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From the Chief Editor

It is with great pleasure that we present Volume 14, Issue 2 (December 2024) of Pragyaan: Journal of Law. This issue continues our commitment to fostering academic discourse and advancing legal scholarship by featuring thought-provoking and insightful contributions from scholars, researchers, and legal practitioners.

Law is an ever-evolving field, constantly shaped by societal transformations, technological advancements, and policy shifts. In this edition, we bring together a diverse range of articles that critically analyze contemporary legal issues, explore emerging jurisprudential trends, and provide fresh perspectives on pressing legal challenges. From different domains of law to regulatory frameworks and human rights concerns, this issue encompasses a broad spectrum of legal discourse.

We extend our heartfelt gratitude to our esteemed contributors for their valuable research and to our diligent peer reviewers for their expertise in ensuring the quality and rigor of this publication. Their collective efforts uphold the academic integrity and excellence that Pragyaan: Journal of Law strives to maintain.

We also appreciate the continued support of our readers, whose engagement with our publication fosters meaningful legal scholarship and dialogue. We hope that this issue serves as a valuable resource for legal academics, practitioners, and students alike, inspiring further research and discussions in the field of law.

We look forward to your continued contributions and insights in future editions.

Warm regards,

Prof (Dr) Ashish Verma

Chief Editor

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Navigating Legal Challenges and Accountability in Autonomous Lethal Weapons: A Critique of IHL Frameworks

Deepak Kumar Srivastava*
Shubham Prakash Singh**[1]

ABSTRACT

Human-warfare exhibits important ambits like invention, usage, technology upgradation for effective warfare e.g. bow evolved into crossbow, Catapults developed to ballistic canons, etc. In the era of International Laws, Weapons of Mass Destructions and Artificial Intelligence (AI) in robotics, Nations must agree that the technology used must be in compliance with rules of International Humanitarian Law (IHL). IHL analyzes the challenges of new technologies in Remote-controlled weapons, Autonomous lethal weapons ("ALWs"), and Cyber & information warfare. ALWs' implications cannot be ignored. ALWs suffer with the problems of non-uniformity, non-consistency, ambiguity in definition. The International Committee of Red Cross (ICRC) evaluated the effects of recent and impending changes in armed conflict by comprehending how autonomous weapons systems influence those who are affected by them and developing humanitarian solutions that cater to the needs of the most vulnerable. ALWs' definition is incomplete without AI and Machine Learning (ML). The ICRC examines them with a focus on their application in the conduct of war and violence, as well as in humanitarian action to support and protect armed conflict victims.

ICRC defines Autonomous Weapon Systems as "the weapon systems with autonomy in their 'critical functions' of selecting; attacking targets and is an immediate concern from humanitarian, legal and ethical perspective, given the risk of loss of human control over weapons and the use of force."

Even yet, there are significant problems with how IHL and ALWs interact while adhering to the core principles of IHL, namely the principles of "distinction", "proportionality", and "precautions" in attack. Further, whether the ALWs are recognized under the IHL is still debatable meanwhile technology grows rapidly and countries like UK & USA develops a framework to regulate its use. On a global level, the need to have such a framework remains unfulfilled and neglected. The existing definition by ICRC fails to impose liability and responsibility for damages and harm caused to innocent civilians and combatant medics.

Considering various facets of ALWs and IHL discussed above, this paper focuses on loopholes of present definition and rules, examines the possibility and feasibility of framework dealing with provisions for responsibilities, functions and liabilities for States and system developers while examining insights that are possible from analysis of relationship between technology & law in military context.

Keywords: Artificial Intelligence, Autonomous Lethal Weapon Systems, International Humanitarian Law, International Committee on Red Cross, Warfare, Mass Destruction.

Introduction

The use of computer systems to perform cognitive, planning, reasoning, or learning-intensive tasks is known as artificial intelligence (AI). These software tools or algorithms could be used for a variety of jobs, therefore their potential effects may be wide-ranging and not yet fully understood. But there is no proper definition till today for 'Autonomous Lethal Weapon System'. However, ICRC gave a working definition which says, "after initial launch or activation by a human operator, it is the weapon system itself, using its sensors, computer programming (software) and weaponry that take on the targeting functions that would otherwise be controlled by humans." This definition includes both current and prospective future weapon systems that have the ability to independently choose and attack targets. Weapon systems that operate autonomously select and attack targets without human intervention. After being initially activated or launched by a person, an autonomous weapon system self-initiates or triggers a strike in response to information from the environment gathered by sensors and on the basis of a generic "target profile". This suggests that the user isn't in charge of choosing or even understanding the exact targets, timing, or places of the succeeding applications of force.

The use of autonomous weapon systems entails risks because it is difficult to predict and regulate their outcomes. This lack of human control and discretion in the

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use of force and weapons poses serious issues from a humanitarian, legal, and ethical perspective.

MEANING AND DEFINITION OF AI & AUTONOMOUS LETHAL WEAPON SYSTEM

According to Oxford Advanced Learner's Dictionary, Artificial Intelligence is "the study and development of computer systems that can copy intelligent human behavior". Stefan Van Duin & Naser Bakhshi in 2017 went one step forward and defined AI in general terms as "AI refers to a broad field of science encompassing not only computer science but also psychology, philosophy, linguistics and other areas. AI is concerned with getting computers to do tasks that would normally require human intelligence."[2]

In a recommendation of Council of Artificial Intelligence of the OECD AI is defined as a "machine- based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. AI systems are designed to operate with varying levels of autonomy."[3]

The most relevant definition for us to consider will be the one given by ICRC i.e. International Committee on Red Cross. They say "AI is the use of computer systems to carry out tasks - often associated with human intelligence - that require cognition, planning, reasoning or learning. Since these are software tools, or algorithms, that could be applied to many different tasks, the potential implications may be far-reaching and yet to be fully understood."[4]

But there is no proper definition till today for 'Autonomous Lethal Weapon System'. However, ICRC gave a working definition which says "after initial launch or activation by a human operator, it is the weapon system itself, using its sensors, computer programming (software) and weaponry that take on the targeting functions that would otherwise be controlled by humans." Any weapon system that can independently choose and attack targets falls under this criterion, which includes certain current weapons and hypothetical future systems. AUTONOMOUS WEAPON SYSTEM[5]

In the expert meeting held at Geneva, Switzerland on 26th to 28th March 2014, it was highlighted that the US Department of Defense's policy classifies weapons into three categories based on their degree of autonomy and human control.

- **FULLY AUTONOMOUS WEAPON SYSTEM:** An Autonomous Weapon system is one that, after being launched and activated by a human operator, can choose and engage targets on its own. E.g. Loitering Munitions.[6]
- **SUPERVISED AUTONOMOUS WEAPON SYSTEM:** In the event that the weapon system used to counter incoming missile or rocket attacks malfunctions, it is a form of autonomous weapon system that is made to allow human operators to intervene and end confrontations. They have the autonomy to choose and attack targets based on pre-programming. In contrast, a human operator oversees the weapon's operation and, if necessary, temporarily assumes control of the system.[7]
- **SEMI-AUTONOMOUS WEAPON SYSTEM:** It is a type of weapon system which can work only on the specific task assigned and cannot further on its own decide and act like the fully autonomous weapon system. It is intended to only engage individual targets or specific target groups that have been selected by a human operator. Example, Homing Munitions, Tanks.[8]

In the same meeting, three main considerations were identified for assessing the implications of autonomy in a given weapon system. They are as follows:

- The task the weapon system is performing
- The level of complexity of the weapon system
- The extent to which it is under human control or supervision.[9]

AI AND AUTONOMOUS WEAPON SYSTEM

Neil Davison has defined 'Autonomous Weapon System' as follows:

"Any weapon system with autonomy in its critical functions i.e. a weapon system that can select (search for, detect,

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2 Stefan van Duin & Naser Bakhshi, Part 1: Artificial Intelligence Defined (The most used terminology around it), Deloitte (March 2017)

3 Ethics and governance of artificial intelligence for health: WHO guidance. Geneva: World Health Organization; License: CC BY-NC-SA 3.0 IGO, (2021)

4 Artificial Intelligence and machine learning in armed conflict: A human-centred approach, International Review of the Red Cross, IRRC, Pg no. 463, (2020)

5 N. Davison, A Legal Perspective: Autonomous Weapon Systems under International Humanitarian Law (January 2018)

6 US Department of Defense (2012) Autonomy in Weapon Systems, Directive 3000.09, 21 November 2012, Glossary, Part II Definitions; Autonomous weapon systems: Technical, military, legal and humanitarian aspects Expert meeting, Geneva, Switzerland, Pg no. 14, (26 -28 March 2014)

7 Autonomous weapon systems: Technical, military, legal and humanitarian aspects. Expert meeting, Geneva, Switzerland, Pg no. 14, (26 -28 March 2014)

8 Ibid.

9 Ibid.

identify, track or select) and attack (use force against, neutralize, damage or destroy) targets without human intervention."[10]

The term "killer robots" or "lethal autonomous weapons systems" (LAWS) refers to weaponry that employs artificial intelligence (AI) to automatically recognize, choose, and kill human targets.

Whereas in the case of unmanned military drones the decision to take life is made remotely by a human operator, in the case of lethal autonomous weapons the decision is made by algorithms alone.

Weapons that kill by algorithms rather than human decision-making are immoral and pose a serious threat to both national and international security.

1. **Immoral:** Since algorithms are unable to appreciate the worth of human life, they should never be given the authority to determine who lives and who dies. Actually, António Guterres, the secretary general of the United Nations, concurs that "machines with the authority and discretion to take lives without human involvement are politically untenable, ethically abhorrent, and should be forbidden by international law."
2. **Threat to Security:** By using algorithms to make decisions, weapons can develop faster, more affordably, and on a larger scale than software. Due to the introduction of the threats of proliferation, fast escalation, unpredictability, and even the possibility of WMD, this will be extremely destabilizing on both a national and worldwide scale.

Autonomous Weapon System (Lethal Autonomous Weapon System-LAWS) according to US Department of Defense is "a weapon system that, once activated, can select and engage targets without further intervention by a human operator."[11]

According to some, robotics automates physical chores whereas AI automates cognitive tasks. However, because AI systems regularly produce unexpected outcomes and do more than just mimic human cognitive processes, this framework may not be sufficient to understand how they operate. In addition to being automated or autonomous, a robot may or may not contain an AI algorithm.

"Drones used as intentional fatal weapons provide the greatest risk. UAVs with remote pilots have been incorporated into modern combat. Armed UAVs are dispatched to destroy the target, frequently under supervision of base thousands of kilometers distant (s). Drones' key advantage is that the military may attack the adversary with the least amount of collateral damage and casualties by using them. In addition to killing the targeted target, drone attacks frequently result in considerable collateral damage and kill numerous innocent individuals. In an effort to reduce the cost of running UAVs, manufacturers have made drones increasingly autonomous, doing away with the requirement for human intervention and drone teaching. Due to the increased autonomy of military equipment, the moral responsibility for the collateral damage caused by indiscriminate drone operations has come under intense examination. It is unclear who should be held accountable for the results of drone strikes when humans are excluded from the UAVs' decision-making process. Is it the military, the robot, or the programmer?[12]

The world's first recorded case of an autonomous drone attacking humans took place in March 2020. The United Nations (UN) security report on Second Libyan Civil War states that "Libyan forces used the Turkish-made drones to "hunt down" and jam retreating enemy forces, preventing them from using their own drones."

Since the 1950s, the US Department of Defense has employed drones in almost all of its combat operations to give reconnaissance, surveillance, and intelligence to the opposition. Nearly 100 nations are said to be using military drones right now. They are employed in war and rescue missions and are outfitted with the newest generation of cameras, which provide an accurate topography of the area. Those with artificial intelligence communicate with soldiers and provide them with information about enemy movements on an ongoing basis.

The media has focused on the potential repercussions of using unmanned aerial systems (UAV), among other things in relation to the unintentional deaths of two innocent hostages of American and Italian nationality during a drone operation on al-Qaeda fighters in 2015.[13]

The Turkish military forces employed unmanned systems in record numbers during the "Spring Shield" (March 2020) offensive in Idlib against the Syrian forces. The proper doctrine for their employment, including for combat missions, as well as coordination with other combatants (particularly artillery), led to the Turkish armed forces' high level of efficacy in their operations.[14]

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10 N. Davison, A Legal Perspective: Autonomous Weapon Systems under International Humanitarian Law (January 2018)

11 Anna Konert, Tomasz Balcerzak, Military autonomous drones (UAVs) - from fantasy to reality. Legal and Ethical implications., Transportation Research Procedia, Volume 59, Pages 292-299, ISSN 2352-1465, (2021)

12 Ibid.

13 Ibid.

14 Ethem Emre Ozcan and Mahmoud Barakat, Operation Spring Shiled leaves Mark on Syria in 2020, Anadolu Agency (AA), (30th December 2020)

Azerbaijan deployed armed drones to significantly outperform Armenia in recent battles for control of the Nagorno-Karabakh territory during Hernandez, 2021. According to reports, in 2021, the Israel Defense Forces employed drones to spray tear gas on protesters in the West Bank, and Hamas fired loitering weapons, or so-called kamikaze drones, into Israel.[15]

According to the Eurasian Times, India's Arjun tanks will also have "Artificial Intelligence" capabilities that will aid in the detection, tracking, and engagement of enemy objects. So, these tanks will have the following characteristics:

1. Target detection, tracking, and classification that is automatic
2. Lightweight and low power consumption
3. The only locally developed RCWS sighting system in India is unrestricted by license and global export regulations.[16]

RISKS OF AUTONOMOUS WEAPONS

1. Unpredictability
2. Escalation
3. Proliferation
4. Lowered Barriers to Conflict
5. Mass Destruction
6. Selective Targeting of Groups
7. AI Arms Race

1. Unpredictability

The behavior of lethal autonomous weapons is extremely unpredictable. Due to complicated interactions between machine learning-based algorithms and a dynamic operating context, it is extremely difficult to predict how these weapons would behave in actual settings. Additionally, in order to keep one step ahead of competing systems, the weapons systems are designed to behave in an unpredictable manner.

2. Escalation

Autonomous weapons systems increase the possibility of unintentional and quick conflict escalation because to the speed and scale at which they can operate. According to recent RAND research, "widespread AI and autonomous systems could lead to unintended escalation and crisis instability", as "the speed of autonomous systems did lead to inadvertent escalation in the war-game". Even the US National Security Commission on AI (NSCAI), a quasi-governmental body, admitted that "unintended escalation may occur for numerous reasons, including when systems fail to perform as intended, because of challenging and untested complexities of interaction between AI-enabled and autonomous systems on the battlefield, and, more generally, as a result of machines or humans misperceiving signals or actions." According to the NSCAI, "AI-enabled technologies would undoubtedly increase the tempo and automation of warfare overall, diminishing the time and space available for de-escalation tactics.

3. Proliferation

Killer Robots or Lethal Autonomous Weapon Systems are extremely inexpensive to build in large quantities since they don't need expensive or difficult-to-find raw ingredients. They are also secure in transit and difficult to find. These weapon systems will undoubtedly spread whenever big military powers start producing them. They will soon turn up on the underground market, where they will end up in the hands of terrorists looking to topple governments, despots terrorizing their people, or warlords looking to carry out ethnic cleansing. Reducing the risk of proliferation is in fact a top objective for lowering the strategic risks associated with AI in the military, according to the U.S. National Security Commission on AI.

4. Lowered Barriers to Conflict

War has historically been expensive-both in terms of the money spent on making conventional weapons and the lives lost. This may have occasionally served as a deterrent to conflict while, on the other hand, encouraging diplomacy. This standard may be challenged by the emergence of affordable, scalable weaponry, lessening the risk of conflict. It may be argued that the spread of lethal autonomous weapons along with the possibility of quick and accidental escalation would have the similar outcome.

5. Mass Destruction

The scalability of lethal autonomous weaponry is enormous. This implies that the amount of damage you can cause with autonomous weaponry is purely dependent on the number of Slaughterbots, i.e. Killer Robots or lethal autonomous weapons in your arsenal, not on the quantity of personnel you have on hand to operate the weapons Contrary to traditional weaponry, which may be used to cause twice as much damage by just buying twice as many guns, this requires twice as many soldiers to be trained to use those guns.

The potential to scale up creates a serious proliferation risk, which heightens the threat of mass catastrophe. A weapon of mass destruction is one that can be directly utilized by one person to inflict many casualties, and with lethal autonomous weapons, one person might

15. Joe Hernandez & Charles Maynes, The Deadly clashes between Armenia and Azerbaijan, NPR, (September 19, 2022)
16. Ashish Dangwal, India's Arjun Tanks to get 'Artificial Intelligence' capabilities to detect, track and engage hostile Targets', The Eurasian times, (30th September 2022)

hypothetically activate hundreds or even thousands of killer robots and autonomous weapons.

6. Selective Targeting of Groups

When selecting victims to kill based only on sensor data, particularly through face recognition or other biometric information, there are serious concerns about the selective targeting of groups based on presumed age, gender, color, ethnicity, or religious dress. When combined with the potential for proliferation, autonomous weapons may dramatically increase the risk of targeted violence against certain groups of people, and perhaps ethnic cleansing and genocide. The potential for disproportionate effects of lethal autonomous weapons on race and gender is one of the key concerns of civil society campaigning.

These threats are particularly noteworthy in light of the growing use of facial recognition technology in law enforcement and ethnic profiling. Businesses have stated that they are unwilling to take a stand against the weaponization of facial recognition software because they are interested in developing lethal systems.

7. AI Arms Race

Since there hasn't been a concerted global effort to raise awareness of the risks of lethal autonomous weapons and apply political pressure, an "AI military race has begun", which goes against a core premise of ethical artificial intelligence. The inherent dangers of unpredictable conduct and escalating behavior are further compounded by arms race dynamics, which prioritize speed over safety.[17]

LEGAL & ETHICAL ISSUES

1. Morally Abhorrent
2. Lack Accountability
3. Violate International Humanitarian Law

1. MORALLY ABHORRENT

Algorithms should never be given the authority to determine who lives and who dies since they are unable to comprehend the value of a human life. A clear moral red line has been crossed by lethal autonomous weaponry.

2. LACK ACCOUNTABILITY

Finally, giving algorithms the authority to decide whether to use fatal force poses important issues regarding who is ultimately in charge of and accountable for the use of force by autonomous weapons, especially given their propensity for unpredictability. Since "international humanitarian law requires that individuals be held legally responsible for war crimes and grave violations of the Geneva Conventions", this "accountability gap" may be seen to be against the law. If a completely autonomous weapon was used by a military commander or operator with the intent to commit a crime, they may be held guilty. To hold an operator liable for an autonomous robot's unforeseen behavior, however, would be problematic legally and possibly unfair.

3. VIOLATE INTERNATIONAL HUMANITARIAN LAW

The principles of distinction and proportionality are outlined in international humanitarian law (IHL). According to the principle of distinction, parties to an armed conflict are required to discriminate between civilian and military targets and focus their actions solely on military goals. Attacks that subject civilian populations to harm that are excessive in comparison to the anticipated military advantage obtained are forbidden by the concept of proportionality.

Fully autonomous weapons would have a difficult time adhering to the distinction and proportionality rules, it has been highlighted.

Further, it has been argued that autonomous weapons that target humans would violate the Martens Clause, a provision of IHL that establishes a moral baseline for judging emerging technologies. These systems would violate the dictates of public conscience and "undermine the principles of humanity because they would be unable to apply compassion or human judgment to decisions to use force."[18]

INTENATIONAL HUMANITARIAN LAW

According to ICRC (herein referred as "International committee of the Red Cross"), International Humanitarian Law (IHL) is, "a set of rules that seeks, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not, or are no longer, directly or actively participating in hostilities, and imposes limits on the means and methods of warfare"

I.H. L is also referred to as "the law of war" or "the law of armed conflict". Treaties, customary law, and general legal concepts all fall under the category of I.H.L., which is a subset of public international law. I.H.L. aims to monitor and regulate parties' behavior once an armed conflict has started, rather than determining whether it started lawfully or not.[19]

International Humanitarian Law and Lethal Autonomous Weapons System

It is a well-known fact that LAWS are used in armed conflicts today. Although few countries have publicly admitted deploying such operations, their use is anticipated to rise in the coming years. Additionally,

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17 The Risks of Lethal Autonomous Weapons, Lethal AWS, (29th October 2022)
18 Ibid.
19 ICRC, what is international humanitarian law? (July 5, 2022)

offensive armed operations have seen significant technological advancements. Warfare has shown in current history that it can substantially damage civilian infrastructure and possibly cause human suffering.[20] As a result, various organizations throughout the globe have attempted to apply the IHL to armed conflict in order to reduce or restrict the damage brought on by cyber-attacks.

1. The Tallinn Manual by NATO.

Applying the laws regulating armed conflict (i.e. IHL) to battle presents a fresh problem because modern warfare differs from traditional warfare in sufficient ways. State neutrality, the definition of a legitimate combatant, and the protection of civilians are all issues that need to be addressed. Therefore, the most thorough publication on the topic is NATO's Tallinn Manual.[21]

Though, the manual, which was only a persuasive value holding document, and which was produced by a team of specialists, does offer advice on how current laws of armed conflict should be applied to combat in which LAWS are used in large scale. The Tallinn manual's structure is pictured in fig. 1.

As an illustration of how the manual operates, Rule No. 43

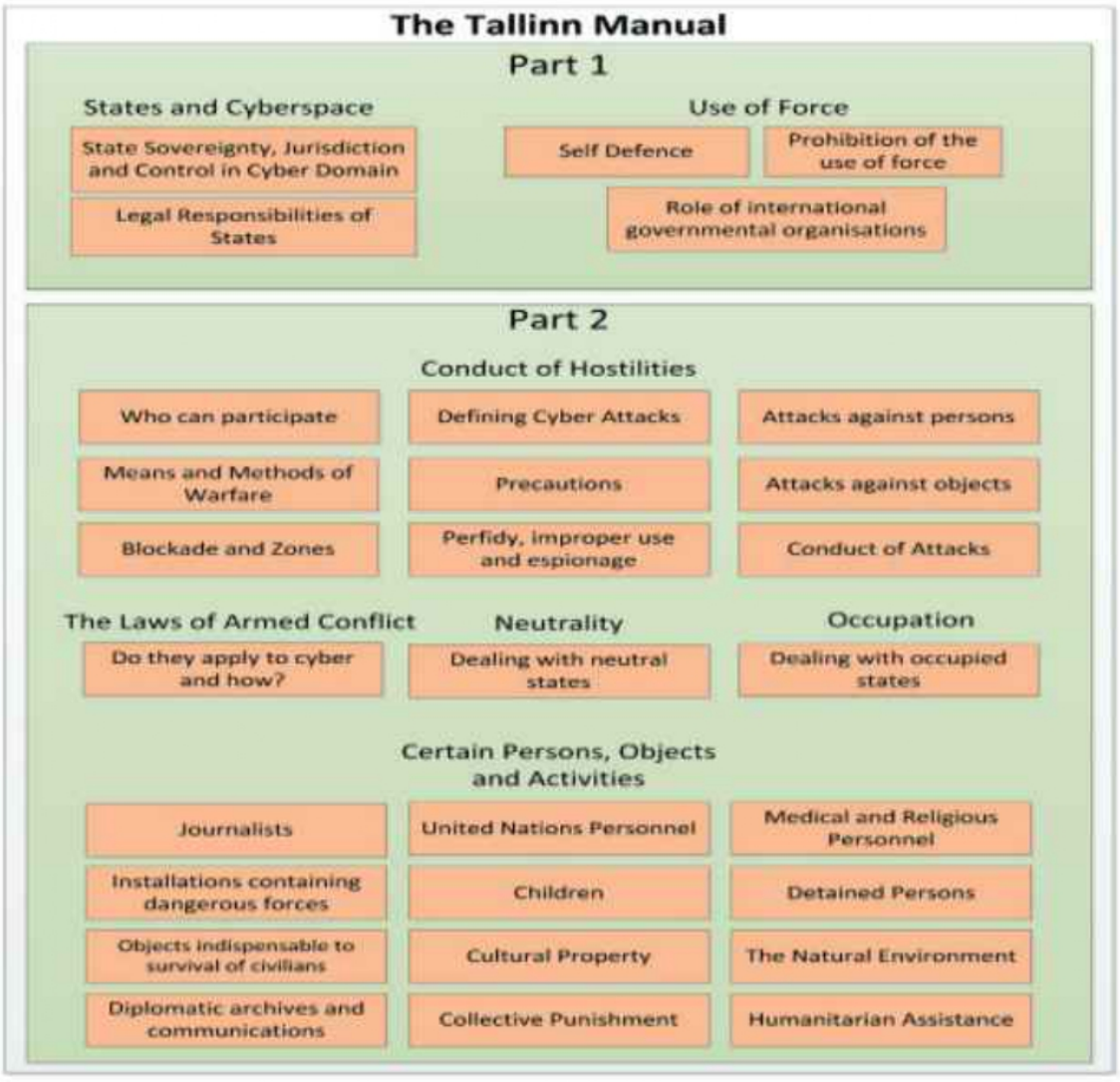

Figure 1: An overview of the Tallinn Manual's structure.

20. ICRC, international Humanitarian Law and Cyber Operations during Armed Conflicts, (2019)
21. NATO, The tallinn manual on the international law applicable to cyber warfare, Online, (March 2013)

handles "indiscriminate means or procedures." According to the rule:

"It is prohibited to employ means or methods of cyber warfare that are indiscriminate by nature. Means or methods of cyber warfare are indiscriminate when they cannot be:

a) directed at a specific military objective, or

b) limited in their effects as required by the law of armed conflict and consequently are of nature to strike military objectives and civilians or civilian objects without distinction."

The manual provides an explanation of the legal basis for this regulation by quoting paragraphs (b) and (c) of Article 51 (4) of Additional Protocol I to the Geneva Conventions. Additionally, the experts' group provides instances of what would and would not be in violation of this guideline. The rule would be broken, for instance, by malware that was uncontrollable and propagated harmfully beyond its intended target. However, malware similar to Stuxnet that infects civilian systems but only targets a narrow range of equipment wouldn't go against the regulation. Understanding how the committee of experts produced each rule and the legal justification for it is made straightforward by using this rule, foundation, and explanation technique throughout the document.[22]

Criticism of Tallinn Manual:

"Even though the manual is comprehensive and arguably the best attempt to translate existing laws of armed conflict into the cyber domain, it has flaws that must be addressed.

i. The manual admits that only military manuals from 4 nations were used to create the rules: Canada, Germany, the United Kingdom, and the United States. This means that the manual could be skewed and influenced by Western ideas about war and conflict.

ii. When attempting to translate terms like "use of force" into the cyber domain, the group of experts runs into difficulties. Determining when a "use of force" occurred is critical because it defines when a state infringed the UN Charter.

iii. The last significant problem with the manual is that the group of experts rarely agrees on how the laws should be implemented in the cyber domain."[23]

The Tallinn Manual states that it is difficult to apply traditional laws regulating armed battle to modern warfare. Questions including the use of force against others, in case of attack, self-defense, and ensuring that attacks are discriminating have all stirred discussion when it comes time to apply them to the modern sphere. The Tallinn Manual is the simplest explanation of how the rules are to be applied to date, but it does not cover every problem. When an AI coupled with Lethal weapon qualifies as the use of force in accordance with law or the right to self-defense should be recognized but the worldwide panel of experts was unable to come to a consensus. The aforementioned instances further demonstrate the unclear legal ambiguity surrounding the applicability of IHL to advance warfare.

2. ICRC

For those suffering as a result of war and other violent events, the ICRC provides safety and aid. According to its mandate and goals, the ICRC is primarily concerned with LAWS deployed as tactics and weapons of war during a war, as well as the protection offered by international humanitarian law (IHL) against their repercussions.

"In times of armed conflict, Autonomous weapon systems (AWS) have been used in support of or alongside traditional weapon systems. AWS may offer alternatives to military combat that traditional means or approaches do not, but they also carry risks."[24]

Industries, infrastructures, telecommunications, transportation, as well as governmental and financial institutions are just a few examples of the diverse "targets" that might be disrupted, altered, or destroyed in the real world. Therefore, the potential human cost of LAWS against essential infrastructure, such as health infrastructure, is of particular concern to ICRC.[25]

The ICRC's Concerns about Autonomous Weapon Systems

Weapon systems that operate autonomously select and attack targets without human intervention. This suggests that the user isn't in charge of choosing or even understanding the exact targets, timing, or places of the succeeding applications of force and poses serious issues from a humanitarian, legal, and ethical perspective.

- The use of autonomous weaponry introduces threats to people involved in armed conflict, including civilians and fighters, as well as risks of the conflict escalating.
- Poses difficulties for adhering to international law, especially international humanitarian law, particularly the guidelines for how hostilities should be conducted to protect civilians.

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22. Michael Robinson, Kevin Jones, Helge Janicke; "Cyber warfare: Issues and challenges" (2014)
23. ibid
24. ICRC, International Humanitarian Law and Cyber Operations during Armed Conflicts, (2019)
25. ICRC, the Potential Human Cost of Cyber Operations, (2019)

- Raises important ethical questions for humans by essentially replacing human judgments about life and death with sensor, software, and mechanical systems.

The application of IHL to LAWS conflict

There is no doubt, according to the ICRC, that IHL applies to and hence restricts the use of LAWS during armed conflict, just as it does to the use of any other weapon, tactic, or technology of warfare in a war, whether it be modern or conventional.[26] States sign IHL treaties to regulate ongoing and upcoming conflicts. Assuming that IHL will apply to them, states have incorporated regulations into IHL accords that prepare for the development of new tools and techniques of combat.

This conclusion is strongly supported by the ICJ's "Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons", which stated that the established IHL principles and regulations that apply in armed conflict apply "to all forms of warfare and to all kinds of weapons," which also include "those of the future" [27]. Therefore, this conclusion "applies to the employment of LAWS during armed conflict", according to the ICRC.

In scenarios not covered by current IHL standards, combatants and civilians are protected under the so-called "martens clause", which implies they are protected and guided by the principles of international law drawn from accepted custom, humanitarian values, and public conscience.[28]

Protection provided by the prevailing IHL.

Currently, norms and guidance on a variety of subjects that may arise during armed conflict are provided by IHL treaties and customary law. These restrictions are intended to protect civilians from the effects of conflicts. A number of the latest LAWS-attacks reported in public appear to have occurred rather "discriminate", for example, destruction caused by harpy & kamikaze drones employed by Russia in Ukraine. They did not do so by accident; the ability to promote oneself must be specifically built into such tools. In addition, an attack on one system could have unintended consequences for other structures. As a result, there is a significant risk that, either purposefully or unintentionally, lethal weapon systems won't be created or utilized in line with IHL.[29]

Assuming IHL, "including the rules of distinction, proportionality, and safeguards," is applicable to armed conflicts; this means that, among other things, under current law:

I. It is forbidden to use tools that are indiscriminate and qualify as weapons[30]

II. Direct attacks on persons and civilian property are expressly prohibited, even when carried out using advanced or conventional military techniques[31]

III. It is prohibited to utilize autonomous weapons or other types of force in acts of violence or threats of violence with the primary goal of intimidating civilians.[32]

IV. Indiscriminate attacks, which aim solely at persons, civilian property, or military targets, are prohibited,[33]

V. "Disproportionate attacks are forbidden, especially those that employ advance or conventional combat techniques. Disproportionate attacks are those that are excessive in relation to the anticipated tangible and direct military gain and are predicted to cause accidental human casualties, civilian injuries, civilian property damage, or a combination of the above.[34]

VI. It is forbidden to employ physical, technological, or other means of warfare to attack, destroy, eliminate, or render worthless items required for population survival. [35]

VII. During military conflicts, medico services must be assisted and protected. [36]

Additionally, all practicable precautions must be taken to shield humans and their property from the impacts of battles and other forms of war, a duty that nations should already fulfill in times of peace.[37]

How IHL should be applicable

The ICRC in its paper titled, "International Humanitarian Law and Cyber Operations during Armed Conflicts" laid emphasis on the requirement of discussing how IHL applies during cyber warfare because "the interconnected nature of cyberspace, as well as its largely digital nature, present challenges for the analysis of key IHL principles and concepts governing hostilities."

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26. ICRC, International Humanitarian Law and the Challenges of Contemporary Armed Conflicts, 31IC/11/5.1.2, pp. 36-37, (2011)
27. International Court of Justice, Legality of the threat or the use of nuclear weapons, Advisory Opinion, Para. 86, (8 July 1996)
28. Art. 1(2) of Protocol Additional to the Geneva Conventions of 12 August 1949.
29. ICRC, "International Humanitarian Law and Cyber Operations during Armed Conflicts", (2019)
30. Rule 71 ICRC Customary IHL Study
31. Art. 48, 51 & 52 of Protocol Additional to the Geneva Conventions of 12 August 1949
32. Art. 51 (2) of Protocol Additional to the Geneva Conventions of 12 August 1949.
33. Art. 51 (4) of Protocol Additional to the Geneva Conventions of 12 August 1949.
34. Art. 51 (5) (b) & 57 of Protocol Additional to the Geneva Conventions of 12 August 1949
35. Art. 14 & 54 of Protocol Additional to the Geneva Conventions of 12 August 1949
36. Art. 12 of Protocol Additional to the Geneva Conventions of 12 August 1949; Rule 25, 28 & 29 ICRC Customary IHL Study.
37. Art. 58 of Protocol Additional to the Geneva Conventions of 12 August 1949; Rule 22-24 ICRC Customary IHL Study

Therefore, the ICRC request to all nations to also incorporate the principle in armed conflict in which LAWS are used at large extent. The ICRC further urges States to cooperate in order to create a common acknowledgment of how IHL rules and principles relate to armed operations. This is the case because applying IHL to battled conflict is a crucial 1st step toward preventing or greatly reducing the possibility for human suffering.

The ICRC's Recommendations to States for the Regulation of Autonomous Weapon Systems

Since 2015, the International Committee of the Red Cross (ICRC) has pushed governments to set legally recognized restrictions on autonomous weaponry in order to protect civilians, uphold international humanitarian law, and maintain morality. The International Committee of the Red Cross (ICRC) urges states to enact new, legally binding rules to support continuing efforts to create international limitations on autonomous weapon systems that address the issues they present. In particular:

1. Expressly excluding unpredictable autonomous weapon systems should be done so due to their potentially indiscriminate consequences. The only way to do this would be to outlaw autonomous weapon systems whose design or use makes it impossible to fully comprehend, forecast, and explain how they would behave.

2. In order to uphold the norms of international humanitarian law for the protection of civilians and combatants hors de combat, the use of autonomous weapon systems to target persons should be prohibited.

Most effective way to do this would be to outlaw autonomous weapon systems that are intended for use against people. The design and use of autonomous weapon systems that would not be prohibited should be regulated, including through a combination of:

- Restrictions on the categories of targets, such as limiting them to things that are innately military objectives.
- Limitations on the breadth, duration, and size of use, as well as the ability for human judgement and control in respect to a particular attack.
- Restrictions on the circumstances in which they may be used, such as limiting them to absence of civilians or civilian objects.
- Conditions for efficient human monitoring prompt human intervention, and timely shutdown of the machine.

The International Committee of the Red Cross (ICRC) supports efforts made in the Convention on Certain Conventional Weapons to reach agreement on components of a normative and operational framework, as well as other efforts made by States to establish international restrictions on autonomous weapon systems that aim to adequately address issues raised by these weapons.Given how quickly technology and applications for autonomous weapon systems are developing, it is essential that international agreements on boundaries be made. These constraints may also include shared policy norms and good practice recommendations, which can be complimentary and mutually reinforced, in addition to new legislative regulations.In order to achieve this, the ICRC is prepared to cooperate with pertinent parties at the national and international levels, including representatives of governments, armed forces, the scientific and technical community, and industry, as long as it falls within the purview of its mandate and areas of expertise.[38]

CONCLUSION

After being initially activated or launched by a person, an autonomous weapon system self-initiates or triggers a strike in response to information from the environment gathered by sensors and on the basis of a generic "target profile". This implies that the user is not in control of selecting or even knowing the precise targets, timing, or location of the ensuing applications of force. Civilians are at danger when LAWS are used as a weapon or method of warfare in a war. In order to safeguard citizens and architecture, it is crucial to understand that these actions do not occur in a legal vacuum. Therefore, it is important for all nation states to agree that IHL should be in effect during wartime. IHL must be applied to lethal attacks during armed conflict, but this must be made clear because doing so encourages militarization of AI rather than denying the legitimacy of AI in warfare. In actuality, IHL restricts the militarization of virtual space by preventing the development of military grade AI capabilities that would be illegal.[39]

At the same time, further discussion was thought to be necessary, especially between nation states, "on how IHL should be understood and applied in wartime." Such a dialogue is crucial and urgent because nation states must make sure that their use of AI or technological capabilities, whether it is defensively or offensively, complies with their obligations under international humanitarian law (IHL).[40]

States must analyze whether current law is acceptable and sufficient to tackle the challenges brought on by the interconnectedness of technology and military capabilities, or whether it needs to be modified to account for those specific qualities. New laws must build upon and reinforce the existing legal framework, which includes IHL, if they are to protect citizens from the impacts of war or for other purposes.

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38. ICRC Position on Autonomous Weapon Systems; ICRC, (12th May 2021)
39. Art. 36 of Protocol Additional to the Geneva Conventions of 12 August 1949; Rule 70 & 71 ICRC Customary IHL Study
40. ICRC, "International humanitarian law and the challenges of contemporary armed conflicts", (2019)

International Trade Law in Transition: Modern Challenges and Global Perspectives

Dr. Abhishek Dubey[1]

ABSTRACT

International trade law supports global business by enabling cross-border commerce and economic integration. However, this legal sector faces unprecedented challenges in the rapidly changing global world. Increased geopolitical tensions, regional trade imbalances, and the change from old trade models to technology-driven commerce have greatly impacted international trade regulations. This article examines current international trade law issues and global perspectives on its growth.

The rise of protectionism, trade wars, and the decline of multilateral organisations like the WTO[2] are analysed. The paper emphasises how regional trade agreements and plurilateral discussions have changed global trade governance. Digital trade and e-commerce affect trade laws, underlining the need for flexible legal frameworks to manage data privacy, cybersecurity, and digital taxation.

The study explores climate change and sustainability issues at the intersection of international trade law and environmental legislation. It analyses how green subsidies, carbon border taxes, and sustainable development goals affect trade policy. The paper proposes modernising international trade law to address these complicated issues.

This study compares different jurisdictions like the EU, US, and developing nations to these trends. To keep international trade law fair, efficient, and relevant in a globalised society, teamwork, dispute resolution, and technology are needed.

This examination illuminates the future of international trade law and its role in global commerce.

Keywords: International Trade Law, WTO, Digital Trade, Regional Agreements, Sustainability

Introduction

International trade law supports the global economy by regulating cross-border trade for stability, predictability, and justice. Trade relations are governed by norms, principles, and agreements that balance economic progress with national and global interests[3]. This article discusses international trade law's role in global economic shifts and its current difficulties.

International commerce is crucial to the global economy in the globalisation period, generating new possibilities and difficulties for governments, corporations, and legal systems[4]. The rise of global commerce has complicated national and international legal systems, making international trade law dynamic and frequently controversial. Nations must manage national laws, international treaties, and commercial agreements while transacting across borders. Over the last few decades, the World Trade Organisation (WTO) and regional trade agreements have shaped international trade laws.

National sovereignty and global governance are key concerns in international trade law, as governments struggle to comply with international standards while protecting local interests. These concerns include trade dispute enforcement, IP rights, trade sanctions, and environmental restrictions[5].

Trade and international agreements are more important as economies grow more integrated.

Digital and e-commerce demand international trade law updates and modifications. Cybersecurity, privacy, and cross-border data flows in the digital economy demand legislative adaption. International trade law is changing due to Brexit, US-China trade disputes, and rising markets.[6]

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[3] Baldwin, R. (2016). The great convergence: Information technology and the new globalization. Harvard University Press.

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[5] J. Bhagwati, In Defense of Globalization (Oxford University Press 2004).

[6] R. B. Porter, International Trade Law and Policy (West Academic 2020).

International trade law faces major problems today, and this paper examines how legal concepts and institutions adapt to the fast-changing global trade context. It will also discuss how changing technology and geopolitics affect international trade norms and propose modifications to solve new concerns.

Framework of International Trade Law

Cross-border trade is regulated by a complicated framework of international trade law. It addresses taxes, trade obstacles, dispute resolution, and intellectual property while facilitating international commerce in products, services, and capital. International trade law is founded on treaties, conventions, and agreements that harmonise legal standards and settle national-international legal problems. Multilateral accords, regional trade agreements, and national trade laws control global commerce in a delicate balance[7].

International trade law relies on the World Trade Organisation (WTO) to negotiate trade agreements and resolve disputes. Since 1995, the WTO has been the main international trade regulator, replacing the GATT. Non-discrimination, transparency, and fair competition are the WTO's key principles to promote seamless and equitable cross-border commerce. Resolving trade disputes between WTO members relies on the DSU.

Regional trade agreements (RTAs) have grown alongside the WTO in recent decades. Countries in some regions can negotiate trade arrangements outside the WTO through agreements like the EU and NAFTA (now USMCA)[8]. Environmental, labour, and intellectual property requirements are commonly addressed in these accords.

Due to digital trade, new laws have been created to handle data privacy, e-commerce, and cyber security. International trade law must adapt to a fast-changing global market as technology advances.

2.1 Historical Evolution

Since the 1947 GATT and 1995 WTO, international trade law has changed dramatically[9]. These institutions promoted trade liberalisation, reduced tariffs, and resolved trade disputes through rules[10].

International commerce law originated in mediaeval times when merchants across areas used customary rules to control trade. The Renaissance in the 16th century formalised commercial law as maritime trade routes and colonial empires expanded. State commercial interactions and conflicts were governed by early agreements such Treaties of Peace and Commerce. The Gold Standard and trade liberalisation policies of the 19th century gave rise to contemporary international trade law[11].

International trade connections were used to restore the global economy following World War II. The 1947 General Agreement on Tariffs and Trade (GATT) reduced tariffs and other trade obstacles to promote worldwide economic cooperation. This led to the 1995 formation of the World Trade Organisation (WTO), which replaced GATT as the main international trade regulator[12].

Regional trade agreements (RTAs) like the EU and NAFTA addressed more particular trade problems including environmental safeguards, labour rights, and intellectual property, shaping international trade law. Integration of digital trade and regulation of cross-border data flows continue to evolve the area[13].

2.2 Role of the WTO

The WTO helped create a multilateral trade system based on non-discrimination, transparency, and reciprocity. Its dispute resolution process enforces trade agreements and resolves trade disputes.

The World Trade Organisation (WTO) negotiates trade agreements, monitors compliance, and resolves disputes to regulate international commerce. The 1995-founded WTO promotes trade liberalisation, tariff reduction, and non-tariff obstacles to improve global economic cooperation[14].

The WTO's Dispute Settlement Mechanism (DSM) effectively resolves trade disputes by encouraging member nations to follow regulations. The WTO promotes a rules-based international trading system by addressing intellectual property, environmental standards, and trade facilitation[15].

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12 United Nations Conference on Trade and Development (UNCTAD). (2022). Digital economy report 2022: Cross-border data flows and development. United Nations. Retrieved from https://unctad.org Last accessed on 21st January, 2025.

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3. Contemporary Issues in International Trade Law

3.1 Rise of Protectionism

Countries adopting tariffs, trade obstacles, and subsidies to preserve domestic sectors have resurfaced as a major issue. The U.S.-China trade war disrupted global supply chains and questioned WTO rules' ability to resolve such conflicts.

Protectionism in international trade law has returned, signalling a trend away from free trade and multilateralism. Due to employment losses, inequality, and national security concerns, countries are embracing protectionist measures. Tariffs, import restrictions, and local industry subsidies protect national economies from international competition. In the U.S.-China trade war, President Donald Trump imposed high tariffs on Chinese imports.

Protectionism contradicts the World Trade Organisation (WTO)'s goals of global trade liberalisation and rules-based dispute resolution. Protectionist attitude might destabilise the global commercial order, causing trade wars and breaking multilateral accords. This tendency has also increased regional trade agreements (RTAs), which may fracture global commercial links.

Case Study: The US-China Trade War and Its Legal Implications

Background

The US-China trade war, which escalated between 2018 and 2021, was one of the most significant disruptions to international trade in recent history. It involved the imposition of tariffs on billions of dollars' worth of goods, intellectual property disputes, and allegations of unfair trade practices.

Legal Issues Involved

1. World Trade Organization (WTO) Rules Violation: Both the US and China filed complaints against each other at the WTO, accusing each other of unfair trade practices. The US imposed tariffs under Section 301 of the Trade Act of 1974, which China claimed violated WTO agreements.
2. Intellectual Property Rights (IPR) Disputes: The US accused China of forced technology transfers and intellectual property theft, citing concerns under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement.
3. National Security vs. Trade Liberalization: The US used national security concerns under Section 232 of the Trade Expansion Act of 1962 to justify restrictions on Chinese telecom companies like Huawei, leading to broader concerns about trade protectionism.

Global Implications

Effect on WTO Dispute Settlement Mechanism: The dispute challenged the credibility of WTO's dispute resolution system, especially after the US blocked appointments to the Appellate Body.

Impact on Supply Chains: The trade war led to the restructuring of global supply chains, with companies relocating manufacturing to countries like Vietnam and India.

Economic Consequences: Both economies faced slowdowns, with tariffs increasing costs for businesses and consumers worldwide.

Lessons for International Trade Law

- The case highlights the need for WTO reforms to address modern trade disputes.
- It emphasizes the tension between national security concerns and free trade principles.
- It underscores the importance of a fair dispute resolution mechanism in global trade.

3.2 Digital Trade and E-Commerce

Laws have not kept pace with digital trade and e-commerce. New trade laws are needed to control the digital economy due to data localisation, cross-border data flows, and cyber security.

3.2 Digital Trade and E-Commerce

Digital trade and e-commerce are major challenges in international trade law due to the fast growth of internet-based transactions and cross-border data flows. Online retail, cloud computing, digital services, and data analytics are examples of digital trade. E-commerce has revolutionised trade by allowing firms and consumers to transact across borders.

Regulating digital trade within WTO accords is difficult[16]. Cross-border data transfers, cyber security, and privacy concerns are not addressed by current rules[17].

Some countries prioritise data localisation, while others promote open data and digital marketplaces.

The WTO and regional agreements are incorporating rules that encourage digital commerce while balancing data privacy, intellectual property, and trade security issues[18]. To promote fair and safe digital commerce across borders, international trade law must advance with technology.

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17 M. S. Moon, Regulating Digital Trade: WTO and Beyond (Cambridge University Press 2021).

18 R. A. Hillman, the WTO and the Digital Economy (Oxford University Press 2019).

3.3 Climate Change and Trade

Climate change complicates trade law. Environmental initiatives like carbon border adjustment systems have prompted questions regarding WTO compatibility and their impact on poor nations.

Climate change and international trade are major issues, threatening world trade. commerce practices create and affect climate change because industries worldwide emit carbon and climatic events impair commerce[19]. The Paris Agreement and other global climate change accords have affected trade policies, encouraging governments to embrace green trade practices. Sustainable products and carbon-intensive commodities regulation may lead to carbon border adjustment mechanisms (CBAMs) and other environmental trade restrictions.

These regulations minimise emissions and promote environmental responsibility, although trade discrimination and protectionism are issues. Some nations contend that CBAMs may disproportionately harm emerging economies, limiting their market access. Others argue that trade must connect with climate goals to develop a green economy and reduce long-term climate change[20].

International trade law must balance environmental protection with economic liberalisation to make climate change policies effective and consistent with trade agreements, especially the WTO. This balancing effort will be critical in the future decades as climate change changes global trade[21].

Case Study: The European Union's Carbon Border Adjustment Mechanism (CBAM) and Its Legal Challenges

Background

In 2023, the European Union (EU) implemented the Carbon Border Adjustment Mechanism (CBAM) as part of its Green Deal initiative. CBAM imposes a carbon tax on imported goods such as steel, cement, and aluminum from countries with weaker environmental regulations.

Legal Issues Involved

1. Compatibility with WTO Rules: CBAM faces scrutiny under the General Agreement on Tariffs and Trade (GATT), as it may be seen as discriminatory against non-EU producers.
2. Sovereignty and Extraterritoriality Concerns: Countries like India, China, and Russia have challenged CBAM, arguing that it unfairly imposes EU environmental policies on non-EU nations.
3. Developing Nations' Perspective: CBAM disproportionately affects developing economies, raising questions about its alignment with the principle of Common but Differentiated Responsibilities (CBDR) under international environmental law.

Global Implications

Trade Disruptions: Exporters to the EU must adapt to new regulatory frameworks, increasing compliance costs.

Climate Change and Trade Policy Intersections: CBAM sets a precedent for integrating climate policies into trade regulations, potentially leading to similar policies in other regions.

Diplomatic and Legal Challenges: Countries affected by CBAM are considering WTO disputes and trade retaliation measures.

Lessons for International Trade Law

- CBAM highlights the growing intersection of trade and environmental law.
- It demonstrates the need for clearer WTO guidelines on environmental trade measures.
- It underscores the challenge of balancing economic development with climate change policies.

3.4 Geopolitical Tensions

Geopolitical conflicts have impacted trade ties, with nations employing trade measures as instruments of foreign policy. Sanctions, trade embargoes, and economic decoupling have underscored the nexus between commerce and national security[22].

Geopolitical conflicts have emerged as a prominent current concern in international trade law, as evolving global power dynamics influence trade ties and economic policy. Trade disputes among major economies, exemplified by the U.S.-China trade war, have escalated in recent years, resulting in increased tariffs, trade barriers, and the disruption of existing supply networks[23].

These difficulties impact not just bilateral relations but also have wider ramifications for the global trade system, frequently hindering multilateral agreements under the World Trade Organisation (WTO).

Geopolitical instability exacerbates apprehensions regarding national security and economic sovereignty,

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23. J. Bhagwati, In Defense of Globalization (Oxford University Press 2004).

prompting nations to progressively implement protectionist policies in critical industries such as technology and energy. The Brexit situation illustrates how geopolitical occurrences can modify trade dynamics and generate new obstacles for international accords [24].

Trade law must evolve to accommodate the current geopolitical landscape, guaranteeing that legal frameworks remain robust and adept at resolving conflicts stemming from power disparities and changing alliances in the global context [25].

4. Regional Trade Agreements (RTAs)

Regional trade agreements (RTAs) have emerged as a significant aspect of the global trade environment, indicating the increasing tendency of nations to pursue further economic integration at the regional scale. Agreements like the European Union (EU), North American Free Trade Agreement (NAFTA) (now USMCA), and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) typically entail more profound trade collaboration than that attained through multilateral agreements under the World Trade Organisation (WTO) [26].

Regional Trade Agreements (RTAs) seek to diminish trade obstacles among member nations, abolish tariffs, and standardise regulatory frameworks.

A primary benefit of RTAs is their capacity to tackle region-specific trade challenges and prospects that may be overlooked by global trade regulations. The EU has included several policies beyond trade, including labour mobility and environmental rules, to establish a single market [27].

Nonetheless, RTAs pose concerns, including the possibility of trade diversion where commerce is redirected from non-member nations and the threat of fostering a fragmented global trading system, since they may weaken the WTO's multilateral framework [28].

Notwithstanding these obstacles, RTAs significantly influence modern trade law by promoting economic collaboration among countries with common interests, and they frequently act as prototypes for broader multilateral accords.

4.1 Growth of RTAs

The expansion of RTAs has enhanced the multilateral trading system by addressing regional trade objectives and promoting economic integration. Notable instances are the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the African Continental Free Trade Area (AfCFTA) [29].

4.2 Challenges with RTAs

Although RTAs provide flexibility, they can result in overlapping obligations and discrepancies with WTO regulations. The "spaghetti bowl" phenomenon of several trade agreements affects global trade governance.

Regional trade agreements (RTAs) pose several issues, chiefly with trade diversion and the fragmentation of the global trading system. Although Regional commerce Agreements facilitate economic integration among member nations, they may marginalise non-member countries, therefore diminishing the efficiency of global commerce [30]. Regional Trade Agreements can generate intricate regulatory frameworks due to varying standards, complicating the navigation of different trade regulations for enterprises. Moreover, Regional Trade Agreements (RTAs) may compromise the World Trade Organisation (WTO) framework, since their emphasis on regional matters might restrict the overarching goals of multilateral trade liberalisation.

5. Legal Implications of Emerging Technologies

The swift advancement of new technologies, including artificial intelligence (AI), blockchain, big data, and automation, has presented significant legal difficulties within international trade law. These technologies, albeit providing considerable economic and societal advantages, pose new legal challenges including intellectual property rights, data privacy, cybersecurity, and transnational data transfers.

A significant legal aspect is the regulation of intellectual property (IP) in a context characterised by an extraordinary rate of innovation. Conventional intellectual property rules, including those regulating patents, copyrights, and trademarks, frequently fail to adapt to the rapid progression of technology, particularly in domains such as

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27. R. B. Porter, International Trade Law and Policy (West Academic 2020).

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30. UNCTAD. (2021). Trade and development report 2021: From recovery to resilience. United Nations.

software development, artificial intelligence algorithms, and digital products. The World Intellectual Property Organisation (WIPO) has endeavoured to modify its framework to tackle these emerging difficulties; yet, the international legal environment continues to be fragmented [31].

A critical concern is the transnational movement of data, which is essential to several future technologies. Data protection legislation, including the General Data Protection Regulation (GDPR) in the European Union, aim to tackle privacy issues [32]. The various regulatory frameworks across countries impede the worldwide transmission of data and obstruct technological progress. Countries such as China and the United States have implemented divergent strategies regarding data localisation, resulting in possible disputes within international trade agreements [33].

Emerging technologies also pose enquiries on liability and accountability, especially in artificial intelligence and autonomous systems. As AI increasingly assumes autonomy in decision-making, ambiguity arises over accountability for its actions, particularly in instances of accidents or errors impacting international trade [34].

In light of these problems, international trade law and entities such as the World Trade Organisation (WTO) must evolve and establish new regulations to align with the changing technological environment, ensuring that legal structures foster innovation while safeguarding public interests.

5.1 Artificial Intelligence and Automation

Innovative technologies like artificial intelligence (AI) and automation have transformed global supply networks. Trade legislation must confront problems with intellectual property, labour displacement, and ethical implications of technological use.

5.2 Blockchain in Trade

Blockchain technology possesses the capacity to improve transparency and efficiency in trade paperwork and supply chain management. Legal frameworks must evolve to guarantee interoperability and tackle data privacy issues.

6. Sustainability and Trade

The incorporation of sustainability into international trade law has gained significance as the global community confronts environmental issues including climate change and resource depletion. Sustainable trade practices seek to harmonise economic development with environmental conservation by advocating for the exchange of eco-friendly products and green technology while mitigating detrimental behaviours. This entails integrating environmental requirements into trade agreements, including carbon border adjustments and sustainability provisions. International entities such as the World Trade Organisation (WTO) and regional trade organisations are striving to harmonise trade liberalisation with sustainable development objectives, ensuring that economic endeavours do not jeopardise future generations' capacity to fulfil their needs [35].

6.1 Sustainable Development Goals (SDGs)

International trade plays a critical role in achieving the United Nations SDGs by promoting economic growth, reducing inequality, and ensuring sustainable consumption and production patterns.

6.2 Environmental Trade Measures

Trade measures designed for environmental protection, like eco-labeling and renewable energy subsidies, are subject to examination under WTO regulations. Achieving equilibrium between economic liberalisation and environmental sustainability is crucial.

7. Future Directions and Reforms

As global commerce evolves in response to increasing issues, future developments in international trade law will likely entail more integration of sustainability, digital trade, and fair economic policy. Essential changes may concentrate on mitigating the escalating conflict between trade liberalisation and environmental conservation, guaranteeing that international trade regulations align with the United Nations' Sustainable Development Goals (SDGs). Future trade agreements may have enhanced environmental clauses, carbon levies, and incentives for green technology to synchronise trade practices with climate goals [36].

Furthermore, the emergence of digital commerce necessitates reforms to regulate cross-border data flows, cybersecurity, and intellectual property in a digital context. Data privacy regulations and digital trade frameworks will be essential to enable secure and efficient global e-

31 P. A. David, Technology and the Law: A Guide to Emerging Issues (Oxford University Press 2021).

32 Sachs, J. D. (2019). Climate change and trade: Policy perspectives. Science, 365(6459), 255-256.

33 R. A. Hillman, International Trade and Technology (Cambridge University Press 2019).

34 Hillman, J. A. (2018). Three approaches to fixing the WTO\u2019s Appellate Body: The good, the bad, and the ugly? Georgetown Journal of International Law, 49(4), 789-811.

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36 P. A. David, Technology and the Law: A Guide to Emerging Issues (Oxford University Press 2021).

commerce. The proliferation of blockchain technology may need the development of new legal frameworks to enable transparent and safe international transactions [27].

To achieve equitable global trade, changes must prioritise mitigating inequality in poorer nations by lowering trade barriers, facilitating technology transfer, and enhancing access to foreign markets. Enhancing the World Trade Organisation (WTO) and other multilateral organisations is essential for creating fair and flexible regulations that address the demands of an evolving global economy.

7.1 Reforming the WTO

To maintain relevance, the WTO must confront its institutional obstacles, including the paralysis of the Appellate Body and the necessity for revised trade regulations concerning internet commerce and environmental matters.

Reforming the World Trade Organisation (WTO) has emerged as a pivotal issue in current dialogues on international trade law, especially as the organisation has mounting difficulties in adjusting to the swiftly changing global economy[28] . Founded in 1995, the WTO's principal objective is to facilitate the efficient operation of international commerce through dispute resolution, tariff reduction, and the promotion of trade liberalisation. Nonetheless, the efficacy of the WTO has been compromised in recent years owing to several factors, including the emergence of protectionism, its failure to tackle contemporary trade difficulties like digital commerce, and the stalemate in the Doha Development Round.

A key need for change is to enhance the dispute resolution mechanism, which has under significant pressure, especially following the U.S. obstruction of judicial nominations to the Appellate Body. The WTO now lacks a fully operational dispute settlement process, prompting apprehensions over the organization's ability to enforce its regulations. Reforms may entail amending the governance framework, promoting more inclusive decision-making, and augmenting the organization's capacity to address global trade challenges.

The WTO must also update its strategy for emerging challenges, like digital commerce, climate change, and sustainability. This may involve formulating more explicit regulations on cross-border data transfers, safeguarding intellectual property in the digital era, and incorporating environmentally sustainable trading practices. It is essential to address the proliferation of regional trade agreements (RTAs) and ensure their alignment with the multilateral framework of the WTO to maintain global trade cohesiveness.

Reforming the WTO is crucial for preserving its significance in a changing global trade landscape, enabling it to effectively tackle contemporary difficulties and offer fair solutions for member nations.

7.2 Enhancing Trade Governance

Global trade governance must prioritise inclusion, guaranteeing that developing and least-developed nations (LDCs) participate in the formulation of trade policy. Capacity-building programs and technical support can enable these nations to engage successfully in global commerce.

Improving trade governance necessitates fortifying international institutions such as the World Trade Organisation (WTO) while tackling growing global issues include digital commerce, sustainability, and climate change. Effective governance needs more explicit legal frameworks, especially in emerging domains such as data privacy and sustainable commerce. Furthermore, enhancing openness, advocating for inclusive trade policies, and guaranteeing improved enforcement mechanisms will be essential for attaining more fair and efficient global trading systems.

8. Conclusion

International trade law must adapt to confront the complex issues of the 21st century. As globalisation transforms the global economy, legal frameworks regulating trade must evolve to reflect new realities and guarantee equal participation for all nations. International trade law may effectively handle complex challenges, such as economic injustice and climate change, by adapting to evolving trends and fostering inclusion. Ongoing research and global collaboration will be essential for progressing this evolving domain and maintaining its significance in a linked society.

The dynamic realm of international trade law encounters several modern issues. Protectionism has resurfaced as a prominent concern, with several nations implementing policies that favour home businesses to the detriment of international trade standards. Trade wars and tariff conflicts, especially among significant economic countries, have disrupted supply chains and weakened the multilateral trade system. Geopolitical tensions intensify these issues, as trade is increasingly employed as a mechanism of economic diplomacy and geopolitical rivalry. These trends underscore the pressing necessity for

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international trade legislation to reconcile national interests with global economic stability.

A significant problem is the emergence of digital trade and the expansion of e-commerce. Digital technologies have revolutionised global trade, generated new opportunities but also presented intricate legal challenges. Concerns like data privacy, cybersecurity, cross-border data flows, and digital taxes necessitate revised legislative frameworks to guarantee equitable competition and safeguard the interests of consumers and enterprises. The absence of a comprehensive global regulatory framework for digital trade has resulted in legal difficulties, requiring concerted efforts among governments to formulate clear and enforceable regulations in this area.

Climate change and sustainability are prominent problems in modern trade law. The convergence of environmental regulations and international commerce has gained prominence, as nations endeavour to reconcile economic development with ecological preservation. The incorporation of green subsidies, carbon border taxes, and sustainable development objectives into trade policy signifies an increasing acknowledgement of the necessity for ecologically responsible trading practices. Nonetheless, these policies have incited conflicts over their alignment with current trade regulations, highlighting the necessity for legal revisions that reconcile trade and environmental goals.

The World commerce Organisation (WTO) is pivotal in governing international commerce; yet, its efficacy has been scrutinised in recent years. The WTO's dispute settlement process, once seen as a fundamental element of global trade governance, has encountered substantial difficulties, notably the paralysis of its Appellate Body. Reforming the WTO is crucial to re-establish its significance and enhance its ability to govern the changing global trade environment.

The future of international trade law is developing more inclusive and efficient institutions to tackle these evolving difficulties. Improving international collaboration is essential for resolving legal uncertainties in new areas and promoting multilateralism. Coordinated efforts are essential to develop global standards for digital trade and to solve concerns related to artificial intelligence, blockchain, and other new technologies. It is equally crucial to ensure that emerging nations and small firms are enabled to engage fully in the global trading system. International trade law may enhance a more resilient and equitable global economy by connecting trade policy with sustainability and equality objectives.

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Environmental Degradation and Health Crisis in Palestine: Unpacking the Synergistic Impacts of Armed Conflict

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ABSTRACT

The prolonged conflict in Palestine has caused significant harm to the environment and posed serious risks to public health. This study explores the lasting effects of armed conflict on environmental conditions and the well-being of communities in Palestine. It examines how pollutants such as heavy metals and residues from explosives have impacted soil, water, and air quality. The analysis identifies strong links between conflict-related activities and environmental contamination, as well as increased incidences of health issues, including respiratory illnesses, cancer, and psychological disorders. Vulnerable populations, particularly children, women, and refugees, are found to face disproportionate challenges. The findings emphasize the pressing need for coordinated remediation efforts, policy changes, and international support to address conflict's environmental and health consequences. This research contributes valuable insights into the broader discussion of war's impacts on ecosystems and public health, underscoring the necessity of sustainable recovery and peacebuilding initiatives.

Key Words: Armed Conflict, Environmental contamination, Pollution from warfare Public health risks, Palestine

1. Introduction

The ongoing conflict between Russia and Ukraine represents a critical threat to global peace, security, and international cooperation. Similarly, in the Middle East, tensions between Israel and groups such as Hamas, Hezbollah, and the Houthis have created significant risks to human life, liberty, dignity, and security. The escalating violence has overwhelmed the capacity of the United Nations and its associated agencies to effectively address the crisis, leading to a severe humanitarian emergency in the region. The region now faces an unprecedented hunger crisis, compounded by extensive loss of life, diminished human well-being, and severe environmental degradation. The armed conflict in Gaza has caused long-lasting impacts on both public health and the environment. Evidence indicates a strong link between the intensity of the conflict and environmental contamination, with increased cases of respiratory illnesses, cancer, and mental health challenges among affected populations.

2. Historical Overview of the Conflict in Palestine

Understanding the ongoing conflict in Palestine requires examining the historical and geopolitical complexities of the Middle East. The Palestinian region has long been a center of contention, with various empires and powers struggling for dominance. The modern conflict stems from multiple issues, including the Israeli occupation of the West Bank and Gaza Strip, disputes over Jerusalem's status, Israeli settlements, borders, security concerns, water resources, restrictions on Palestinian movement, and the right of return for Palestinian refugees.

The roots of the conflict can be traced to the late 19th century with the emergence of Zionism and an increase in Jewish immigration to Palestine, which was under Ottoman rule at the time. Following World War- I, the British took control of the region and issued the Balfour Declaration in 1917, supporting the establishment of a homeland for the Jewish people. This decision intensified tensions between the Arab and Jewish populations, leading to frequent violence.

In 1948, the declaration of Israel's independence sparked the Arab-Israeli War, resulting in the displacement of hundreds of thousands of Palestinians and the beginning of a protracted refugee crisis. The situation worsened in 1967 during the Six-Day War, when Israel occupied the Gaza Strip and West Bank, initiating a military presence that persists to this day.

The late 20th century saw key events, such as the First Intifada (1987-1993), marked by widespread Palestinian protests, and the Oslo Accords in 1993, which sought to create a framework for peace but fell short of resolving core disputes. The Second Intifada (2000-2005) reignited violence, while subsequent conflicts in Gaza (2008-2009, 2012, 2014, and 2021) further exacerbated suffering and instability.

At present, the conflict remains unresolved, with critical issues like Israeli settlements, territorial borders, and Jerusalem's status fueling tensions. Gaza faces severe humanitarian challenges, while the West Bank endures ongoing occupation and territorial division. Despite

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numerous international attempts, a lasting resolution remains elusive, with the vision of a two-state solution yet to be realized.

In a recent development, the International Court of Justice (ICJ) issued a non-binding advisory opinion on the legality of Israel's long-term occupation of Palestinian territories. On July 19, 2024, the court deemed the occupation illegal under international law and urged its immediate end.[1]

2.1 Current Situation in Palestine Amid the Armed Conflict: The Israeli-Palestinian conflict remains unresolved, with ongoing tensions and violence in the Middle East Asia. Here are some key aspects of the current situation in Palestine:

(i) Escalating Violence: As of October 7, 2023, more than one hundred hostages, including Israelis and foreign nationals, remain held captive by Hamas (An armed Group active in Gaza). The conflict has intensified dramatically, especially in Gaza, where both sides have endured significant human losses. In the Gaza Strip, relentless aerial and artillery bombardments have targeted shelters, schools, and hospitals, resulting in the widespread destruction of critical infrastructure. The devastation is stark, with much of Gaza reduced to rubble due to sustained attacks by Israeli forces.

The Middle East appears to be evolving into a volatile war zone, with growing concerns of a broader conflict potentially resembling the scale of a global war, with the United States and Russia on opposing sides. America deployed the USS Georgia, a guided missile submarine, to the region. This submarine can carry up to 154 Tomahawk cruise missiles, designed for precision strikes on land-based targets. Additionally, the Pentagon directed the USS Abraham Lincoln carrier strike group, equipped with F-35C fighter jets, to expedite its journey to the area. The carrier was initially enrooted to replace another U.S. naval vessel stationed in the region.[2]

(ii) No Ceasefire: In February 2024, after the United States vetoed a UN resolution for a ceasefire, Cuban President Miguel Díaz-Canel accused the U.S. of complicity in what he described as "Genocide by Israel against Palestine."[3]

Recent ceasefire proposals from the U.S. and Egypt have garnered widespread international support. Nations including the United Kingdom, France, Saudi Arabia, and the UAE have endorsed President Biden's initiative. At the same time, Qatar and Egypt joined the U.S. in urging Israel and Hamas to finalize an agreement. Hamas expressed interest in considering the plan, signaling openness to a permanent ceasefire.

However, a statement from Israeli Prime Minister Benjamin Netanyahu's office emphasized that Israel's objectives-including dismantling Hamas's military and governing structures, securing the release of hostages, and eliminating threats from Gaza-must be achieved before any permanent ceasefire can take effect. Netanyahu's firm stance has cast doubt on Biden's peace proposal, posing significant challenges to ongoing Middle East peace efforts.[4]

(iii) Humanitarian Crisis: The conflict has triggered a devastating humanitarian crisis, leaving millions of Palestinians enduring dire living conditions with minimal access to essential resources such as water, electricity, fuel, transportation, and medical care. In Gaza, women and girls are bearing a disproportionate burden, enduring continuous trauma, repeated displacement, and pervasive fear. The lack of adequate food, clean water, sanitation, healthcare, and waste management exacerbates their suffering, creating a relentless cycle of hardship. Malnutrition heightens vulnerability to disease, particularly for pregnant and breastfeeding women and their newborns, who face heightened risks.

Overcrowded settlements have further intensified challenges for women and girls. The displacement of service providers tasked with preventing and addressing gender-based violence has left critical support systems inaccessible. Due to shortages of tents, skyrocketing rental costs, fuel scarcities, and rising transportation expenses, the inability to re-establish these services has left many at greater risk.[5]

(iv) Displacement Crisis: Approximately 1.9 million of Gaza's 2.1 million residents-nearly 90% of the population-are internally displaced, with many forced to move multiple times. Among them are an estimated 43,580 pregnant women. Each evacuation order disrupts lives, often placing survival at grave risk and making it increasingly challenging for women and girls to access essential services, including care for the estimated 180 births that occur daily.

By the end of 2023, around 1.7 million Palestinians, constituting 83% of Gaza's population, were living in internal displacement, primarily seeking refuge in southern Gaza. The southernmost governorate of Rafah hosted nearly half the population, all facing severe humanitarian needs as the conflict persisted into 2024. More than 60% of Gaza's housing stock has been damaged or destroyed, leaving durable solutions for internally displaced persons

1 The Hindu, Israeli occupation of Palestinian territory 'illegal': U.N. top court published on July 19, 2024
2 Francesca Gillett, "US sends submarine to Middle East as tensions grow" BBC News 13th August, 2024
3 Cuba: US 'accomplices' in the devastation of Gaza". Al Jazeera, 21 February 2024 (Accessed on 14th August, 2024)
4 By Benjamin Brown and Sophie Tanno, CNN Updated 5:11 PM EDT, Sat June 1, 2024 (Accessed on 13th August, 2024)
5 Available at: https://www.unfpa.org/occupied-palestinian-territory (Accessed on 12th August, 2024)

(IDPs) far from reach even after hostilities subside. The ongoing crisis has created immense challenges, leaving countless individuals in need of shelter, resources, and long-term recovery plans.[6]

On August 6, 2024 residents of Beit Hanoun, Al-Manshiyah, and Sheikh Zayed neighborhoods in Gaza were ordered by the Israeli military to evacuate immediately, citing preparations for an imminent military operation following rocket launches toward Ashkelon. Such warnings have become a regular occurrence, leaving civilians to endure a constant state of fear and insecurity. The ongoing threats and evacuations highlight the precarious reality of life in Gaza, where the risk to life and repeated displacements have become a harrowing part of daily existence.[7]

Israeli forces have issued fresh evacuation orders in Khan Younis, marking their third military operation in the area since October. Palestinians report that no part of the Gaza Strip offers safety, as the ongoing violence leaves residents in a perpetual state of insecurity. The United Nations Agency for Palestinian Refugees has revealed that over 75,000 people in southern Gaza have been displaced, just days after many had returned to their homes. The repeated cycles of evacuation and displacement underscore the relentless humanitarian crisis gripping the region, where stability and security remain elusive.[8]

(v) International Intervention Fails to Yield Results

Despite widespread international calls for an immediate ceasefire and the cessation of hostilities, a lasting resolution to the conflict remains out of reach. While 142 of the 193 UN member states officially recognize Palestine as a sovereign state, the United States has blocked its bid for UN membership, where statehood is crucial. Israel continues to pursue its policy of apartheid, a situation that has become a global concern.

Recently, nations such as Barbados, Jamaica, and Trinidad and Tobago have established diplomatic ties with Palestine, and the UN General Assembly is expected to overwhelmingly support Palestine's membership. This growing international solidarity is also visible on university campuses in the US, the UK, and beyond, where students, recognizing the signs of apartheid and potential genocide, are actively advocating for an end to the suffering in Palestine.[9]

(vi) Ongoing Military Operations: Israel has persisted with its military operations in Gaza, primarily targeting Hamas and attempting to rescue hostages. The United Nations has warned that the ongoing violence will exacerbate the already dire humanitarian crisis in the region. Jens Laerke, spokesperson for the UN humanitarian office in Geneva, described the situation as "Hell on Earth" for the people of Gaza. UN aid chief Martin Griffiths emphasized the extreme vulnerability of Gaza's population, noting that children, women, and men have "nowhere safe to go and very little to survive on." The escalating conflict continues to deepen the humanitarian emergency facing the territory.[10]

(vii) Escalating Tensions in the Middle East: The ongoing conflict has significantly heightened regional tensions, with Hezbollah fighters in Lebanon engaging in cross-border clashes with the Israeli military, and Iran-backed groups launching attacks on U.S. military positions in Iraq and Syria. The threat of a broader Middle East conflict remains high, particularly after airstrikes from both sides. Tensions reached a new peak following the Israeli assassination of key Iranian security figures, including Hamas leader Ismail Haniyeh, in Iran, marking a dangerous escalation in regional brinkmanship. Amid these rising tensions, many international airlines suspended flights to Tel Aviv at various times, reflecting the growing instability in the region.

3. Environmental Contamination from Warfare

For decades, Gaza has endured severe environmental degradation, driven by recurrent conflicts, rapid urbanization, high population density, and the region's vulnerability to climate change. The environmental fallout from the ongoing war is unprecedented, according to an initial assessment by the UN Environment Programme (UNEP). This conflict has exposed the community to escalating soil, water, and air pollution, with the risk of irreversible harm to vital ecosystems. UNEP has emphasized the urgent need for a ceasefire, not only to safeguard human lives but also to mitigate the long-term environmental consequences of the ongoing violence.[11]

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6 Available at: https://www.internal-displacement.org/spotlights/Palestine-Conflict-in-Gaza-leaves-83-per-cent-of-the-population-internally-displaced-in-less-than-three-months/ (Accessed on 12th August, 2024)

7 Available at: https://www.aljazeera.com/news/liveblog/2024/8/6/israel-war-on-gaza-live-at-least-40-palestinians-killed-over-past-24-hours (Accessed on 13th August, 2024)

8 Ibid.

9 https://www.aljazeera.com/opinions/2024/5/8/peace-starts-with-palestines-un-membership

10 https://www.aljazeera.com/news/2023/12/2/israeli-bombs-hundreds-of-targets-in-gaza-as-truce-efforts-continue (Accessed on 3rd August, 2024)

11 Damage to Gaza causing new risks to human health and long-term recovery - New UNEP Assessment
Source: Press Release by UNEP published on 18 June 2024 Available at: https://www.unep.org/news-and-stories/press-release/damage-gaza-causing-new-risks-human-health-and-long-term-recovery (Accessed on 11th August 2024)

The preliminary assessment by UNEP on Gaza's environmental health reveals several alarming findings:

(i) Reversal of Environmental Progress: Recent advances in Gaza's environmental management, including water desalination and wastewater treatment facilities, solar energy expansion, and efforts to restore the Wadi Gaza coastal wetland, have been severely undone by the ongoing conflict.

(ii) Massive Debris Accumulation: The conflict has generated an estimated 39 million tons of debris-over 107 kg per square meter in Gaza. This is more than five times the amount of debris from the 2017 Mosul conflict. The debris presents numerous risks, including dust, contamination from unexploded ordnance, asbestos, industrial and medical waste, and other hazardous substances. Additionally, human remains buried under the rubble require sensitive handling. Clearing the debris is a monumental task that must begin immediately to facilitate recovery and reconstruction.

(iii) Collapse of Water and Sanitation Systems: Gaza's water, sanitation, and hygiene systems have almost entirely failed. All five of Gaza's wastewater treatment plants are inoperable, leading to untreated sewage contaminating beaches, coastal waters, soil, and freshwater sources with pathogens, nutrients, microplastics, and toxic chemicals. It poses immediate and long-term health risks to the population and the environment.

(iv) Damaged Waste Management Systems: Five of Gaza's six solid waste management facilities have been damaged. By November 2023, 1,200 tons of rubbish were accumulating daily in camps and shelters. With cooking gas shortages, families have resorted to burning wood, plastic, and waste, creating further dangers, especially for women and children. The resulting fires and smoke have likely worsened Gaza's air quality, though no official air quality data is available. The destruction of solar panels has likely released heavy metals, creating additional risks to soil and water.

(v) Contamination from Munitions: The use of munitions containing heavy metals and explosive chemicals in densely populated areas has polluted Gaza's soil and water sources, creating long-term health risks that will persist well beyond the end of hostilities. Unexploded ordnance poses a particular danger to children.

(vi) Environmental Impact of Tunnel Destruction: Efforts to destroy Hamas' tunnel system may exacerbate environmental damage, depending on the construction standards of the tunnels and the extent to which water has been pumped into them. This could lead to long-term risks, including groundwater contamination and the destabilization of buildings constructed on potentially unstable surfaces.

These environmental risks exacerbate the humanitarian crisis in Palestine, highlighting the need for urgent attention to environmental protection and sustainable peacebuilding efforts.

4. An Estimation of the Devastation of Human Life and Infrastructure

The current armed conflict has directly impacted the lives and health of the Palestine-Israel region. The accumulative effects of Israel's war on Gaza could mean the true death toll could reach more than 186,000 people, according to a study published in the Lancet Journal. The study finds factors like diseases will lead to many more indirect deaths in the long run even if the war stops now.[12]

According to the latest data[13] from the UN's Office for the Coordination of Humanitarian Affairs, the World Health Organization, and the Palestinian government as of 11th August 2024 Israeli attacks have damaged:

- More than half of Gaza's homes were destroyed or damaged
- 80 per cent of commercial facilities
- 85 percent of school buildings
- 16 out of 36 hospitals are partially functioning
- 65 per cent of road networks
- 65 per cent of cropland damaged

5. Health Risks in Palestine Due to Armed Conflict

The Gaza conflict not only causes immediate harm through violence but also has far-reaching indirect health effects that will persist long after the fighting ends. Even if the war were to cease immediately, it would continue to lead to many indirect deaths due to factors such as diseases. The use of munitions containing heavy metals and explosive chemicals has left Gaza's soil and water sources contaminated, posing long-term health risks. Unexploded ordnance, particularly in densely populated areas, remains a danger, especially to children.

The ongoing conflict in Palestine has exacerbated a range of significant health risks, including:

(i) Physical Injuries and Fatalities: Direct harm from explosions, gunfire, and other forms of violence continues to cause widespread injuries and deaths.

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12 Available at: https://www.aljazeera.com/news/2024/7/8/gaza-toll-could-exceed-186000-lancet-study-says (Accessed on 12th August, 2024)

13 Available at: https://www.aljazeera.com/news/longform/2023/10/9/israel-hamas-war-in-maps-and-charts-live-tracker (Accessed on 12th August, 2024)

(ii) Psychological Trauma: Many individuals, particularly survivors, are at risk of developing Post-Traumatic Stress Disorder (PTSD), anxiety, and depression.

(iii) Healthcare Disruptions: The destruction of medical facilities, shortages of supplies, and diminished access to care severely impact the ability to treat both urgent and ongoing health issues.

(iv) Increased Spread of Infectious Diseases: Contaminated water, inadequate sanitation, and overcrowding have led to outbreaks of diseases such as cholera, typhoid, and measles.

(v) Malnutrition and Food Insecurity: Economic hardship, food shortages, and restrictions on aid exacerbate malnutrition, particularly among vulnerable groups like children and pregnant women.

(vi) Reproductive Health Risks: Limited access to maternal care increases the risk of miscarriage, complications during childbirth, and poor neonatal outcomes.

(vii) Challenges in Managing Chronic Diseases: Disruptions in access to medications and medical care for chronic conditions like diabetes, hypertension, and cancer leave many individuals without essential treatments.

(viii) Mental Health Stigma: Cultural barriers and stigma surrounding mental health prevent many individuals from seeking necessary help and treatment.

(ix) Health Risks in Displacement and Refugee Camps: Overcrowded living conditions, poor sanitation, and limited healthcare access in refugee camps heighten health risks for displaced individuals.

(x) Long-Term Health Consequences: Prolonged exposure to violence, stress, and environmental hazards increases the likelihood of developing chronic diseases, disabilities, and premature death.

6. Estimation of Humanitarian Crisis

Gaza is currently facing an unprecedented humanitarian crisis, exacerbated by a rapidly escalating conflict that has led to significant loss of life, widespread injuries, mass displacement, and severe degradation of the health system, along with disruptions to essential public health and infrastructure services.

(I) Casualties and Injuries: As of December 10, 2024, heavy aerial and artillery bombardments by Israeli forces in the Gaza Strip have resulted in over 46,000 fatalities, including 44,786 Palestinians and 1,706 Israelis. The casualties also include between 141 and 156 journalists, 120 academics, and more than 224 humanitarian aid workers, of whom 179 were employees of the United Nations Relief and Works Agency for Palestine Refugees (UNRWA).[14]

Health authorities in the occupied Palestinian territory have reported an estimated 63,264 injuries, including 23,210 deaths and 59,167 injuries in the Gaza Strip. Of the fatalities, 70% were women and children. Over 7,780 individuals are missing, and 85% of the population has been displaced. In the West Bank, there have been 330 deaths, 4,097 injuries, and 2,334 displacements; in Lebanon, 135 fatalities and 612 injuries have been reported.

(ii) Health System Degradation: The health system in Gaza has been severely compromised due to extensive bombardment, widespread destruction, increasing health needs, restrictions on the entry of fuel, goods, medical supplies, and medical personnel, as well as substantial limitations on the outbound movement of patients, including the injured. As of January 10, 2024, 58% of the 36 hospitals are non-functional, and 78% of the 73 Gaza Ministry of Health and UNRWA primary care clinics have ceased operations. The situation is particularly critical in the north of Gaza, with 75% of hospitals and 100% of primary care clinics non-functional. Overall, 59% of hospitals' bed capacity in the Gaza Strip has been lost, while health needs soar, and these facilities are currently accommodating a considerable number of internally displaced persons. The remaining hospitals operate at 359% of their capacity, severely inhibiting the quality and safety of health services.

(iii) Attacks on Healthcare Facilities: Since October 7, 2023, there has been an unprecedented increase in attacks on healthcare facilities. The World Health Organization (WHO) has recorded 304 events in the Gaza Strip, impacting 94 health facilities and 79 ambulances. Most attacks (77%) involved the use of force, resulting in 606 fatalities and 774 casualties. In the West Bank, 286 attacks on healthcare have disrupted the delivery of care, including the supply of essential medicines and equipment, the blockade of hospitals, and the prevention of ambulance access.

(iv) Food Security and Displacement: Food security remains a major health risk, as the entire population in the Gaza Strip is classified in the Integrated Food Security Phase Classification at Phase 3 or above (Crisis or worse). Among these, at least one in four households (over 500,000 people) is facing catastrophic conditions (Phase 5), and about 50% of the population (1.17 million people) is in an emergency state (Phase 4). Households facing

[14] Available at; https://en.wikipedia.org/wiki/Casualties_of_the_Israel%E2%80%93Hamas_war#:~:text=As%20of%2010%20December%202024,includes%20179%20employees%20of%20UNRWA. (Accessed on 27/12/2024)

catastrophic and emergency conditions are experiencing an extreme lack of food, starvation, and exhaustion of coping capacities. The increased nutritional vulnerability of children, pregnant and breastfeeding women, and elderly people is a particular source of concern.

The mass and continuing displacement of 1.9 million people due to insecurity and destruction of civilian infrastructure and housing have led to severe overcrowding in shelters that are deficient in water and sanitation facilities, significantly increasing the risk of infectious disease outbreaks. Over 1.4 million individuals are sheltering in 155 UNRWA installations. Other internally displaced persons stay in non-UNRWA schools, hospitals, mosques, and churches, while an increasing number of makeshift shelters are used.

(v) Health Risks and Disease Outbreaks: The burden of acute respiratory infections, diarrhea, and skin infections has been particularly high, with a steady week-on-week high incidence of reported cases. Furthermore, additional signals of epidemics of acute jaundice, meningitis, mumps, and chickenpox affecting the population of the Gaza Strip were monitored. The number of diarrheal illnesses reported among children under 5 years in the last three months of 2023 was about 25 times higher compared with the corresponding period in 2022 (80,532 cases vs 3,101 cases).

Disease surveillance is constrained by the severe deterioration of laboratory capacities. As of January 10, 2024, no meaningful public health measures for disease prevention and control could be implemented due to access constraints and lack of supplies coming into the Gaza Strip. The absence of such measures will result in unmitigated transmission of bacterial, viral, fungal, and parasitic pathogens, including many infectious organisms known to transmit in settings in which people congregate, causing severe morbidity and mortality, which cannot be identified through syndromic surveillance alone.

(vi) Chronic Disease Management: About 350,000 people live with chronic diseases in the Gaza Strip. Shortages of essential medications and closures of healthcare facilities are increasingly impeding access for the 52,000 individuals with diabetes, 45,000 with asthma, 45,000 with cardiovascular diseases, and 225,000 with hypertension. Of the 178 hemodialysis machines, 63% are situated north of Wadi Gaza, severely limiting access to dialysis for the 1,100 patients who need this service to survive.

(vii) Mental Health Concerns: Based on prevalence estimates of mental disorders in conflict settings, 1,452,600 people (22.1%) in the Gaza Strip are estimated to be living with mental health disorders, including 104,450 (5.1% of the population) with severe conditions such as schizophrenia, bipolar disorder, severe depression, and severe anxiety. Displacements, bombardments, violence, dispossession, loss of loved ones, homes, and livelihoods, and restrictions will increase mental health risks among affected populations. Treatment capacities remain severely constrained, however, as the only specialized treatment center in the Gaza Strip has stopped functioning.[15]

7. Concluding Thoughts

Palestine faces an unprecedented humanitarian crisis marked by high mortality, mass displacement, and the collapse of health systems and vital infrastructure. Prolonged violence and environmental hazards have worsened chronic illnesses, disabilities, and regional instability, risking global repercussions. The conflict escalates tensions in the Middle East, with international powers deepening divisions and hindering peace efforts. Environmental damage further exacerbates the crisis, accelerating climate change and threatening long-term regional sustainability.

Urgent global action is needed to provide humanitarian aid, protect the environment, and foster sustainable peace. Only coordinated efforts can break the cycle of violence and build a future of stability and cooperation in the region.

[15] Health conditions in the occupied Palestinian territory, including east Jerusalem, Provisional Agenda of WHO of 22 January 2024 Available at: https://apps.who.int/gb/ebwha/pdf_files/EB154/B154_51-en.pdf (Accessed on 13th August 2024)

AI on Trial: Navigating Civil and Criminal Liabilities in the age of Automation

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ABSTRACT

The advancements in the field of technology and the application of this field for providing more ease and comfort to human life and lifestyle. The aids to support or to replace human activities or dependence has rapidly advanced and changed the perception of the 'support system' in the last few years. These advancements when integrated are referred to as Artificial Intelligence (hereinafter referred AI) tools.

There are cross-border collaborations done mainly to improve machine translation software, robots, agriculture, emergency response, health care, climate forecasting and the electrical grid. AI inventions also help human mental events such as interpretation, evaluation, and decision-making. AI acts autonomously and with limited control from humans and therefore the risks of faults can also arise.

This can damage individual or collective interests, which need to be protected by policies and laws. The AI-powered utilities can be misused by a human to commit a crime, for which both Mens Rea and Actus Reus can be attributed to that human, for the liability but whenever a fault by an AI-powered system has been committed, the onus of determining the fault needs to be verified for determining the criminal negligence or civil liabilities for legal purposes.

The act of a boom barrier at the toll plaza on a highway is the best example of an AI entity being used where multiple agencies work in tandem to do human functions and the act of a boom falling on a moving car as a result of malfunction can cause multifarious liabilities which are both Civil And Criminal in nature.

This paper would evaluate the criminal and civil liability of Artificial Intelligence entities and discuss the various obligations. The need of ascertaining liability, civil and/or criminal, for claiming damages or losses resulting from such activities is, therefore, important. The focus will be on the legal liabilities of such malfunctions in terms of various acts which are criminal in nature.

Keywords: Criminal Liability, Artificial Intelligence, Criminal law, Civil Liability, Programming, Artificial Intelligence.

I INTRODUCTION

The concept of Artificial Intelligence was regarded as a subject of fiction and philosophy which is a dream of mankind for centuries and is made a reality with its exponential technological advancement in recent times. Humans today are more dependent on the utilities provided by artificial intelligence technologies and their associated benefits.

"From automated cars to *drones, from computer science to medical science and from an artificially intelligent assistant on phones to artificially intelligent attorneys, there is hardly any sphere of everyday life which has remained untouched from it. AI has helped to make human life easier, better and efficient, saving valuable time and energy.*"[1]

[1] *In common parlance, Artificial Intelligence can be described as the "ability to adapt or improvise according to the feedback received in order to solve problems and address situations that go beyond the predefined set of queries and instructions that the AI was programmed with"*[2]

However, it is seen that like any technology, Artificial Intelligence also contains some merits and a few demerits. If we study the case study of autonomous vehicles- where on one side, it has enhanced the flexibility for the elderly and disabled, and on the flip side this technology has also been held responsible for some accidents also. This issue of accidents and other drawbacks has given rise to legal concerns and has increased the levels of curiosity on the various aspects of the liabilities associated with Artificial Intelligence and their applications under civil laws and criminal law for crimes Artificial Intelligence technology is also associated with it and several relevant legal apprehensions.

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1 O.E.R. adutniy, Criminal Liability of the Artificial Intelligence, 138 Probs. Legality 132 (2017).
2 Matilda Claussen-ICarlsson, Artificial Intelligence and the External Element of the Crime: An Analysis of the Liability Problem 7 (2017).

The foremost study is that if any Artificial Intelligence powered entity hurts or injures a person or associated property, who will decide the onus of criminal liability for that incident? Will it be the Artificial Intelligence powered entity by its own self (for example a robot), or the programmer or the producer (the programmer could be a third party working under the producer), or the person using the entity i.e. the owner or the buyer of the Artificial Intelligence entity, or is there a possibility that the act, be considered as an Act of God?

The second issue is regarding the various elements of any criminal act and the essential elements which are mandatory in a case when the crime is said to have been committed by an Artificial Intelligence Entity.

The importance of the third topic, is if an Artificial Intelligence entity, like a robot, is involved in a crime, the kind of punishments will be imposed on the entity which is powered by Artificial Intelligence?

There are many such examples of breaches of legal compliances which are required to be clarified, demarcated and amicably settled.[3]

The legislation which is in force, on the aspect of Artificial Intelligence regarding the onus of determining the criminal aspect of various Artificial Intelligence entities is negligible with barely any existing laws or landmark cases on the issue, particularly in India.

The present research article is on the focus of this issue and the need to determine the various aspects associated with formulating legislation. The objective is to cover all features associated with the usage of Artificial Intelligence in various spheres and the larger principles which can be of some help in formulating specific laws on the issue in future and at the equivalent time allowing the much-needed flexibility and compatibility for the rapidly changing face of technology.[4]

This article tries to provide necessary resolutions to the complex jargon of legal challenges faced for determining the effects of criminal liability of the defaulting Artificial Intelligence Entity.

II GENERAL ELEMENTS OF CRIMINAL LIABILITY

The onus of a criminal act and the associated liability for any offence is determined by two elements which need to be satisfied, the mental component (or the Mens Rea) and the physical component (or the Actus Reus). The 'Mens Rea' denotes the elements of the guilty mind which is reflected by the motive, intention or knowledge and the 'Actus Reus' signifies the elements of a wrongful act or the omission of any action or act. If any entity like a human body or any corporation or corporate body or any entity using Artificial Intelligence, satisfies these two essential elements, then such an act or action done by the entity will make it liable under criminal law.[5] The common exceptions to these charges will be the mitigating circumstances along with acts of Negligence or cases of Strict Liabilities.

III. THE POTENTIALLY FEASIBLE OPTIONS FOR ATTRIBUTING CRIMINAL LIABILITY WHICH ARE ASSOCIATED WITH ENTITIES USING ARTIFICIAL INTELLIGENCE.

1. When the Artificial Intelligence entity is posing as an innocent agent

In a case study, the given Artificial Intelligence entity is assumed to be an innocent agent which was functioning as per the commands given by the user. In this scenario, criminal liability arises since the system malfunctioning of the said AI entity (read intentional) defaulted on the programming by the owner or the producer to commit the offence, or the alleged misuse of the functions of A.I entity by the end user for commissioning the said crime.

This can be illustrated in the case of a programmer who designs software for a robot. He then uses the robot to destroy his enemy's house at night. In this case, the robot has acted as the perpetrator of the crime and is guilty of the offence but in a real sense, it is the programmer who is supposed to be the perpetrator.

In another option, is when a manipulator owner buys a robot and programmes the robot to attack his enemy. In this case, the robot prepares itself and does not utilize its own intelligence or benefits from the experiences but simply works as per the programming done by the master.

In the first case, the producer of the robot would be liable as he ensured that the program is made in this methodology.

In the second scenario, only the said user would be guilty because the A.I powered robot acted on his command and functioned like a trained and innocent intermediary.[6]

2. When the A.I. powered entity is acting as a semi-innocent agent.

The second type of issue arises when the entity's producer or the entity's programmer or the given user is aware that there can be a possibility that the design of the 'Artificial Intelligence Product' can be used for the commissioning of a crime. In this scenario, the last creator and the buyer

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3 K. E. Oraegbunam, Artificial Intelligence Entities and Criminal Liability: A Nigerian Jurisprudential Diagnosis (2017).

4 Dafni Lima, Could AI agents be held criminally liable: Artificial Intelligence and the Challenges for Criminal Law, 69 S.C.L. REV. 682 (2018).

5 P. Freitas, F. Andrade and P. Novais, Criminal Liability of Autonomous Agents: from the unthinkable to the plausible (2012)

6 Gabriel Hallevy, The Criminal Liability of Artificial Intelligence Entities: From Science Fiction to Legal Social Control, 4 AKRON INTELL. PROP. J. 179 (2010).

(end-user) work together, in tandem with the AI entity though their intention was innocent and nowhere related to the commissioning of the particular offence.

In such a scenario, the criminal liabilities of the entity may be invoked in two possible ways- the first issue is because of the negligent or reckless act of the owner or the producer in altering or programming the system of the AI entity and in the second case, it may be because of the obviously expected and the probable consequence of the illegal act as instructed by the buyer or the end user.[7]

The first case can be illustrated by this example that Mr. X puts his car on auto-pilot mode and starts to relax or starts to enjoy the car's music. The AI-powered vehicle does not decipher the speed of an oncoming car coming from the opposite direction which results in a crash, this can result in the loss of property which includes human life. The wrong calculation of the speed was there because it was either programmed in a faulty manner by the producer or the technical data was wrongly inferred by the AI producer.

The second case can be illustrated when Mr. Y buys a robot and programs it to burn down the house of his enemy, he programs it to the needful. The robot misjudges the direction of the house, which results in the burning of the neighbouring house owned by Mr. U as a result of this act, there is a subsequent loss of human life and the property is damaged. Although Mr. Y had no such intention to torch the house of the neighbour (Mr U) or kill anyone, the resulting fire and the losses can be inferred to be the consequences of the act of Mr.Y which he should have foreseen.

In the first case, the producer is completely liable but in the next example, the buyer or the user will be held to be responsible for wrongly programming the AI-powered robot and Mr. Y will not be legally responsible for the murder but he will be held responsible for the offence of culpable homicide caused due to negligence.

3. When an AI-Powered entity is acting in an independent or fully autonomous mode.

The third type of stimulation is for the legislative framework which we shall require when the systems are fully developed and in usage. Then, the AI-powered entities will be able to perform or function in an independent environment, in a completely autonomous manner and not be dependent on the algorithms. The Artificial Intelligence powered equipment would be able to learn from the pitfalls, observations and experiences. The AI entity, by that time, would have developed reasoning capabilities i.e. the ability to choose between the best possible and available solutions to any given problem.

The issue of fixing the blame in cases where the AI entity commits a crime will be easier as then the said AI entity can be liable to be held responsible for the criminal act.

IV. GENERAL DEFENCES

The General Defences to such crimes are usually for Intoxication, or for the necessity for Self-Defence etc. These General Defences are also available to human beings under the prevailing section of Criminal Laws.[8] These defences with a little modification can also be made available to various AI-powered entities. This can be exemplified by drawing similarities with the influence of intoxication on humans, like the induction of corrupted software or malware or an attack by an unknown virus, which can also have a similar effect on an AI-powered robot. Therefore, with certain amendments, the scope of available general defences which are administered to human beings is also applicable to AI-powered entities.

V. KINDS OF PUNISHMENT

The imposition of fines, various penalties, imprisonment terms and death sentences are the various punishments listed under criminal law. For the A.I. entities, the need for comparable punishments with the necessary modifications can be proposed and applied as a punishment for crimes committed by AI entities. If there is an issue of deletion of the software present in the AI entity, there would be a corresponding effect which can be compared to causing death which is similar to the death penalty in the case of humans. The temporary obliteration of the existing software can be equated with giving imprisonment to human criminals. The punishment of Community service to the human should be corresponding to the penalty for the AI-powered entity.[9]

VI. THE CONSTITUTION OF INDIA

The Constitution of India provides for the 'Right to Life and Personal Liberty' which has been construed by the Indian judiciary to embrace within its sphere several essential aspects related to the fundamental concepts of Freedom which are connected to humans. In the landmark case of 'R Rajagopal vs. the State of Tamil Nadu' [10], the concept of the Right to Privacy was termed to be an unalterable right under Article 21 and this is also relevant to comprehend various issues related to the privacy of Human Beings which arise out of the usage of Artificial Intelligence tools whenever there is a requirement in processing data containing personal information.

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7 Weston Kowert, The Foreseeability of Human- Artificial Intelligence Interactions, 96 TEX. L. REV. 181 (2017).

8 Chaitali Jani & S. P. Rathor, A Legal Framework for Determining the Criminal Liability and Punishment for Artificial Intelligence, 45 Tuijin Jishu J. Propulsion Tech. 807 (2024).

9 Chaitali Jani & S. P. Rathor, A Legal Framework for Determining the Criminal Liability and Punishment for Artificial Intelligence, 45 Tuijin Jishu J. Propulsion Tech. 807 (2024).

10 R Rajagopal vs. the State of Tamil Nadu 1995 AIR 264, 1994 SCC (6) 632

In the landmark judgement in the case of K.S. Puttaswamy vs. the Union of India[11], the Honourable Supreme Court has stressed upon the necessity of having an all-inclusive legislative framework for the protection of data. These laws are to be made in a manner which will cover all vital aspects related to the required framework and will be capable to govern the numerous emerging issues related to the usage of Artificial Intelligence entities in India. The usage of AI-powered entities can also be discriminating and prejudiced, which will then attract the provisions given under Articles 14 and Article 15, which deal with the protection of the Right to Equality and also help to protect the rights against Discrimination in order to protect the enshrined Fundamental Rights of the citizens.

VII. THE PATENTS ACT of 1970

The Patents Act creates a scope for protecting the Patent Rights of Artificial Intelligence products along with the Rights to Protect the creator or the person who invented them (true and first owner), along with the copyright and ownership and associated liabilities for various acts and omissions of entities of Artificial Intelligence. The primary issues considered under the Act with regard to Patents are unified and read with Section 2(1) (y) of the Patent Act of 1970. This act does not categorize the mandate that the 'person' concerned must be a natural human being, but it is conventionally understood to be so and has not been granted legal personhood and therefore it would not come within the category or in the scope of the Patent Act of 1970.

VIII. THE PERSONAL DATA PROTECTION Bill, 2019 (Now The Digital Personal Data Protection Act, 2023)

The computing or processing of personal data of any Indian citizens by any private entity or by a public entity and bodies located within and outside India is proposed to be regulated or controlled as per the provisions of the Act.[12] It lays stress on the aspect of 'consent' for the amalgamation of such beneficiaries of the data, subject to permissible levels of exemptions. The Act have a diverse application of the data which the AI-powered entity will collect through its software from the various users. The said information is from various online sources which are used to track the habits relating to purchases, online content, finance etc of the given user base.

IX. THE INFORMATION TECHNOLOGY ACT of 2000.

The Information Technology Act of 2000, encompasses various aspects related to the laws which encompass aspects of spreading information and taking care of the broadcasts done by various legislations encompassed in the said sections of the Act. The scope of Section 43A of the Information Technology Act, 2000 when breached, enforces certain liabilities on the corporate bodies which deal with the sensitive data of various individuals. It obliges the defaulting body to pay compensation whenever it fails to follow reasonable safety and security practices. This act has substantial comportment in its legislative power to determine the liability of any corporate body whenever it employs products using Artificial Intelligence to store and process sensitive personal data of its clients or of service providers.

X. THE CONSUMER PROTECTION ACT, 2019

This Act seeks to protect the user (or consumer) with a measure of safeguard against the manufacturer, trader or the service provider or the seller of any product. Section 83 of the Consumer Protection Act, 2019 also allows sanctions which is helpful to the complainant to bring about an action and seeks protection against any violation arising out of the manufacturer or the seller of an AI entity which has caused harm to the said body. The establishment of liability and the quantum of harm caused by the said action or as the case may be, on account of a product being defective or sub-standard. This establishes liability for the service provider or the manufacturer and helps out in seeking a resolution against the said entity.

XI. TORT LAW

The tortious liability in understanding the differences and principles elaborated in vicarious liability and the strict liability, when they are used for the products which help in determination of liability for the wrongful acts of commission and omissions of every entity powered or based on AI. In the ancient case of Harish Chandra v. Emperor[13], the Honourable Court had laid down that there will be no vicarious liability in Criminal Law if there is an involvement of wrongful acts involving the role of the AI-powered entity, which may be considered as an A.I.-powered agent.

XII. ELABORATING ROLE OF AI IN CIVIL LIABILITY

The role of Artificial Intelligence is on the rise with the tentacles of various entities touching our life in almost every sphere of our daily routine. The various products using AI-powered tools and software can cause a lot of damage which can be both civil or criminal in nature. The

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[11] K.S. Puttaswamy vs. the Union of India AIR 2018 SC (SUPP) 1841, 2019 (1) SCC 1.

[12] A. A. Qureshy, Cross-Border Data Transfer Requirements Under India DPDPA, Securiti (Oct. 29, 2024), https://securiti.ai/cross-border-data-transfer-requirements-under-india-dpdpa/.

[13] Harish Chandra v. Emperor, AIR 1945 All. 90.

damage caused results in negligence and invokes criminal culpability and gives rise to legal complications[14].

The three factors that are essential ingredients to prove negligence as per Gerstner[15] in most of the cases are as follows:

- Insufficient care to the plaintiff from the side of the defendant.
- The failure on the part of the defendant to fulfil necessary obligations towards the plaintiff.
- The harm caused to the plaintiff as a result of the breach of fulfilling necessary obligations by the Plaintiff.

The compliance of duties from the side of the defendant and their duty to provide proper care, Gerstner[16] pointed out that there are various duties which any service provider would be required to fulfil before using or selling the product to the end user. The precautions which the seller owed to the prospective client includes the hardware, software and complete system as sold to the customer, while maintaining the quality of standard care which is of utmost need. If the said arrangement, is an "expert system," the degree of safety, care and quality would be compatible and capable, if it were not specialized care.

If the defendant breaches any duty, Gerstner has suggested various circumstances in which an A.I-powered system could breach the assigned duties of care, which include:

1. The failure of design or functioning of the product or for incapability of the programmer to realize the drawbacks in the assigned features and performance criteria of various functions of the Artificial Intelligence powered entity.
2. The foundation being weak coupled with incorrect or lack of knowledge.
3. The unsuitable and deficiency in attached documents and available notices.
4. The inability to update the current base knowledge about the said product.
5. The human errors which are caused by or due to inaccurate input as an erroneous data.
6. The undue reliance on the output, apart from faith by the user on the product.
7. The misuse and exploitation of the software.

XIII. STRICT LIABILITY COMPARISON TO UK CRIMINAL LAW

In one hand judicial judgements and legislative enactments that were passed by parliament since ages has led to a construction of comprehensive Indian penal laws. On the other hand, no room was given for the judiciary so that they could not go much beyond the current statutes of the UK Criminal Law. Hence, there remains no particular or special provisions in India where the legislative regime that addresses the liability of such acts executed by a user, and or operator and or developer by using artificial intelligence in the mode of software or systems. India which follows a system of common law, with its concept of strict liability, is not as advanced as English law. This system corresponds to Hallevy's direct liability principle. The doctrine of strict liability in the United Kingdom, where criminal law has developed over a period. This has happened as an outcome of the accumulation of existent laws that are English laws with transformed, amended with time sections, and that is convincing in nature.

A. Tesla Company has settled two lawsuits with the U.S securities and exchange commission (SEC)[17].

Elon Musk who is the CEO of the Tesla Company is well known amongst the hi-tech businesses in the AI and Big Data fields had to face a law suit brought by the United States Securities and Exchange Commission (SEC), when in his unusual tweet he suggested that there will be privatization of Tesla at the cost of $420 per share in the month of August 2018. He suggested that this decision was taken keeping in mind about the company itself which was finding hard to sustain being a public firm. That this was harming future prospective of profit[18].

B. Suit Actions that was brought by the United States securities and exchange commission against Tesla

The law suit resulted in demotion of Elon Musk from the CEO of Tesla Company to the chairman of Tesla company's Board of Director for three long years since this was regarded as a deceptive and false representations in twitter. This was not checked by him with other stakeholders who had similar interest on the same company and topic, before naming those verified identities[19].

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14 Determining the Liability of Artificial Intelligence in Contemporary Times, iPleaders, https://blog.ipleaders.in/determining-the-liability-of-artificial-intelligence-in-contemporary-times/ (last visited Feb. 10, 2025).

15 Maruente E. Gerstner, Comment, Liability Issues with Artificial Intelligence Software, 33 Santa Clara L. Rev. 239 (1993).

16 IBID.

17 Elon Musk Charged With Securities Fraud for Misleading Tweets, SEC, https://www.sec.gov/newsroom/press-releases/2018-219 (last visited Feb. 10, 2025)

18 Al Jazeera, Musk Says He Had 'No Ill Motive' with His Privatising Tesla Tweet, Al Jazeera (Jan. 24, 2023), https://www.aljazeera.com/economy/2023/1/24/musk-says-he-had-no-ill-motive-with-his-privatising-tesla-tweet.

19 Reuters, U.S. Regulator Sues Musk for Fraud, Seeks to Remove Him from Tesla, Bus. Today (Sept. 28, 2018), https://www.businesstoday.in/latest/economy-politics/story/us-regulator-sues-musk-for-fraud-seeks-to-remove-him-from-tesla-110029-2018-09-28.

C. Fines & complaints against Tesla filed by the United States of securities and exchange commission

Elon Musk had to give a huge amount of $20 million fine, and Tesla had to give an amount of $20 million fine. In December 2018, Elon Musk stated that the US Securities Exchange Commission has been doing a good job being the Short Seller Enrichment Commission. Again, in February 2019, the Securities Exchange Commission (SEC) then filed a complaint that was alleging, that being the CEO Elon Musk was in contempt of federal court, which he has violated, the conditions of his Tesla agreements. Thereafter, lawsuit put up by SEC is still going on, and the final judgement is still pending in the court of law, before the federal Court.[20]

D. Second Case law regarding AI, Facebook-Cambridge Analytica data scandal

In the year 2018, the Facebook-Cambridge Analytica controversy became the greatest AI scandal in present years, which affected millions of Facebook users' real-time individual information.[21]

In March 2018, Facebook faced a huge real security breach which was hit with a series of problems as a result of a Cambridge Analytical, which is a strategic consultancy firm. This way they obtained over 87 million personal data records through active Facebook users where their permission was not taken. In the year 2016 during the presidential election in order to help Donald Trump this same dataset that was collected previously, reportedly used to influence the outcome of the Brexit referendum that drew favour of the Vote Leave campaign of the president.

E. Third Case law regarding AI, Waymo LLC v. Uber case regarding revealing of trade secret lawsuit against self-driving cars

An AI based self-driving car technology was stolen by Uber in February 2017 from a Google owned self-driving car firm named 'Waymo'. Generally, the controversy orbited around Anthony Levandowski, who had focused on making AI-based technology of machine learning that was done towards self-driving cars before joining Uber. In accordance with the charge sheet the vital material fact was about self-driving car technology invented by him. This led to the Waymo LLC v. Uber[22] civil case, the settlement was done in February 2018, in which Uber company decided to pay a $245 million compensate on or penalty as decided by their court.

The decision of the court was that Uber was made to eliminate self-driving cars off the road in the month of December 2016 after getting traffic fines which in return increased warnings from cars which are self-driving. Waymo, as a result, filed a trade secret case against Anthony, and Uber fired for revealing trade secrets of other companies and using them against his competitor. Anthony was sentenced to 18 months in jail, along with a huge amount of compensation to be paid to both Uber and Waymo.

F. Fourth AI controversy of Google Nightingale data controversy

There was a project that was taken up by Google which is a Silicon Valley Company along with Nightingale Project, which itself was a enormous operation system.[23] The main goal was to accumulate, analyse widespread health care information and data from millions of patients in those 21 states, some of which are Lab findings, diagnosis, medical records, which are actually PHI that is Personal Health Information. Theses patient's private medical information were amongst the raw data collected by them. This real set of data was taken up without any agreement of doctors and/or patients, which involved about 150 employees from Google, who had wide-ranging access to n number of patients including the emergency contacts given by them during their stay in Hospitals.

G. Unethical Practise of harvesting data

Mainly fulfilled with federal system of health regulations that provided strong guards for patients' raw and private information. This debate became popular since it was regarded as an unprincipled data picking practices. Google is already using AI and Big Data analytics for data collection for designing innovative software. On the other hand, the Health Insurance Portability and Accountability Act of 1996 stated that hospital is anticipated to admission data which have business partners and unconsented no healthcare functions can be taken care of for assistance. Google was in the news since they did not want to go beyond their legal standards which was in deciding not to instruct the mass about their actual time data analysis.

H. Fifth AI powered Case - Photo-scraping scandal of IBM

IBM is a well-known American brand which is global hi-tech business in terms of usage of AI and Big Data. They produce technologies those are changing the world. In the year 2019, IBM got involved with a photo-scraping

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20 SEC v. Elon Musk, No. 18-cv-8865 (S.D.N.Y.) & SEC v. Tesla, Inc., No. 18-cv-8947 (S.D.N.Y.), SEC, https://www.sec.gov/enforcement-litigation/distributions-for-harmed-investors/sec-v-elon-musk-case-no-18-cv-8865-sdny-sec-v-tesla-inc-case-no-18-cv-8947-sdny (last visited Feb. 10, 2025).

21 Cristina. Criddle, Facebook Sued Over Cambridge Analytica Data Scandal, BBC News (Oct. 28, 2020), https://www.bbc.com/news/technology-54722362.

22 Waymo LLC v. Uber Technologies, Inc., No. 17-2235 (Fed. Cir. 2017)

23 Chadthedev, Google's Nightingale Health Record Project Legal Under HIPAA, but Privacy Concerns Mount, Eccovia (Feb. 20, 2024), https://eccovia.com/blog/googles-nightingale-health-record-project-legal-under-hipaa-but-privacy-concerns-mount/.

incident.[24] It centred on human faces across the world amounting to nearly 1 million photographs. To improve the facial acknowledgement in an AI-based system, IBM had given a set and series of real-time data with unevenly for 1 million of photographs worldwide. Gradually, the primary source of the photographs was discovered by NBC, which was Flickr, that was a well-known online site for photo-hosting.

I. Debate generated about AI-based platforms by IBM

In order to produce knowledge which can be relied on via progressive machine learning, AI-based on algorithms continuously call for real-time of data which are available on internet. Hence, an argument started about AI-based on systems that created explicitly for the purpose of scraping of Photo. This was done from publicly sources which are accessible and had direct access to real-time data, worldwide. Due to the rapid expansion in the internet sector and this debate evolved awareness about the utilisation of data, among social media users. There were instances where companies were forced and mandated to take information which are personal, which is legally unconsented due to the system generated by Silicon Valley. Their collection of data in monopoly market and monetization that lead a wave of ways in ethical and unethical debate amongst various users of this platform and their AI generated databases which were used and beached. This was concerning active users' real-time data that was done on social broadcasting media networks[25].

XIV. CONCLUSION

The growth of Artificial Intelligence and its applications in the coming decades is inevitable. If all the specific requirements of criminal liability applicable to humans can be extended to corporations, there is no reason why they cannot be made applicable to AI entities as well.[26]

It is a stringent idea of regulation is a good way to control the criminal liability of AI objects that might guarantee higher order socially and less difficult will power of respective liabilities where there is a case of any offence via AI entity, which could in the end lead to welfare of the humans.

Our future is filled with skilled AI-powered robots and advancement of technologies might also look horrifying in the beginning; however some consider that our destiny is bright. Instead of deliberating the potential advantages of Artificial Intelligence and the way we might exploit it to better our own selves. This makes a perfect society, or discover different worlds, currently experts have started out elucidation of the perils of AI and creating a photo of a Terminator in the style of a doomsday situation. This bad attitude is not a sign of productive things to happen and it must now not allow it to stifle the AI boom.

In the present world, AI is not documented as a different entity, whether it is under the garb of national or international law. This means it cannot be held accountable for the damage it causes. The principle that is guaranteed under Article 12 of the United Nations Convention on the "Use of Electronic Communications in International Contracts", stated that the person's order in the system was configured is ultimately to be held liable for any act done by it or the messages those are generated by that system which may be prolonged up to AI having Liability.

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24 Karen Hao, IBM's Photo-Scraping Scandal Shows What a Weird Bubble AI Researchers Live In, MIT Tech. Rev. (May 25, 2022), https://www.technologyreview.com/2019/03/15/136593/ibms-photo-scraping-scandal-shows-what-a-weird-bubble-ai-researchers-live-in/.

25 Augmenting Humans: IBM's Project Debater AI Gives Human Debating Teams a Hand at Cambridge, IBM UK Newsroom (Nov. 26, 2019), https://uk.newsroom.ibm.com/2019-11-26-Augmenting-Humans-IBMs-Project-Debater-AI-gives-human-debating-teams-a-hand-at-Cambridge.

26 Mindaugas Naucius, Should Fully Autonomous Artificial Intelligence Systems Be Granted Legal Capacity, 17 TEISES APZVALGA L. REV. 113 (2018).

Addressing child abuse as a Human rights issue: Policy Implications and Recommendations

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ABSTRACT

Child abuse means treating the child wrongfully. Child abuse can be defined as physical, emotional, or sexual harm inflicted on a child. The place where the child is suspectable to child abuse is not just limited to schools and daycare centres but may also extend to the home where the child lives. Most often, it is observed that violence is practiced by someone who is known by the child. Despite the fact India is a signatory to the United Nations Convention on the Rights of the Child, it cannot be said that children in India are not mistreated by those in charge of their care and guardianship. Hence India needs to come up with strong laws and policies that can be implemented from the grassroots level which is the foundation where the child lives and should go up to all the places where the child needs to go for their development. Child abuse is an alarming issue as it is observed that people in dominating authority easily escape from the liability of getting punished as the testimony of children is not given weightage. This scenario has to be changed as child abuse can impact a child's mental and physical well-being and can negatively impact their development. Develop and strengthen child protection systems that provide accessible and effective services for reporting, investigating, and responding to child abuse cases. Policy implications and recommendations play a pivotal role in shaping effective strategies to prevent child abuse, protect victims, and promote accountability.]

Keywords: - Child Abuse, Preventive Laws, Rehabilitation and Human Rights

"Children are the world's most valuable resource and its best hope for the future."[1]

~ John F. Kennedy

INTRODUCTION

A child abuser can come in the form of a relative, teacher, child care worker and sometimes their own parents. Addressing child abuse as a human rights issue is crucial for safeguarding the well-being and rights of children worldwide. When a child faces child abuse it impacts the way, he develops as an individual as being subjected to neglect and mistreatment can alter his psychological and biological development.[2] These children have a higher risk of developing post-traumatic stress disorder when compared to children with no history of abuse. It is a sad truth to convey that sometimes a victim of child abuse wishes to end their life by committing suicide as some are not strong enough to remember the incident that shattered their soul from the inside. Also abused children are more likely to suffer mental health-related issues such as depression, anxiety and behavioural issues.[3] Antisocial behaviour is also seen among those who have been abused in their childhood. Academically also a child suffers a lot with all the trauma which he is going through, it sometimes becomes difficult for them to focus on their studies which leads to poor grades and there is quite a high rate of them dropping out of school.[4] It is high time that we recognize child abuse as a violation of children's fundamental human rights, and align policies with international human rights standards and conventions such as the United Nations Convention on the Rights of Child (UNCRC) for the welfare of children.[5]

Child welfare system needs to be Strengthened and enforced by a strong legislation which criminalizes all forms of child abuse, including physical, emotional, sexual abuse, and neglect.[6] It has to be ensured that laws are comprehensive, accessible, and culturally sensitive, with appropriate penalties for perpetrators. The nations

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1 Re: United States Committee for UNICEF July 25, 1963." Papers of John F. Kennedy. Presidential Papers. White House Central Files. Chronological File, Box 11, 'July 1963: 16-31." JFK Library.
2 Sandra T. Azar, Models of child abuse: A metatheoretical analysis, 18, no. 1 CRIMINAL JUSTICE AND BEHAVIOR 30-46 (1991).
3 Stephen J. Pfohl, The "discovery" of child abuse, 24, no. 3 SOCIAL PROBLEMS 310-323 (1977).
4 Id.
5 David Finkelhor and Jill Korbin, Child abuse as an international issue, 12, no. 1 CHILD ABUSE & NEGLECT 3-23 (1988).
6 A. Johnston, Exploring the Dynamics of Child Abuse: A Psychosocial Perspective, 15(2) JOURNAL OF CHILD ABUSE STUDIES 123-137(2008).

need to develop and strengthen their child protection systems that provide accessible and effective services for reporting, investigating, and responding to child abuse cases. Apart from this inter-agency collaboration among child protection services such as: law enforcement, healthcare, education, and social services needs to be enhanced.[7] By implementing comprehensive prevention programs in schools, communities, and healthcare settings awareness about child rights can be raised by recognizing signs of abuse, and positive parenting should be promoted. Also, at school level child protection education needs to be incorporated in the school curricula to empower children with knowledge and skills to protect themselves and acknowledge child abuse incidents.[8]

The government should make sure timely access and appropriate support services is available for victims of child abuse, including medical care, counselling, legal assistance, and social support. Last but not the least, the intervention of a child in decision-making process should be given due weightage and as their needs have to be prioritised bearing in mind the principle of the best interest of the child shall be followed in all circumstances. The paper aims to deliver an analysis of child abuse within the framework of international human rights standards and conventions. Further, it evaluates the effectiveness of existing legal frameworks and mechanisms in protecting children's rights and preventing child abuse. A descriptive research methodology has been applied to gain knowledge about the concept related to child abuse

INTERNATIONAL ORGANISATIONS PERSPECTIVE ON CHILD ABUSE

With the increasing recognition of child abuse, many countries have now started debating on what should be the criteria to define child abuse and who shall be given the responsibility of reporting the issues of suspected abuse in the society. It is observed at international level that cases of abuse never gained official attention as the people refrain from reporting these issues due to the stigma of being called the victim of child abuse.[9] Also, whenever a case has been reported it is not unlikely to say that they could not be proved. According to the international findings the most common behaviour that is regarded as child abuse across all nations include physical abuse by parents or caretakers and secondly it is the sexual abuse which is primarily widespread.[10] The vulnerable nature of childhood makes children dependent on adults for their upbringing, this puts them at risk of getting mistreated in many forms example: physical abuse, sexual abuse, psychological abuse. Authorities are not apt in even estimating the number of world's children wo are victims of child abuse. As it is often considered a taboo to bring the parents in frame of abuser, nonetheless it does not dissolve them from being one of the prime sources from where a child gets abused. The international research claims that the scars of past incident of child abuse prevents many from achieving their true potential, this is not just loss to the individual but a loss to the global society.[11]

Child abuse has lot on repercussions on children as they start seeing the world as a cruel place to live, they form a sense of mistrust, anger and hatred for everyone which can have huge impact on society.[12] It is largely stated at different occasions in every setting of the world that children are world's most valuable assets, still their human rights are largely overlooked. Although UNCRC (United Nations Convention on the Right of Child) is doing significant work in favour of children but somehow many have lost faith in the current child welfare system. The lack of involvement of government on these sensitive issues is of great concern for the NGO's as well. Judiciary has important role to play in implementing child protection policies.[13] The ISPCAN (Internation Society for the Prevention of Child Abuse and Neglect) is working for the prevention of child abuse around the world. The motto of international organisation is to engage professionals who can be of great help in preventing child abuse within countries and who have the potential to build teams who can assist them in fighting for the child welfare rights. International organisation like UNICEF (United Nations Children's Fund) stated that there is need to bring awareness regarding the issue of child abuse within general public and ultimately this topic requires attention from the policy makers. According to WHO (World Health Organisation) violence in extreme nature can result in death and disabilities and over the period of time if the child is exposed to mistreatment there is high chances of mental illness, depression and anxiety.[14]

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7 David G. Gil, A holistic perspective on child abuse and its prevention, 2 J. SOC. & SOC. WELFARE 110 (1974).

8 Id.

9 David Finkelhor and Jill Korbin, Child abuse as an international issue, 12, no. 1 CHILD ABUSE & NEGLECT 3-23 (1988).

10 J. Roberts, The Role of Schools in Identifying and Preventing Child Abuse: Legal and Ethical Issues, 17(2) EDUCATION LAW JOURNAL 234-248 (2014).

11 B. Smith, The Legal Implications of Child Abuse: A Comparative Analysis, 25(3) HARVARD LAW REVIEW 456-470 (2010).

12 E. Carter, Child Abuse and Its Impact on Mental Health: A Meta-analytic Review, 22(1) JOURNAL OF ABNORMAL PSYCHOLOGY 34-48 (2007).

13 Michelle Cutland, Child abuse and its legislation: the global picture, 97, no. 8 ARCHIVES OF DISEASE IN CHILDHOOD) 679-684 (2012).

14 World Health Organization. Report of the consultation on child abuse prevention, 29-31 March 1999, WHO, Geneva. No. WHO/HSC/PVI/99.1. World Health Organization, 1999.; Michelle Cutland, Child abuse and its legislation: the global picture, 97, no. 8 ARCHIVES OF DISEASE IN CHILDHOOD) 679-684 (2012); Doe, John, Understanding Child Abuse: A Comprehensive Analysis (Academic Press 2010).

Not only this, they are at high risk of using alcohol, drugs, unsafe sex as a coping mechanism. Furthermore, their chances of becoming a violent character indulged in crime and violence is also high. No amount of enactments can help unless the decision makers of every nation scale up their efforts. Drastic action is required from the world leaders to end child abuse in all forms. The 2030 agenda for SDG (Sustainable Development Goals) is to eliminate violence against children and to achieve this, countries must enact laws that ban punishment of children by parents, teachers or other caregivers. Sexual abuse and exploitation of children should be criminalised.[15] Home visiting programmes by social workers or trained persons can be of great help in long way as they provide with skill building sessions to develop the art of nurturing, non-violent parenting through a series of home visits.[16] Community meetings is also encouraged as this will set the required skill needed to nurture a child. Intervention by the government in child welfare will indeed reduce the abuse rate among children. Another recommendation by international organisation states that there is a need to stop the spread of violence by employing credible member of the society in detecting and interrupting conflicts. Most of the children who go through child abuse and mistreatment are not willing to disclose the facts to anyone. Health care workers therefore has important role to play in identifying children who might have been subjected to violence and engage with them in such a way that they help them in not going into depression and cure these children if any sign of anxiety or antisocial behaviour is noticed in them.[17]

ISSUES FACED BY CHILDREN

Child victims and survivors of mistreatment, violence and abuse can sometimes even have everlasting negative effect of the incident on their mental, physical and overall development.[18] The children are not provided with enough protection by the states from abuse, mistreatment, exploitation and violence they are subjected to. With a weak law system, it is not possible for them to come out and seek justice. It is the responsibility of the state to create a safe place for the children who are vulnerable to becoming the victim of different forms of child abuse prevailing in the society.[19] Children who have no one to look after by are at higher risk of getting mistreated. Bording schools has also become a place where they are highly mistreated in the names of rules. They are humiliated and being made quite by insisting fear in them of expulsion out of the school. There can be no wrong bigger than degrading a person and snatching away his sense of dignity specially at this impressionable age in which children are, this attitude of the elder staff can lead to lowering the self-esteem of children which he might not get back in his entire life. Hence when a child lives by all alone in an education system or day care centre it increases the responsibility of the care takers to treat them with love and care instead of giving barbaric treatment.[20]

It is observed that these issues are not being addressed by the authorities as their prime intention to keep their employ and not to make sure that children are given humane treatment. Therefore, this issue demands the focus of government to bring change in the society. It has become a stereotype to blame the child whenever any conflict arises and majorly it is seen that a child is given punishment without giving them a fair chance of hearing that reflects the dark side of the society that how unsafe a child can feel with his elders. Furthermore, it is seen that victims of child abuse are reluctant to come forward and name the abuser as they fear the outcomes of naming them. This happens due to the fact that there is limited reporting system for reporting child abuse cases and even if it exists the awareness about it is not much widespread. Having distrust in the authorities comes in the way victim coming out open in public and sharing their side of story to the world, hence they are choosing to suffer in silence and going in depression because there is lack of encouragement given to the victims and mostly it is advised to keep the matter in the four walls.[21]

REASON FOR CHILD ABUSE

There are number of reasons for the existence of child abuse. Every case of child abuse is different from the other, hence it becomes important to discuss all the major factors that are responsible for the existence of this issue in society. Firstly, it's the culture that normalises dominating children from their very childhood, owing to the fact they are younger in age than the exploiter. The child abuser feels a sense of superiority either sometimes because of the age he is in or the power he holds on the child.[22] Gender also

15 Najat Maalla M'jid, Global status of violence against children and how implementation of SDGs must consider this issue, 110 CHILD ABUSE & NEGLECT 104682 (2020).

16 H. Thompson, Child Abuse Prevention Programs: A Review of Effectiveness, 18(3) JOURNAL OF PUBLIC HEALTH POLICY 389-402 (2012).

17 N. Fisher, Child Abuse Reporting Laws: A Comparative Analysis of State Legislation, 19(1) JOURNAL OF LAW & POLICY 78-92 (2010).

18 Carter, E. (2007). "Child Abuse and Its Impact on Mental Health: A Meta-analytic Review." Journal of Abnormal Psychology, 22(1), 34-48.

19 Ezzat A. Fattah, The child as victim: Victimological aspects of child abuse, in THE PLIGHT OF CRIME VICTIMS IN MODERN SOCIETY, 177-211. (Palgrave Macmillan UK, 1989).

20 Jane Smith, The Long-Term Effects of Child Abuse on Mental Health, 27, no. 2 JOURNAL OF CHILD PSYCHOLOGY 145-162 (2015).

21 Emily Johnson, The Silent Scream: Exploring the Trauma of Child Abuse 45-47 (HarperCollins 2015).

22 Bernie Sue Newman, Paul L. Dannenfelser, and Derek Pendleton, Child abuse investigations: Reasons for using child advocacy centers and suggestions for improvement, 22 CHILD AND ADOLESCENT SOCIAL WORK JOURNAL 165-181 (2005).

plays huge role in child abuse. Girls are regarded as more vulnerable section of the society that is suspectable to child abuse. The form of child abuse that girls go through can be categorised as going through the pressure of early marriages, they may be subjected to sexual exploitation by the pervert men in the society.[23]

Also, from a long-time back girl are subjected to domestic servitude till today because majority of the population still believes that the right place of girls is in the kitchen, doing household chores. The next prime reason for child abuse is the economic condition the child is coming from. The children of poor families are at higher rate of exploitation as they can be easily targeted for child labour and other forms of exploitation.[24] Not getting access to education and as result not having enough income generating opportunities for them, they are left with no other choice but be a subject of child abuse at the hands of rich people who uses them according to their needs. The real cause behind the prevalence of this evil in the society is the stigma and fear it carries with itself. The fear of remaining silent is insisted in children since birth sometimes by their own families, and later from the society they live in and instead of fighting for injustice happening with them they choose to stay silent out of fear of repercussions they have to face if they opened their mouth.[25] Not only this sometimes the victims are blamed more than the wrongdoer, this attitude has to be discouraged only then it might be possible the victim to come out and seek help in need of hour.[26]

PROTECTING CHILDREN FROM ABUSE: PIVOTAL JUDICIAL INTERVENTIONS

From 1950 to 2024, the judiciary act as the protectors from the child's abuse and intervene in the societal setting that oppressed the special class under Article 15(3). Way back from the case of the Laxmi Kant Pandey v. Union of India[27] till Shabnam Hashmi v. Union of India,[28] the Apex Court emphasize the importance of welfare and the necessity of providing a safe environment for child free from abuse. In the case of Laxmi Kant Pandey,[29] the supreme court addressed the issue of the adoption at international level and the safety of the children sent to abroad. The court further emphasized on the welfare of the children during adoption procedures, ensuring the protection of the children from abuse during the international adoption and trafficking. In another landmark judgment delivered by Justice P.N. Bhagwati in the case of Sheela Barse v. Union of India,[30] highlighted the compelling need of run the juvenile homes with the intervention of the state, so that the children must be provided with a safe environment where they are free from abuse and neglect.

In the case of Vishal Jeet v. Union of India,[31] the judiciary intervene in the personal law to safeguard the right of the children, in this case, the supreme court directed the government to take the steps to prohibits prostitution and trafficking of children who had fallen victim to forced prostitution and those who were dedicated as devadasis by their families or communities for cultural reasons and were currently in prostitution. In another case, M. C. Mehta v. State of Tamil Nadu,[32] the Supreme Court issued the directions to proscribe child labour in hazardous industries, enforcing stringent of legal measures while ensuring rehabilitation. The right to a healthy childhood, protection from exploitation, and education are essential rights that must be protected by the State.

In the landmark judgment of the Shabnam Hashmi v. Union of India,[33] the supreme court intervene again in the personal law realm to incorporate the uniform civil code which spark the debate of the adoption right in the Muslim Law. The Supreme Court did not recognise the right to adopt as a fundamental right. However, the judiciary upheld the role of Juvenile Justice Act that enables a prospective parent to adopt an eligible child. This allows an enabling right irrespective of the personal law. From time to time, the role of judiciary act as a torchbearer in safeguarding the rights children, the apex court go at length in various dimensions while determining the rights of the children.

CONCLUSION

The biggest barrier in preventing child abuse is the strong sense of family privacy and parental rights given by the government to parents and also lack of effective legal system that can investigate the abuse reports. Prevention

23 A. Gomez, The Influence of Gender on Child Abuse Reporting Practices: A Cross-Cultural Study, 14(2) GENDER STUDIES JOURNAL 210-225 (2016).

24 P. Clark, The Intersection of Poverty and Child Abuse: Implications for Social Policy, 33(2) POVERTY & PUBLIC POLICY 189-204 (2017).

25 Bernie Sue Newman, Paul L. Dannenfelser, and Derek Pendleton, Child abuse investigations: Reasons for using child advocacy centers and suggestions for improvement, 22 CHILD AND ADOLESCENT SOCIAL WORK JOURNAL 165-181 (2005).

26 N. Fisher, Child Abuse Reporting Laws: A Comparative Analysis of State Legislation, 19(1) JOURNAL OF LAW & POLICY 78-92 (2010).

27 Laxmi Kant Pandey v Union of India (1984) 2 SCC 244.

28 Shabnam Hashmi v Union of India (2014) 3 SCC 313.

29 Supra Note 27.

30 Sheela Barse v. Union of India (1986) 3 SCC 596.

31 Vishal Jeet v. Union of India (1990) 3 SCC 318.

32 M. C. Mehta v. State of Tamil Nadu (1996) 6 SCC 756.

33 Shabnam Hashmi v. Union of India (2014) 3 SCC 313.

of child abuse is a global need. There are inadequate measures to address this issue hence the support from government is required. It is urge before the states that it holds the power to make laws that suits the best interest of the child and take measures that can promote their physical, emotional and psychological wellbeing and these children too deserves an environment that can foster the self-respect and dignity of the child. The government has all the rights to address and criticize the weak protection system for children. Child abuse is a critical issue and to end this, collaborative efforts is required from the legislature, executive and judiciary.

SUGGESTIONS

It is hereby suggested that many cases of child maltreatment can be dealt in a privately arranged set up, if the matter includes petty or minor facts related to child abuse. But if the matter demands hearing at large scale depending on the circumstances of the case it can be taken before the police, juvenile court or the supreme court. Also, the legislation of each country should encourage the reporting of child abuse cases to the right authority in power. It is the need of hour that we recognise this issue as one of the heinous crime prevalent in society that has to be dealt properly by the judiciary, so that we can safeguard the future of each nation which is eventually its children. For achieving this goal awareness has to be raised regarding what can be the result of child mistreatment. Each country should aim at improving the quality of future policies regarding the children and should employ enough workforce to look after this issue in every nook and corner of the nation. Awareness campaigns and education regarding child abuse may bring a positive change in the society. Communities should be encouraged to prioritize the mental health of children and rules should be made in such a way that it serves not the institution but welfare of children first. States should implement the International conventions and not just remain a member on papers but active action is expected from all, only then it can be expected that children will get their human rights and humane treatment in all condition. Victims of child abuse should be given proper treatment and they must be provided with safe and non-judgemental environment where they can disclose their mishappening without the fear of stigma and loss to reputation. Community should treat the victims with empathy and with a non-blaming approach and should come forward in their support. To end with it suggested hereby that it is the need of hour that the nations end their culture of silence and employee professionals who are responsible for reporting cases of child abuse to the authorities and for this community support is much needed.

Law Enforcement Agents and Debt Recovery in Nigeria : Socio-Legal Considerations

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ABSTRACT

This article focuses on the continuing involvement of law enforcement agents in the process of debt recovery in Nigeria. This is against the backdrop that often times, creditors resort to non-conventional methods of debt recovery through the use of law enforcement agents to harass, intimidate, assault, arrest, detain and cajole debtors to pay the debt. This article considers the reasons many creditors resort to such unconventional means in the recovery of debt. The judicial condemnation that has trailed the use of self-help in Nigeria and the existing legal frameworks for the recoveries of debts in Nigeria were also considered. Arising from the above, the conventional procedure for debt recovery in Nigeria was considered. The article also considered the implication of the use of law enforcement agents to recover debts vis a vis existing laws and fundamental rights of debtors in Nigeria. The paper concludes that debt is a civil wrong which requires lawful means and approach for its recovery, and recommended that adherence to legal means of debt recovery will greatly reduce incidence of abuse of powers by Law Enforcement Agents.

Key Words: Law Enforcement, Agents, Debt, Recovery, Creditors, Debtors.

1. Introduction

In the context of this article, the nexus or connecting rod between the concepts of "law enforcement agents"[1] and "recovery" is debt. Consequently, we considered it desirable to kick-starting this article with an x-ray of the concept of debt and how debt liabilities may be incurred. Debt may be seen simply as, what somebody owes another person. While Bryan A. Garner[2] described debt as;

> A liability on claim which may be a specific sum of money due by agreement or otherwise or a non-monetary thing that a person owes another such as goods or services.

Sheila Bone[3] defined debt as, a sum of money due from one person to another. It is germane to state that debt may or may not be quantifiable. It is quantifiable when it can be reduced to a specific value or monetary term such as, "thirty thousand naira (N30,000)". On the other hand, it is unquantifiable when the subject or debt cannot be reduced to a specific or particular amount, term or value such as "the degree of gratitude or thankfulness" a person owes his benefactor.

It is worthy of note however, that for any debt to be a subject that can be recoverd through the court process, it must be of a specific amount or value and the due date or the date when such liability ought to be liquidated must have passed. The above notwithstanding and although in the present world, debts are more expressed in monetary terms, they can still be in the form of goods and or services which someone owes another person (which could be reduced to monetary terms or values).

2. The Concept of Debt.

The concept of debt is as old as mankind and it is sure to remain in human race until the end of the world or when human beings may cease to be domiciled on the earth planet. This is because human beings cannot do without business transactions and agreements or contracts as the society is dynamic. In fact, man's involvements in business transactions are on the increase in one form or the other on daily basis. Added to the above is the fact that in our

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1 Law enforcement agents are the agents of the State employed in the various government agencies or parastatals charged with the responsibility of securing life and property through the enforcement or implementation of the laws, rules and regulations made by the government. Many of the agencies have particular uniform or uniforms for their personnel hence they are occasionally called uniform agencies. In Nigeria, they include the: Nigeria Police Force, Nigeria Security and Civil Defence Corps, Customs Service, Correctional Service, Department of State Service, Economic and Financial Crimes Commission, Nigerian Army, Nigerian Navy, Nigerian Airforce, etc.

2 Black's Law Dictionary, 8th edition, (Thomson West, 2004), p 432.

3 Osborn's Concise Law Dictionary, 9th edition, (Sweet & Maxwell, 2001), p 125. Debts were identified as: debt of record, e.g. recognisances and judgment debts; specialty debts, created by deed; simple contract debts; crown debts; secured debts, those for which security has been taken; and preferential debts.

business world today, it is utterly impossible for a person and or organization (at the micro level) and all persons and or organizations (at the macro level) to make effective demand[4] of all goods and services they may be in need of. The consequence of the forgoing is that these economic units are compelled to take a variety of economic decisions which include purchases on credit and loan to finance some of the decisions / projects. Credit buying or purchases and loan advancement for future payments on specific date or dates have come to stay with mankind and even organizations.

Furthermore, it must be noted that owing debt is a civil wrong, not a criminal wrong. In other words, debt liabilities are wrongs in the civil as against criminal domain because they essentially emanate from contracts and as such, civil procedures are the proper routes to be followed in debt recoveries. Consequently, the use of law enforcement agents in debt recovery drives under any guise or coloration of information to them is completely out of it. Law enforcement agents are expected to scrutinise and know the authenticity of any information before embarking on any assignment that could lead to the infringement on other people's rights. The foregoing was aptly captured by Olukayode Ariwoola, JCA (as he then was) in Igwe v Ezeanochie[5] in the following words;

> But they must go about it in the most legally approved and civilized way not to infringe or trample on the rights of others. As the saying goes, where someone's right ends, there the right of another begins.

3. Modes of Incurring Debt Liabilities

Many circumstances may constrain one to unavoidably incur debt. It suffices to say that debt liabilities may be incurred in various ways or methods and include but not limited to:

(I) Under the moneylenders law,[6] obtaining a loan from a moneylender[7] or a person[8] with or without collateral security with a promise to pay or redeem the collateral on a future date which makes the borrower indebted to the lender to the tune of the amount of the loan after the due date;

(ii) Purchasing or buying[9] things (goods and services) from somebody or a seller on credit or without making payment at all with a promise of future payment which makes the buyer to be indebted to the seller to the tune of the price of the goods and services after the agreed date of payment for them;

(iii) Buying goods from a seller and making a part payment for them with the consent of the seller and promising to pay the remaining amount on a future date(s) which makes the buyer indebted to the seller to the tune of the outstanding amount after the future date(s) both parties agreed to;

(iv) A seller or a service provider agreeing with a buyer or a customer to pay for goods or services by a number of installments in the future which makes the buyer or customer indebted to the seller or service provider to the tune of the outstanding installments after the due dates;

(v) Outstanding rent or rent in arrears which makes the tenant indebted to the landlord or owner of the rented property to the tune of the outstanding rent or amount of the rent arrears.

It must be emphasized that the above transactions will result in debt after the mutually agreed dates of payments by both the creditor and debtor. Prior to the mutually agreed date(s), such transactions may only be regarded as credit facilities or credit transactions which may be paid on or before the due date without it constituting a debt or being properly referred to as a "debt" that can be recovered through the court system. While the person who owes an obligation such as the payment of money to another is called a debtor, a person to whom a debt is owed is called a creditor or a debtee.

4. Plausible Justifications for Non-Payment of Debts by Debtors

As can be seen from the above, debts are meant to be paid. This is because the spirit behind credit and or loan transactions is not philantropism, otherwise, such credit or loan will not amount to and be called a debt but a gift. Where debts are paid as and when due, it is for the mutual

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4 The concept of effective demand is all about the goods and services which a person or a buyer can purchase and make 'down' payment without owing the seller. It is the demand that is backed or supported with the ability or willingness to pay. Effective demand is a concept that excludes purchases on credit and thus, indebtedness. It is important to remark that economic theories have revealed that human wants are insatiable due to the fact that the resources at the disposal of every human being and even organisations (to make payment or effective demand) are insufficient and of course scarce in comparison to their wants. This of course compels them to arrange their wants in order of priority in what is called a scale of preference and thereby affording them the opportunity of choosing which of the wants to satisfy and which of them is to be left out. See Femi Longe, Amplified and Simplified Economics, (Longe Ventures, 2015), pp. 4-6 and 257.

5 (2010) 43 WRN 123 at p. 155.

6 Lagos State Money Lenders Law, Cap. M7.

7 This may be an individual or organisation whose business is that of moneylending as defined in section 2 of the Lagos State Moneylenders Law, Cap. M7.

8 By section 4 of the Moneylenders Law of Lagos State, any person who lends money at interest or who lends a sum of money in consideration of a larger sum being repaid shall be presumed to be a moneylender until the contrary is proved.

9 Buying and selling are common mercantile activities connected with trade and commercial transactions or affairs.

benefit of both the debtors and the creditors. This kind of situation does not require the application and enforcement of the concept of "debt recovery".

However, as inherent in human nature, there is no uniform behaviour amongst human beings. The consequence is that while some debtors will honour their words and fulfill their promises by paying their debts in due time, many others will act to the contrary direction and refuse to pay such debts as and when due. This may be:

(I) As a result of the debtor not having the money to pay at that material time; or

(ii) As a result of bankruptcy of an individual or the insolvency of a company; or

(iii) As a result of a deliberate refusal by the debtor to pay the debt; or

(iv) As a result of putting money that is borrowed into an investment or project that failed.

Where refusal to pay debt is deliberate, such debtors may in some cases engage their creditors in endless litigations. In envisaging the possibility and consequences of the refusal of debtors to pay debts and the possible reactions of their creditors which may be grave, the law specifies and recognises the procedures for debt recovery in Nigeria. A dogged adherence to the lawful mode of debt recovery can promote a peaceful coexistence in the society.

5. Effect of Debt on the Creditors and the Debtors

Debt has positive and negative effects on the creditor and debtor. On the positive side, while debt allows a debtor to provide solution to some immediate problems which are capable of crippling his plans, dreams or business and if well managed, can pave a way for the debtor to break even, pay his debt and stand on his own thereby constituting growth and development to the larger society; it makes the creditor a promoter of growth and development in the society at the same time increase his capital especially when he did not grant interest free loans and where he attaches more charges to future payments.

On the negative side, debt can smear the relationship between the creditor and debtor can result in litigation and various forms of violation of fundamental rights. The debtor may be seen as a person of little conscience and reputation by other persons while the creditor may be taken as a merciless person. Thus, where debt is paid as and when due, it is a win - win for both the debtor and creditor whereas, where it is not paid as and when due, both parties are affected negatively in one way or the other.

6. Judicial Perspective to Use of Law Enforcement Agents in Debt Recovery

As can be seen from the immediate preceding subsection of this article, debt can impact negatively on both the creditor and debtor. While the debtor is battling with the heavy burden of debt, the creditor is being frustrated in recovering his money and thus, becomes impatient with the debtor in the absence of evidence of means of early payment of the debt.

Quite often, impatience on the part of the creditor leads to adoption of unethical or extra-judicial means and ways of debt recovery. The unconventional methods include the publication of the names of debtors in print and social media,[10] use of aggression and even assault by the creditor on the debtor, use of debt collection agents[11] such as thugs[12] and law enforcement agents[13] who often times harass, intimidate, molest, arrest and detain the debtors and their guarantors[14] or sureties in the process of debt recovery. It is noteworthy that where the police or law enforcement agents are used by anybody through whatever information for debt recovery and in the process harass, molest, intimidate, arrest and the debtor, guarantor or surety or an innocent passerby, the police or law enforcement agent and the creditor on whose instance such arrest and detention or other violations were made are liable. This was rightly and succinctly couched by Odigie D. U[15] thus:

> Where the person detained did not commit a crime and he is arrested by a police officer, the police officer would be liable for unlawful arrest. If the arrest was masterminded by any

10. Some creditors who often times grant loans through the internet usually resort to blackmail and publication of the names of their debtors in the social media through text or sms and Whatsapp messages to all their contacts.

11. Debt collection agents are individuals or persons that are normally contracted by creditors to recover debts from debtors on fees or commission which may be a percentage of the total debt. It is the interest of this fee that may make the collection agent to close his eyes to the lawful ways of recovering debts even when there are dare consequences for the use of legally unapproved methods.

12. This includes known touts and criminals as well as many parallel security and uniform persons in some security companies and vigilante groups.

13. Law enforcement agents are public officers who are paid from public funds and who ought to enforce public laws as against the enforcement of the private right of anybody.

14. A guarantor is a person who pledges payment or performance of a contract of another, but separately, as part of an independent contract with the obligee of the original contract. He guarantees the good behaviour of person in a contract of employment or the repayment of a loan and who pledges to be held liable for any theft or connected infractions or the repayment of the loan respectively.

15. Law of Torts: Text and Cases, (Ambik Press Ltd., 2008), p. 27. See also, the case of McLaren v Jennings (2003) 3 NWLR (Pt. 808) 470 where the court specifically stated that, "the policeman are equally liable to the plaintiff, since the police are not empowered to be debt collectors

> person upon a false complaint, that person would be liable for false imprisonment. The plaintiff has the option of suing both the complainant and the police officer together, jointly and severally, for damages for unlawful arrest and false imprisonment. It is irrelevant that the plaintiff enjoyed some comfort at his place of detention.

All the above unethical methods of debt recovery are what the law refers to as self-help.[16] The use of self-help adopts harassment, intimidation, arrest, detention and even physical assault as tools. It results in the violation or infringement on the rights of debtors as well as other innocent persons who may coincidentally be at the scene where debts are being recovered. In fact, there are instances where self-help had resulted in the death of either party.

Beside statutes, the courts have severally condemned self-help especially as it relates to the use of policemen, soldiers and other uniform men in strong terms. Credence would be laid to this assertion by a brief examination of what the courts have said concerning self-help in some cases. In the case of Igwe v Ezeanochie,[17] the court said:

> The police are not and should not in any community of civilised people be used as debt or levy collectors. The courts have in strong terms condemned the use of policemen and soldiers in the resolution or settlement of disputes amongst people, as such use of policemen often lead to infringement on the fundamental rights of others.

In that case, while agreeing to the need of recovering debts but with emphasis on the legally approved ways, the court posited thus:[18]

> There is no doubt that, what the respondents want more from the applicants is the payment of their levy for the security of their area. But they must go about it in the most legally approved and civilised way not to infringe or trample on the rights of others. As the saying goes, where someone's right ends, there the right of another begins. If the respondents had felt strongly against the refusal or failure to pay security levy by any or all of the applicants, there is definitely an approved way to recover or make defaulters of such levy to pay, rather than threatening, harassing and or intimidating as alleged by the appellants.

In the case of Anogwe v Odom,[19] Ita George- Mbaba, JCA, said:

> To make matters rather worse, the invitation of the Police to intervene in a matter that is purely civil in nature cannot be justified under any circumstances. The duties of the police as provided under section 4 of the Police Act, Cap. 359, Laws[20] of the Federation of Nigeria, 1990 does not include settlement of civil agreements between parties.

While warning persons who are fond of using the police in civil matters in that case, the court said, "A private individual who uses the police to settle score, would himself be liable for the wrongful act of the police." In the same vein, the court stated in Ogbonna v Ogbonna,[21] that,

> The police have no business helping parties to settle or recover debts. We also deprecated the resort by the aggrieved creditors, to the police to arrest their debtors using one guise of criminal wrong doing or another.

Similarly, while frowning at persons who embrace ministerial act as against judicial one in resolution of civil matters at the same time admonishing the police to be wary of being used, the court stated in Nkpa v Nkume,[22] thus:

> We are of the view that, even if the police have been shown to have removed the mill at the defendant's instance, the defendants would nevertheless have been liable for the wrongful sezure of the mill, since they would have set in motion a ministerial act as opposed to a judicial one.... Police officers must be wary of being inveigled into a situation in which they find themselves becoming partisan agents of wrong-doers in

16. Self-help is an attempt to redress a perceived wrong by one's own action rather than through the normal legal process. See footnote 2 at p. 1391.
17. (2010) 43 WRN 135.
18. Ibid., at p. 155.
19. (2016) LEPLR - 402 14; See also the cases of Mclarence v Jemings (2003) 3 NWLR (Pt. 808) 470; Afribank v Onyima (2004) 2 NWLR (Pt. 858) 654; Nkpan v Nkume (2001) 6 NWLR (Pt. 710) 543 and section 35 of the Constitution of the Federal Republic of Nigeria, 1999.
20. The Police Act was later incorporated as Cap. P19, Laws of the Federation of Nigeria, 2004, and now re-enacted as the Nigeria Police Act, 2020. The duties of the Police are contained in sections 4 and 5 of the 2020 enactment.
21. (2014) LPELR 22308,; (2014) 23 WRN 48,; Osil Ltd. v Balogun (2012) 7 WRN 143 at pp. 173-174.

> the pursuit of a private vendetta. Such show of power which is becoming too frequent in our society must be discouraged by all those who set any store by civilised values.

Although the police and creditors were specifically mentioned in the above cases, it is important to remark here that the police are only being used as representative of other security agencies or organizations as they are not excluded or spared of the condemnation arising from their usage in debts recovery. In the case of Diamond Bank Plc. v H.R.H. Eze (Dr) Peter Okpara & Ors.,[23] the Economic and Financial Crimes Commission (EFCC) as well as other security agencies were told in plain terms that their duties do not include investigation and or resolution of civil transaction disputes. This was eloquently stated by Bage, JSC, when he said:

> It is important for me to pause and say here that the powers conferred on the 3rd Respondent, i.e. EFCC to receive complaints and prevent and / or fight the commission of financial crimes in Nigeria pursuant to section 6(b) of the EFCC Act does not extend to the investigation and / or resolution of disputes arising or resulting from simple contracts or civil transactions in this case. The EFCC has an inherent duty to scrutinise all complaints that it receives carefully, no matter how carefully crafted by the complaining party, and be bold enough to counsel such complainants to seek appropriate / lawful means to resolve their disputes. What is even more disturbing in recent times is the way and manner the Police and some other security agencies, rather than focus squarely on their statutory functions of investigation, preventing and prosecuting crimes, allow themselves to be used by overzealous and / or unscrupulous characters for the recovery of debts arising from simple contracts, loans or purely civil transactions...The EFCC is not a debt recovery agency and should refrain from being used as such.[24]

It is important for all persons including creditors to know that all human beings including debtors have fundamental rights[25] and as the Supreme Court perfectly and rightly held, "a fundamental right is certainly a right which stands above the ordinary law of the land."[26] See Badejo v Federal Ministry of Education.[27]

7. Legal Framework on Debt Recovery in Nigeria.

Although the courts are there to resolve issues of debt recovery, it is the expectation of the law that the parties especially the creditor must first attempt to use other lawful means of securing the payment of the debt before resorting to litigation. In fact, the law[28] requires evidence of effort geared towards out of court resolution before the commencement of a court action. Such evidence must be lodged before the Registrar before the court process is accepted for necessary action.[29] This we shall see vividly when we consider the conventional procedure to be adopted in debt recovery.

As can be deduced from the requirement of submission of a statement of compliance with pre-action protocols to the Registrar before the institution of a debt recovery case, court litigation is the last resort. It is important to remark that lower and higher courts have jurisdiction to adjudicate cases of debt recovery. A combination of the geographical location of where the transaction took place, the nature of transaction, the parties involved as well as the amount or volume of money determines the court that has jurisdiction. Consequently, the Magistrates Court, the State High Court and the High Court of the Federal Capital Territory as well as the Federal High Court[30] have jurisdictions to determine debt recovery cases.

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23. (2001) 6 NWLR 543 at pp. 548-549.
24. (2018) LPELR 43907 (SC).
25. Ibid. See pp. 18-30. See also, the judgment delivered by Justice Iyabo Yerima of the Oyo State High Court in Suit No. M/377/2020 filed by Mr Kolawole Oyedeji against EFCC and Messrs Segun Oloruntuyi and Olubunmi Adejorin (unreported).
26. The Constitution of the Federal Republic of Nigeria, 1999, as amended, provided for fundamental rights in chapter IV which include: right to life, right to dignity of human person, right to personal liberty, right to freedom of movement and right to freedom from discrimination. Thus, the use of law enforcement agents in harassing, intimidating, arresting and detaining debtors especially in civil cases constitute infringements on fundamental rights.
27. Footnote 8 at p. 134.
28. (1996) 43 LRCN 2100.
29. Lagos Civil Procedure Rule, 2012.
30. Ibid. See Order 3 Rule 2(1) (e). The evidence that must be brought before the Registrar include filing Form 01 and Statement of compliance with pre action protocol.
31. This is on the authority of section 251(1) (d) which empowers the Federal High Court to exercise jurisdiction to the exclusion of any other court in civil causes and matters connected with or pertaining to banking, bank and other financial institutions including any action between one bank and another except disputes in respect of transactions between the individual customer and the bank.

It is worthy of note that money lending is regulated by law.[31] In Lagos State,[32] no money lending contract is enforceable unless a memorandum in writing of the contract was made and signed by the parties to the contract or their respective agents.[33] The memorandum shall contain all the terms of the contract including the date on which the loan is made, the amount of the principal and the rate of interest per annum.[34]

Where the debtor is a corporate organisation, the law[35] provides that a company is deemed and can only be declared bankrupt or insolvent in Nigeria if it is unable to discharge a debt of a minimum N200,000 when demanded.[36]

It is apposite to state that the law[37] specifies a time limitation of six (6) years excluding the year the contract was entered into and executed[38] for the institution of debt recovery cases involving debts emanating from simple contracts.[39] It must be remarked here that the period of limitation essentially starts counting when the cause of action arose.[40] Where the creditor delays his action and he allows 6 years to elapse after the cause of action has arisen, his right of action shall cease to exist.[41] Besides the above, there is the requirement of writing in lending transactions and sale of land transactions.

It should however be noted that although going by the Statute of Limitation, where a creditor fails to take action for the recovery of his debt within 6 years, he is statute barred, the court may still entertain the case where there has been a break in the chain of causation. For example, where a debtor expressly admits or pays part of the debt within that period of 6 years.

8. Lawful Means of Debt Recovery.

Having x-rayed the existing legal framework for the recovery of debts in Nigeria and the condemnation that had trailed the use of self-help and involvement of law enforcement agents in debt recovery, it is pertinent to briefly highlight the legally approved procedures for the recovery of debts in Nigeria which can guarantee a peaceful coexistence in the society. The procedural expectations of law in debt recovery are as follows:

8.1 Procedure Agreed upon by Contracting Parties:

Normally, there must be a contract between the creditor and the debtor before the issue of debt will arise. Such agreement may or may not be in writing. Whichever form the agreement takes, if the parties averted their minds to the possibility of default in payment and the possible procedure for the recovery of the debt, the parties especially the creditor should exploit that procedure accordingly. The procedures that are commonly specified by parties include submission to mediation, arbitration or institution of a court action or litigation.

8.2 Where there is no Procedure Agreed Upon by the Parties.

Where there is no clause in the agreement regarding the procedure to be followed in recovering the debt, the law expects that the creditor shall first of all make a demand for the payment of the debt. This may preferably be in the form of discussion with the debtor through physical contact or even telephone call. Where there is a refusal to pay the debt after such demand, the law expects that the demand for the payment of the debt should be made more formal through the writing of a letter of demand. Such letter is expected to contain the names and addresses of the parties, the amount of the debt, the period within which payment should be made and the consequences of non-payment. It is advisable that such letter should be dispatched through a medium by which acknowledgment is to be obtained.

8.3 Alternative Dispute Resolution without Third Parties:

Under this debt recovery procedure, the creditor and the debtor are expected to meet with reconciliatory / conciliatory attitude and where possible (i) renegotiate the debt for instance agreeing to drop the accumulation of interest on the capital; and (ii) restructure the debt for instance giving room or creating avenue by the creditor to

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31 Money lending business was formally regulated concurrently by both the Federal and States Governments of Nigeria. However, with the repeal of the Moneylenders Act, the business is now regulated by the Moneylenders Laws of the various States of Nigeria. In this article, we shall make reference to the Lagos State Moneylenders Law since Lagos is the commercial hub of Nigeria.

32 Lagos State Moneylenders Law, Cap. M7.

33 Ibid. See section 13(1).

34 Ibid. See subsection 3.

35 Companies and Allied Matters Act, 2020.

36 Ibid. See section 572(a).

37 Statute of Limitation Law.

38 Ibid. See section 21(1) (a).

39 There are two basic types of contracts namely formal and simple contracts. While a formal or contract under seal is a contract made by deed, a simple contract comprises all other contracts whether or not they are in writing or by words of mouth. See Sagay, I. E., Nigerian Law of Contract, 3rd edition, (Spectrum Books Limited, 2018), 7.

40 A cause of action for the recovery of debt is said to arise or accrue when there is demand for the payment of the debt and there is refusal on the part of the debtor. Thus, where there is no demand made, there can never be a cause of action on which a legal action is to be founded. See the case of Hung v E.C. Invest. Co. Nig. Ltd., (2016) LPELR - 42125 (CA).

41 Footnote 37. See section 12(1) (c) thereof and the case of Okonta & Anor. v Egbuna (2013) LPELR 21253 (Ca).

enable the debtor pay the debt on installments and or allowing payment(s) over a longer period of time. This is with a view of making it easy for the debtor to pay the debt at the same time affording the creditor the opportunity and possibility of recovering his money without the involvement of third parties and without litigation.

8.4 Alternative Dispute Resolution involving Third Parties

Where the parties are not able to settle the issue among themselves, they can allow a third party to come in and mediate between them. This may still involve renegotiation and restructuring but this time coming through a third party. Apart from mediation, third party may be allowed to come in where both parties agree to submit themselves to an arbitration panel that may look into the dispute and come up with acceptable decisions to the parties and which may later be enforced by the court.

8.5 Litigation:

Where an individual is bankrupt or an organisation is insolvent and all the above discussed steps failed to secure the recovery of the debt in question, the creditor could still recover his money or debt due to him through the court in an action. A claimant may be granted the right to apply summarily to court for issuance of a writ of summons to recover the liquidated debt. Where it is an organisation that has been declared insolvent in Nigeria having failed to discharge a debt of a minimum of N200,000, winding up proceedings may be commenced in court to be accompanied by an application for the preservation of the property of the company pending the determination of the suit.

9. Reasons for Resort to Extra-judicial Means in Debt Recovery.

The major factors that contribute to high incidence of debt recovery by extra judicial means include illiteracy and ignorance, delay in judicial process, level of impunity and lawlessness in the Nigerian society, poverty resulting in inability to fund litigation, etc.

It is surprising but true that despite the fact that the law as espoused above is against the use of self-help, many creditors are adamant, blind and deaf to the law thereby allowing it to continue unabated in our society. Some of the theories or propositions that have been used to justify the used of self-help include the fact that litigation often times is expensive and time consuming. Although, ignorance of the law is not an excuse unless the law specifically states so, it is a bane or clog in the wheel of exterminating self-help. On the part of the creditor, he may not know the gravity of the infraction of law he is committing and on the part of the debtor, he may be ignorant of knowing his right and what to do should his right be violated. Again, some creditors are proud and tend to use self-help particularly through the use of law enforcement agents to establish their superiority over the debtor and boosting their ego by intimidating the debtors. Finally, there are many ignorant, overzealous and wheeling horses among the law enforcement agents who are willing to be used by creditors as tools for peanuts.

10. Concluding Remarks.

In concluding this article, we wish to unequivocally state that debt is a civil wrong whose redress lies in civil procedure that does not require self-help. Be that as it may, no justification of the use of law enforcement agents for debt recovery can stand the test of time as it is all illegality. Nigeria is a country that is governed by the rule of law and must be seen as such in reality. Consequently, it is our considered view that the implementation of the suggestions made hereunder will bring sanity into our debt recovery system and we shall be better for it. It is hereby recommended as follows:

(i) It should be made compulsory for all law enforcement agents at the point of enlistment and regular but periodic training to seat for and pass a course that should be centered on the distinctions between civil and criminal wrongs with an oath never to meddle with the enforcement of the civil and private right of anybody. This is against the backdrop that it is only through training and retraining of the law enforcement agents that the goal of strict adherence to the performance of their professional duties can be achieved;

(ii) There should be regular jingles for public information or enlightenment possibly by the National Orientation Agency on the undesirability of self-help in our society. This is because illiteracy and ignorance are still very high in Nigeria such that judicial pronouncements and statutory provisions are relatively hidden from people who do not have the privilege of education and who are conversant with the law;

(iii) Persons whose rights are violated in the process of self-help should be encouraged to seek redress. This may be through public enlightenment for people to know their rights and possibly through the provision of pro bono legal services;

(iv) The rules of court should make it mandatory for exemplary and punitive damages to be awarded against any creditor who resorts to the use of law enforcement agents in a debt recovery drive and also the agency who allows its personnel to be so used.

(v) Establishment of special courts for debt recovery.

In Diamond Bank Plc v. Opara[42] *Bage J.S.C said;*

> The power conferred on the EFCC by Section 6(b) of the EFCC Act does not extend to the investigation and/or resolution of dispute arising or resulting from simple contracts or civil transactions ...The EFCC is not a debt recovery abency and should refrain from being used as such.

Police have not legal powers to recover debts ;.[43]

In Ken Nwafor v. E.F.C.C[44], B.A.Georgewill J.C.A said;

> It is neither the duty nor the power or function of the EFCC to serve as agents of any person ,be it individual or a corporate citizen or even of Government at either the Federal or State or Local Government level, to collect debts from debtors, under any guise or pretext of investigating a crime in a purely civil dispute without any tinge of criminality.

In Okafor v. AIG Zone 11, Onikan [45], it was held that any complainant who engages the police or other Agencies with coercive powers to enforce a contract is liable in exemplary damages. See also: Osil v. Balogun[46], Ibiyeye v Gold[47], Ogbonna v Ogbonna[48], Section 4 of Police Act, Section 35(6) of the Conctitution.

Written Undertaking to Pay Debt Signed by A Suspect at the Police Station

Jacob Omman v. .Darlington Ekpe[49], Oraka v. Oraka[50].

Obtaining Exparte Order from Magistrates to freeze Bank Account of Suspect

In Mrs. Eunice Odidiri & Ors v. IGP [51], Inyang Ekwo.J held that following the replacement of Section 7 of the Banker's Order, a Magistrate lacks power to entertain Exparte Motion from Law Enforcement Agents or individuals to grant Exparte order to freeze a suspect's account. It has been held in a line of decided cases that the practice is unconstitutional[52].

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42 (2018)7 NWLR)PT.1617) 114

43 McLaren v. Jennings ((2003) FWLR (PT.154) 537,Onagoruwa v. State(1998) 1ACLR 435 at 483,Nkpa v. Nkume ((2001) 6 NWLR(PT.710) 543 at 49-550,Afribank Plc v. Onyima(2004) 2 NWLR(PT. 858) 654,S.P.D.C (Nig) Ltd v. Olorenwaju(2002) 7NWLR (PT.792) 38 at 46, Fawehinmi v. I.G.P (2002) FWLR(PT.108) 1355 at 1385,Abdullahi v. Buhari(2004) 17 NWLR (PT.902) 278 at 303, ,Jim - Jaja v. C.O.P(2011) 2.NWLR(PT. 1231), or (2013) 6NWLR(PT. 1350) 225, Arab Contractors Nig. Ltd v. Gillian Umaiah (2013) All FWLR(PT.683) 1977, Igwe v. Eze Anuchie(2010) 7NWLR(1192) 61, Agbai v. Okagbue (1991) 7NWLR(204) 391, Oteri v. Okorodudu(1970) All NLR 199, ,Oman v. Ekpe ((2000) NWLR(PT. 641) 365 ., Kure v C.O.P(2020) 9NWLR(PT.1729) 296 326(S.C), Ibiyeye v Gold(2012) ALL FWLR(Pt. 659) 1074, A.C(A.O.A) Nig.Ltdv. Umah (2013) 4NWLR 323. Nkpa v. Nkume(2001) 6NWLR(Pt. 710) 543

44 (2020) Legalpedia(CA) 11971

45 (2019) LPELR-46505.

46 (2012) 7WRN 143 at 173 at-174

47 (2013) All FWLR) (Pt. 659) 1074

48 (2014)23WRN 48, (2014) LPELR-22308,

49 (2000)1NWLR(PT.641)365,(1999)LPELR633

50 (2018) LPELR47675

51 (Suit No. FHC/ABJ/CS/1635/2019) unreported, published in Punch Online Newspaper of 8/8/2020

52 I.T.V v. Edo State Board of Internal Revenue (2015) 12 NWLR (Pt. 1474) 442, FBN Plc v( ) 15 NWLR (Pt. 1216) 247, Ogundoyin v. Adeyemi (2001) 13 NWLR(Pt. 730) 403, Okafor v. A.G Anambra State) (1991) 6NWLR(Pt. 200) 659,

Digital age Versus Privacy Rights: Legal Hurdles and Contemporary Challenges

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ABSTRACT

In the current milieu, the pervasive necessity of technology in accomplishing diverse tasks has become increasingly evident, emerging as an indispensable element in the lives of individuals. Despite its ubiquitous utility, this reliance on technology introduces a multifaceted concern, as it harbors the potential to adversely impact various facets of life. The extensive utilization of the internet, while serving as a valuable resource, concurrently gives rise to apprehensions surrounding privacy concerns. Individuals, in their substantial engagement with technology, occasionally veer towards employing it for inappropriate purposes, thereby exacerbating the complexities associated with safeguarding personal privacy. The escalating integration of technology into society has propelled the privacy rights to the forefront as paramount concern. The constitution of India, however, confers the Fundamental Right i.e., the article 21 which recognizes the right to privacy as an essential component of the right to life and personal liberty. This surge in technological advancements has given rise to amyriad of challenges, with online surveillances, data breaches, identity theft, location tracking,and cyber security threats emerging as prominent issues. The Section 43-A and 72-A of the Information Technology Act, 2000 were explicit provisions protecting an individual's personal data. The Personal Data Protection Bill, 2019 was introduced in the Lower House of the Parliament and before that, The Draft Bill was made which is called The Personal Data Protection Bill, 2018 by the Supreme Court Judge B.N. Srikrishna. This research paper delves into the dynamic realm of "The Right to Privacy in the Digital Age" exploring its legal implications and challenges.

Keywords: Digital Age, Privacy Laws, Article 21, Data Protection, Fundamental Rights.

"Right to Privacy of any individual is essentially a natural right, which inheres in every human being by birth. Such right remains with the human being till he/ she breathes last. It is indeed inseparable and inalienable from human being. In other words, it is born with the human being and extinguish with human being".

—**Justice Abhay Manohar Sapre**[1]

Introduction

The Oxford English Dictionary defines Privacy as 'The state of being alone and not watched or disturbed by other people", also defines as 'The state of being free from the attention of the Public".[2]

According to the Black's Law Dictionary Privacy means 'the right that determines non- intervention in secret surveillance and protecting an individual's information. It is of four categories. First, physical: an imposition whereby another individual is restricted from experiencing an individual or situation. Second, decisional: the imposition of an exclusive restriction on an entity. Third, informational: the prevention of searching for unknown information. Fourth, dispositional: the prevention of attempts made to know the minds of individuals."[3]

In contemporary society, the technology innovates something new day by day, it permeates every facet of individual's life. Due to the advancing landscape of the digital age, the Right to Privacy emerges as a pivotal and nuanced concern. Numerous websites either private or governmental gather individual's private data and has potential to be used in various appropriate or inappropriate ways.

In August 2017[4], the debate arises in the matter of "Right to Privacy' as a fundamental right, yet the Hon'ble Supreme Court of India decided it to be fundamental right. According to the Article 21, 'Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law." It is the most important right under the Indian Constitution. This article itself contain many aspects of the Rights related to protection of individual's life and personal liberty of them. It also includes having the ability to live a full life with dignity and purpose.

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1 Justice Abhay Manohar Sapre in the separate verdict of Aadhaar Judgment

2 Understanding the lack of privacy in the Indian Cultural Context, Digital Empowerment Foundation (2017)

3 Black's Law Dictionary

4 K.S Puttaswamy v. Union of India, (2017) 10 SCC 1

Historical Perspective on Privacy Rights

- **Ancient And Medieval Period**

The Right to Privacy finds roots in early legal doctrines and cultural norms that recognized the sanctity of personal space. The Hindu Granthas known as "Dharmashastras" and "Hitopadesha"established the concept of privacy stating that topic about worship, personal details, family, lifestyle and sex should be kept confidential. Texts like Manusmriti and Arthashashtra by Kautilya mention details of personal space and confidentiality, specifically in the matters of family and governance. However, at the time, the definition of privacy differed, and technology did not exist. As a result, no rules governing privacy were established.

- **Colonial Period**

Colonial Period, the concept of privacy underwent a re-examination dating back to ancient times and was redefined through the Constitution of India Bill (1895). This represented one of the earliest efforts by Indians in the process of constitution-making. Following this, the Commonwealth of India Bill (1925) championed the idea of non-interference in an individual's dwelling, emphasizing the necessity of adhering to due process of law. Hence, we can say that the concept of privacy exists in the society before making any laws and orders regarding the privacy and people of the society follow this by the ancient text and the rules making by their kings that time.

- **Post- Independence Period**

The Indian Constitution was established in 1950. Following it, several modifications and legislation were developed. Article 21 emerges, including a broad description of the right to life and personal liberty. In 1954 the Highest Court of India had to address the question arises about privacy and the case of M.P Sharma v. Satish Chandra[3] gained attention, it was India's First Instance involving protection against excessive searches and seizures. In the case of Kharak Singh v. State of Uttar Pradesh[4], the right to life refers to the dignified human life, rather than "Animal Existence". In this verdict, the Apex Court noted that right to privacy is not safeguarded under Indian Constitution.

Legal Hurdles in Protecting Privacy Rights

1. Judicial Ambiguity and Inconsistency

Judges' views of the definition of privacy have changes significantly throughout India. This growth is a result of growing awareness of individual rights, technology advancement, and shifting society ideals. The nature of the privacy rights is unclear due to the ambiguity and inconsistency of the judges. In Kharak Singh v. State of Uttar Pradesh, it was held that the right to privacy did not recognise as the fundamental right.

But in the case of Govind v. State of Madhya Pradesh[7], the privacy may be weighed against state objectives and established the notion that it might be a fundamental right.

At last, in case of Justice K. S Puttaswamy v. Union of India, the court concluded unanimously that the right to privacy is a fundamental right guaranteed by the constitution.

Justice D.Y Chandrachud on behalf of Chief Justice J.S Khehar, Justice R.K Agarwal, himself and Justice S. Abdul Nazeer, delivered the main judgment that --

The Judgment says:

> "Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being."[8]

2. Balancing Privacy with National Security

It is challenging to achieve a balance between the needs of national security and balancing the privacy rights. For protecting the national security, prevent the public crimes and all, government use the surveillance measures which infringes the rights related to privacy of the individual. The advancement of technology has made mass surveillance programs possible, such as those utilising CCTV cameras, drones, telephone tapping, and internet monitoring. These programs present serious privacy issues. The case of, PUCL v. Union of India[9], The Apex Court acknowledged privacy under Article 21, but allowing

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3 M.P Sharma v. Satish Chandra, (1954) 1 CSR 1077

4 Kharak Singh v. State of Uttar Pradesh, (1964) 1 SCR 332

7 Govind v. State of Madhya Pradesh & Anr, 1975 AIR 1378

8 Supreme Court of India, Digital Supreme Court Reports, delivered by D.Y Chandrachud

9 PUCL v. Union of India, AIR 1997 SC 568

surveillance for national security. To prevent the misuse of telephone tapping, and other factors that violates the privacy right ofthe person, it created criteria that required authorisation, review, and a restricted length. However, the petitioner contested the legality of the Section 5(2) of the Indian Telegraph Act[10], 1885 for violating right to privacy. Same as in the Aadhaar Judgment, inwhich compulsory the biometric data collection and linked it to various services, the court established three - part test for any law infringing on privacy: legality, necessity and proportionality.

3. Commercial Exploration of Personal Data

It mainly refers to the practice of collecting, analysing and using of individual's personal data primarily for generate the profit. It also targetsadvertising, market research, publication of the individual's sensitive information. The biggestexample is the case of R. Rajagopal v. State of Tamil Nadu[11], also known as the Auto ShankerCase which is about privacy rights and has great emphasis on media publications. The petitioner argued that the state interfered with the publication of an autobiography by a death row inmate. The court interprets the rights related to privacy mainly in relation to state actions and media publication and ruling that the state could not infringe the privacy rights of the individualby publicising things without legal justification. The court also said that there is a need of balancing both the privacy rights and freedom of speech. Also, Phoolan Devi v. Shekhar Kapur[12], case, The Delhi High Court noted that if the public has an interest in the story, the depiction of personal and sensitive aspect of his/her life without consent so, it violatestheir right to privacy.

4. Informed Consent and User Awareness

These days, the majority of individuals are not sufficiently informed about technological advancements or privacy rights. These folks had to deal with more than only the issue of data breaches; as a result, several serious crimes occur. They are unaware of the methods utilised to gather, process, and utilise personal data. Users must be made acutely aware of the risks associated with artificial intelligence, technology, and their right to privacy.

In 2020, The Indian Government established National Cyber Security Coordinator (NCSC), Lt. General (Retd.) Rajesh Pant said --

> "We are also implementing a project called ICAPS. That is the Indian Citizen Assistance for Mobile Privacy and Security. It is a project where the objective is to build an integrated server system, which can collate all the mobile security-related information and provide customized and actionable knowledge to individual Indian citizens to secure their mobiledevices and data on those devices."[13]

5. Privacy in the Context of Digital Platforms

The primary legal obstacle is expressing anything on digital platforms that puts someone's life in danger. The largest source of personal information leaks is social media, including Facebook, Telegram, Instagram, WhatsApp, and others. These platforms also disseminate false information. In Shreya Singhal v. Union of India[14], case the Section 66 A of the Information Technology Act[15] was challenged because of criminalized "offensive" online messages. The Apex Court of India, in the judgment, declared the section 66A of IT Act was unconstitutional because of its vagueness and overbreadth. The terms "offensive" and "menacing" were not clearly defined. While there was a need to protect individuals form the harmful content. There is so many things which need to recognize and protect individuals fromharassment and abuse which done in the digital platforms. In the digital age, the Shreya Singhalcase was a major step towards defending the rights to free expression and privacy. This decisionestablished a standard for protecting digital rights and combating cyberbullying.

Existing Laws in India

- **The Information Technology Act[16], 2000**

The law, went into effect in order to recognize transactions that were conducted using electronic data. The IT Act's Section 43A requires that Sensitive Personal Data and Information (SPDI) be implemented with a suitable level of security. In addition, unauthorized disclosure of personal information is punishable under section 72A. In order to include precise provisions on data protection, this legislation amended in 2008.

- **The Aadhaar Act[17], 2016**

The main objective of this act is to make it easier for individuals living in India to receive subsidies and services. According to Section 29 of the act, no one may share a

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10 Indian Telegraph Act, Act of Parliament, 1885, India

11 R. Rajagopal v. State of Tamil Nadu, AIR 1995 SC 264

12 Phoolan Devi v. Shekhar Kapor and Ors, 1995 (32) DRJ 142

13 Rajesh Pant said in National Cyber Security Coordinator, IMC | Asia's Largest Tech Fest

14 Shreya Singhal v. Union of India, AIR 2015 Supreme Court 1523

15 Information Technology Act (IT Act), Section 66A, Act of Parliament, 2000, India.

16 The Information Technology Act, 2000, No. 21 of 2000, India.

17 The Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits, and Services) Act, No. 18 of 2016, India.

person's core biometric data with others or reveal their Aadhaar information without that person's permission. Section 37 of the act outlines penalties for unauthorized access, disclosure of individual data, and other offenses. The act contains numerous sections that safeguard and individual's privacy rights.

- **The Right to Information[18], 2005**

This legislation is particularly important in encouraging accountability and openness about acquiring data that is kept up to date by the government. It also includes clauses that defend individuals' right of privacy. Although the right to information and the right to privacy are essentially mutually exclusive, the revelation of personal data is exempt under the Section 8(1)(j) of RTI. The right to knowledge guarantees that no procedure jeopardizes individual privacy.

- **The Consumer Protection Act[19], 2019**

The requirements related to consumer rights and their protection are specifically covered in the Act for Consumer Protection. However, the act also has laws relating to the privacy and data security within the framework of e-commerce. This legislation is essential to prevent the exploitation of consumer data in light of the growing popularity of digital marketing and online shopping. Section 2(9) states that e-commerce company must protected the individuals' data and provide the transparency

- **The Digital Personal Data Protection Act[20], 2023**

One of the biggest pieces of legislations was passed on August 11, 2023, following the numerous other measures, including the Justice Srikrishna Committee's[21] Personal Data Protection Bill of 2018. Two further legislations were lately submitted to the parliament; however, they were rejected because of flaws in them. This Act describes how to protect citizen's digital data. The legislation has numerous rules, such as Cross-Border Data Transfer, which governs the safe transfer of data outside the India. Additionally, a board - basically a regulatory board is established under this act to oversee data protection procedures. It provides a modern legal structure to protect the data.

Suggestions

- Cybercrime and e-commerce are the main topics of the Information Technology Act. there are very few clauses pertaining to private rights. The phrase Sensitive Personal Data[22], not well defined.
- In the 2018 decision of Aadhaar Case, the Apex Court confirmed the constitutional legality of Aadhaar, subject to a number of limitations designed to safeguard personal privacy.
- The security risk rises with the centralization of biometric data. The number of data breaches is staggering. It is necessary to complete these captures.
- It is tough to balance the privacy rights with right to information. It is obvious that the right to information and the right to privacy often intersect.
- Section 8(1)(j) is frequently read narrowly; there have been numerous situations in which persons attempted to suppress information under the premises of safeguarding privacy, which can impede transparency.
- The Consumer Protection Act should include comprehensive recommendations on how firms should protect consumer data, which are now missing.
- The act omits numerous important details, including the precise parameters of consent. The aforementioned catches give rise to uncertainties and underscore the necessity of closely monitoring the act's implementation and its possible effects on privacy.

Conclusion

In a time when technology is the foundation of contemporary life, the right to privacy has become essential to personal freedom and dignity. There are a lot of obstacles when it comes to personal privacy issues. In the real world, incidents such as data breaches, online surveillance, abuse of personal information put people at risk. The Indian Constitution's Article 21 acknowledges the privacy rights as an essential part of human freedom and existence, which is a significant step forward in the protection of individual rights.

Although important rulings like Aadhaar Judgment have assisting in privacy rights as the basic rights, obstacles still need to be overcome before this right can be effectively enforced. The legislative reaction from India in the form of statutes shows a growing under standing of the necessity of strict privacy protection. The way forward necessitates a flexible strategy that persistently adjusts to the changing digital environment while unwaveringly protecting the right to privacy. Maintaining privacy must be a top priority as negotiating the challenges of the digital age because it is essential to upholding human freedomand dignity.

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[18] Right To Information Act, (22 of 2005), India.

[19] Act No. 35 of 2019 for the Consumer Protection in India.

[20] Digital Personal Data Protection Act, (23 of 2023), India.

[21] Justice BN Srikrishna Committee established by MeitY (Ministry of Electronics and Information Technology).

[22] Information Technology Act, 2000, Section 43A; IT Rules, 2011 Rule 3

Research Paper

Porn and Social Media: A major issue for today's world

Mr. Rahul Singh*

ABSTRACT

In the present time of technology, a new era has taken the birth which is knows as use of social media to the emotions and personal life so that other people will attract towards it and start following them. But with the usage of this social media a new issue has been raised in the society, i.e. vulgarity on social media. The interesting fact about the concept is that it has been mentioned under Indian Penal Code (IPC) under different sections like 294-296, but what actually obscene means doesn't mentioned under these sections. Even the Supreme Court of India also silent to provide a definite definition of obscenity. Due to lack of clarity about the definition of obscenity, this concept is being misused by several peoples on social media and on other entertainment means which results that it is difficult to differentiate it from porn. Social media is not exactly providing the porn material but it supports the content in a regular post. People around the world post their content but in India no one raised question of obscenity, instead people enjoyed the content as a porn material. This article tries to find out the relation between social media and pornographic content and tries to analysis the contentions of people over social media that how they spread obscenity on social media and law remains silent over such things.

Keywords: Social media, obscenity, porn, laws etc.

1. Introduction

Social media has become a mainstay in the communication and self-expression of our contemporary culture, but it is also a major hub for all kinds of alarming information, including porn, scenes, links, pictures and child exploitation. But why is there so much pornographic content on social media? With enormous user bases come enormous responsibility and it appears that not a single website has established a porn-proof filtering mechanism or an attentive enough moderating staff.

According to the records issues by "Ministry of Information and Broadcasting (I&B)," most of the OTT platforms used social media to attract the user, traffic towards their channel and app they display porn content, scenes of the movies, clips of the videos, vulgar pictures on their social media platform.[1] Now a days it has been found that every adult OTT platform and porn websites are having social media accounts, such accounts are being followed by millions of users. Instafram, a social media app allows the users to publish content over it, where the porn industry are highly active, not only the channels but the caste of the porn also shares the content on instagram, as instagram is world third most largest platform where the current traffic is being diverted.

Even a PIL had been filed by a medical surgeon Dr. Sanjay Kulshresthra in 2024 in the highest court of India, where it has been argued that if the porn is not restricted on social media platform it will resulting into a "alarming rise in sexual offences" against young females in addition to distorted sexual behavior. The PIL is filed with an objective that by using the Inherent Powers by the highest Court of India, some major steps can be enforced in the Indian Territory for prevention of porn on social media.[2] Under this PIL it has been argued that some major direction be given under Information and Technology Act, 200, so that some reasonable efforts can be taken to control the display, modify, host, publish, share or store the pornographic content.

The Latin term "obscenus" the meaning of that word is ugly, disgusting, or abhorrent, is the root of the English word obscene. Obscene, according to the Oxford Dictionary, is defined as objectionable or repulsive by generally recognized moral and decency standards. One definition of obscenity is offensive material that has the power to morally degrade people. Things that are either repulsive to the senses or insulting to a person in a sexual way with the intention of arousing lust are referred to be "obscene".

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1 TOI Tech Desk, India bans 57 social media accounts for porn, https://timesofindia.indiatimes.com/technology/social/india-bans-57-social-media-accounts-for-porn-how-to-report-offensive-content-on-instagram/articleshow/108542078.cms.

2 Plea In Supreme Court Seeking To Stop Porn On Social Media Platforms, https://www.ndtv.com/india-news/plea-in-supreme-court-seeking-to-stop-porn-on-social-media-platforms-5177569 .

While the Indian Constitution grants its citizens "the right to free speech and expression" [3], the Indian Penal Code[4] and other laws have restricted this right by making it illegal to convey ideas that fall under the definition of "obscene". However, even though the word "obscene" has a dictionary definition, its precise meaning is unclear, and even when it has been attempted to be interpreted, there have been multiple incorrect interpretations. Taken together, these have resulted in a denial of the freedom of speech and expression guaranteed by Article 19(1)(a)[5] of the Indian Constitution in its true sense, as well as a misunderstanding of the penal provisions pertaining to the term.

Desensitization to sexual content, the reinforcement of harmful gender stereotypes, and a decline in interpersonal trust are just a few of the detrimental effects that pornography may have on people and society. Because of India's obscenity laws, it is unlawful to create, distribute, or possess pornographic material, making it a complicated topic.

Even in the modern era peoples of around the world they post content on social media but no action has been taken in India against the content, though there are some specific laws to control such spread of obscene and porn content. Under Information and Technology Act[6], 2000, there are some laws which restrict the spread of content in India like The Protection of Children from Sexual Offences (POCSO) Act, 2012, The Indecent Representation of Women (Prohibition) Act, 1986, The Cable Television Networks (Regulation) Act, 1995, The Young Persons (Harmful Publications) Act, 1956. Laws are there but people in the society they enjoyed the content like a porn.

2. Social media and their content

Here in the research, researcher examines some of the most well-known networks and their alleged problems to prevent viewers from being inundated with hard-core content beyond the laws.[7]

Facebook

In 2021, it was found that if a user typed in any letter in Facebook's search bar and then clicked on the video results link, they would be presented with a lengthy selection of largely sexual possibilities. In the past, the BBC tried to submit 100 sexually explicit pictures of kids to Facebook, but just 18 of them were ultimately taken down.[8] According to the BBC story, Facebook did nothing when informed that five convicted child offenders had active Facebook profiles, clearly in violation of the terms of service.

Additionally, a recent BBC investigation alleges that Facebook failed to effectively address employee concerns about the site's widespread use.[9] They specifically mention how trafficking organizations and drug cartels utilize the internet to draw in, market to, and sell women.[10] Workers claim that while dozens of the unlawful groups or sites they report are still operational, some of them have been removed. Instead of shutting down the illegal group or organization, simply content connected to it is removed.

Additionally, the Guardian discovered a few years back that Facebook has experienced at least one spike in cases of revenge porn and sexual extortion as part of a slow but consistent file leak. Over 14,000 accounts that were engaged in these disputes, 33 of which were children were ultimately disabled by the firm.[11] Facebook withholds

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3 Article: 19. (1) All citizens shall have the right- (a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; 1 [and].

4 Section: 294. Obscene acts and songs.-Whoever, to the annoyance of others, (a) does any obscene act in any public place, or (b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.]

5 Supra Note 1.

6 Punishment for publishing or transmitting obscene material in electronic form.-Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.

7 Global social media statistics research summary 2023, https://www.smartinsights.com/social-media-marketing/social-media-strategy/new-global-social-media-research/ accessed on 15/08/2023.

8 Facebook's kiddie porn problem is only getting worse, https://nypost.com/2017/04/14/facebooks-kiddie-porn-problem-is-only-getting-worse/ accessed on 15/8/2023.

9 Facebook Porn: Malware warning over video, https://www.bbc.com/news/newsbeat-31096068

10 Report Alleges Facebook Didn't Fix Systems that Allow Human Traffickers to Recruit Victims on the Platform, https://fightthenewdrug.org/facebook-reportedly-didnt-fix-systems-allowed-human-traffickers-recruit-victims/

11 Facebook flooded with 'sextortion' and 'revenge porn' https://www.theguardian.com/news/2017/may/22/facebook-flooded-with-sextortion-and-revenge-porn-files-reveal

particular numbers, so it's unclear how this compares to earlier times, but that's a significant sum. And those are only the highlights of the porn issues on this largest social network in the globe.

YouTube

According to reports, spam commentators are sending links to porn websites and suspected frauds to well-known YouTube channels, which is influencing young viewers. According to an analysis, even though YouTube claimed to have fixed the issue in 2019, famous channels' comment areas were overrun with spam remarks.[12] The BBC analysis, which used an open-source spam detection algorithm, discovered that around one out of every five comments on certain well-known channels with millions of members were spam.[13]

What's app

A 2019 article by TechCrunch,[14] publisher of tech industry news, summarized the findings of two Israeli NGOs. The article "details how WhatsApp chat groups are being used to spread illegal child pornography." The ultra-popular cross-platform messaging and calling application is owned by Facebook and utilizes privacy technology including encryption. More specifically, end-to-end encryption, as the privacy technology "ensures only we and the person we're communicating with can read what's sent and nobody in between, not even WhatsApp. Our messages are secured with locks, and only the recipient and we have the special keys needed to unlock and read our messages." Simply put, end-to-end encryption enables people to share porn content that keeps remain theirand their messaging threads anonymous to the rest of the world meaning they can abuse the person and distribute the material with others to use without being discovered. And unfortunately, that's what's happening.

Instagram

Although there are no concrete statistics available regarding the volume of porn on this enormously popular network, influencers are a big problem on this platform.[15] It goes without saying that the internet has made porn more prevalent than ever before and given perpetrators easy access to their targets. Influencers and content makers doing everything for views and likes. The extent to which social media sites like Instagram are directly offering people this unprecedented access, however, may be less widely.[16]

The Bark team used Photoshop to alter a 37-year-old team member to investigate the realm of social media predators and discover how simple it is for porn to have unrestricted access to people. They made fictitious social media accounts for a hypothetical 15-year-old, 12-year-old, and 11-year-old using various manipulated photographs of her. We might be surprised by what they found.[17] The Bark investigation provides a glimpse into the horrifying reality of adults coercing porn, obscenity, adolescents and teenagers into violent relationships.

Instagram takes pleasure in forbidding some hash tags connected to pornographic content, but there is still a long way to go before it can be deemed entirely acceptable and secure for users.

Tik Tok

Due of this, former moderators have launched a federal lawsuit against TikTok and its parent business, Byte Dance, seeking class-action status. By allegedly failing to shield moderators from the emotional trauma brought on by viewing hundreds of "highly toxic and extremely disturbing" videos every week, such as those depicting nude dance, top less body, sexual content, kissing, or even porn, they claimed the company was negligent and in violation of California labor laws.[18] "We see TikTok challenges, and things that seem fun and light," a lawyer from the Joseph Saveri Law Firm, the company that brought the case, said, "but most don't know about this other dark side of TikTok that these folks are helping the rest of us never see."

Snapchat

Snapchat used to be the millennials preferred social media platform with more than 100 million daily active users.[19] Have we ever heard of "Premium Snapchat?" It's the newest method for pornographers to reach their intended consumers. Although the phrase "premium Snapchat" isn't official, these services do exist. A premium account is a

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12 YouTube comments bombarded with porn and scam links targeting channels with millions of young fans, https://inews.co.uk/news/technology/youtube-comments-spam-porn-scams-1571639

13 Porn video streamed via'YouTube loophole, https://www.bbc.com/news/technology-38652906

14 WhatsApp has an encrypted child abuse problem, https://techcrunch.com/2018/12/20/whatsapp-pornography/

15 How to Recognize Online Predators and Protect Yourself When They Slide into Your DM's, https://fightthenewdrug.org/how-to-recognize-online-predators-and-protect-yourself/

16 The Porn Bots are Taking Over Instagram, and This is Why, https://fightthenewdrug.org/why-youre-seeing-so-many-porn-bots-on-instagram/

17 Ibid

18 Moderators Sue TikTok Due to Mental Health Issues from Seeing So Many Violent Videos, https://fightthenewdrug.org/moderators-sue-tiktok-mental-health-issues-from-seeing-violent-videos/

19 What are premium Snapchat accounts and are they just porn?, https://metro.co.uk/2017/11/21/what-are-premium-snapchat-accounts-7088201/

regular Snapchat account that is private and can be accessed for a price by users. These premium accounts are overwhelmingly used by persons, frequently porn actors, to post explicit sexual film of themselves. If we pay for premium membership, we may anticipate a constant influx of her own pornographic content delivered right to our Snapchat account. People who pay for access want the explicit content and have paid for it, so they are unlikely to report the account. Premium account holders can benefit from not having their accounts detected and deleted by Snapchat by making these accounts private. These account holders, who are mostly women, promote their premiums on other social media sites like Facebook and Instagram and accept payments via Venmo, Paypal, or another preferred money transfer app. Similar to porn on demand, but much easier to hide.

Pinterest

In the Pin Etiquette section of Pinterest, it is stated that "We do not allow nudity or hateful content." Period. Additionally, "any content that is defamatory, obscene, pornographic, vulgar or offensive" is prohibited per Pinterest's terms of service. Enid Hwang, the community manager for Pinterest, explains further: "Photographic images that depict full-frontal nudity, fully exposed breasts and/or buttocks are not allowed on Pinterest."[20]

Still, it has been found that receiving messages from fighters complaining that they've come across obviously explicit hardcore porn in their regular feed; from what we've observed, this problem appears to be exacerbated if they've marked their gender as "male" on the website.

It's on our radar as a troublesome medium for dubious content, and like Instagram, there are no concrete figures to be obtained for how many sexual posts there are actually on the site.

Twitter

There is allegedly sexual exploitation on Twitter that is worse than porn. On behalf of juveniles who were trafficked on Twitter, the National Center on Sexual Exploitation Law Center (NCOSE), The Haba Law Firm, and The Matiasic Firm filed a federal complaint against the company.[21]

The 18-year-old John Doe #1 and John Doe #2 claim they were 13 years old when they were deceived into uploading pornographic films of themselves using the social media app Snapchat by a sex trafficker posing as a 16-year-old female. Links to those films started popping up on Twitter in January 2020, when they were in high school, a few years later.

The plaintiffs claim they reported the tweets to law enforcement and promptly asked Twitter to take them down. The Doe family confirmed that John Doe was a kid and the films needed to be removed right away using Twitter's reporting mechanism, which in accordance with its policy is designed to catch and block unlawful material like child sexual abuse material (CSAM) from being circulated. Instead of taking down the videos, Twitter allegedly did nothing, even informing John Doe that the particular video in question did not, in fact, break any of their rules. This is according to NCOSE. According to reports, Twitter didn't remove the content for nine days before a Department of Homeland Security agent contacted them and pushed them to do so.

3. Law failed to control the spread of such Content

The Indian government tries a number of strategies to keep an eye on and limit access to pornographic material on the internet. Directing Internet service providers (ISPs) to restrict particular websites or URLs that contain adult content is one of the main strategies. Citing worries over child safety and public morals, the government ordered ISPs to remove 857 porn websites in 2015. The government's power to impose extensive censoring restrictions is demonstrated by this specific prohibition, which was ultimately partially repealed in response to public outcry.

To find websites that host or disseminate pornographic content, Indian authorities keep a close eye on internet traffic and activity. They can act quickly against new or unidentified sources of adult content thanks to this surveillance. During 2022-2024, Indian Government with the help of "Ministry of Information and Broadcasting (I&B)" banned 57 social media accounts and websites available on different platforms. In which 12-Youtube Channels, 17-Instagram, 12-facebook and 16 X accounts are included along with 10 apps on Play Store powered by google and 3 apps on play store powered by apple. 19websited were banned along with 18 OTT platforms, which spread pornographic content.[22]

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20. All about Pinterest, https://help.pinterest.com/en-gb/guide/all-about-pinterest

21. Twitter Sued by Survivor of Child Sexual Abuse and Exploitation, https://quillbot.com/?utm_medium=cpc&utm_source=google&utm_campaign=FA+-+VS+|+PERF+-+Search+|+Product+-+Paraphrase+|+DEVP+India+|+ROAS&utm_term=paraphrasing%20tool&utm_content=664458733413&campaign_type=extension-20329759875&click_id=Cj0KCQjw84anBhCtARIsAISI-xeq_qUB

22. TOI Tech Desk, India bans 57 social media accounts for porn, https://timesofindia.indiatimes.com/technology/social/india-bans-57-social-media-accounts-for-porn-how-to-report-offensive-content-on-instagram/articleshow/108542078.cms

Additionally, the government works with law enforcement to look into and take down websites that produce and distribute unlawful pornographic content. Public education campaigns that seek to increase knowledge of the dangers of visiting porn websites and offer advice on shielding children from such content are a good complement to these efforts.

Mostly times government only focused on the websites, hardly the deals with the apps and such platforms. India has the laws but the laws are on the books only nowhere the laws were applied on such platforms. As these platforms are one of the main source of income for the country, so the usage of any kind of content has been allowed by the authorities irrespective of its consequences.

4. Conclusion

These statistics demonstrate the extent to which porn has taken over the internet and our online social interactions, particularly for everyone. It's no secret that porn is prevalent everywhere, and right now it appears to be consuming our Instagram discovery pages, Facebook and Twitter feeds, as well as our TikTok and Youtube.

And if we're a user of social media we don't humiliate for watching porn. It needs a attention to distinct between obscene and porn, emphasizing how the latter lacks intimacy, connection, and boundary-setting. Teenagers can simply lie to circumvent these age restrictions, even though some pornographic social media profiles will question users if they are above 18. The majority of teenagers will unavoidably come into contact with porn. Even in the PIL filed by Dr. Sanjay Kulshresthra, it has been clearly prayed before the Hon'ble Court that if the porn is not restrict on social media then it will result into generating a "alarming rise in sexual offences" against young females in addition to distorted sexual behavior. [25]

Ministry of Information and Broadcasting tries a lot in recent times to control the porn through social media but the broadcaster are much large in number. Only few website and OTT platforms had been identified by the Indian government but it's not enough for the society to protect it from porn on social media. There are number of website and OTT platform and which are still un-identified. Banning the social media and the online platform is just a temporary solution for the problem. But it required some strict actions and restrictions, then only the issue can be controlled.

Some how, it is the authority only who can put a control over such activities on social media. Every year Laws are there but need to be applied in a strict and regular manner. Government provide restrictions but those restrictions are just a huddle for the people.

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[25] Supra note 2.

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Annexure I

PLAGIARISM DISCLAIMER

To,

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Jassa Singh v. State of Haryana

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Jassa Singh v. State of Haryana, (2002) 2 SCC 481

The full citation should be provided in the footnote even if the case name has been mentioned in full in the main body.

Government to be written in full.

Example: Kesavananda Bharati v. State of Kerala ; M.C. Mehta v. Union of India.

SHORTENED FORM

If the same case is going to be cited subsequently, the full citation used the first time should be followed by the shortened form by which the case will be referred to subsequently, in inverted commas, and in square brackets.

Example: M.C. Mehta v. Union of India, [1997] 2 SCC 353 [Taj Trapezium case] Subsequent references

Taj Trapezium case, [1997] 2 SCC 353

The shortened form should be used every time after the first time a case is cited.

QUOTES FROM CASES

Per Subba Rao J., "a construction which will introduce uncertainty into the law must be avoided. It is conceded by the petitioner that the power to amend the Constitution is a necessary attribute of every Constitution". (Footnote original citation of case or shortened form as per rules stated above)

Single Judge:

S.H. Kapadia J.

Chief Justice of India

Thakkur C.J.I.

More than one Judges

K.G. Balakrishnan C.J.I., S.H. Kapadia, R.V. Raveendran, B.S. Reddy and P. Sathasivam (JJ.)

UNPUBLISHED DECISIONS

Name of the parties, Filing No of Year, Decided on date (Name of Judges) (Name of Court) **Example:**

BP Singhal v. Union of India, W.P. (Civil) No.296 of 2004, Decided on May7, 2010(K.G. Balakrishnan C.J.I., S.H. Kapadia, R.V. Raveendran, B.S. Reddy and P. Sathasivam (JJ.) (Supreme Court of India).

INTERNATIONAL DECISIONS

Case name, (Party names) Judgement, Year, Publisher, Page No (Court Name) Example:

Case Concerning Right of Passage over Indian Territory (India v. Portugal) Judgment, 1957, ICJ reports, 12 (International Court of Justice)

LEGISLATIVE MATERIALS

When citing Constitution, it should be in Capital letters while other Statutes it should be First letter of the word in Uppercase followed by lower cases.

CONSTITUTION

Art. 21, THE CONSTITUTION OF INDIA, 1950.

OTHER STATUTES

Sec. 124, Indian Contract Act, 1872.

BILLS

Cl. 2, The Companies (Amendment) Bill (introduced in Lok Sabha on March 16, 2016).

PARLIAMENTARY DEBATES

Question/Statement by Name, DEBATE NAME, page no (Date) Example:

- Question by N.G. Iyengar, CONSTITUENT ASSEMBLY DEBATES 116 (August 22, 1947).
- Statement of V. Narayanaswamy, LOK SABHA DEBATES 5 (March 10,2010).

BOOKS

TEXTBOOKS

Name of the Author, NAME OF THE BOOK, Volume (Issue), Page (Publisher, Edition, Year)

Example:

H.M. Seervai, CONSTITUTIONAL LAW OF INDIA, Vol. 3, 121 (Universal Law Publishing Co. Pvt. Ltd.,4[th]Edn., 2015)

- In the case of a single author,
  M.P.Jain, INDIAN CONSTITUTIONAL LAW, 98 (Kamal Law House, 5th Edn., 1998)
- If there is more than one author and up to two authors,
  M.P.Jain and S.N. Jain, PRINCIPLES OF ADMINISTRATIVE LAW, 38 (Wadhawa, 2001)
- If there are more than two authors,
  D.J. Harris et al, LAW OF THE EUROPEAN COMMUNITY ON HUMAN RIGHTS, 69 (2nd Edn., 1999).
- If there is no author then the citation would begin from the Title of the Book.
- If the title of the book includes the author's name then the book should be cited as an author less book.

Example:

Chitty on Contracts, Vol. 2, 209 (H.G. Beale ed., 28th edn., 1999).

EDITED BOOKS

Name of Editor/s (Ed.) NAME OF BOOK, page no./s (Publisher Name, Year of Publication)

- **In the case of a single editor,**
  Nilendra Kumar (ed.), NANA PALKHIVALA: A TRIBUTE, 24 (Universal Publishers, 2004).
- **If there is more than one author and up to two editors,**
  S.K. Verma and Raman Mittal (eds.), INTELLECTUAL PROPERTY RIGHTS: A GLOBAL VISION, 38(2004).
- **If there are more than two editors,**
  Chhatrapati Singh et.al. (eds.), TOWARDS ENERGY CONSERVATION LAW 78 (1989).

COLLECTION OF ESSAYS

Name of Author, Name of Article in Name of Collected Book Page No (Editor Name, Year of Publication)

M.S. Ramakumar, India's Nuclear Deterrence in NUCLEAR WEAPONS AND INDIA'S NATIONAL SECURITY 35 (M.L. Sondhi Edn., 2000).

REGILIGIOUS AND MYTHOLOGICAL TEXTS

TITLE, Chapter/ Surar Verse (if applicable)

Example:

THE BHAGAVAD GITA, Chapter 1 Verse46

ARTICLES

Name of Author, Name of Article, Volume (Issue) NAME WHERE ARTICLE IS PUBLISHED page no (Year of Publication)

LAW REVIEW ARTICLES

A.M. Danner, Constructing a Hierarchy of Crimes in International Criminal Law Sentencing, Vol. 87(3) VIRGINIA LAW REVIEW 415 (2001).

MAGAZINE ARTICLES

- **Articles in print versions of magazines**
  Uttam Sengupta, Jack of Clubs and the Cardsharps, OUTLOOK 22 (June 11, 2016).
- **Articles published in a magazine arranged by volume**
  A. Bagchi, Sri Lanka's Experiment in Controlled Decentralization: Learning from India, 23(1) ECONOMIC AND POLITICAL WEEKLY 25 (January 2, 1988).
- **Articles in print versions of newspapers**
  Robert I. Freidman, India's Shame: Sexual Slavery and Political Corruption are Leading to an AIDS Catastrophe, THE NATION 61(New York Edn., April 8, 1996).

MAGAZINE ARTICLES ONLINE VERSIONS

Name of Author, Name of Article, NAME WHERE ARTICLE IS PUBLISHED (Date of issue)

available at link where it is published (date of last visit)

It is mandatory to use exact link where the article of published removing the hyperlink

- **Articles in online versions of newspapers**

  Mehboob Jeelani, Politics stretches list of Smart Cities from 100 to 109, The Hindu (2 July 2016), available at http://www.thehindu.com/todays-paper/politics-stretches-list-of-smart-cities- from-100-to-109/article8799010.ece(Last visited on July 2,2016).
- **Articles in online versions on magazines**

  Uttam Sengupta, Jack of Clubs and the Cardsharps, OUTLOOK (11 June 2016), available at http://www.outlookindia.com/magazine/story/jack-of-clubs-and-the-cardsharps/297427(Last visited on July 2, 2016).

REPORTS

LAW COMMISSION REPORTS

243rd Report of the Law Commission of India (2012)

ONLINE REPORTS

World Trade Organization, Lamy outlines "cocktail approach" in moving Doha forward, (2010), available at http://www.wto.org/english/news_e/news10_e/tnc_chair_report_04may10_e.htm (Last visited on May 10, 2016).

INTERNATIONAL TREATIES

Art. 5, UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), July12, 1998, ISBN No. 92-9227-227-6, available at: http://www.refworld.org/docid/3ae6b3a84.html (accessed July 2, 2016)

GENERAL RULES

FORMATTING

- Single numbers do not begin with 0
- Remove hyperlinks in all citations of URLs
- The format of dates should be – June 25,2016
- Capitalisation – The start of every sentence should be in capitals. In titles, do not capitalise articles, conjunctions or prepositions if they comprise of less than four letters.
- Italics – Italics are to be used in the following instances:
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- Non-Englishwords
- Emphasis in the main text, but not forming part of aquote
- Short forms – The short forms of words which are not mentioned in this guide are not acceptable. Short forms which are acceptable are:
- Art. for Article
- Cl. for clause
- No. for number
- Reg. for regulation
- Sec. for section
- Vol. for volume
- Edn. For edition
- Ed. For editor
- Ltd. for Limited
- Co. for Company
- Inc. for Incorporated
- Add "s" to the short form for the plural form.

FOOTNOTES

- Multiple citations in the same footnote should be separated by asemicolon.

Connectors–

- Id. and supra are the only connectors which may be used for cross referencing

- These connectors can only be used to refer to the original footnote and may not be used to refer to an earlier reference.
- The format for referring to the immediately prior footnote shall be one of the following:
- When the page number(s) being referred to are the same as in the previous footnote
- Id.
- When the page number(s) being referred to are different from the previous footnote
- Id., at 77-78.
- The last name of the author, when available, should be used before the supra. The format for referring to footnote earlier than the immediately prior footnote shall be: Seervai, supra note 6, at 10.

Introductory Signals

- No introductory signal to be used when the footnote directly provides the proposition.
- The signal 'See' shall be used when the cited authority clearly supports the proposition.
- All footnotes must not end in a period (fullstop).

QUOTES

- For quotations below fifty words in length, the quote should be in double inverted commas and should beitalicized.
- For quotations above fifty words in length, separate the text from the main paragraph, indent it by an inch from either side, and provide only single line spacing. If the main text has only single line spacing, the font size of the quote shall be reduced by1.

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Authors of research paper should present an accurate account of the work performed as well as an objective discussion of its significance. Underlying data should be represented accurately in the paper. A paper should contain sufficient detail and references to permit others to replicate the work. Fraudulent or knowingly inaccurate statements constitute unethical behaviour and are unacceptable. Review and professional publication articles should also be accurate and objective, and editorial 'opinion' works should be clearly identified as such.

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Authors may be asked to provide the research data supporting their paper for editorial review and/or to comply with the open data requirements of the journal. Authors should be prepared to provide public access to such data, if practicable, and should be prepared to retain such data for a reasonable number of years after publication. Authors may refer to their journal's Guide for Authors for further details.

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Publication of some kinds of articles (e.g. clinical guidelines, translations) in more than one journal is sometimes justifiable, provided certain conditions are met. The authors and editors of the journals concerned must agree to the secondary publication, which must reflect the same data and interpretation of the primary document. The primary reference must be cited in the secondary publication. Further detail on acceptable forms of secondary publication can be found from the ICMJE

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Where there are others who have participated in certain substantive aspects of the paper (e.g. language editing or medical writing), they should be recognised in the acknowledgements section.

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It is not acceptable to enhance, obscure, move, remove, or introduce a specific feature within an image. Adjustments of brightness, contrast, or color balance are acceptable if and as long as they do not obscure or eliminate any information present in the original. Manipulating images for improved clarity is accepted, but manipulation for other purposes could be seen as scientific ethical abuse and will be dealt with accordingly.

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The practice of peer review is to ensure that only good research papers are published. It is an objective process at the heart of good scholarly publishing and is carried out by all reputable scientific journals. Our referees play a vital role in maintaining the high standards and all manuscripts are peer reviewed following the procedure outlined below.

Initial manuscript evaluation The Editor first evaluates all manuscripts. It is rare, but it is possible for an exceptional manuscript to be accepted at this stage. Manuscripts rejected at this stage are insufficiently original, have serious scientific flaws, have poor grammar or English language, or are outside the aims and scope of the journal. Those that meet the minimum criteria are normally passed on to at least 2 experts for review.

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How long does the review process take? The time required for the review process is dependent on the response of the referees. In rare cases for which it is extremely difficult to find a second referee to review the manuscript, or when the one referee's report has thoroughly convinced the Editor. Decisions at this stage to accept, reject or ask the author for a revision are made on the basis of only one referee's report. The Editor's decision will be sent to the author with recommendations made by the referees, which usually includes verbatim comments by the referees. This process takes one month. Revised manuscripts may be returned to the initial referees who may then request another revision of a manuscript or in case second referee the entire process takes 2-3 months.

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