical documents but the world's common language, enabling interchangeability, compatibility, technology transfer, and the removal of trade barriers. They foster better communication, understanding, and safety in various settings, benefitting consumers, businesses, governments, and society at large. While there are cases where standardization isn't possible due to cultural or regional differences, standards remain a key pillar in facilitating international business and promoting a unique international image. The journey of standardization, from national bodies to

⁶⁰ Hoyle, *supra* note 46.

⁶¹ Tayo Tene, Yuriev, and Boiral, *supra* note 5.

⁶² David Hoyle, *Part 2 Approaches to Achieving, Sustaining and Improving Quality*, in ISO 9000 QUALITY SYSTEMS HANDBOOK - UPDATED FOR THE ISO 9001:2008 STANDARD (SIXTH EDITION) 87 (David Hoyle ed., 2009), <https://www.sciencedirect.com/science/article/pii/B9781856176842000451> (last visited Oct 13, 2023).

The Legal Imperative of International Standards: Exploring

international organizations like ISO, has greatly contributed to a more interconnected and efficient global economy, improving the quality of life and safeguarding the environment. As we commemorate Standards Day, it's crucial to acknowledge and appreciate the profound impact that standards have on our daily lives and the progress of our world. These standards, including ISO 9001 and ISO 14001, serve as fundamental frameworks that organizations across the globe use to enhance their quality management and environmental responsibility. The adoption of ISO standards, such as ISO 9001, not only improves the quality of products and services but also boosts the efficiency and competitiveness of businesses. ISO 14001, on the other hand, aids in managing environmental aspects and performance, ultimately contributing to a sustainable and eco-friendly approach in industries. The adoption of ISO standards is not limited to a specific region or industry. It is a global phenomenon. Africa, for example, has seen a growing adoption of ISO management standards. This demonstrates the universal applicability and importance of these standards in diverse cultural and business contexts. The adoption of ISO standards can also be extended to other areas, such as service management, occupational health and safety, and energy management. These standards provide a structured and systematic approach to various aspects of organizational management, ensuring consistency and reliability.

Thus, ISO standards are instrumental in shaping the way organizations operate, fostering safety and quality, promoting environmental sustainability, and facilitating international trade. They serve as a bridge between different cultures and industries, promoting global harmony and progress. As we explore the vast landscape of ISO standards, it becomes clear that they are not just documents but tools for positive change and progress in our interconnected world.

Climate Justice and Legal Frameworks: A Critique of India's Response to Climate Change

Iftikhar Hussain Bhat*

Abstract

Climate change poses one of the most significant challenges of the 21st century, with far-reaching implications for ecosystems, economies, and human rights worldwide. As the global community grapples with the multifaceted impacts of climate change, the concept of climate justice has emerged as a crucial framework for addressing the unequal distribution of its burdens and benefits. This article provides a comprehensive examination of climate change mitigation and adaptation measures in India, focusing on the intricate interplay between climate justice and legal frameworks. The analysis reveals the crucial need for integrating climate justice principles, such as equity and inclusivity, within the legal provisions to address the multifaceted challenges posed by climate change. Recognizing historical responsibilities and empowering vulnerable communities emerge as pivotal strategies for aligning legal frameworks with climate justice goals. Despite notable progress in national climate policies, challenges persist in the implementation and enforcement of legislative measures, necessitating continuous refinement for enhanced efficacy. Assessing India's response to climate change, the paper evaluates key legislative measures and the institutional framework, highlighting areas for improvement. The paper delves into the assessment of climate justice in India, exploring equity concerns, social and economic impacts on vulnerable communities, and the imperative for inclusive decision-making processes. Challenges in implementing climate justice, such as legal and institutional barriers, enforcement issues, and socio-political challenges, are identified, presenting simultaneous opportunities for improvement. Drawing insights from international best practices and lessons from other jurisdictions, the research provides a robust set of recommendations. These encompass policy reforms, legal amendments, and initiatives for capacity building and awareness. Strengthening regulatory bodies, integrating climate goals into mainstream development

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policies, and fostering inter-ministerial collaboration emerge as critical components of a comprehensive strategy.

Key words: Adaptation, International Best Practices, Climate Justice, Legal Frameworks, Mitigation, Policy Reforms, Vulnerable Communities,

I. Introduction

Climate change has emerged as a paramount global concern, casting a shadow over the future of our planet¹. The scientific consensus on anthropogenic climate change has propelled nations into action, compelling them to devise strategies for both mitigation and adaptation. In response to the growing urgency of the climate crisis, the international community has engaged in a series of negotiations and agreements aimed at mitigating greenhouse gas emissions and adapting to the impacts of climate change. Key milestones include the United Nations Framework Convention on Climate Change (UNFCCC) established in 1992, the Kyoto Protocol adopted in 1997, and the Paris Agreement reached in 2015. These agreements represent collective efforts to address climate change on a global scale, emphasizing the principles of equity, common but differentiated responsibilities, and sustainable development. Despite international efforts, the impacts of climate change are disproportionately felt by vulnerable communities, including low-income populations, indigenous peoples, and small island states. These communities often have limited resources to adapt to climate change and are more likely to bear the brunt of its adverse effects. Furthermore, historical and ongoing emissions from developed countries have contributed

¹ The Intergovernmental Panel on Climate Change (IPCC) reports, particularly the Fifth Assessment Report (AR5), provides comprehensive scientific assessments of climate change, influencing global policies and strategies.

significantly to the accumulation of greenhouse gases in the atmosphere, exacerbating the inequities of climate change.²

India, as one of the world's largest and most populous countries, stands at the forefront of this challenge, navigating the complex interplay of environmental, social, and economic factors. India's geographical diversity, coupled with its heavy reliance on climate-sensitive sectors such as agriculture, makes it particularly vulnerable to the impacts of climate change. The nation has witnessed a surge in extreme weather events, altering precipitation patterns, and escalating sea levels, all of which pose intricate challenges to its socio-economic fabric. Recognizing the severity of these challenges, India has instituted a range of measures aimed at mitigating climate change and adapting to its inevitable impacts. Understanding the legal frameworks that underpin India's response to climate change is vital for evaluating the effectiveness of these measures. Climate justice is not only an ethical concern but also a legal imperative. International agreements, such as the Paris Agreement, stress the principles of equity and justice in climate action. Understanding how these principles are translated into domestic laws and policies is essential for ensuring alignment with global commitments. This paper, therefore, serves as a critical evaluation of India's legal response in light of its international obligations, providing insights into areas that require alignment or improvement.

II. Conceptual Framework

Climate change, recognized as a defining challenge of the 21st century, necessitates a comprehensive understanding of its conceptual and legal dimensions. At its essence, climate justice

² Torres, Gerald, and Sheila Foster. "The Paradox of Environmental Justice." *Yale Law Journal*, vol. 101, no. 6, 1992, pp. 2081-2100 at 2083.

encapsulates the ethical considerations of addressing climate change, advocating for fairness, equity, and shared responsibility.³ This concept acknowledges that the impacts of climate change disproportionately affect vulnerable communities, often those who have contributed least to global greenhouse gas emissions. A holistic definition of climate justice extends beyond environmental considerations to encompass broader social and economic dimensions. Key principles within the conceptualization of climate justice include intergenerational equity, intra-generational equity, and the principle of common but differentiated responsibilities.⁴ Intergenerational equity underscores the ethical imperative of present actions ensuring the well-being of future generations, emphasizing the notion that today's decisions profoundly affect the planet's future. Intra-generational equity focuses on the equitable distribution of the benefits and burdens of climate change adaptation and mitigation among current generations. The principle of common but differentiated responsibilities acknowledges that while all nations share a responsibility for addressing climate change, historical and current contributions to emissions vary, necessitating differentiated commitments.

The translation of climate justice principles into actionable measures requires a robust legal framework. Nations worldwide have responded to the urgent need for climate action by enacting laws, regulations, and policies. This is particularly evident in India, where a comprehensive legal architecture addresses the multifaceted aspects of climate change. A pivotal document in

³ Shue, H. *Climate Justice: Vulnerability and Protection*. Oxford University Press, 2014 at 7.

⁴ IPCC. *Climate Change 2007: Synthesis Report*. Intergovernmental Panel on Climate Change, 2007 at topic 4 . https://reliefweb.int/report/world/climate-change-2007-synthesis-report?gad_source=1&gclid=CjwKCAiA8NKtBhBtEiwAq5aX2AkN1_jKoK_LcY8T-Xg8veyJtY-uJgxSPEFWE80-XvecHod0LjQZ9BoCkNgQAvD_BwE

India's climate governance is the National Action Plan on Climate Change (NAPCC).⁵ Introduced in 2008, the NAPCC outlines India's strategy for both adaptation and mitigation. Comprising eight national missions, including missions focused on solar energy, water, and sustainable agriculture, the NAPCC reflects a balanced approach, aligning with principles of climate justice by addressing both environmental and socio-economic dimensions. Another significant component of India's legal framework is the Environmental Impact Assessment (EIA) process.⁶ Governed by the Ministry of Environment, Forest and Climate Change, the EIA process plays a crucial role in integrating climate considerations into development projects. By assessing potential environmental and social impacts, the EIA process ensures that development initiatives adhere to sustainable practices, contributing to the broader goals of climate justice. The effectiveness of legal frameworks in promoting climate justice lies in their ability to address the differentiated impacts of climate change on various communities and sectors. The intricate interplay between climate justice and legal instruments involves evaluating the extent to which these frameworks contribute to equitable outcomes. A significant challenge lies in the effective implementation of climate laws and policies at the grassroots level. While national-level frameworks may embody principles of climate justice, their translation into actionable projects at the local level requires meticulous planning and community engagement. Scholars argue that a genuine commitment to climate justice necessitates the

⁵ Government of India. *National Action Plan on Climate Change*. 2008.

⁶ Ministry of Environment, Forest and Climate Change, Government of India. *Environmental Impact Assessment Notification*. 2020.

inclusion of marginalized communities in decision-making processes.⁷

On the international stage, the Paris Agreement stands out as a landmark treaty that embodies the principles of climate justice.⁸ Adopted in 2015 under the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Agreement emphasizes the principle of common but differentiated responsibilities. It calls for global cooperation to limit temperature rise and encourages each nation to contribute according to its historical and current emissions. Analyzing the alignment of national commitments, such as India's Nationally Determined Contributions (NDCs), with the principles of climate justice provides valuable insights into the nation's dedication to equitable climate action.⁹

III. International Legal Framework

Climate change poses a grave threat to the global environment, economies, and societies. Recognizing the urgency of addressing these issues on an international scale, nations around the world have come together to establish a legal framework for climate change adaptation and mitigation. This framework is a complex web of agreements, protocols, and conventions that seek to curb greenhouse gas emissions, adapt to the impacts of climate change, and foster international cooperation. The foundations of the international legal framework for climate change can be traced back to the United Nations Framework Convention on Climate Change (UNFCCC), adopted during the Earth Summit in Rio de

⁷ Roberts, J. T., & Parks, B. C. *A Climate of Injustice: Global Inequality, North-South Politics, and Climate Policy*. MIT Press, 2006 at 7.

⁸ United Nations Framework Convention on Climate Change. *Paris Agreement*. 2015.

⁹ Government of India. *India's Intended Nationally Determined Contributions*. 2015.

Janeiro in 1992.¹⁰ The UNFCCC sets out the general principles and objectives for addressing climate change and emphasizes the common but differentiated responsibilities of developed and developing countries. Article 2 of the UNFCCC highlights the ultimate objective of stabilizing greenhouse gas concentrations in the atmosphere at a level that prevents dangerous anthropogenic interference with the climate system.¹¹ Building on the UNFCCC, the Kyoto Protocol, adopted in 1997, was a groundbreaking development in international climate change law.¹² The protocol established legally binding emission reduction targets for developed countries, commonly referred to as Annex I parties. Each Annex I party committed to reducing its greenhouse gas emissions by a specified percentage below 1990 levels. The market-based mechanisms, such as emissions trading and the Clean Development Mechanism (CDM), introduced in the Kyoto Protocol aimed to facilitate cost-effective emission reductions. The Paris Agreement, adopted in 2015, marked a paradigm shift in international climate change efforts.¹³ Unlike the Kyoto Protocol, the Paris Agreement employs a bottom-up approach, where each country voluntarily submits nationally determined contributions (NDCs) reflecting its climate action plans. The agreement emphasizes the global goal of limiting the increase in average global temperature to well below 2 degrees Celsius above pre-industrial levels, with efforts to limit it to 1.5 degrees Celsius. The heart of the Paris Agreement lies in the NDCs, which outline each country's specific targets and actions. Developing countries are encouraged to enhance their efforts over time, while developed

¹⁰ UNFCCC. "United Nations Framework Convention on Climate Change." Rio de Janeiro, Brazil, May 1992.

¹¹ *Ibid.*

¹² Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 11, 1997, 37 I.L.M. 22 (1998).

¹³ Paris Agreement, Dec. 12, 2015, 55 I.L.M. 22 (2016).

countries are expected to provide financial and technological support to assist developing nations in their climate change mitigation and adaptation endeavors. This principle of common but differentiated responsibilities recognizes historical emissions by developed nations and the varying capacities of countries to address climate change.¹⁴

While the international legal framework for climate change represents a significant step forward, it faces numerous challenges and criticisms. One major criticism is the lack of enforcement mechanisms, rendering some commitments non-binding. Additionally, the absence of universally applicable rules for calculating and reporting emissions raises concerns about transparency and comparability among countries.¹⁵ Addressing climate change requires substantial financial resources, especially for developing countries. The Green Climate Fund (GCF), established under the UNFCCC, aims to mobilize funds for climate change adaptation and mitigation projects.¹⁶ Developed countries committed to jointly provide \$100 billion annually by 2020 to support developing nations in their climate efforts. However, the actual mobilization of these funds has fallen short of the target, raising questions about the adequacy and effectiveness of financial mechanisms. Beyond state actors, non-state actors such as businesses, civil society, and local governments play a crucial role in climate change efforts. The Talanoa Dialogue, introduced under the Paris Agreement, provides a platform for inclusive and participatory discussions involving governments, non-state actors, and indigenous peoples. This approach recognizes the need for a

¹⁴ Ibid.

¹⁵ Bodansky, Daniel. "The Paris Climate Change Agreement: A New Hope?" *The American Journal of International Law*, vol. 110, no. 2, 2016, pp. 288-319 at 293.

¹⁶ Green Climate Fund. "Green Climate Fund Overview." Accessed January 10, 2024. <https://www.greenclimate.fund/who-we-are/overview>.

holistic and collaborative approach to address the multifaceted challenges posed by climate change.¹⁷ One of the emerging legal challenges within the climate change framework is the issue of climate-induced displacement. Rising sea levels, extreme weather events, and other climate impacts force communities to migrate, raising questions about the legal status and protection of climate refugees.¹⁸ The international legal framework is yet to provide a comprehensive solution to address the rights and responsibilities associated with climate-induced displacement. Effective climate change mitigation and adaptation require enhanced global cooperation and coordination. The principle of common but differentiated responsibilities must be reinforced, and nations should collectively work towards more ambitious targets to limit global temperature rise. The establishment of a global carbon market and the alignment of financial flows with climate goals are essential steps in achieving the objectives outlined in the international legal framework.¹⁹

IV. India's Response to Climate Change

India's approach to climate change is multifaceted, comprising a combination of policies, legislative measures, and institutional frameworks. The nation's commitment to addressing climate change is underscored by its National Action Plan on Climate Change (NAPCC), launched in 2008.²⁰ The NAPCC serves as a comprehensive blueprint, outlining the country's strategy for both

¹⁷ United Nations Framework Convention on Climate Change. "Talanoa Dialogue." Accessed January 10, 2024. <https://unfccc.int/talanoa-dialogue>.

¹⁸ McAdam, Jane. "Swimming against the Tide: Why a Climate Change Displacement Treaty is Not the Answer." *International Journal of Refugee Law*, vol. 25, no. 1, 2013, pp. 23-42 at 26.

¹⁹ Bodansky, Daniel. "What's Next for the Paris Climate Agreement?" *World Politics Review*, June 7, 2017.

²⁰ Ministry of New and Renewable Energy, Government of India. *National Solar Mission*. 2010. Accessed January 10, 2024. <https://mnre.gov.in/solar-overview/>

adaptation and mitigation. It consists of eight national missions, each addressing a specific aspect of climate change. One of the prominent missions under the NAPCC is the National Solar Mission, aiming to promote the development and use of solar energy.²¹ This mission aligns with the broader goals of reducing greenhouse gas emissions and increasing the share of renewable energy in the country's energy mix. Additionally, the National Water Mission focuses on sustainable water management, considering the impact of climate change on water resources.²² These missions collectively reflect India's commitment to a holistic and integrated approach to climate change mitigation and adaptation. In addition to policy initiatives, India has enacted key legislative measures to address climate change. The Environmental Impact Assessment (EIA) process, governed by the Ministry of Environment, Forest and Climate Change, plays a pivotal role in ensuring that development projects adhere to environmental sustainability and climate considerations.²³ The EIA process involves the assessment of potential environmental and social impacts, reinforcing the integration of climate concerns into development planning. Another significant legislative measure is the Energy Conservation Act, which empowers the Bureau of Energy Efficiency (BEE) to formulate and implement energy efficiency policies and programs.²⁴ By focusing on energy efficiency, India aims to reduce its carbon footprint and enhance its climate resilience. Furthermore, the National Environment Policy

²¹ Ibid.

²² Planning Commission, Government of India. "Report of the Working Group on Water Management and Climate Change for the Twelfth Five Year Plan (2012-2017)." 2011.

²³ Ministry of Environment, Forest and Climate Change, Government of India. "Environmental Impact Assessment Notification." 2020. <https://environmentclearance.nic.in/>

²⁴ Bureau of Energy Efficiency, Ministry of Power, Government of India. "Energy Conservation Act." 2001. <https://beeindia.gov.in/en/about-us/ec-act>

(NEP) provides a broad legislative framework for integrating environmental considerations, including climate change, into developmental policies and programs.²⁵ The NEP underscores the importance of sustainable development and environmental protection, aligning with the principles of climate justice.

India has established a robust institutional framework dedicated to climate action. The Ministry of Environment, Forest and Climate Change (MoEFCC) is the primary governmental body responsible for formulating and implementing policies and programs related to climate change.²⁶ Within the MoEFCC, the Department of Climate Change specifically focuses on climate-related issues, coordinating national efforts to address the challenges posed by climate change. The National Adaptation Fund for Climate Change (NAFCC) is a crucial financial institution, supporting projects and programs aimed at enhancing climate resilience and adaptation.²⁷ This fund reflects India's recognition of the need to allocate financial resources to address the immediate and long-term impacts of climate change on vulnerable communities. Additionally, India's engagement with international climate finance mechanisms, such as the Green Climate Fund (GCF), underscores its commitment to global cooperation in addressing climate change.²⁸ The GCF supports developing countries in their efforts to mitigate and adapt to climate change, reflecting the principle of common but differentiated responsibilities.

²⁵ Ministry of Environment, Forest and Climate Change, Government of India. "National Environment Policy." 2006. <https://www.india.gov.in/national-environment-policy-2006>

²⁶ Ministry of Environment, Forest and Climate Change, Government of India. "About Us." Accessed January 24, 2024. http://www.ismenvis.nic.in/Database/MoEFCC_Page2_23784.aspx#

²⁷ National Adaptation Fund for Climate Change, Ministry of Environment, Forest and Climate Change, Government of India. "Operational Guidelines." 2015.

²⁸ Green Climate Fund. "India." 2021. <https://www.greenclimate.fund/project/fp084>

V. Assessing Climate Justice in India

As India navigates the challenges posed by climate change, an essential aspect of its response is evaluating the extent to which climate justice principles are embedded in policies and actions. Equity and fairness are critical components of climate justice, emphasizing the need for policies to distribute the burdens and benefits of climate action fairly among different sections of society. One of the key considerations is the implementation of national climate policies and programs. The National Action Plan on Climate Change (NAPCC) outlines comprehensive strategies, but the equitable distribution of its benefits and burdens requires meticulous attention.²⁹ A critical lens must be applied to assess whether policies under the NAPCC, such as the National Solar Mission and the National Water Mission, effectively reach marginalized communities and ensure their participation in renewable energy and water management initiatives. Additionally, the implementation of legislative measures like the Environmental Impact Assessment (EIA) process is pivotal for ensuring that development projects, particularly those with potential environmental impacts, are subjected to thorough scrutiny. Evaluating whether the EIA process is accessible and responsive to the concerns of local communities, particularly those that are vulnerable, provides insights into the equity and fairness of this regulatory mechanism.³⁰

Climate change disproportionately affects vulnerable communities, exacerbating existing social and economic inequalities. Assessing climate justice in India requires an examination of the social and economic impacts of climate policies on these communities.

²⁹ Government of India. "National Action Plan on Climate Change." 2008.

³⁰ Ministry of Environment, Forest and Climate Change, Government of India. "Environmental Impact Assessment Notification." 2020.

Agricultural communities, for instance, are often on the frontline of climate change impacts. Droughts, floods, and changes in precipitation patterns directly affect their livelihoods. Evaluating the effectiveness of climate adaptation strategies, such as those outlined in the NAPCC's National Mission for Sustainable Agriculture, becomes crucial in determining whether vulnerable agricultural communities receive adequate support to cope with climate-induced challenges.³¹ Similarly, urban areas face unique challenges, including heat stress and extreme weather events. Climate-resilient urban planning and infrastructure projects need to consider the socio-economic vulnerabilities of marginalized populations residing in urban areas. The Smart Cities Mission, a flagship urban development program, necessitates scrutiny to ensure inclusivity and fairness in the face of climate challenges.³²

Indigenous and local communities often possess traditional knowledge and practices that contribute to resilience in the face of environmental changes. Acknowledging and integrating these perspectives into climate policies is integral to achieving climate justice. India's rich tapestry of indigenous knowledge is exemplified in the National Biodiversity Action Plan (NBAP), which recognizes the importance of traditional knowledge in biodiversity conservation.³³ However, the effectiveness of incorporating indigenous perspectives into broader climate policies requires continuous evaluation to ensure that these communities are active participants in decision-making processes.³⁴ Furthermore, the Forest Rights Act (2006) aims to empower forest-

³¹ Government of India. "National Action Plan on Climate Change." 2008.

³² Ministry of Housing and Urban Affairs, Government of India. "Smart Cities Mission."

³³ Ministry of Environment, Forest and Climate Change, Government of India. "National Biodiversity Action Plan." 2014.

³⁴ Pathak, N., & Ghosh, S. "Indigenous Knowledge and Adaptation to Climate Change: The Case of the Tharu in the Tarai Region of India." *Weather, Climate, and Society*, vol. 9, no. 4, 2017, pp. 829-842 at 833.

dwelling communities, including many indigenous groups, by recognizing their rights to forest resources. Assessing the implementation of this legislation provides insights into whether indigenous communities have gained equitable access to and control over forest resources in the context of climate change adaptation and mitigation efforts.³⁵

VI. Challenges in Implementing Climate Justice

As India endeavors to incorporate climate justice principles into its policies and actions, numerous challenges hinder the seamless execution of these aspirations. Despite India's commitment to climate justice, various legal and institutional barriers impede its effective implementation. One significant challenge lies in the complexity and fragmentation of existing laws and regulations related to climate change. The multiplicity of frameworks can result in overlapping jurisdictions and responsibilities, potentially causing confusion and hindering streamlined action.³⁶ The Environmental Impact Assessment (EIA) process, while essential, faces challenges in striking a balance between environmental conservation and development imperatives. The recent amendments to the EIA Notification in 2020 have raised concerns about diluting environmental safeguards and reducing public participation in decision-making processes.³⁷ These changes pose a threat to the equitable implementation of environmental and climate policies. Additionally, the allocation of responsibilities among different ministries and departments can lead to coordination challenges. Climate change involves cross-cutting

³⁵ Ministry of Tribal Affairs, Government of India. "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act." 2006.

³⁶ Terazono, A., & Otsubo, S. "Climate Change Law and Policy in India." *Routledge Handbook of Climate Change Law*, 2014 at 12.

³⁷ Ministry of Environment, Forest and Climate Change, Government of India. "Environmental Impact Assessment Notification." 2020.

issues that require collaboration between various sectors, and the absence of robust inter-ministerial coordination may impede the effectiveness of climate initiatives.³⁸

Enforcing climate justice measures faces inherent challenges related to monitoring, enforcement, and compliance. Despite the presence of environmental regulations and laws, the actual implementation and enforcement often fall short, leading to lapses in adherence to climate justice principles. A critical issue is the inadequacy of monitoring mechanisms to ensure that industries and development projects comply with environmental and climate regulations. This is evident in cases where projects with significant environmental implications proceed without thorough scrutiny or adequate consideration of climate impacts.³⁹ The capacity of regulatory bodies, such as the Pollution Control Boards at the state level, to effectively enforce environmental and climate regulations is another challenge. Limited resources, technical expertise, and the overwhelming task of overseeing a multitude of projects contribute to enforcement gaps.⁴⁰ Moreover, the accountability of corporations and industries for their environmental impact remains a persistent challenge. Instances of non-compliance and lack of stringent penalties for environmental violations can undermine the principles of climate justice.⁴¹

³⁸ Bhatia, B., & Mitra, R. "Climate Governance in India: The Role of the Judiciary." *Oxford Research Encyclopedia of Communication*, 2019 at 31.

³⁹ Dutta, P., & De, U. S. "A Critical Review on Environmental Impact Assessment under Climate Change Scenario in India." *Environmental Impact Assessment Review*, vol. 72, 2018, at 1-12.

⁴⁰ Mohan, M., & Banerjee, T. "State Environmental Governance and the Impact of Industrial Pollution on Human Well-being in India." *World Development*, vol. 87, 2016, pp. 33-41 at 34.

⁴¹ Chatterjee, R. "Legal Strategies for Climate Change Mitigation and Adaptation in India." *Journal of Environmental Law*, vol. 24, no. 3, 2012, pp. 449-478 at 450.

The implementation of climate justice is intricately linked with political will and socioeconomic realities. Political considerations and the prioritization of economic development over environmental concerns can pose challenges to the effective incorporation of climate justice principles. The tension between economic growth and environmental conservation is exemplified in the approval of infrastructure projects that may have adverse environmental impacts. The pursuit of development goals, often driven by short-term economic considerations, can conflict with the imperative of sustainable and climate-resilient development.⁴² Socioeconomic challenges, including poverty and lack of access to resources, can exacerbate vulnerability to climate change impacts. Vulnerable communities may struggle to adapt to changing climatic conditions due to limited resources and inadequate infrastructure.⁴³ Climate justice, therefore, requires addressing broader socioeconomic inequalities to ensure that the benefits of climate initiatives reach those who need them the most. Political considerations, both at the national and international levels, also influence India's stance on climate action. The negotiation dynamics in international forums, such as the United Nations Framework Convention on Climate Change (UNFCCC), can impact India's commitments and contributions to global climate efforts.⁴⁴

⁴² Biswas, M. R., & Khondker, H. H. "Infrastructure-led Development and Environmental Justice in the Emerging Urban Areas of India: A Case Study of Kolkata Metropolitan Area." *Land Use Policy*, vol. 67, 2017, pp. 202-210 at 204.

⁴³ Pandey, P., & Swami, D. "Climate Change Vulnerability and Adaptation Strategies in Agrarian Communities: A Case Study of Bundelkhand Region, India." *Climate Risk Management*, vol. 19, 2018, pp. 19-31 at 23.

⁴⁴ Patwardhan, A., & Kanitkar, T. "India in a Climate of Change: Priorities, Prospects, and Policies." In *Climate Change in the Himalaya*, pp. 185-197, Springer, 2015 at 185.

VII. Opportunities for Improvement

As India grapples with challenges in implementing climate justice, there exist significant opportunities for improvement. A robust legal framework is essential for fostering climate justice. Strengthening legal provisions involves a careful review and enhancement of existing laws and regulations related to climate change. India has made strides in this direction, but there is room for improvement. One avenue for improvement lies in refining the Environmental Impact Assessment (EIA) process to ensure a more comprehensive and participatory approach. Amendments should be guided by principles that prioritize environmental conservation, public engagement, and climate considerations. The ongoing discourse surrounding EIA amendments necessitates a balance that safeguards environmental integrity while fostering sustainable development. Furthermore, aligning India's legal frameworks with international agreements and standards, such as the Paris Agreement, can enhance the country's commitment to global climate goals.⁴⁵ This alignment ensures coherence and reinforces India's role in the global community's efforts to combat climate change. The legal system should also address the rights of marginalized communities, particularly indigenous populations. Amendments to legislation such as the Forest Rights Act can further empower these communities by recognizing and protecting their rights to forest resources.⁴⁶

Effective climate governance demands institutions with the capacity to translate policies into action. Enhancing institutional capacities involves addressing challenges related to coordination, monitoring, and enforcement. One key opportunity lies in

⁴⁵ United Nations Framework Convention on Climate Change. "Paris Agreement." 2015.

⁴⁶ Ministry of Tribal Affairs, Government of India. "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act." 2006.

streamlining inter-ministerial coordination to ensure a holistic and synergistic approach to climate issues.⁴⁷ Empowering existing institutions, such as the Ministry of Environment, Forest and Climate Change (MoEFCC), with the necessary resources and expertise is essential for effective climate governance. This includes fostering collaboration between ministries responsible for environment, energy, agriculture, and urban development to tackle climate change comprehensively. Additionally, investing in the capacity of regulatory bodies, such as state Pollution Control Boards, can enhance their ability to monitor and enforce environmental regulations.⁴⁸ This involves providing adequate training, resources, and technological support to enable these bodies to carry out their responsibilities effectively. The National Adaptation Fund for Climate Change (NAFCC) can be strengthened by expanding its financial base and ensuring timely disbursement of funds to support climate-resilient projects. A transparent and efficient financial mechanism can enhance the adaptability of vulnerable communities.⁴⁹

To truly embed climate justice, there must be a concerted effort to integrate its principles into the entire spectrum of policymaking and implementation. One avenue for integration is through education and awareness programs. Integrating climate justice principles into school curricula can foster a sense of responsibility and environmental stewardship from an early age.⁵⁰ This approach

⁴⁷ Bhatia, B., & Mitra, R. "Climate Governance in India: The Role of the Judiciary." *Oxford Research Encyclopedia of Communication*, 2019 at 33.

⁴⁸ Mohan, M., & Banerjee, T. "State Environmental Governance and the Impact of Industrial Pollution on Human Well-being in India." *World Development*, vol. 87, 2016, pp. 33-41 at 36.

⁴⁹ National Adaptation Fund for Climate Change, Ministry of Environment, Forest and Climate Change, Government of India. "Operational Guidelines." 2015.

⁵⁰ UNESCO. "Education for Sustainable Development Goals: Learning Objectives." 2017.

can contribute to a future generation that is attuned to the ethical considerations of climate change. Promoting public participation in decision-making processes, especially those that impact the environment, is integral to climate justice. Creating platforms for community engagement and ensuring that vulnerable populations have a say in projects that affect them can help address social and economic inequalities.⁵¹ Furthermore, encouraging research and scholarship on climate justice issues can inform policymaking and ensure that strategies are grounded in ethical considerations.⁵² The academic community can play a crucial role in shaping the discourse around climate justice in India.

VIII. Comparative Analysis

A comparative analysis of international best practices and lessons from other jurisdictions provides valuable insights for enhancing climate justice in India. Several countries have implemented innovative and effective strategies to address climate change and integrate climate justice principles. Drawing lessons from these international best practices can contribute to the refinement of India's approach. Germany's Energiewende (Energy Transition) is a landmark policy aimed at transitioning from conventional energy sources to renewable energy. This ambitious initiative prioritizes community participation, decentralized energy production, and a just transition for workers in the fossil fuel sector.⁵³ India can learn from this model by emphasizing community involvement and ensuring a just transition for communities dependent on industries undergoing transformation. Scandinavian countries like Sweden

⁵¹ Keskitalo, E. C. H. "Community and Indigenous Involvement in Urban Greening for Climate Adaptation." *Sustainability*, vol. 11, no. 5, 2019, pp 14-21 at 16.

⁵² Adger, W. N., et al. "Adaptive Capacity of Systems in Climate Change." *Ecology and Society*, vol. 10, no. 2, 2006, at 10.

⁵³ "The German Energiewende - History and Status Quo." *Renewable and Sustainable Energy Reviews*, vol. 24, 2013, pp. 610-619 at 614.

and Denmark have successfully integrated climate policies with social welfare objectives. These nations prioritize clean energy, sustainable transportation, and social equity in their climate actions.⁵⁴ India can draw inspiration from these models to craft policies that not only mitigate climate change but also address social and economic inequalities. South Africa's Climate Change Response Policy focuses on both mitigation and adaptation, addressing historical emissions and promoting resilience among vulnerable communities.⁵⁵ India can adopt a similar approach by recognizing historical responsibilities and enhancing adaptation measures in climate policies.

Examining challenges faced by other jurisdictions can provide lessons for India on what to avoid or overcome. Learning from the experiences of countries with similar socio-economic contexts or facing comparable climate challenges can inform more effective climate justice strategies. Brazil faced significant challenges in balancing economic development with environmental conservation, particularly in the Amazon rainforest. The revision of Brazil's Forest Code aimed at finding a middle ground by reconciling agricultural interests with forest conservation.⁵⁶ India can learn from Brazil's experiences in navigating conflicting priorities and finding compromises that promote sustainable development while protecting vital ecosystems. Indonesia, with its extensive peatlands, has grappled with the environmental and social impacts of peatland degradation. The government's efforts to restore peatlands and involve local communities in conservation

⁵⁴ Fawcett, T., et al. "Bottom-up Initiatives and Participatory Approaches for Prospective and Retrospective Climate Policy Assessment: A Review of Experiences in the Literature." *Wiley Interdisciplinary Reviews: Climate Change*, vol. 8, no. 6, 2017, at 493.

⁵⁵ Republic of South Africa. "National Climate Change Response Policy." 2011.

⁵⁶ Soares-Filho, B., et al. "Role of Brazilian Amazon Protected Areas in Climate Change Mitigation." *PNAS*, vol. 111, no. 34, 2014, pp. 15591-15596 at 15592.

activities provide insights into community-based solutions for environmental challenges.⁵⁷ India, with its diverse ecosystems, can explore similar community-centric approaches to conservation. Canada's engagement with indigenous communities in climate policies, recognizing their traditional knowledge and involving them in decision-making processes, sets an example for inclusivity.⁵⁸ India can consider adopting similar practices, especially in policies related to forest rights and indigenous perspectives on climate change.

The comparative analysis of international best practices and lessons from other jurisdictions yields implications for enhancing India's legal framework for climate justice. Successful models from Germany and Scandinavia highlight the importance of community participation in decision-making processes related to climate policies. India's legal framework can be refined to ensure the active involvement of local communities, especially those most vulnerable to climate impacts, in the formulation and implementation of policies.⁵⁹ Learning from South Africa's approach, India's legal framework can explicitly acknowledge historical responsibilities and incorporate measures to address the disproportionate impact of climate change on communities that have contributed least to global emissions.⁶⁰ Brazil's Forest Code offers insights into finding a balance between economic development and environmental conservation. India's legal

⁵⁷ Page, S. E., et al. "Managing Peatlands in Indonesia: Challenges and Opportunities for Local and Global Communities." *Environmental Science & Policy*, vol. 66, 2016, pp. 197-206 at 199.

⁵⁸ Government of Canada. "Pan-Canadian Framework on Clean Growth and Climate Change." 2017.

⁵⁹ Ojha, H. R., et al. "Decentralisation Meets Community-based Natural Resource Management: A Situated Analysis of Power." *World Development*, vol. 78, 2016, pp. 114-126 at 118.

⁶⁰ Harris, N., et al. "Enhancing Adaptation: Legal Perspectives from South Africa and Beyond." *Environmental and Planning Law Journal*, vol. 36, no. 1, 2019, pp. 67-90 at 68.

provisions can be refined to strike a nuanced equilibrium that supports sustainable development while safeguarding critical ecosystems.⁶¹ Canada's engagement with indigenous communities emphasizes the value of recognizing and incorporating indigenous knowledge in climate policies. India can consider legal provisions that actively involve indigenous communities in decision-making processes and acknowledge their traditional wisdom regarding climate adaptation.⁶²

IX. Recommendations

Addressing the complex challenges posed by climate change in India requires a multifaceted approach that involves comprehensive policy reforms, targeted legal amendments, robust capacity building, and heightened awareness. India should explicitly embed climate justice principles in its national policies. The integration of equity, fairness, and inclusivity into climate policies can be achieved by prioritizing vulnerable communities, promoting community-based adaptation measures, and ensuring that the benefits of climate actions are distributed equitably.⁶³ Drawing inspiration from international best practices, such as Germany's Energiewende, policies should emphasize a just transition for communities impacted by climate initiatives.⁶⁴ Encouraging and facilitating active community participation is crucial. Policymaking processes should incorporate mechanisms

⁶¹ Sparovek, G., et al. "The Revision of the Brazilian Forest Act: Increased Deforestation or a Historic Step Towards Balancing Agricultural Development and Nature Conservation?" *Environmental Science & Policy*, vol. 50, 2015, pp. 159-172 at 163.

⁶² Stevenson, M. G., & Stephenson, J. A. "Decolonizing Conservation: A Review of the Discourses on the Role of Local Communities in Protected Areas." *Policy Matters*, vol. 24, 2017, pp. 1-9 at 3.

⁶³ Adger, W. Neil, et al. "Adaptive Capacity of Systems in Climate Change." *Ecology and Society*, vol. 10, no. 2, 2006, at 10.

⁶⁴ Klessmann, C., et al. "The German Energiewende - History and Status Quo." *Renewable and Sustainable Energy Reviews*, vol. 24, 2013, pp. 610-619 at 611.

for meaningful engagement with local communities, especially those directly affected by climate impacts. Learning from successful models, like Canada's Indigenous Engagement, India can establish platforms for inclusive decision-making, recognizing and incorporating traditional knowledge.⁶⁵ To achieve comprehensive climate action, India should integrate climate goals into mainstream development policies. Aligning climate policies with broader social and economic objectives, as observed in Scandinavian countries, can ensure a holistic and sustainable approach to development.⁶⁶ This approach requires collaboration across sectors and ministries, fostering a cohesive strategy for climate-resilient development.

Legal amendments should explicitly recognize historical responsibilities in climate policies. This recognition, as demonstrated in South Africa's Climate Change Response Policy, can inform the prioritization of adaptation measures for communities disproportionately affected by climate change.⁶⁷ India's legal framework should encompass measures that address historical emissions and vulnerabilities. Amendments to environmental regulations, such as the Environmental Impact Assessment (EIA) process, should aim for a balance between development and conservation. Learning from Brazil's Forest Code, India can revise regulations to ensure sustainable

⁶⁵ Stevenson, M. G., & Stephenson, J. A. "Decolonizing Conservation: A Review of the Discourses on the Role of Local Communities in Protected Areas." *Policy Matters*, vol. 24, 2017, pp. 1-9 at 2.

⁶⁶ Fawcett, T., et al. "Bottom-up Initiatives and Participatory Approaches for Prospective and Retrospective Climate Policy Assessment: A Review of Experiences in the Literature." *Wiley Interdisciplinary Reviews: Climate Change*, vol. 8, no. 6, 2017, at 493.

⁶⁷ Harris, N., et al. "Enhancing Adaptation: Legal Perspectives from South Africa and Beyond." *Environmental and Planning Law Journal*, vol. 36, no. 1, 2019, pp. 67-90 at 74.

development while safeguarding critical ecosystems.⁶⁸ The EIA process should be transparent, participatory, and considerate of social and environmental impacts. Legal amendments should strengthen the rights of indigenous and local communities. Building upon the Forest Rights Act, provisions should ensure that these communities have a meaningful say in decisions affecting their lands and resources. Legal frameworks should recognize and protect traditional knowledge, as observed in Canada's Indigenous Engagement.

Capacity building should focus on enhancing inter-ministerial collaboration to ensure a coordinated response to climate change. Building on lessons from Germany's Energiewende, where multiple sectors actively contribute to the energy transition, India can establish mechanisms for cross-sectoral collaboration.⁶⁹ This collaboration is essential for addressing climate change comprehensively. Capacity building should prioritize strengthening regulatory bodies, such as Pollution Control Boards, to effectively enforce environmental regulations.⁷⁰ Adequate training, resources, and technological support are essential to enhance their ability to monitor and enforce climate-related measures. Learning from international experiences, India can benefit from capacity-building initiatives tailored to the needs of regulatory bodies.⁷¹ A comprehensive awareness and education campaign is vital to engage the public in climate action. Drawing from UNESCO's

⁶⁸ Sparovek, G., et al. "The Revision of the Brazilian Forest Act: Increased Deforestation or a Historic Step Towards Balancing Agricultural Development and Nature Conservation?" *Environmental Science & Policy*, vol. 50, 2015, pp. 159-172 at 163.

⁶⁹ Bhatia, B., & Mitra, R. "Climate Governance in India: The Role of the Judiciary." *Oxford Research Encyclopedia of Communication*, 2019 at 34.

⁷⁰ Mohan, M., & Banerjee, T. "State Environmental Governance and the Impact of Industrial Pollution on Human Well-being in India." *World Development*, vol. 87, 2016, pp. 33-41 at 36.

⁷¹ National Adaptation Fund for Climate Change, Ministry of Environment, Forest and Climate Change, Government of India. "Operational Guidelines." 2015.

emphasis on Education for Sustainable Development, India should integrate climate change education into school curricula.⁷² A well-informed public is more likely to support and participate in climate initiatives. By adopting these measures, India can fortify its response to climate change, fostering a just, inclusive, and sustainable future. The implementation of these recommendations requires a collaborative effort from policymakers, communities, and various stakeholders committed to addressing the challenges of climate change in India.

X. Conclusion

Climate change poses a formidable challenge globally, and India, as a developing nation, is navigating a complex landscape of mitigation and adaptation measures. The exploration of climate change mitigation and adaptation measures in India reveals a multifaceted landscape. India's efforts encompass a range of policies and legislative measures aimed at addressing the impacts of climate change. Notable initiatives include the National Action Plan on Climate Change (NAPCC) and the Intended Nationally Determined Contributions (INDC) submitted under the Paris Agreement. However, challenges persist in implementing these measures effectively, particularly concerning equitable distribution of benefits and the protection of vulnerable communities. The assessment of challenges and opportunities highlights the need for a balanced approach. While India grapples with legal and institutional barriers, there are opportunities for improvement in strengthening legal provisions, enhancing institutional capacities, and integrating climate justice principles. The examination of international best practices and lessons from other jurisdictions

⁷² UNESCO. "Education for Sustainable Development Goals: Learning Objectives." 2017.

underscores the importance of aligning climate policies with social welfare objectives, recognizing historical responsibilities, and actively engaging indigenous and local communities. Recommendations for policy reforms and legal amendments emphasize the integration of climate justice principles, enhancing community participation, mainstreaming climate goals, recognizing historical responsibilities, and empowering indigenous and local communities. These measures aim to create a legal and policy framework that not only addresses the challenges posed by climate change but also fosters social equity and resilience. Capacity building and awareness initiatives are deemed essential for effective climate governance. Strengthening inter-ministerial collaboration, regulatory bodies, and public education are key components of this strategy. These efforts can enhance India's adaptive capacity, ensuring that policies are implemented efficiently and the public is actively engaged in climate actions.

Rule of Law and National Security: Conflicting Debate on Liberty and Security

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Abstract

Law is considered as the foundation of civilized society. Law gives the basic normative framework without which uncertainty and chaos will prevail. 'Law' without 'rule of law' is shallow. Rule of law ensures that no person is above the law. It adheres that state power should not be arbitrarily exercised. Yet, there are national security laws which pose a challenge for the protection of civil liberties; which are part and parcel of rule of law. This paper analyzes the meaning and the development of the rule of law in different legal systems. Theme of this paper is to evaluate the impact of national security laws on individual liberties and freedoms with reference to rule of law.

Keywords: Arbitrariness, Civil Liberties, Freedom of Speech and Expression, Informational Privacy, National Security.

I. Rule of Law- An Introduction

Rule of Law or the supremacy of Law is one of the important aspects of well-ordered society. It has occupied a predominant position since ages. Rule of Law would essentially mean society should be ruled by 'Law' rather than 'Men'. And even if ruled by them, their actions must be authorized by Law. The protection of civil liberties is the heart and soul of the rule of law. Different jurists and scholars have variedly interpreted the concept of rule of law. Some notable interpretations are:

The work of Aristotle on the Rule of Law is still influential. Though he formulated the question of whether it was better to be

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ruled by the best man or the best laws, he approached that question realistically, noting that it depended not only on the type of law one was considering but also on the type of regime that enacted and administered the law in question.¹

English legal scholar Albert Venn Dicey² defined the Rule of Law as follows:

[It] means in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government. It means, again, equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts ... [and], lastly, that, in short, the principles of private law have with us been by the action of the courts and Parliament so extended as to determine the position of the Crown and of its servants; thus the constitution is the result of the ordinary law of the land.

Professor Finnis³ has described the rule of law as ‘the name commonly given to the state of affairs in which a legal system is legally in good shape’. Further, Professor Brian Tamanaha,⁴ has

¹ An essay on *the Rule of Law* published on Jun 22, 2016, available at <https://plato.stanford.edu/entries/rule-of-law/>, (last visited April 16, 2020)

² A. V. Dicey, *Introduction to The Study of The Law of The Constitution*, 10th Ed., 42 (London: Macmillan; New York: St. Martin's Press, 1961).

³ John Finnis, *Natural Law and Natural Rights*, 270, (Oxford University Press, 1980)

⁴ B.Z. Tamanaha, *On the Rule of Law*, 3 (History & Politics, Theory, 2004).

described the rule of law as ‘an exceedingly elusive notion’ giving rise to a ‘rampant divergence of understandings’ and analogous to the notion of the Good in the sense that ‘everyone is for it, but have contrasting convictions about what it is’. Some think that it is a value, albeit not moral values⁵, while others regard it as among the highest of political ideals⁶.

Ronald Dworkin has interpreted the concept of Rule of Law in context of legality of Laws.⁷ He believes that if rule of law is possible goal, then everyone ought to try to reach it legally. He further says that, in the inception, legality of a law matters to uphold the principle of rule of law in the society. While defending the general idea of rule of law, he observes that:

Law insists that force not be used or withheld, no matter how beneficial... but collective force is to be justified. Therefore, it is the concrete nature of law that must rule, if the rule of law is to be achieved.⁸

Dworkin further explained that rule of law is not merely a rule-book, but also includes respect for rights.⁹

Interpreting further, F. A. Hayek¹⁰, an Austrian-British economist and philosopher best known for his defence of classical liberalism, believes that liberalism is the way forward for all economic growth and the Rule of Law is a crucial ingredient for liberalism to succeed. For Hayek, the Rule of Law is a great liberal principle.

⁵ J. Raz, *The Authority of Law*, 210, (Oxford: Clarendon Press, 1979)

⁶ J. Waldron, “The Concept and the Rule of Law”, *Georgia Law Review, Forthcoming, NYU School of Law, Public Law Research Paper No .08-50,1*, (2008); available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract127300> (Last Visited April 14, 2020).

⁷ R. Dworkin, “What is Rule of Law”, Vol. 30, No.2, *Antoich Review*,4- 6, (1970)

⁸ R. Dworkin, *Law’s Empire*, 107 (The Belknap Press of Harvard University Press Cambridge, Massachusetts London, England, 1986)

⁹ R. Dworkin, *Political Judges and the Rule of Law*, 11 (London: The British Academy, 1980)

¹⁰ F.A. Hayek, *The Road to Serfdom*, 15th Edn. 78-79, (Rutledge PressUK , 2012)

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The modern day has provided us with widened interpretations rule of law as a concept. Tom Bingham¹¹ in his book has given an elaborated version of rule of law. There are eight constituent parts of his definition of rule of law. These are:

- i. The law must be accessible and so far as possible intelligible, clear and predictable;
- ii. Questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion;
- iii. The laws of the land should apply equally to all, save to the extent that objective differences justify differentiation;
- iv. Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably;
- v. The law must afford adequate protection of fundamental human rights;
- vi. Means must be provided for resolving, without prohibitive cost or inordinate delay, bona fide civil disputes which the parties themselves are unable to resolve;
- vii. Adjudicative procedures provided by the state should be fair and
- viii. The rule of law requires compliance by the state with its obligations in international law as in national law.

Quite obviously, it would be naive to seek a semantically universal and ideologically neutral definition of the “rule of law”. However, it could be deduced from the above explanations that, broadly, to support rule of law means to advocate the protection of individual rights as the primary aim of political institutions and legal bodies. Further, the significant aspect of this understanding is that, it is the

¹¹ T. Bingham, *The Rule of Law*, (Penguin Books 2011)

content or the substance of the law which matters. If the laws are secret, contradictory or inhuman, it could be assumed that they do not add up to the rule of law. Therefore, rule of law stipulates that people in authority have to exercise their powers within a well-ordered legal framework and should be held responsible for their unauthorized actions.

II. Development of Rule of Law

The term “Rule of Law” is said to have been derived from the French phrase ‘*La Principe de Legality*’ (the principle of legality) which refers to a government based on principles of law and not of men.¹² Western thought on the Rule of Law can be traced all the way back to the Greek philosophers, Plato and Aristotle. The first known charter of individual liberties is regarded as *Magna Carta*¹³, agreed to by King John of England at Runnymede, near Windsor, in 1215. It is one of the most important documents in history as it established the principle that everyone is subject to the law. Few Scholars¹⁴ believe that Sir Edward Coke, the Chief Justice in James I’s Reign (1567-1603) was the originator of this concept. In a battle against the King, he maintained successfully that the King should be under God and the Law, and he established the supremacy of the law.

The traces of its origin could also be found in Locke’s Social Contract¹⁵. He propounded that, in order to develop a chaos-free

¹² <https://www.lawteacher.net/free-law-essays/administrative-law/origin-and-concept-of-rule-of-law-administrative-law-essay.php#ftn4>, (last visited April 16, 2020)

¹³ In its translation, the terms of chapters 39 and 40 provide: No free man shall be seized or imprisoned or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land. To no one will we sell, to no one deny or delay right or justice.

¹⁴ For example: C.K. Takwani, *Lectures on Administrative Law*, Third Edition Reprinted, 17, (Eastern Book Company 2004)

¹⁵ Social Contract is an actual or hypothetical compact, or agreement, between the ruled and their rulers, defining the rights and duties of each. The main proponents of this theory are Thomas Hobbes, John Locke and Jean-Jacques Rousseau

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society, we need to develop the strong institutions that includes strong laws, courts and enforcement mechanism. It is because of the assurance of the ‘constitutional government’; people agree to surrender their rights to the government established by the law, which was agreed by all in the society. John Locke in the second of his *Two Treatises of Government* (1689) emphasized the importance of governance through “established standing Laws, promulgated and known to the People.” One can safely argue that, it is one of the earliest examples, where people stood for rule of law and rule of law provided protection from abuse and arbitrariness. If this would not have been for rule of law, people would have revoked the contract and fallen back to the state of nature.

World history is full of events and certainly, there were few of them, which helped in the growth and development of rule of law. In 1689 British Bill of rights¹⁶ contributed significantly to the development of principles of freedom. Its essence was embedded in the principle that no government was above the law. This was followed by the American and French revolutions, which lead to the conceptualization and popularity of this concept. In tracing the roots of rule of law in modern times, we came across the Declaration of the International Rights of Man adopted in 1929 by the Institute of International Law in New York. Its object stated that the ‘juridical conscience of the civilized world demands the recognition for the individual rights preserved from all infringement on the part of the state.’¹⁷ However the major breakthrough in the development of this concept was the Universal Declaration of Human Rights, adopted by the General Assembly of

¹⁶ The Bill of Rights 1689 is a landmark Act in the constitutional law of England that sets out certain basic civil rights.

¹⁷ *Institut de Droit International*, ‘Preamble to the Declaration of the International Rights of Man’, 12 October 1929, taken from J.B Scott, *Law, the State, and the International Community*, 420 (New York: The Lawbook Exchange, 2002)

the United Nations on 10 December 1948. It has provided the common standard for human rights upon which formal treaty commitments have subsequently been founded, and has inspired the International Covenant on Civil and Political Rights 1966, the International Covenant on Economic, Social and Cultural Rights 1966, the International Covenant on the Elimination of All Forms of Racial Discrimination 1966 and regional treaties such as the European Convention on Human Rights 1950, the American Convention on Human Rights 1969, the African Charter on Human and Peoples' Rights 1981 and the Arab Convention on Human Rights 1994.¹⁸ Universal Declaration of Human Rights states in its preamble that, it is widely thought to be "essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppressions, that human rights should be protected by the rule of law."¹⁹

The present-day nation states are almost all governed by Constitution (written or unwritten) based on rule of law. In United Kingdom, the Rule of Law constitutes a key principle underpinning the unwritten Constitution. Hence, the rule of law has formally been recognized as a constitutional principle by the Constitutional Reform Act 2005.²⁰ The Act also strengthened a central aspect of the rule of law that is the separation of powers between the executive, legislative and judicial powers.²¹ In the same line, the House of Lords has stated that 'the rule of law enforced by the courts is the ultimate controlling factor on which our Constitution is based'.²² The British Upper Chamber thereby reaffirmed the role

¹⁸ *Supra* note 10 at 45

¹⁹ Universal Declaration of Human Rights (1948). Preamble. Para 3.

²⁰ Diana Woodhouse, 'United Kingdom, The Constitutional Reform Act 2005: Defending Judicial Independence the English Way' *5 International Journal of Constitutional Law* 153 (2007).

²¹ Hilaire Barnett, *Constitutional and Administrative Law*, 8th edn, 89 (Routledge, 2011)

²² *Jackson and others v. Her Majesty's Attorney General*, House of Lords [2005] UKHL 56, available

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of courts ‘in defining the limits of Parliament’s legislative sovereignty’.

The Constitution of Canada recognizes in its Preamble that ‘Canada is founded upon principles that recognize the supremacy of God and the rule of law’.²³ The Supreme Court of Canada reaffirmed accordingly that the rule of law is a ‘fundamental postulate’ of the constitutional structure that obliges the administration to make decisions according to the law and not according to the discretionary and potentially arbitrary power of its representatives.²⁴

The Basic Law for the Federal Republic of Germany makes three references to the rule of law. First, the rule of law should be respected for a German citizen to be extradited in the conditions set by the law (Article 16(2)). Second, the Basic Law emphasizes the German contribution to the European Union (EU) that is an organization based on the rule of law (Article 23(1)). Finally, the Basic Law refers to the rule of law as an organizing principle of decentralization when it emphasizes that:

The constitutional order in the *Laender*
must conform to the principles of
republican, democratic, and social

at www.publications.parliament.uk/pa/ld200506/ldjudgmt/jd051013/jack.pdf (last visited April 18, 2020)

²³ Canada Constitution Act, Canadian Charter of Rights and Freedoms, Preamble, available at <http://laws-lois.justice.gc.ca/eng/Const/page-15.html#h-38> (last visited April 18, 2020).

²⁴ *Roncarelli v. Duplessis* [1959] SCR 121, Supreme Court of Canada, 27 January 1959, at 141, available at <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2751/index.doc> (last visited April 18, 2020). The full quotation reads as follows: ‘in the presence of expanding administrative regulation of economic activities, such a step and its consequences are to be suffered by the victim without recourse or remedy, that an administration according to law is to be superseded by action dictated by and according to the arbitrary likes, dislikes and irrelevant purposes of public officers acting beyond their duty, would signal the beginning of disintegration of the rule of law as a fundamental postulate of our constitutional structure’.

government based on the rule of law,
within the meaning of this Basic Law
(Article 28(1))

The Supreme Court of India has recognized the rule of law as a 'basic structure' of the Indian Constitution and therefore presented the rule of law as a 'terrestrial concept having its habitat within the four corners of the constitution'.²⁵ As a 'basic structure' of the Indian Constitution, the rule of law principle cannot be altered or abolished even through a constitutional amendment.²⁶

Therefore, Rule of Law forms the basic framework of all legal systems. However, it should be unfettered and should not be underestimated by any other legal principle. To save a state from lawlessness, rule of law plays an imminent role, if given proper weight.

III. National Security and the Rule of Law

The rule of law has played a vital role in anchoring economic, social and cultural rights in every legal system. Where such rights are justiciable or their legal protection is otherwise ensured. The rule of law provides the means of redress when those rights are not respected or public resources are misused. These rights have either implicit existence or are mentioned expressly in the country's '*Grundnorm*'²⁷, usually a Constitution. Every law enacted in the country is tested on the touch stone of this *grundnorm*. However, there are certain set of laws where deviance from these

²⁵ *Indira Nehru Gandhi v. Raj Narain and another*, AIR 1975, SC 2295, Para. 340, cited in Rohini Sen, 'The Indian Perspective on the International Rule of Law: Through the Lens of International Agreements on Free Trade' 2 *Belgian Review of International Law* 382 (2013)

²⁶ Soli J. Sorabjee, 'Rule of Law: An Unruly Horse? Some Reflections on its Application in India' 101 *Round Table: Commonwealth Journal of International Affairs* 331 (2012)

²⁷ Grundnorm is a German word meaning "fundamental norm." The jurist and legal philosopher Hans Kelsen coined the term to refer to the fundamental norm, order, or rule that forms an underlying basis for a legal system.

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fundamental liberties is justified as 'reasonable' in the name of public policy, or sovereignty of state, or national security. The point of discussion here is national security and not the public policy or sovereignty of the state. Hence the focus is on national security, how it undervalues the rule of law. There are countries like India, where fundamental rights (basic civil and political rights) are not absolute. They are subject to limits and national security is one of them. Apart from 'national security' as an express restriction provided within the Constitution, there is a separate regime of 'National Security Laws in India'. These laws are basically enacted for the protection against vulnerable external or internal attacks (more precisely attack on sovereignty or integrity of the state).

There has been always a conflict between national security laws and rule of law. It is believed that national security laws are transgressing the ideals of rule of law, by violating the fundamental liberties of an individual. It is also being said that national security law is developing rapidly into a distinct discipline and the implications are affecting all citizens.²⁸ It is further stated that the temptation to ignore the law is more under the exigencies of wartime or other national security issues.²⁹ This conflict has been there since long, between the liberties and perceived necessities of national security. The oft-cited example of Abraham Lincoln's decision to suspend the writ of habeas corpus during the Civil War shows one of respected presidents struggling with such a conflict.³⁰

²⁸ S. Dycus, et al., *National Security Law*, 3rd Edn, 25 (Aspen Publishers, New York 2002)

²⁹ Thomas A. Johnson (ed.), *National Security Issues in Science, Law and Technology*, 406 (CRC Press, Taylor & Francis Group, New York 2007)

³⁰ Lincoln initially suspended the writ by his own action, but Chief Justice Roger Taney, sitting on the Circuit Court for Maryland, in *Ex Parte Merryman*, 17 F Cases 144, 148 (Cir Ct Md 1861), questioned the President's authority to do this without Congressional authorization. Shortly thereafter, Congress passed legislation authorizing the President's act. Act of Mar 3, 1863, 12 Stat 755. See also *Duncan v Kahanamoku*, 327 US 304,307-08 (1946) (noting the Governor of Hawaii's post-Pearl Harbor decision to impose martial

Position of India is no less different. In 1970's, the then PM of India, Mrs. Indira Gandhi enacted the Maintenance of Internal Security Act (1971) which vested drastic powers to the executive and Indian Law enforcement agencies, with the immunity from judicial review. Same Act was replaced with the National Security Act, 1980.³¹

These national security laws have executive dominance which promotes the secret departures from the standards of rule of law. Therefore, where rules are set regulating national security conduct, it is often through the work of executive officials themselves, issuing legal opinions, policy guidelines, and other "rules" of various kinds.³² The content of rules adopted wholly by executive agencies will often preserve broad executive discretion and set a low bar for constitutional protections.³³ As Professors Eric Posner and Adrian Vermeule have rightly argued, internal "self-binding" mechanisms paradoxically empower the Executive.³⁴ Therefore, it could be rightly said that the discretion exercised in national security issues, by either executive or national security agencies, onslaught the basic ideals of rule of law.

law and suspend the writ of habeas corpus, and President Roosevelt's immediate approval).

³¹ The National Security Act is an act that empowers the government to detain a person if the authorities are satisfied that he/she is a threat to national security or to prevent him/her from disrupting public order. The government can also detain a person to prevent him from disrupting public order or for maintenance of supplies and services essential to the community. The maximum period for which one may be detained is 12 months. But the term can be extended if the government finds fresh evidence. No basic rights are given to person detained under the NSA, including: The right to be informed of the reason for the arrest.

³² Margo Schlanger, 'Intelligence Legalism and the National Security Agency's Civil Liberties Gap', 6 *Harv. National Security Journal*, 123, (2015)

³³ Cornelia T.L. Pillard, 'The Unfulfilled Promise of the Constitution in Executive Hands' 103 *Michigan Law Review*. 676 (2005)

³⁴ Eric A. Posner & Adrian Vermeule, 'The Credible Executive' , 74 *Chicago Law Review*, 912-13 (2007)

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There are number of examples of national security laws in the present times, which pose challenge to the proper implementation of the principles of rule of law. One of such issue is the infringement of right to privacy. Development in the technology has made privacy more vulnerable to attacks, be it cyber surveillance or personal data handling, role of the state cannot be ignored. Laws have been enacted, that makes compulsory for the people to handover the biometric information to the state, one such example is Aadhar in India³⁵. In this whole process, residents are requested to submit demographic information, biometric information, photograph, finger prints and iris scan. Having its benefits apart, this procedure increases the risk of intrusion by state and becomes a tool of state surveillance on the basis of information collected from each individual. Certainly, these new technologies pose risk to the individual liberties from electronic surveillance to interception, which affronts the core values of privacy rights.

National security laws also allow the authorities for ‘wire-tapping’.³⁶ In some countries like United Kingdom interception is allowed under the Regulation of Investigatory Powers Act 2000, which provides a mandatory issuance of interception warrant³⁷ and establishes a Tribunal which can investigate, whether there was a warrant and whether it was properly issued³⁸. Thus, where it is found that an Interception Warrant has been improperly issued, the Tribunal has power to order compensation and the destruction of the recorded material. In United States of America, this needs a

³⁵ The data is collected by the Unique Identification Authority of India (UIDAI), a statutory authority established in January 2009 by the government of India, under the jurisdiction of the Ministry of Electronics and Information Technology.

³⁶ Wiretapping is the surreptitious electronic monitoring of telephone, telegraph, cellular, fax or Internet-based communications.

³⁷ Regulation of Investigatory Powers Act, 2000 s.27

³⁸ *Id.*, Section 65,

judicial authorization³⁹, while in India, a nod from Home Ministry is sufficient.⁴⁰ The judicial protection of individual rights from the abuse of authorities, an essential characteristic of the rule of law as we understand it today, is not at all assured. Having such an empowered entity, either executive or national security agency, it will definitely result in exploitation of values of privacy.

In December 2013, the United Nations General Assembly adopted resolution 68/167, which expressed deep concern at the negative impact that surveillance and interception of communications may have on human rights.⁴¹ The General Assembly affirmed that the rights held by people offline must also be protected online, and it called upon all States to respect and protect the right to privacy in digital communication. International human rights law provides the universal framework against which any interference in individual privacy rights must be assessed.⁴² Justice Brandeis considered privacy—“the right to be let alone”—to be “the most comprehensive of rights and the right most valued by civilized men.”⁴³

³⁹ Under S.186, U.S. Criminal Code, any investigative authority has to apply for a judicial authorization to intercept a private communication that is contingent on satisfaction of the Judge to whom such an application has been made. In the United States, the Foreign Intelligence Surveillance Act 1978 permits the government to intercept the telephone conversations and e-mails, without showing probable grounds for suspicion, of persons believed to be associated with a foreign power. But such wire-tapping could lawfully take place only if authorized by a warrant issued by a judge before or immediately after the wire-tap took place.

⁴⁰ The Central and the State Governments in India are empowered to tap phones under Section 5(2) of Indian Telegraphic Act, 1885.

⁴¹ <https://www.ohchr.org/EN/Issues/DigitalAge/Pages/DigitalAgeIndex.aspx> (last visited April 24, 2020)

⁴² Article 12 of Universal Declaration of Human Rights, 1948 provides that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks. Article 17 of International Covenant on Civil and Political Rights, 1966, provides the same.

⁴³ *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting).

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Supreme court of India⁴⁴ has expanded the meaning of this right to the extent that the fundamental right to privacy includes at least three aspects—(i) intrusion with an individual's physical body, (ii) informational privacy and (iii) privacy of choice. Further, one aspect of privacy is the right to control the dissemination of personal information. Every individual should have a right to be able to control exercise over his/her own life and image as portrayed in the world and to control commercial use of his/her identity. Privacy is intrinsic to freedom, liberty and dignity. The right to privacy is inherent to the liberties guaranteed by Part-III of the Constitution and privacy is an element of human dignity. Informational Privacy is a facet of right to privacy. Every transaction of an individual user leaves electronic tracks, without his/her knowledge. Individually these information silos may seem inconsequential. In aggregation, information provides a picture of the beings.

Moreover, right to privacy will encompass right to erasure⁴⁵. One of the facets of this right is that the personal data or information of an individual if no longer necessary to an organization, he has right to have their personal data erased. Yet this right will be compromised if the said organization is a national security agency.

Elaborating further, national security laws are being used to silence the critics. Though not an absolute right, Freedom of speech and expression is always hindered under the reasonable restrictions. Prosecuting individuals for national security violations, is currently the most common method used by authorities for silencing those who, in spite of the legal, political, psychological, and technological barriers that authorities have erected from expressing

⁴⁴ *Justice K S Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1

⁴⁵ Article 27 of General Data Protection Regulation, All Articles of the GDPR are linked with suitable recitals. The European Data Protection Regulation is applicable as of May 25th, 2018 in all member states to harmonize data privacy laws across Europe, available at <https://gdpr.eu/right-to-be-forgotten/> (last visited April 24, 2020)

their opinions, nevertheless attempt to exercise their right to publish their views. Like in India, Unlawful Activities Prevention Act, 1967 is used to suppress the journalism.⁴⁶ Further, the colonial laws like sedition still prevail. Sedition law essentially suppresses the free speech and free thought, however, its justified under the blanket protection of ‘reasonable restrictions’.⁴⁷ Sedition laws are claimed to have a ‘chilling effect’ on public debate which particularly affects the activities of publishers, scholars and political organizations critical of government policy.⁴⁸

Tom Bingham⁴⁹ has rightly pointed out that the rule of law requires that fundamental rights, such as that of freedom of belief and practice, should be protected, but it does not require that they should be absolute. The rights of the individual must be set against the rights of others, and that calls for the drawing of lines.

These challenges to basic liberties emanate from both State and non-State entities. This conflict between the rule of law and national security has majorly affected the fundamental values of civil liberties. It is clear from the above discussion that there is less regard for civil liberties when it comes to the matters of national security.

IV. Conclusion

Rule of law is an essential element of good governance. Proper implementation of the principles of rule of law negatives or completely eliminates the arbitrariness. Certainly, rule of law cannot rule out the involvement of men; but it reduces the influence of passion and tyranny on the behest of personal choices

⁴⁶ <https://www.outlookindia.com/website/story/india-news-kashmiri-author-and-journalist-gowhar-geelani-booked-under-uapa-moves-hc/351368> (last visited April 24, 2020)

⁴⁷ *Kedar Nath Singh v State of Bihar*, AIR 1962 SC 955.

⁴⁸ S. Bronitt and J. Stellios, “Sedition, Security And Human Rights: ‘Unbalanced’ Law Reform In The ‘War On Terror’” 30, *Melbourne University Law Review*, 928 (2006)

⁴⁹ *Supra* note 10, at 92.

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of those who are in power. However, ideals of rule of law are time and again compromised on the grounds of national security. Nonetheless, limits are inevitable; rule of law has its own boundaries as well. But it should not mean that the concept of rule of law can be cabined and confined to satisfy the national security standards. There is a need to strike a balance between the liberty and security.

Those responsible for national security must gauge the proportionality of these laws viz-a-viz values of rule of law. The security norms need not to be only reasonable but proportionate as well. They must clearly define the limits of the state. Genuine accountability procedure must be accompanied with these laws, to have a proper check on any arbitrary action. To strengthen the foundation of rule of law, there must be impartial interference of judiciary. The tool of judicial review must be utilized without any bias to the ruling government. Furthermore, the equal application of laws, regardless of status, profession, class, etc, will ultimately flourish the concept of rule of law; which in turn will safeguard the individual liberties more appropriately.

Mental Health Act: An Analysis of Existential Crises of Section 309 IPC as Against Section 115

*Khazin Munir**

Abstract

Every law in itself is very important and should be practiced in its letter and spirit but sometimes two laws or two sections of the same or different Acts contradict each other, which lead to conflict between the laws. Maximum times these disputes are resolved by the interpretations given by the courts. One of such conflict is about the topic of attempt to suicide. Suicide means inflicting self injury with the desire of killing one self. So now the point of conflict arises between Sec 309 of Indian penal code, 1860 i.e. Attempt to suicide is punishable and Sec 115(1) of Mental Health Act, 2017 i.e. Attempt to suicide is not punishable if done under severe stress. The object of this seminar paper is to give a clear view of both the laws and find a way to resolve this issue.

Keywords:- Law, Mental health, Suicide, Punishment.

I. Introduction

Humans have always had two aspects of health, Physical and Mental. Mental health is a very underrated topic as people generally take it very casually leading to death of many by suicide. Globally 800,000 people die from suicide every year – that's twice the number from homicide. 1,64,033 Indians committed suicide in 2021. The Mental Healthcare Act of 2017's S. 115(1) establishes a presumption of extreme stress that favors those who attempt suicide. In addition, the Indian Penal Code forbids the prosecution and sentencing of individuals who attempt suicide. In a recent Supreme Court case, a petition was filed asking for guidelines to stop people from trying to end their lives by jumping into zoo animal enclosures. (*Red Lynx Confederation v. Union of India and Ors.*)

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1. (SLP (Crl.) No. 3185/2020)

II. Section 309 Indian penal Code, 1860 and Section 115(1) Mental Health Act, 2017:-

Section 309 of the IPC reads as follows-

“309. Attempt to commit suicide.—Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year [or with fine, or with both]”.¹

Section 115 of the Mental Healthcare Act provides-

“115. (1) Notwithstanding anything contained in section 309 of the Indian Penal Code any person who attempts to commit suicide shall be presumed unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code”.²

In the 42nd report³ of the Law Commission of India, 1971 Sec.309 was declared as “harsh and unjustifiable” and took note of the Suicide Act, 1961 of British Parliament where its attempt was not made an offence. However, in the 156th report⁴, it was retained. They said assisted suicide and assisted attempts to commit suicide are made punishable for society’s interest.

But later, a study was done by Justice A.R. Lakshman who chaired Law Commission from 2006-2009 and said: “abetment to commit suicide must be punishable, and its attempt to commit suicide must be omitted in IPC.” They observed that just because the person is suffering from mental illness punishing him is not justified; rather, he should be given treatment and care. Also, this section is inhuman irrespective of its being constitutional or unconstitutional. Removal of this section will help in

¹ The Indian Penal Code, 1860, § 309, No. 45, Acts of Parliament, 1860(India).

² LAW COMMISSION OF INDIA, REPORT NO. 42: THE INDIAN PENAL CODE 43 (1971).

³ Parth Jaisinghani - Symboisis Law School, Hyderabad, Validity of Suicide: Section 309 of IPC vs. Section 115 of Mental Healthcare Act, 2017.

⁴ Law Commission, Humanization and Decriminalization of Attempt to Suicide (Law Com No 210, 2008).

the betterment of society." In March 2011, the Supreme Court too recommended to Parliament that it should consider the feasibility of deleting the section.⁵

It was stated by Justice R.A. Jahagirdar in the 210th Law Commission⁶ report that "Section 309 of the Indian Penal Code cannot act as a deterrent as individuals attempt to commit suicide for reasons beyond their control, it is not reformatory as placing individuals who suffer psychologically are with criminals in incarceration and finally it does not uphold punitive theory as attempting suicide does not harm other individuals."

On Sep.10, 2020 a bench headed by Chief Justice S.A.Bobde made remarks on sec.309 of IPC. This section states, "Any person who tries to commit suicide will be punished with simple imprisonment up to 1 year or fine or both."⁷ Now, when we read sec.115 of the Mental Healthcare Act, 2017 it states that – "decriminalization of suicide"⁸. Now, the conflict arises- which section is going to overpower the other one? This clash was seen in a case where a person tried to commit suicide, who threw himself in a cage in the zoo. The case was presided over by a three-judge bench comprising Chief Justice S.A.Bobde along with Justices *A.S.Bopanna, and V. Ramasubramanian*.

While responding to an appeal to repeal Section 309 of the Indian Penal Code (IPC) that criminalizes attempt to commit suicide, *Justice V. Ramasubramanian* of the Supreme Court of India, said the Mental Healthcare Act, 2017, has come up with some kind of a solution but wondered if it has provided a solution in entirety. "Section 115 of the Mental Health Act,2017 can be taken, to some extent, as having repealed Section 309 of IPC. Though in the text, it still remains," he said,

⁵ supra 1

⁶ supra 2

⁷The Hindu Bureau- <https://www.thehindu.com/news/cities/chennai/decriminalising-suicides-courts-havent-understood-scientific-perspective-but-only-legal-says-sc-judge/article65875761.ece>

⁸ 2011 KHC 4220: 2011 (1) KHC SN 49: 2011 (1) KLD 388 : ILR 2011 (1) Ker. 913: 2011 (4) SCC 454: AIR 2011 SC 1290: 2011 (3) KLT SN 30

addressing the World Suicide Prevention Day program organized by Sneha, a non-governmental organization (NGO) working in the area of suicide prevention, in 2022.⁹ He elaborated on a Supreme Court judgment in 1994 that struck down Section 309 as unconstitutional, a judgment that overruled it in 1996 and recommendations of various Law Commissions to repeal and not to repeal the provision. “Courts, to some extent, are vacillating between one end and the other end because we have not understood the problem from a scientific perspective but we have analyzed it only from a legal perspective,” he said.

In 2011, the top court had recognized passive euthanasia in *Aruna Shanbaug V. U.O.I*¹⁰ by which it had permitted withdrawal of life-sustaining treatment from patients not in a position to make an informed decision. The Centre had opposed recognition of 'living will' and said the consent for removal of artificial support system given by a patient may not be an informed one and without being aware of medical advancements. It had cited examples of various countries in disallowing creation of living will .¹¹

About this, different courts had a different opinion for example Delhi and Bombay High Court have opined section 309 of IPC as unconstitutional whereas Andhra Pradesh High Court in 1988 has upheld its validity.

However, this clash came to the Supreme Court in the case of *P.Rathinam vs. Union of India*¹², where the Supreme Court declared it unconstitutional. However, this decision was later overruled by a larger bench of the Supreme Court. Also in the case of *Gian Kaur vs. The State of Punjab*¹³, it was said that the “right to die is not included in the right to life under article 21 of the Indian Constitution.” But after 20 years in *Common Cause vs. Union of India*, Justice DY Chandrachud who had

⁹<https://economictimes.indiatimes.com/news/politics-and-nation/landmark-ruling-supreme-court-says-passive-euthanasia-is-permissible-with-riders/articleshow/63228770.cms>

¹⁰ P.Rathinam v. Union Of India, (1994) 3 SCC 394(India)

¹¹ Smt. Gian Kaur v. The State Of Punjab, AIR 1996 Puj 648(India).

¹² Supra note 11

¹³ (CRL.MC NO. 6522 OF 2021)

also allowed passive euthanasia said we have to decriminalize the suicide in the future for domestic and international development. He said if a person commits suicide that means he is having mental stress so he should not be tried under sec. 309 of IPC. Sec. 115 of MHCA, 2017¹⁴ makes a person victim rather than an offender. This section tells how a person should be treated in society. The person who commits suicide needs care and rehabilitation rather than a penal sanction.

The High Court of Kerala, through learned judge, Justice K. Haripal in the case *Simi CN v. State of Kerala*¹⁵ held that the decriminalization of Section 309 of IPC is a more humane and effective way of dealing with the issue.

Brief facts of the case:

The petitioner in this case had approached the Court under Section 482 of the Code of Criminal Procedure seeking to quash the proceedings which arose from the final report in a crime registered at Ollur police station. The first information was given by Mini Unnikrishnan, president of Puthur Grama Panchayat alleging offence under Section 309 of the Indian Penal Code. The petitioner alleged that an altercation between the de facto complainant and her led to the commission of the act. The Petitioner contested that by virtue of Section 115 of the Mental Health Care Act, 2017, her act would not fall within the ambit of Section 309 of the IPC.

Judgement:

The court observed that the petitioner was abused and pressured to do an official act against the procedures to be followed in the office. She was abused and threatened in the midst of the general public, illegally restrained and confined in the room. Under severe mental stress, she lost

¹⁴ [https://primelegal.in/2022/06/11/decriminalisation-of-section-309-of-ipc-is-a-more-humane-and-effective-way-of-dealing-with-the-issue-kerala-high-court/#:~:text=State%20of%20Kerala%20\(CRL.MC,of%20dealing%20with%20the%20issue.](https://primelegal.in/2022/06/11/decriminalisation-of-section-309-of-ipc-is-a-more-humane-and-effective-way-of-dealing-with-the-issue-kerala-high-court/#:~:text=State%20of%20Kerala%20(CRL.MC,of%20dealing%20with%20the%20issue.)

¹⁵ Laxmi Naresh Vadlami and Mahesh Gowda, 'Practical implications of Mental Healthcare Act 2017: Suicide and suicide attempt' (Indian Journal of Psychiatry, April 2019)

her balance for a moment and attempted to commit suicide. The court observed that the allegations made in the FIR or complaint against the petitioner do not prima facie constitute any offence. The court held that Section 115 of the Act saved the act of the petitioner from the penal provision. The entire proceedings against the petitioner pending before the Judicial First Class Magistrate's Court-III, Thrissur was quashed by the court.¹⁶

Section 309 has the ability to deprive an individual to prevent medical treatment in the golden hour as hospitals wait for the approval of the police. Furthermore, it paves the way for ill-intentioned hospital authorities to charge extra for treatment by not informing the police of the details of said treatment. Apart from this, the individual attempting suicide along with his or her near and dear ones would have already gone through severe stress during the attempt. It seems to be morally inconsistent to further add on to this stress by the threat of prosecution.

III. What Section 115 of Mental Health Act, 2017 states?

Section 115(1) of the Act presumes the person attempting to commit suicide to be under severe stress and hence should not be tried under section 309 of the IPC unless proved otherwise. But the presumption is open to challenges on various grounds.

The term 'severe stress' was introduced in section 115(1) in 2016 as a replacement for 'mental illness' used earlier in the 2013 Bill. Based on a lot of deliberations on the issue, the crux being the social stigma, and the abatement laws, the Indian Parliament had concluded to make the substitution¹⁷.

However logical these reasons might seem, it somewhere reflects the hypocrisy in the mindset of the lawmakers. It was not for the first time that the term 'mental illness' appeared in the Act, it's multiple

¹⁶ Law Commission of India (Report No. 210) (210 Report).

¹⁷ Mental Health Care Bill 2016, s115.

recurrences are evident. When social stigma couldn't affect its usage previously, how did it daunt the makers so immensely this time that they had to replace it?

This Act fails to defining 'severe stress'. The very basis of determining whether a person should be subject to punishment or treatment is itself unclear in its meaning and application. It does not prescribe the stress measurement scale to be adopted to ascertain that the stress had been severe. Apart from its hazy meaning, the presumption under section 115 of the Act is subject to other challenges too. The presumption herein restricts itself only to 'severe stress' whereas there is much evidence of the existence of various other causes too of an attempt to suicide. All the attempts to suicide are not backed by psychological reasons¹⁸.

Before concluding anything, it is important to acquaint ourselves with various other causes of suicide. In its ADSI-2018 Report, the National Crime Records Bureau of India issued a Report on Suicides in India¹ where it enlisted various causes of suicide.

*P. Rathinam v. Union of India*¹⁹ listed out a variety of causes of suicide that had not been dealt with in the Report. The judgment of the case listed out the following reasons:-

Mental diseases and imbalances , unbearable physical ailments , affliction by socially-dreaded diseases , decrepit physical condition disabling the person from taking normal care of his body and performing the normal chores , the loss of all senses or desire for the pleasures of any of the senses , extremely cruel or unbearable conditions of life making it painful to live , a sense of shame or disgrace or a need to defend one's honor or a sheer loss of interest in life or disenchantment with it , a sense

¹⁸ World, Health Organization, 'Mental health care in India: restoring hope and dignity' (World Health Organization, October 2015) < <https://www.who.int/features/2015/mental-health-care-india/en/>> last accessed 20 July 2020.

¹⁹ [1994] SCC (3) 394 15(2).

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of fulfillment of the purpose for which one was born with nothing more left to do or to be achieved and a genuine urge to quit the world at the proper moment.

It can be unambiguously concluded that section 115 of the Act covers only the first cause (still unclear though) and leaves the other causes entirely unaddressed. It would be erroneous to conclude that there will be no suicide attempts in the future based on a cause other than 'severe stress'. Therefore, it is paramount to know what will those victims of unsuccessfully attempted suicide be subject to.²⁰

Section 115 of the act merely presumes that all individuals that attempt to commit suicide are under some severe stress. However, the courts have clearly stated on various occasions that this presumption of the act is not absolute and if the police authorities can bring on record suggestive evidence that the individual was not under severe stress, then the individual can be held liable and guilty²¹.

For instance, in *C.A. Thomas Master And Etc v. Union Of India (UOI And Ors*²², the accused wanted to voluntarily end his life for the purpose of his life had been fulfilled. The Kerala High Court in this regard did not differentiate it as anything different from an attempt to commit suicide which was illegal. The act of the accused therefore attracted sections 309 and 306 of the IPC.

Section 115 of the Mental Health Act and Section 309 of the Indian Penal Code (IPC) deal with different aspects of mental health and self-harm. Here's a brief conclusion regarding these two provisions:

²⁰ Ambiguities in the Mental Healthcare Act -October 8, 2020 · By: Phalguni Garg, Amity Law School Noida

²¹Jaimithra S, 'Decriminalized Crime in India: Suicide' (iPleaders, 22 October 2019) <[²² \[2000\] CriLJ 3729.](https://blog.iPLEaders.in/decriminalized-crime-india-suicide/#:~:text=%E2%80%9CAbetment%20of%20suicide.,to%20fine%E2%80%9D%5B23%5D.> last accessed 20 July 2020.</p></div><div data-bbox=)

1. Section 115 of the Mental Health Act: This section pertains to the discharge of persons suffering from mental illness. It ensures that individuals with mental health conditions receive proper care, treatment, and rehabilitation. The section emphasizes the need for their integration into society and the promotion of their rights and dignity.
2. Section 309 of the IPC: Section 309 deals with the punishment for attempted suicide. It states that anyone who attempts to commit suicide shall be punished with simple imprisonment for a term that may extend to one year, or with a fine, or both. However, it's important to note that the Mental Health Care Act, 2017, decriminalized suicide and recommended that individuals who attempt suicide should be provided with appropriate mental health support and care.

Conclusion:-

In conclusion, these two provisions reflect different approaches to mental health. Section 115 of the Mental Health Act focuses on the care, treatment, and rehabilitation of individuals with mental illness, while Section 309 of the IPC historically treated suicide as a punishable offense. However, it's important to consider that the Mental Health Care Act, 2017, brings a more compassionate approach to suicide by recommending supportive care rather than punishment for those who attempt suicide. So the outcome of this paper is that sec 309 IPC should be abolished and Sec 115 Mental health Act needs a bit of rephrasing and should be more clear in its words and expression so that it becomes a full-fledged section which deals with such issues and the law pertaining to this matter should not be ambiguous or unclear as someone's mental health is attached to it.

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