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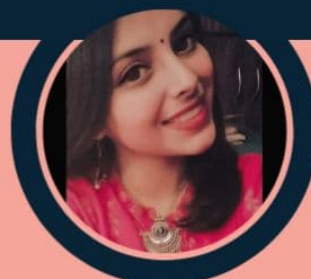


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SURROGACY (REGULATION) BILL, 2020: BRINGING MORE NEGATIVES?

– PREETHI A. & NITHIN SATEESH

INTRODUCTION:

Today, the concept of surrogacy is rapidly evolving and has gained prominence for the involved individuals. Therefore, there is an urgent need to regulate surrogacy laws to eliminate any hindrance that citizens might face during the process.

The surrogacy (Regulation) Bill, 2020 was approved on 26th February 2020 by the Union Ministry and awaits the ratification of the Rajya Sabha. The objective of the Bill is to curb the practice of commercial surrogacy and protect the interest of the surrogate mothers, prospective parents and the rights of the child born.

While awaiting ratification from the Rajya Sabha, this bill has been met with a lot of controversy. This paper aims to study how the 2020 bill departs from its predecessors in many ways.

KEY CHANGES:

The Surrogacy (Regulation) Bill 2020 has introduced some key changes to the existing act.

1. ESTABLISHMENT OF REGULATORY BODIES:

The bill suggests the establishment of a State surrogacy board and a National surrogacy board at the State and Central level respectively and appropriate authorities for Union territories. The National surrogacy board has been assigned with an extensive range of functions, the prominent being:

- Advisory function on the policy matters of surrogacy
- Supervisory function over the regulating bodies proposed to be constituted under the Act.
- Administrative function to set a Code of conduct to be followed by the persons employed at the surrogacy clinics.
- To set up minimum standards on infrastructure, manpower, equipment and laboratory.

2. PROHIBITION OF COMMERCIAL SURROGACY:

In pursuance of the 228th Law commission report which recommended the prohibition of commercial surrogacy, this bill inaugurated a blanket ban on commercial surrogacy and only allows for altruistic surrogacy.



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3. OMISSION OF THE DEFINITION OF INFERTILITY:

The earlier bill defined infertility as “the inability to conceive after five years of unprotected coitus or other proven medical condition preventing a couple from conception”. It requires at least one individual in the couple to suffer from ‘infertility’ to be eligible for surrogacy.



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Since five years was deemed an unreasonable time to opt for surrogacy, the term ‘infertility’ has been omitted.

EXPANDED THE AMBIT OF THE ACT:

The earlier bill only allowed the ‘married Indian couples’ to opt for surrogacy. Whereas the present bill also includes every ‘Indian Single women’ including ‘divorcee’ between the ages of 35 to 45 years and a ‘widow’ within the meaning of “intending women”.

The earlier bill restricts the ambit of surrogate mother to mean a close relative. Presently, this has been relaxed to include all willing women.

MERITS OF THE BILL:

The 228th Law Commission Report has pointed out the necessity for stern provisions to govern surrogacy. The 2020, bill has managed to incorporate these recommendations of the 228th Law Commission Report. Now, the laws provide for the constitution of the regulatory bodies at the state and the central level. It also specifies exactly who can opt for surrogacy whilst laying down stern and stringent process for candidates to obtain certificates. This bill not only protects the rights of the surrogates, but also enlists provisions to safeguard the rights of the child. The bill also requires compulsory registration of surrogacy clinics to make it easier to examine any medical malice. Thus, many argue that by having stricter provisions the surrogacy regulation bill, 2020 has paved the way for minimal irregularities within the process and reduced the illegalities involved.

DEMERITS OF THE BILL:

1. BAN ON COMMERCIAL SURROGACY:

Though ban on commercial surrogacy is a welcome move, it fails in curbing the practice in its entirety. This provides room for more irregularities and the practice can tend to bloom illegally without the approval of the government. This hampers the morality behind the concept of surrogacy.

2. MANIFEST DISCRIMINATION:

Although this bill out rightly mentions who can opt for the practice of surrogacy, it excludes foreigners and LGBT couples without any proper explanation which can only be categorised as blatant discrimination. This proposal per se leads to blatant discrimination. For it excludes a considerable chunk of population from opting for the practice without proper explanation which in turn forces the individuals to partake in illegal practices.

3. VIOLATION OF PART III OF THE CONSTITUTION:

ARTICLE 14:

Article 14 provides every citizen equality before law. Since the 2020, bill restricts many couples from opting surrogacy without any reasonable classification; it violates their article 14 right. The surrogacy bill does not qualify the test of reasonable classification to ascertain legal validity of an Act, under article 14 and hence is in its violation.

ARTICLE 21:

Article 21 of the Indian Constitution has been held to include the right to privacy within its ambit. Right to our own body is a part of right to privacy. Establishment of agency over the women's body, under the bill completely restricts the woman's privacy and hence violates Article 21 of the Indian Constitution.

CONFLICTING IDEAS:

Several landmark judgments have propounded the idea that live in relationships are legal and that such couples hold an equal status to a married couple. But confusingly, the Surrogacy bill, 2020 omits to include live in couples

Likewise, the historic Navtej Singh Johar v. UOI judgement, unanimously struck down Sec. 377 of IPC. This judgment legalizes same sex couples. However, the surrogacy bill prohibits the LGBT from opting surrogacy.

As evidenced by the aforementioned examples, many provisions of the Surrogacy bill, 2020 disregard the court's recent liberal interpretations of various statutes to safeguard all the citizen's rights. This clash of opinion between the judiciary and the legislature, in turn leads to confusion amongst the masses.

SUGGESTIONS:

The Assisted Reproductive Technology (ART Regulation) Bill, 2020 has been introduced to regulate the Assisted Reproductive Technology services.

The concepts of surrogacy and ART go hand in hand. ART bill deals with the procedural aspects, whereas the surrogacy bill deals with the definition and moral issues arising from surrogacy. The ART Bill depicts a better comprehensive framework and as it does not meddle with surrogacy, the government must ensure that there is a sync between the two bills. Therefore, it is suggested to ratify the ART (Regulation), 2020 before the Surrogacy bill, 2020 comes into effect.

CONCLUSION:

In the Indian society, Surrogacy is treated as a taboo. Although, Surrogacy has been legalized in 2016, there is still an absence of proper regulatory measures and a comprehensive framework for the same. The Surrogacy (Regulation) Bill, 2020 has its pros and cons. Though the bill is a progress but there is an urgent need to address, the grey areas whilst also reconsidering the conflicting ideas between the judiciary and the parliament, to get rid of all the hindrances faced by the population during the process of surrogacy conflicting ideas has to be reconsidered to remove all the hindrances faced by the population.

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PRESUMPTION OF LEGITIMACY AT CROSSROADS - DR. BELU GUPTA ARORA

In the Banbury Peerage case, it has been held:

Whenever a child is born in a lawful wedlock between his mother and any man to whom she is lawfully wedded to, and the matrimonial relationship between the two continues then the only presumption is that sexual intercourse has taken place between the two as a consequence of which the legitimacy of the child begotten by the mother is in question. This presumption can be rebutted only by such evidence which establishes that there existed no opportunities for the two to have sexual intercourse. When such is the strength of the nature of presumption contained in Sec.112 of the Evidence Act, what went wrong over a period of time which has forced us to re-think about the dilution of the tone and tenor of this section, done by the judicial decisions, which seems to have reduced the impact of presumption of "conclusive proof" contained in the section.

The essential ingredients of Section 112 of the Indian Evidence Act are as under:

1. Continuance of valid marriage between the mother of the child whose legitimacy is in question and any man.



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2. Birth of this child during this period of continuance of valid marriage, or within two hundred and eighty days after the dissolution of this marriage, the mother remaining unmarried.
3. The conditions mentioned above shall be the conclusive proof of the fact that the child is the legitimate son of that man.

This presumption of legitimacy can only be rebutted by the fact the parties to the marriage had no access to each other at any time when the child could have been begotten.

“Conclusive proof”. — This irrebuttable presumption of law lays down in strict terms that a fact is said to be conclusive proof of another fact when on the proof of one fact the Court shall, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

Thus if a child is born as a consequence of the marriage between his mother and any man, then the man shall be the father of the child unless the contrary is proved and the very evidence which can be entertained to disprove this fact that this man is the father of the child is “non-access” between his mother and this man. This strong presumption can only be repelled by the presence or absence of opportunities between the mother and the man to have sexual intercourse because in a wedlock the presumption is of the fact that sexual intercourse has taken place between the two.

The language of section 112 nowhere mandates a test to be conducted by an outside agency to establish the fatherhood of the child, thus, the only requirement contained in the section is of valid marriage between his mother and the man, who is to be regarded the father of the child in question as the fact of marriage between the two leads to the presumption of “access” between them when the child was conceived by the mother. So, the area of prime concern is as to how the modern scientific tests (DNA) have rendered the presumption contained under sec112 completely redundant and nugatory. Even the trend of judicial interpretation seems to have drifted from the presumption of conclusive proof to these modern scientific tools of establishing paternity.

The judicial interpretation appears to be giving an out of context meaning to the terms ‘legitimacy’ and ‘paternity’ as is reflected in the latest decisions of the Supreme Court which will be taken up little later in this paper. The main idea behind section 112 is that “no child should be labelled as a bastard” and thus the law thrusts an obligation on that man who has married the mother of the child, to give his name, care and protection to that child even if the man is not the biological father of the child. One thing should

section 112 should not be snatched away from him by pressing upon a scientific test and depriving him from the name of his father who is actually the man to whom the mother of the child is legally married to. The intention of the legislature behind Section112 is to extend legitimacy to that child whose legitimacy is in question because of the fact that the man who’s married his. Mother doesn’t own the fact of his birth.

In the case of Goutam Kundu v. State of West Bengal., the Supreme Court has pointed out:

- (1) Blood tests cannot be ordered by the courts in quotidian manner.
- (2) Applications containing the prayers for blood test for taking up mindless inquiry cannot be entertained.
- (3) The presumption of Section 112 can only be rebutted when the husband establishes non-access.
- (4) Neither any child should be labelled as a bastard nor any mother be called as an unchaste woman.
- (5) This blood tests cannot be conducted forcibly.

In *Bhartiraj v. Sumesh Sachdeo and ors.*, 1986 AIR All 2591 court held:

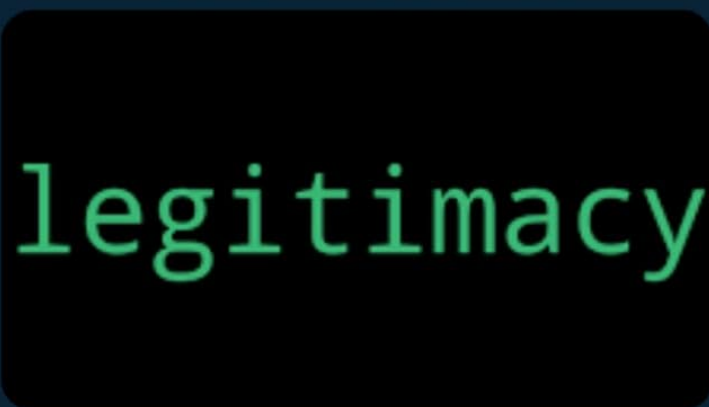
“The position which emerges is that depending on the type of litigation, samples of blood, when subjected to skilled scientific examination, can sometimes supply helpful evidence on various issues, to exclude a particular parentage set up in the case. But the consideration remains that the party asserting the claim to have a child and the rival set of parents put to blood test must establish his right so to do. The court exercises protective jurisdiction on behalf of an infant. It would be unjust and not fair either to direct a test for a collateral reason to assist a litigant in his or her claim. The child cannot be allowed to suffer because of his incapacity; the aim is to ensure that he gets his rights. If in a case the court has reason to believe that the application for blood test is of a fishing nature or designed for some ulterior motive, it would be justified in not acceding to such a prayer.”

But few recent judgements seems to have completely ignored the noble cause behind Section 112 and thus the scientific tests are given precedence over the test provided by law under Section 112, Evidence Act.

In the case of *Dipanwita Roy v. Ronobroto Roy.*, the honourable Supreme Court gave the following observations which seems to have given a new meaning altogether to Section 112:

“We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancement and DNA test were not even in contemplation of the legislature. The result of DNA test is said to be scientifically accurate. Although Section 112 raises a presumption of conclusive proof on satisfaction of the conditions enumerated therein but the same is rebuttable. The interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. In our opinion, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former.”

The Court also gave reference of the observations given by the



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be very clear to us that section 112 is talking about the legitimate father of the child i.e. the one who is to be regarded as the father of the child ‘as per law’ even against the fact that he may not be the natural or the biological father of the child. Thus, the point to be stressed here is while dealing with the cases of disputed fatherhood, the protection afforded to the child by virtue of

Court in cases of Bhabani Prasad Jena's case, and Nandlal Wasudeo Badwaik's case, wherein the Court has held that in given facts and circumstances, the Court can make necessary orders for conducting DNA test, to test the veracity of the allegations made by the father of that child, whose legitimacy is in question. But it should be strictly borne in mind that such scientific tests cannot be ordered with a casual approach.

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COMPARATIVE ANALYSIS OF THE FUNDAMENTAL RIGHTS IN THE 1972 AND 1978 CONSTITUTIONS OF SRI LANKA

- H.D.P HANSINI

Sri Lanka is a free, independent, democratic, and sovereign country in the Indian Ocean. It has a prolonged history of several rulers ranging from Portuguese, Dutch to British. As a result, the laws of Sri Lanka are varied and the common law of the country is Roman-Dutch law. Now, the constitution is the supreme law of the land and it has several provisions made for the betterment of the country. Until gaining its independence in 1948 the country had several legislative councils, but it was in 1972 that it gained its first republican constitution. The Constitution of the Democratic Socialist Republic of Sri Lanka in 1978 was the second republican constitution.

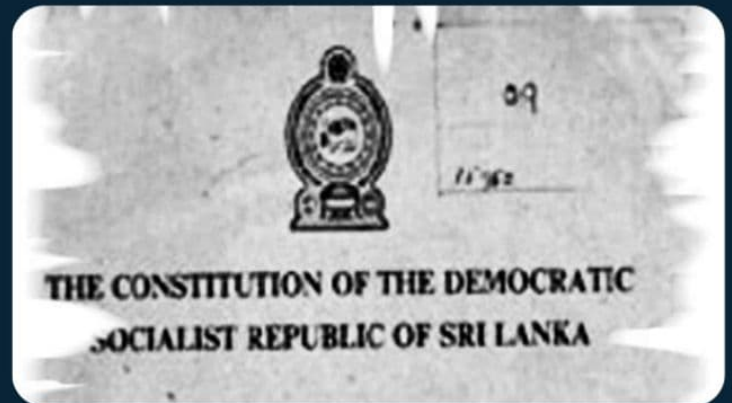
Fundamental Rights are often viewed as the most significant provision in a constitution. Since both 1972 and 1978 are written constitutions, Sri Lanka has a rigid constitution. In a written constitution, Human rights become Fundamental rights and apply to every human from birth till death. They maintain and protect the respect, peace, equality, and fairness of the citizens. It can be seen that the implantation of Fundamental rights in both constitutions is based on UDHR.

Although both the constitutions were made with the aim of good governance and protecting peoples' rights there are several dissimilarities on the topic of Fundamental rights between both of them.



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The 1972 republican constitution first implemented fundamental rights in section 18, chapter (vi). This chapter enumerates several rights for the betterment of the people and states that every person is treated equally before the law, that no person has the right to intentionally kill or harm another person, any person may be arrested or imprisoned after lawful authentication and people



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the right to choose the religion of their preference, they also have the right to enjoy their culture and associate with the other people without any disturbance to others. They have the freedom to engage in speeches and to assemble with others, while also preventing discrimination based on gender, race, or caste. Moreover, citizens can choose any place of residence inside the country without disruption. There are various similarities and dissimilarities when comparing these rights with the present constitution.

The 1978 constitution, developed and advanced from the previous constitution of 1972, the provision of the fundamental rights can be found in Chapter (iii) of the constitution from section 10 -17. Here major changes compared to the 1972 constitution can be felt. People have been given the freedom to get involved with any religion and thoughts and are also prevented from torture.

Section 12 provides equality among all people without any discrimination may it be women, children, or differently-abled people. Additionally, people can't be arrested or sentenced without a fair trial following the law. People have the right to express their ideas peacefully and the freedom to conduct speeches or to associate. More so, as a result of the 19th amendment people have been given the right to obtain information under section 14(A). Section 15, 16, and 17 contain the limitations to these fundamental rights and remedies. People can directly approach the Supreme Court when their rights get violated according to section 118 (b); it has the sole authority to engage in protecting Fundamental rights.

On the point of dissimilarities between the two constitutions, it is

felt that the 1972 constitution mainly focused on civil and political rights while the present constitution is concerned about civil, political rights as well as economic, cultural, children, women, and disabled peoples' rights. The present constitution also bears signs of the Bill of Rights but this can't be seen in 1972. Additionally, the present constitution engages solely the Supreme Court to authorise the rights but it is absent in the 1972 constitution. The present constitution also features the newly granted right to access information, unlike its predecessor. Section (3) of the present constitution holds Fundamental rights as a component of people's supremacy, unseen in the constitution of 1972. Section 4 (d) in the present constitution also additionally mentions that all Fundamental rights of every person must be. The Constitution of 1978 allows a friend of the detained to file an application if a fundamental right gets violated absent in the 1972 constitution. Furthermore, the establishment of a Court of Appeal in every province an important act under the present constitution cannot be seen in 1972. This constitution also recognises rights such as the right to life, elders' rights, and family rights under the Fundamental rights which aren't in 1972. When compared to the previous constitution, the present constitution features well develop and advanced fundamental rights.

To protect and promote Fundamental rights, a Human Rights Commission was implemented in 1997 along with a Human Rights Commission of Sri Lanka Act no 21 of 1996. This commission has the authority to investigate the violations and give suitable judgements and provide remedy. Still one deficiency in the constitution remains, even though several rights are expressed, the 'right to life' isn't specifically mentioned in the constitution. The development and protection of fundamental rights in the country, are indirect attempts at reducing poverty and hunger among the people, providing equal education to all the students, increasing the involvement of women in work to obtain gender equality in the society, and lastly, developing international relations with different countries.

Fundamental rights are known as the most important elements of a written constitution as they not only benefit the people but also the country. They play a significant role in a persons' life, from survival to using them as a defense for difficulties stemming out of inequalities. It is important to have fundamental rights along with a written constitution, for it helps observe the rule of law; meaning 'no person can act above the law' and maintains stable democracy in the country. This helps develop international relations with different countries and their people. In conclusion, it can be stated that Sri Lanka is a democratic country where every person has the ability and privilege to enjoy their rights except when violating the rights of others. This can be seen as an important step in the country's development.

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NOTES:

1. There are several laws that can be seen in Sri Lanka and they are Roman Dutch law, English law, personal laws, statutes and customs. Kandyan law, Muslim law and Thesawalamai Law which also applies for the inherited people of Malabar who lives in Jaffna are known as the personal laws which are seen in Sri Lanka.
2. There are various legislative councils which can be seen in the past and it was begun from Colebrooke- Cameron in 1833 and followed as Crew McCallum Reform in 1910, Manning Reform in 1920, Manning Devonshire in 1923, Donoughmore Reform in 1937 and Soulbury constitution in 1947. Sri Lanka got independent in 4th of February, 1948 and for the 7th constitution as a republic country was introduced in 1972 as a replacement of the Soulbury Constitution.
3. Universal Declaration of Human Rights is known as UDHR and both constitutions are made based on that. United Nations' General Assembly introduced UDHR to protect peoples' rights and this can be known as an international organization which used by most of the countries. This is also known as the Universal Declaration of Human Rights is known as UDHR and both constitutions are made based on that. United Nations' General Assembly introduced UDHR to protect peoples' rights and this can be known as an international organization which used by most of the countries. This is also known as the International Bill of Rights and the 10 basic components are used. They are as follow, (1) right to equality and prevent discrimination (2) right to live (3) prevention of maltreatment (4) every person is equal before the law (5) fair trial should be granted before punishing (6) maintain the privacy among people (7) freedom to choose any religion (8) freedom of opinion (9) education is a must to give and (10) people should have the ability to assemble and associate peacefully are the 10 general components which are used in implementing the rights for every person.

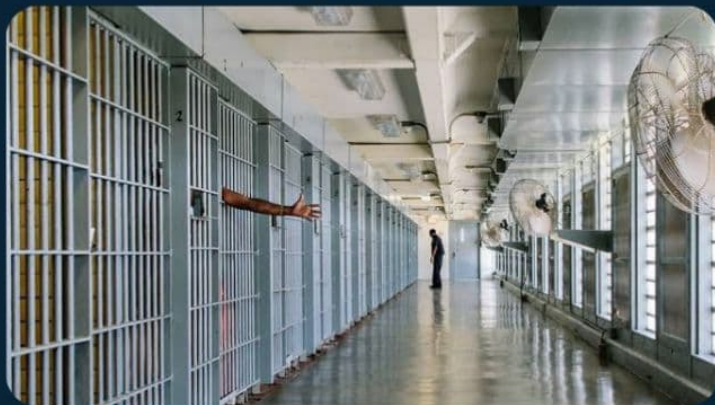
attentive to your own intrinsic bias. If you characterize an industry trying social fora as a dealing forum, it's significant to keep your piece constant with your brand and share aspects on your timeline that make consumer connections, line up with your importance, or showcase actual topic.

Erroneous information on social fora may be inevitable. But you can assist in ending the spread by believing crucially. Conserve a decent classification of attention for what you research on your feed, understand how social fora arenas curate what you watch, and utilize investigative exercises often. Social fora are influential equipment, for both industries and people when mannered with reasonable purpose and reflection.

JUSTICE FOR ALL BUT PRISONS FOR SOME - BHAVISHYA SHAKYA

Despite the Supreme Court ruling that access to justice is a "fundamental right", the unfortunate reality suggests that it is not accessible for many and is unequally dispensed across states, classes, and other social and economic groups. Nothing highlights this divide better than the recently released India Justice Report 2020, indicating the work undertaken by all the states, and subsequently the whole country, in ensuring a fair level of justice for the citizens. Although there are many kinds of justices such as social justice and economic justice, the report primarily focuses on the state of legal justice available to the citizens.

The facts from the report paint a rather gruesome picture; Firstly, two - thirds (70 %) of India's prisoners have not been convicted so far, meaning the majority of the overcrowding is a result of the huge number of undertrials in custody awaiting investigation, inquiry, or trial. Secondly, currently of the total 4, 78,600 prison inmate population of the country, 3, 15,409 or 65.90 % belongs to OBC, SC, ST. Upon further analysis, it is found that of the 65.90 % of inmates, 34.01 % - (1, 62,800) belong to OBC, 20.74 % (99,273) belong to SC and 11.14 % - (53,336) belongs to ST Adivasis. Thirdly, the statistics for female inmates tell a similar story. Accounting for only 4.14 % of the population that is 19,913, almost 32 % that is 6,360 belong to OBC while 4,467 (22.43 %) were SC and



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2,281(11.45 %) were ST and 5,236 (26.29 %) belonged to the other category.

This raises many concerns. But the most importantly, why is it that the majority of under-trial prisoners belong to the backward, Dalits, and Adivasi backgrounds? There are various views on the

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matter; some extreme one's going as far as to justify this apparent injustice by placing greater criminality on members of these backward classes. But is that a thorough approach to the whole matter? A case by case analysis provides a better insight:

OTHER BACKWARD CLASS (OBC)

The term OBC was first mentioned and finds its emergence from the recommendations of the Mandal commission, 1980. The castes included under this category are socially and educationally backward castes such as; Kushwaha, kachi, kurmi, Patel,koeri, jaat, gurjar, ahir, Yadav, Prajapati, Dhiman, etc. The majority is rural and professionally engaged in farming, cattle raising, and artisanship. Although the Mandal commission may have brought the plight of the OBC to the attention of national-level politics, it is not unreasonable to conclude that in recent years they have been reduced to a vote bank for politicians. This is asserted because despite their recognition, they still remain backward economically, politically, and socially. Recently whilst answering a parliamentary question, the Minister of State for Personnel, Public Grievances and Pensions, Jitendra Singh told the Rajya Sabha that out of 82 Secretaries to the Government of India, only four were from Scheduled Caste or Scheduled Tribe communities and zero from other backward class (OBC).

Much like the tales enumerated in autobiographical movies such as Pan Singh Tomar, most of the OBC criminal activity and violent gangs such as Mallah, Kushwaha, Gurjar, Patel, Lohar, Meena, Jatt, etc, are a direct consequence of the injustice inflicted upon them by the Administration. Their criminal actions are usually aimed at ensuring the protection and enforcement of the Rights

of their community. The 2016 analysis of the Death Penalty India Report by the National Law University, found that of the 279 prisoners on death row, 127 or 34% were from the backward classes. In comparison, the ones from the general category only constitute 24%. The OBC owing to the law of education, awareness about their rights and legal aid, socioeconomic status are much more vulnerable to being caught by the police and falsely detained. This demonstrates a problem within the system.

SCHEDULED CASTE

In the words of Kumari Selja, an Ex-Minister for Social Justice, India, "As a society, when we hear about untouchability practices, we should feel outraged, as we would with other criminal acts like murder and rape. It's time we accepted that the practice of untouchability is not the vestigial remains of some backward, social phenomenon or tradition: it's a criminal offense. Let's start calling it what it is."

Despite government policies, the Scheduled Caste, remains vastly underrepresented in every field from education, medical, sciences, politics, sports, etc. Much of this may have to do with the stigma attached to their social status. As the majority are labours, cleaners, daily wagers in rural or in urban areas without much property to their name, their position is perceived as somewhat lower. This resulted in them falling victim to injustices, all the way back in history to the present day, such as being even being discriminated at the village level. Due to their lower position within the community, in case an FIR is registered an SC citizen, it becomes easier for the police to arrest them because of the lack of legal aid or support available to them because of the influence of powerful and usually an upper-class member of the village community such as the Pradhan or Sarpanch.

ADIVASIS OR SCHEDULED TRIBE

Members of ST have long suffered from the stereotype of being habitual criminals, placed upon them by the British during colonisation, by enacting discriminatory statutes such as the Criminal Tribes Act, 1871 when entire communities were forced into isolation and cut off from the normal village life in states like Meghalaya, Assam, Nagaland. This isolation leads them to develop their laws and customs as opposed to the mainstream. Usually, they are arrested because they traditionally view forests as their home and not government territory. Post-independence, the Indian government following in the footsteps of their British counterparts enacted the Habitual Offenders Act 1952; releasing lists and classifying many Nomadic, Semi-nomadic Tribes as habitual offenders. To this day the Adivasi are haunted by this colonial legacy. Making it substantially easier for the police to detain tribe members at any time and file charge sheets riding on these colonial stereotypes. Many tribal and Adivasi Activists continue to fight for the repeal of this act but no progress has been achieved.

MEASURES TO ENSURE JUSTICE IN ALL SPHERE

The Criminal justice system needs revolutionary reforms within every organ

POLICE

WHERE ARE THE SC, ST, AND OBC OFFICERS?

To keep the police in check and stop them from abusing their power, there needs to a substantial representation of every caste

and gender in the force itself. Karnataka serves as a good example, having a large number of women prison staff and not only met but exceeded its SC, ST, and OBC quotas for police officers and constables. The police needs to be reformed into a representative organisation devoid of its current colonial, elitist hangover and be held to account for their actions to better protect vulnerable communities like SC, ST AND OBCs.

COURT ROOMS

We need to ensure a diverse and equal representation amongst judges, prosecutors, judicial clerks, and advocates belonging to every caste, gender, region, etc. Additionally, the collegium system which encourages nepotism; hegemony by limited families should be displaced and instead, there should be an implementation of reservation in the judiciary to ensure diversity.

PRISON DEPARTMENT

As discussed before much of the overcrowding is a result of the huge number of undertrials in custody awaiting investigation, inquiry, or trial, constituting nearly 70% of all prison inmates. Statistics suggest that in 35 States and Union Territories, the share of under-trial inmates was above 50 percent of the prison population. Nationally, over the last three years, the average vacancy levels across all prison staff remained at a little over 30% but ranged from 29% among cadre staff to 42% among correctional staff. The disparity in the treatment of the rich and the poor within the prison system is quite jarring. Where high-profile inmates are treated close to royalty and the ordinary inmates live in pathetic conditions. A diverse background of prison staff would along with more frequent and timely visits from the District judge, and SP of that district would vastly help in improving that. Furthermore, the incorporation of technology such as blockchain, CCTV and GPS, can help keep the prison administration accountable for their actions.

AWARENESS

Wider awareness may it be educational or legal is the driving factor in ensuring justice and protection against arbitrary acts of the police or the public.

LEGAL AID

There is an imminent need for more para-legal volunteer and legal clinic professionals from diverse families to ensure justice for all. The current situation does not represent that. For instance, nationally, the share of women amongst empanelled lawyers has remained stagnant at 18%, more problematically there is no data on how many lawyers belong to the obc, sc, st, or the LGBTQ+ community. This needs to be remedied to ensure that all communities can get access to justice.

POLITIC REPRESENTATION:

This may be summed up by this quote: जिसकी जितनी संख्या भारी उसकी उतनी हिस्सेदारी - कांशीराम

CONCLUSION

All because
we were in the wrong place
we were in the wrong skins
we were in the wrong time
we were in the wrong bodies

we were in the wrong country
 we were in the wrong
 were in the wrong
 in the wrong
 the wrong
 wrong

All because

they were in the right place
 they were in the right skins
 they were in the right time
 they were in the right bodies
 they were”

– Ibi Zoboi, *Punching the Air*

RECOGNITION OF PASSIVE EUTHANASIA – SIDDHI MEHTA

INTRODUCTION

With technological advancements augmenting at very fast pace, human life is also thriving and uplifting its standards of living. There has been immense preferment in medical science which has created positive impact in human life. Every machine and every practise is characterised as a step towards enhancement. Human life is the most significant part of existence and efforts are made to protect it. But certain conditions are beyond the control of humans as well as science and they turn out to be hostile and generate incapacity to overcome them. In those circumstances, the choice has to be made between life and death and even if life holds utmost importance, suffering surpasses it and the preference is given to surrender to death. The concept of attaining death because the pain is intractable and recidivous so as to depart without extreme suffering is Euthanasia. It is a practice of ending a person's life to provide relief from incurable distress. It is done to ensure painless death to person who has no signs of betterment left.

MEANING AND TYPES

According to Black's Law Dictionary, Euthanasia is defined as an act of killing a person or causing the death of a person who is in a permanent vegetative state or suffering from an incurable disease. It is derived from Greek words 'eu' and 'thanatos' collectively meaning easy death or good death. There are different types of Euthanasia enlisted as follows-

1. Active Euthanasia which involves giving lethal substances to end patient's suffering.



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2. Passive Euthanasia which subsumes removal of life-saving devices or to stop giving medication. It is a practice of ending life in natural ways.

3. Voluntary Euthanasia which is performed on express desire of the person suffering.

4. Involuntary Euthanasia which is carried out without the



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consent of the patient and it amounts to an offence.

5. Non-voluntary Euthanasia which is undertaken by the consent of relatives of the patient as he is not competent to inform his request to die or give any directives for the same.

Passive Euthanasia is commonly engaged in by the doctors. The law in our country had provisions which could contradict this principle but in the recent judgement of Supreme Court, it was distinguished from the other offences. The practice of Passive Euthanasia is now legalised and doesn't amount to any offence hereafter.

INDIAN PRECEDENTS

The main Indian cases which played major role in determining the faith of legalising passive euthanasia were Maneka Gandhi case, Gian Kaur case, Aruna Shanbaug case and the very recent Common Cause case. There were other judgements as well but these were the ones which actively got attention and were highly celebrated as well.

In Maneka Gandhi, scope of article 21 was widened. It is the leading case for recognising the right to personal liberty. The inclusion of 'right to die' within the ambit of article 21 further aggrandized it. Gian Kaur pronounced that both active and passive euthanasia and assisted suicide were unlawful in India. This was in line with sec. 306 and sec.309 of Indian Penal Code which stated that abetment of suicide and attempt to commit suicide were punishable offences. The Supreme Court in Aruna Shanbaug held passive euthanasia as legally valid under exceptional circumstances. Finally, in March 2018, a landmark verdict of giving legal protection and recognition to passive euthanasia was announced in the Common Cause case. The Apex court introduced guidelines for performing euthanasia and gave a strenuous interpretation of right to life including right to die.

PRESENT SCENARIO

Article 21 is a fundamental right. Its ambit is widened in recent times because of which right to die in read in addition to right to life. The contradiction intervenes when religion comes into the picture. There are still debates on constitutionality of legalising euthanasia. People of different religions have different faiths and values. Every person looks at it through his own glasses of beliefs. Hindus have given mixed reaction to this. Some of them believe that a person must depart free from misery and sufferings. They welcomed the decision. Some opined that killing a person before the time has time leads to disturbing the natural cycle of life and death. It is heinous and against the laws of nature. Muslims profoundly opposed it. They believe that life is a gift of Allah and he is the only supreme authority to take it away, no one has a right to interfere with the health of a living person. Christians were against it as well. They believed that only God has power to give and take one's life. Sikhs also regarded it as interruption in God's plan. These mixed opinions make it hard for pragmatical undertaking. Religion plays significant role in individual's life as the practices and working of his life is in accordance with it. To choose between legal right and religious belief is extremely difficult. However, the Court has given applauding performance and now it is the time for people to understand and accept it. The favourable outcomes would be achieved once people start affirming and approbating it.

CONCLUSION

The prevalent notion of defining life as a gift of god and

terminating it before his will was considered unethical. With changing times, this perception has only changed and now people consider that right to life includes living with dignity and right to die as well.

Liberty to die must not be read in isolation. It must be considered as a vital right under article 21. The main concern in society is to improve quality of life and to ensure the same, sufferings and misery have to be minimised. The Law Commission of India in its 196th report drafted the Bill named as 'Medical Protection of terminally ill patients (Protection of Patients and Medical Practitioners) Bill to emphasise the need for legislation related to deceased who wanted natural death. The bill was a lauding and praise-worthy step taken for the good of those suffering. As much as people who are healthy and doing fine have this right, the ones who are in vegetative state also have it. If it is known that their condition is not going to get better than the viable solution is to end their life in order to free them from agony and hardships. The concept of passive euthanasia is developed for betterment of society and it shall get moral and rational acceptance.

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AN OVERVIEW OF SECURED SMART CONTRACTS - AVINASH PANDEY & JASPRIYA ALUNG

INTRODUCTION

Smart Contracts are essentially self-accomplishing arrangements that take place virtually through blockchain technology to give a trouble-free accomplishment of the contracts. The most fascinating aspect of the blockchain is its decentralized nature which removes the condition of the intermediary, mainly it preserves time and bypasses any sort of future conflict that may arise due to a third party. During the process of smart contracts, the crucial clauses of the agreements which exist between the buyer and seller gets recorded in the sequence of the code. Blockchain technology includes the code of the agreements, the codes also consists of erudition that performs the transactions and assures that the transactions can be traced and are immutable.

SUGGESTIVE PLATFORMS OF SMART CONTRACTS

1) ETHEREUM

Ethereum is a suburbanized platform that can execute smart contracts. Ethereum created its own coding languages with the motive to help users who are using common applications. The adjustment system of the Ethereum is engrossing, wherein, it utilises record-based data standard, in which every participator is recognised by its digital purse.

2) HYPERLEDGER FABRIC

Hyperledger Fabric is also a shared entries platform that is normally used for operating smart contracts. Ethereum performs smart contracts through digital machines but when it comes to



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Hyperledger fabric, it uses various high-tech algorithms perform the code. Most of the time, Hyperledger Fabric uses an extraordinary level of sophisticated programming codes which makes the whole process very efficient.

3) CORDA

Corda is recognised and efficient for virtual money applications. Corda principally carries out a very essential job of storing and concocting all the past virtual asset accounts. Corda uses a transaction-based prototype. Many private organizations and institutions use Corda with the purpose to establish a secured platform for the private exchange of their virtual assets in a private manner.

4) STELLAR

Stellar is a more updated and advanced version as compared to Corda. It is the most secured platform for virtual currency applications. Stellar is more manageable and more convenient. The stellar provides extensive alternatives of languages such as Golang, Python and many more which is a very rare feature.

PERILS OF SMART CONTRACTS

PREVAILING ADMINISTRATIVE STRUCTURE

The prevailing supervisory structure in India is not adjustable for the enactment of smart contracts. There are no established statutes administering smart contracts. The IT act is absolutely unclear pertaining to the smart contract, validation of smart contracts can be only done by acquiring certified electronic signatures but there is no such authority with such powers. Till now we don't have any statutory provisions regulating crypto trades in our nation. For making virtual transactions certified electronic signature is a must, yet, we don't have any authority who regulates the same. The government must include all the necessary authorities for monitoring and managing the virtual contract.

INCERTITUDE

There are several conditions in the smart contracts that are vague thereby exposing it to a number of reviews. When smart contracts are performed, such conditions would drive to complications and confusion among parties which would be very challenging to hold transactions midway or to alter them. There are no rules and statutes purveying particularly to smart contracts in India which moreover produces a difficulty when disagreements or misunderstandings occur among parties in such circumstances and the jurisdiction of courts which would receive, hear and settle such matters as transactions take place over the internet.

COMMERCIAL CRIMES

Since these agreements are self-performing without human interference, there is a tremendous risk of terrorism funding and currency laundering and non-acquiescence of relevant laws.

AUDITS



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Security statements for smart contracts can be very complicated in several matters linking to the transactions and their purposes and also costly as corresponded to Traditional contracts.

SHORTAGE OF PROFICIENT DEVELOPERS

Smart contracts are formed on blockchains utilising specialised

applications and cyphers but considering The Novelty of the concept in the Indian regime, there is a scarcity of proficient developers thereby delivering inadequate source codes exposed to hacking.

BENEFITS OF SECURED TRANSACTIONS

EXPEDITIOUS METHOD

Smart Contracts have the convenience of accomplishing assignments speedily and with magnificent capability. Smart Contracts concentrate on decreasing human interruption therefore, it reduces human flaws like time allocated in doing paperwork, improving error in reports and etc. Machine cyphers eradicate such flaws.

UNIMPEACHABLE

Smart Contracts are based on prearranged instructions that are automatically administered at every step of a contract. Hence, it excludes every possibility of such a transaction being handled or tampered with.

UNHARMED

Smart Contracts is remarkably secured for the transactions and the agreements. A smart contract takes place through a very solid encrypted process. Each section carries knowledge and for modifying that, one will have to hack all the segments in succession as they are complementary to each other.

DECREASE OPERATIONAL EXPENSE

With the advantage of reducing human flaws, the bordering value like fees, expenses, procedural charges, prices associating with different rules and paperwork are also reduced. Essentially when the purpose of a mediator is placed aside the expense associating with such emissaries also annihilate.

THIRD PARTY INVASIONS

There is very imminent intimidation of third party invasion. The hackers principally target the vulnerabilities present in the codes of the system or in the contract itself. Sometimes they do target smart contract platforms such as Ethereum. In many cases, the parties claim the compensation from the developer as a breach of the contract due to a lack of security. Perhaps, the aggrieved party could seek a doctrine of carelessness, which would be a tenuous method of restoration at best and would be based on clarifying there is a responsibility that flows from the developer to the user.

CURRENT INDIAN SCENARIO PERTAINING TO SMART CONTRACT

The position in India with regards to the smart contract is notably complicated. The stand of the government regarding Cryptocurrencies is unclear till now, which is definitely a roadblock for the smart contract. The smart contract has a tremendous future in India. A nation with a huge population using digital payment on a daily basis for each and every stuff switching to the smart contract would be an instantaneous history-making step. The algorithms used by smart contracts makes it more captivating and more efficient as compared to other technologies in the filed. Still, there is an unsolved dilemma that exists as to how to include cryptocurrency, smart contracts and their

respective taxation part in the Indian laws. In case a smart contract comes into the picture, then the government has to include all types of dispute mechanism with respect to the smart contract and cryptocurrency in order to avoid all future chaos.

CONCLUSION

The functioning, relevance and use of Smart Contracts under Blockchain Technology are moderately transparently described earlier. Whereas, the statutory position of Smart Contracts in India is tolerably suspicious. The issue of the legality of cryptocurrency and the proposed block over uncertified digital signatures makes it a pretty dicey thing for all the possible users of such technology. It's just that the administration is taking more extra time in the creation of sanctioned provisions explicitly explaining titles like Smart Contracts, digital modes of currency and the judicial aspect connected to it. Various nations have their own legislation governing cryptocurrency, blockchain and smart contracts. Therefore it's high time India clarify its position concerning Blockchain and Smart Contracts. The fact remains the same that the smart contract would be very serviceable in order to reduce the costs and time, it would be a very secured process. The government can look into the Indian evidence act 1872, Information technology act 2000 for inserting some very stringent laws pertaining to smart contracts and cryptocurrency or to effectively remove any futuristic regulatory issues the government has to draft new legislation accordingly.

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DISSENT AS A FUNDAMENTAL RIGHT: A STUDY OF THE CONTEMPORARY SITUATION IN INDIA

- TAUSEEF JAWED

Article 19 of the Constitution of India guarantees, Right to Freedom of speech and expression as a fundamental right. This fundamental right of freedom of speech and expression is considered one of the primal rights of an individual human being. The apex court in a famous case of Re- Ramlila Maidan Incident Dt v. Home Secretary, observed that the freedom of speech and expression are the essence of a democracy and there could be no expression without ensuring these rights. However, this right is not absolute and is subjected to certain reasonable restrictions such as sovereignty and integrity of India, The security of the State, Public order, Decency and Morality among others.

DISSENT AS A PART OF FREEDOM OF SPEECH AND EXPRESSION

Right to express dissent is part and parcel of the freedom of speech and expression guaranteed by the Constitution of India. Justice SK Kaul observed in the hearing of the famous Shaheen Bagh Protest Case that, "Democracy and Dissent go hand in hand, but then the demonstrators expressing dissent have to be in designated places alone" which means that though dissent is an essential element of a democracy and is a fundamental aspect of strengthening and forming a more vibrant, robust democracy, the citizens need to follow a particular channel of expressing their dissent, which in no circumstance should cause damage to the state or private property, or harm any individual and should not cause inconvenience to the general public. If the protesters who while expressing their dissent cause or plan to cause any inconvenience or nuisance either towards the state or towards



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general public, then the Government has the power to impose Section 144 of the CrPC, thereby restricting public gatherings at a particular place. Keeping the fact in mind that the Constitution of India provides reasonable restrictions upon the fundamental right to freedom of speech and expression, the Constitution of India is itself determining the scope and ambit of dissent that is permissible and acceptable. However, the protests taking place these days are not clearly in line with the spirit of the Constitution of India. For instance, the protests against new farm laws, which eventually led to a protester to climbing up to the flagpoles on top of the red fort and unfurling a flag of religious orientation is definitely not something which the Constitution of India expects or permits. Similarly, the calm method of blocking of public roads as was seen in some parts of Delhi in furtherance

of the Anti-CAA protests, also leads to inconvenience to the general public. It is also not in line with the spirit of the Constitution of India, because it clearly leads to deforming of the public order and also comes at a cost of grave inconvenience for the general masses. Article 51A of the Constitution of India calls for the fundamental duties to be fulfilled by the citizens of India. If the Constitution of India is providing us fundamental rights then at the same time we should not forget about the fundamental duties that the Constitution expects us to discharge. Therefore, it is imperative that the citizens find a balance when they exercise their fundamental rights and in upholding their fundamental duties.

STANDPOINT OF SEDITION LAWS

Section 124A of The Indian Penal Code (hereinafter, the IPC) which lays down punishment for sedition and is in furtherance of the reasonable restrictions upon the fundamental right to freedom of speech and expression. This particular provision was not a part of the original draft of the IPC during the British era and was later added by an amendment act of 1898, and instead of parting away with this draconian law which was originally introduced in first place to target and penalise the Indian freedom fighters in order to slow down the Indian Independence movement, however, our Legislators still couldn't leave the baggage behind and move on, whereas other countries like the United Kingdom have already abolished their sedition law in the year 2009 itself. Its even more surprising to know that the text of the section 124A of the IPC still remains the same, unchanged for all practical purposes, which means that the same section was used to put Mahatma Gandhi behind the bars, the person who would have never incited violence or public disorder, but was unfortunately punished on those particular grounds. In Australia, the Australian Law Reform Commission (ALRC), recommended to remove the word 'sedition'. This recommendation was taken-up by the Parliament of Australia, and the term was replaced with 'urging violent offences'.

There have been reported allegations on the misuse of this sedition law upon the dissenting media voices, for instance, during the protests against new farm laws, few journalists including some senior journalists as well were charged with



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sedition for their report and social media posts on the incidents that took place during the new farm laws protest. A number of police complaints in different states were filed against Mr. Rajdeep Sardesai, a senior anchor on the India Today television channel as well as against Mr. Vinod Jose, executive editor of a magazine named 'Caravan'.

The Editors Guild of India then expressed their concern over the matter and were disheartened and shocked to know that criminal charges were lodged under a number of laws, including the sedition law.

In another surprising incident, a 22-year-old environment activist Disha Ravi was charged with the sedition law and was arrested for allegedly creating a toolkit for the farmers' protest in India. Former Apex Court Judge, Justice Deepak Gupta expressed his views on the toolkit case and said that in the past years there has been an "exponential increase in arrests" which has led to and stirred a sense of fear.

We need to understand that though there is a fundamental right to freedom of speech and expression which is guaranteed by the Constitution of India, but at the same time we need to keep in mind the reasonable restrictions upon those rights as well. Dissent and criticism are the essence of a democracy and reminds the government of their duties. It is needed to address the critical issues and make necessary improvements. The government must not take dissent personally, rather they should try to align their actions with the Spirit of the Constitution of India. In a country as diverse as India, it is nearly impossible to address each and every issue and to please each and every citizen, but if a significant number of people are raising their voices against a particular state action, then the government needs to at least address them and discuss upon the issue. At the same time, it is the duty of every citizen of India, that if they disagree with any action of the government, then they should follow bare minimum manners to express their dissent along with keeping in mind the reasonable restrictions to article 19 (1) of the Constitution of India. Nothing is above Constitutionalism. Activities like blocking of public roads, damaging and vandalising state or private property, creating nuisance for the general public should be stopped and strongly discouraged, as it is not only wrong morally but wrong from the legal point of view as well. Of course, it is necessary to protect the integrity and security of the nation, but if the government is not ready to entertain positive criticism which is very much essential for holistic development of the country as well as of the people of the country, then there would be not much of a difference between the pre and post-independence era.

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TESTS FOR DETERMINING COPYRIGHT VIOLATION

- MINDALA NAGASAI

INTRODUCTION

Copying is the act which is known to every person as people in this technologically advanced world are reluctant to work hard and instead working smartly. We being the students might have came across the word copying many yet times especially during the examinations, during home works and so on.

So unlike our retina or finger impressions where they are not same with any other person in this world there are laws governing and regulating the similarity in the works of two or more people. No two people on Earth are alike similarly no works should be same. In the recent past we heard or read some news articles on copyright infringement from the film industry.

COPYRIGHT LAW:

In India, the copyright law provides for the protection of works created in India. The statute which deals with the copyright matters is the Copyright Act which was originally taken from United Kingdom. The above said act provides protection to the owner of various work including music, movies, literature and so on and any violation of the rights results in the copyright infringement.

WHAT IS INFRINGEMENT?

For proving that a particular work has been plagiarised or copied then there must be evidence supporting the existence of a previous work from which the allegation of copying was made. The principles of copyright law do not purport to give a monopoly in ideas or in mere words, but in the particular forms, or media, for reproducing or communicating ideas or in other words, in the expression of thought, and in the case of a literary work, the expression of thought in print or writing. According to Justice Woolsey the cardinal principle i.e. "the first question in a case of alleged literary larceny is whether there is any direct evidence of access by the defendant to the plaintiff's book."

The sine qua non of copyright infringement is simply ownership of a valid copyright and copying by the defendant. Further



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copying is rarely admitted, it is generally established by showing that the defendant had access to the copyrighted work and the infringing work is substantially similar.

HISTORY OF PLAGIARISM:

Plagiarism is not a modern sin. It has a way back history. Before



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2000 years there was a complaint of plagiarism. Many famous authors have been accused of plagiarism. There is a history of literary constables in England where in the 17th century the officers of the Stationers' Company, due to the prevalence of literary piracy, were under the necessity of acting as a kind of literary constables to seize all books that were printed contrary to the licence of the company granted to the copyright owner.

The main reason for an increase in the plagiarism and the infringement of the copyrights is the increase and advancement in the technology and also increase of other means of expression including literary, musical, dramatic, and artistic works.

Riddell Justice has stated some principles based on which plagiarism can be proved. The following are the principles set out:

1. Similarity of language
2. Common inclusions
3. Common omissions
4. Common mistakes
5. Physical impossibility of the Outline being written independently of the Web in the time

In the case of Indian Performing Right Society Ltd v Eastern Indian Motion Pictures Krishna Iyer J., has explained the meaning of musical works as: "Indian copyright law provides protection for works created in India. Copyright act provides copyright protection to various works including original literary, dramatic, artistic, and musical works, cinematographic films and sound recordings."

NO TESTS FOR DETERMINING SIMILARITY:

In our country no test or tests have been laid down by the Supreme Court nor there were any statutory laws governing or regulating it. So it is open to the courts to follow the tests as were opined by the United States or Canada or any other foreign country till our country comes up with some new changes in this type of cases.

EXPERT EVIDENCE:

Expert is a person who has a knowledge on any special or particular subject and the Indian evidence act under section 45 defines an expert as a person who has give time and studied a special branch of subject and have the skill in related to that matters where he was asked for his opinion. This section does not provides for any particular standards or experience as a criteria for naming that person as an expert to give the evidence.

Therefore a person is said to be an expert if he has any special and peculiar knowledge in a subject. Interestingly parties approach courts with their own (specialists) experts.

COPYRIGHT INFRINGEMENT IN MUSIC:

In the present society there are frequent news of copyright infringement which relates to music and in such cases people usually come armed with experts and this constitutes a major act for any copyrighted music infringement cases wherein both the sides experts speaks in favour of that particular party. In the words of Clark J., "copyright infringement is actionable where ever there is actual copying, regardless of the degree to which the defendant used the plaintiffs work in creation of his own work."

In the Sita Nath v. Mohini case the court held that in cases of infringement of copyright, "the court should be reluctant to sit as experts and to decide without the aid of expert evidence and sec. 45 of the Indian Evidence Act (IEA) speaks about the expert evidence. Expert plays a crucial role in deciding a case."

Similarly the Bombay High Court in Ram Sampath v. Rajesh Roshan as explained in the further project has been held that in case of infringement of any copyright then the opinion of expert can be considered in finding if the person has violated or infringed the copyright of the original owner and the court has answered that in these cases the expert opinion is relevant and can be admissible in accordance with section 45 of Indian Evidence Act.

COPYRIGHT INFRINGEMENT OF SOFTWARE :

Surprisingly not even a single person is living without a smart phone and even if they don't have the bank account they will definitely have an account in at least one of the social media accounts like instagram, face book. So each of the above mentioned have its own software and its own source codes.

Now a days children including the youngsters are addicted to the games especially played in the mobile phones. Every such game has a unique software which in computer language called as a source code. So in order to identify the similarity of these games there is a need of persons having special knowledge in it i.e. experts and these experts plays a vital role in coming to the conclusion of infringement.

The opinion or testimony of an expert plays a vital role in getting to a conclusion by the judges in cases of matters relating to software hence jury considers experts as important in deciding such cases. Admitting expert testimony, however, is the equivalent of admitting an analysis of the points of similarity and points of difference between the pieces of software at issue.

The US courts have laid down the following tests in determining the substantial similarity. The following are the three tests as laid down by the courts in determining the similarity:

1. The Audience Test
2. The Intrinsic or Extrinsic Test
3. The Abstraction, Filtration, And Comparison Test

1. THE AUDIENCE TEST

The audience test was initially (first) used in the case of Arnisten V Porter. The Audience test is also known as the ordinary observers test. This test states that "substantial similarity is measured by how an audience would view the two works-would the intended audience regard them as substantially similar". In

India it is called the Resemblance Test.

2. THE EXTRINSIC OR INTRINSIC TEST

In this test as the name itself suggest that there are two steps where in the first step i.e. extrinsic test the court called this test as extrinsic as they determine the similarity through special criteria which is listed and analysed thereon. And the second step i.e. test is the Intrinsic test where the similarity is determined by comparing the expressions in both the original and copyrighted works. So the second step is basically a comparative one and it is similar to the audience test where people or audience finds the similarity between the two works.

Here in the first step or the first test the expert opinion is admissible and considered whereas in the second step or test the opinion of expert is not admissible.

3. THE ABSTRACTION, FILTRATION AND COMPARISON TEST

In this test there are three steps in total they are:

The first test is that court constructs a hierarchy of computer program abstraction.

In the second test it filters several elements such as unprotectable ones such as the programming techniques, platform determined interfaces and routines, non original modules and such other elements as excluded by various copyright doctrines.

In the third test i.e. filtration courts compare the copyright protectable elements which are left in the original program with that of the elements which are claimed as the infringed in the program.

NOTE:

The first tests are used and are suitable to determine the similarity in the cases of copyright infringement in music and not suitable for determining the similarity in the software related cases as it leads to grave injustice if the first and second test is applied so the court has developed this three step test in the case of Antonick v Electronic Arts.

CONCLUSION:

Every artistic work has a copyright. In our daily life we have seen or read about copying some ideas and using same in their movies or songs. So every judge in the court of law may not be experts on the cases which come before them. So for such cases the court may allow and even if possible admit the expert opinion if is according to the satisfaction of the court.

The courts though not specifically used any of the three tests i.e. the ordinary observer test, the extrinsic & intrinsic test & the three step test in deciding the disputes which are in respect of the infringement of copyright. Mostly courts have used the audience test (ordinary observer) in determining the substantially similarity. It has decided in some cases that the small amount of plagiarism does not amount to copyright infringement but there is an exception that if the copied portion though of small can be considered as infringement of copyright if the portion copied is the catchy part of that work. So the Supreme Court has to give some guidelines or lay down some tests in determining the violation of copyright unlike the above mentioned three tests.

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UNDERSTANDING THE PRINCIPLE OF CONSTITUTIONAL MORALITY IN THE DECADE 2010-2020 - TEJASWINI V

INTRODUCTION

A tool in the hands of our judiciary to ensure that every citizen of the nation exercises their fundamental rights by abiding by their fundamental duties, and make sure that the essence of the constitution, its ideals, and aspirations are not compromised is the principle of Constitutional Morality. It is an inconclusive yet hardened concept that gives a cutting edge to the various judgments by the apex court. The paper tries to explore the values on which the principle is built upon. It further goes on to understand the concepts of individual autonomy, liberty, equality, discrimination, recognition of identity, life with dignity, the right to privacy which is all linked and are a foundation to constitutional morality. It makes an effort to understand the relation and differences between public morality, private morality, societal morality, political morality, institutional morality as against constitutional morality.

THE ESSENCE OF CONSTITUTIONAL MORALITY:

Indian Constitution though not expressly but impliedly upholds the principle of constitutional morality through :

1. The Preamble
2. Rule of Law
3. Individual Liberty



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4. Right to Equality
5. Freedom of Choice
6. Freedom of Expression
7. Social Justice
8. The procedure established by Law
9. Due process of Law



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Constitutional morality can be expressed as a type of incomparable dutifulness to the different parts of the Constitution of the land. This doctrine lays down certain implied obligations on every citizen, to mention a few,

1. Holding in high regards the Constitution and all the authorities that derive their powers through constitution's command.
2. Accessibility to the citizen their freedom of speech to free discourse for the residents to scrutinize and consider responsible every one of those authorities acting in compatibility of their protected obligations.
3. The duty on the authorities and the government officials to adhere to the charges and powers conferred in them by the Constitution.
4. The individuals and parties contesting for political force and their resistance ought to have worship for the Constitution.

AMBEDKAR AND CONSTITUTIONAL MORALITY:

During the constituent assembly debates in 1948, Dr. B. R. Ambedkar quoting George Grote had said "The diffusion of constitutional morality, not merely among the majority of any community but throughout the whole, is the indispensable condition of government at once free and peaceable; since even, any powerful and obstinate minority may render the working of a free institution impracticable, without being strong enough to conquer ascendancy for themselves." According to him, Constitutional Morality meant coordination and cooperation between different people groups and the administration to cordially find solutions to their conflicting interests without ignoring or neglecting the ends they had to meet.

JUDICIARY AND CONSTITUTIONAL MORALITY:

Constitutional Morality has no expressed definition. There exists

no determining strategy to interpret and implement this principle. Thus, variability creeps in at the time of applying the doctrine by the judges. In this decade, the call for employing the doctrine by the judges has seen a surge than ever before. The courts have previously tried to interpret and apply the doctrine in the cases of *Kesavananda Bharti v. State of Kerala* and *S.P.Gupta v. Union of India*. Of late, the Apex court has engineered the doctrine of constitutional morality to address the issues of adultery, euthanasia, homosexuality, right of women to temple entry, inter-faith marriages.

Mr.K K Venugopal, Attorney General of India, in an online lecture series organized by Adhivakta Parishad once had said that "another power to the court now, is constitutional morality which is imbibed in the constitution that shouldn't be a ground or reason to decide on anything." The Supreme court derives its powers from article 142 of the Constitution and promises through it, to deliver complete justice to the individuals. Article 32 of the Indian Constitution gives the Supreme court the powers of judicial review, which is a massive responsibility and power. With this, constitutional morality can act as a Brahmastra in the hands of the judiciary.

The principle of personal autonomy was upheld through the application of constitutional morality in two particular cases. In the case of *Shafin Jahan v. Ashokan K.M. and others*, while deciding on inter-faith marriages, the court held that "The expression of choice in accord with the law is acceptance of individual identity. Curtailment of that expression and the ultimate action emanating therefrom on the conceptual structuralism of obeisance to the societal will destroy the individualistic entity of a person. The social values and morals have their space but they are not above the constitutionally guaranteed freedom." Thus established that it is an individualistic and personal choice of a woman to choose her spouse and that caste or faith will not overpower her personal choices. The court had recognized passive Euthanasia in the case of *Aruna Ramchandra Shanbaug v. Union of India (UOI) and Ors.* Further in the case of *Common Cause v. Union of India (UOI) and Ors.*, the court applied constitutional morality to extend Article 21 (right to life) to include the right to a dignified death, personal liberty, and self-determination.

In the famous case of *Navtej Singh Johar and Ors. v. Union of India (UOI) and Ors.* the court observed that "Sexual orientation is integral to the identity of the members of the LGBT communities. It is intrinsic to their dignity, inseparable from their autonomy, and at the heart of their privacy. Section 377 is founded on moral notions which are an anathema to a constitutional order in which liberty must trump over stereotypes and prevail over the mainstreaming of culture." It went ahead and said "Sexual and gender-based minorities cannot live in fear if the Constitution has to have meaning for them on even terms. In its quest for equality and the equal protection of the law, the Constitution guarantees to them equal citizenship. In de-criminalizing such conduct, the values of the Constitution assure to the LGBT community the ability to lead a life of freedom from fear and to find fulfilment in intimate choices."

Section 497 of the Indian Penal Code,1860 treats a married woman as the property of the husband. It is considered a man to

commit adultery if he had sexual relations with a married woman without the permission or knowledge of her husband. It did not consider the wife of the adulterer as an aggrieved person. In the case of *Joseph Shine V. Union of India (UOI)* the Supreme Court, the above-mentioned section was held archaic and unconstitutional and the notion of a woman being the property of her husband was held to be discriminatory and opposed to the constitutional values of dignity and individuality.

Indian Young Lawyers Association and Ors. v. The State of Kerala and Ors. was a case that devised nationwide debates and discussions between societal morality and constitutional morality. It upheld Articles 14, 15, 21, and 25 by declaring the provisions of *Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965* as discriminatory against women of menstruating age and thus unconstitutional. It addressed the issues between Religious freedom in India and Individual rights and group rights. *Shanti Bhushan v. Supreme Court of India and Ors.* showed us how the judiciary is subjective in applying Constitutional Morality and how transparency in the activities of the judiciary did not come under its purview. It declared that Chief Justice is the master of the roster' and he need not consult any other judge or collegium in administrative decisions. The court trivialized the rights of SCs and ST's by amending the provisions of *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989* and including mandatory preliminary inquiry before registering a case, prior sanction before an arrest, and laid down provisions for anticipatory bail, which were in absolute contradiction to the objectives of the Act. In the case of *Subhash Kashinath Mahajan v. The State of Maharashtra and Ors.* The court watered down the essence of reservations in promotions in the case of *Jarnail Singh and Ors. v. Lachhmi Narain Gupta and Ors.*

CONCLUSION:

When we examine the cases, we see that there is always a choice between preserving group identity and interests and preserving individual identity and interests to uphold constitutional morality. Constitutional Morality being a very abstract concept and not having a definition can be understood and elucidated in a subjective manner by different judges. Constitutional morality has been used by the apex court to give out a strong message to the people of the nation that the rule of law in the land will be ensured while adopting, amending, implementing, drafting any law for the nation. While addressing any issues between different groups of its citizen, the court has ensured that the nation will adapt to advancing society and the changing requirements of the society only if it is in conformity with the aspirations of the Constitution. It is being used as a tool to regain the trust of the nation's people in their judiciary. Jawaharlal Nehru had feared that this concept of constitutional morality will make the judiciary a third authority of administration and that this will lead to conferring excess powers in the judiciary in violation of the theory of separation of powers. And it is seen that Constitutional Morality can be a tool that allows Judicial overreach at times.

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VIRTUAL CURRENCY AND BLOCKCHAIN TECHNOLOGY IN INDIA - DANISH RAINA

Currency has been an integral part of our lives since time immemorial. In the caveman era, humans used the barter system which involved the exchange of goods and services. However, the barter system failed due to glaring flaws it possessed, and there was a desperate need for a uniform standard currency and the modern form of currency we know today came into existence. The currency we utilize today has undergone numerous changes over the years. As we progress towards the realm of virtual reality, the currency we use in our day-to-day life also has observed tremendous changes and slowly is taking a digital form, which is a shift from the traditional age-old physical form. However, digital currency has undergone a giant upgrade in the last few years, and a new type of currency based on blockchain technology, called Cryptocurrency has been in the limelight.

WHAT IS CRYPTOCURRENCY?

A cryptocurrency is a type of digital or virtual currency that is secured by the method of cryptography providing it top-notch security and making it nearly implausible to counterfeit or double-spend. It is digital money that is stored typically in a digital wallet, either online, on a computer, or other hardware, and can be transferred online directly without ever going to a



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bank or using any other banking services. Cryptocurrency does not have a definite universal definition and is also referred as virtual currency or digital currency.

The definite definition for the same is "Digital currency is a form of electronic money combined with new technology involving cryptography,



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peer-to-peer networking, databases and a system of consensus" which is mostly followed by the banks.

Cryptocurrency is slowly becoming a widely accepted payment method that can be exchanged online for goods and services. Many corporations have issued their currencies, often termed as 'tokens' which can be traded in exchange for the amenities or services that the corporation specializes in. Cryptocurrency can be perceived as 'arcade tokens' or 'casino chips' as in order to obtain cryptocurrency one must exchange real currency in lieu of digital currency, just like it is done in the case of 'arcade tokens' or 'casino chips'.

Cryptocurrencies are based upon blockchain technology. Blockchain presently resides at the peak of the Hype Cycle. It is a quite simple concept, yet difficult to understand and comprehend. It is in the same position as the Internet was in 1995 - 'very early, with its major applications yet to be built.' Blockchain must be thought of as a philosophy than as a technology. It has a potential imbibed in it to transform the world just as the Internet did. It can radically change the spheres of identity, agriculture, coinage, energy, governance, and more or less everything else, especially in emerging countries like India. Blockchain is a decentralized and redistributed technology that is spread across many computers managing and recording the transactions that take place from time to time. It can be thought of as a distributed log or record enforced by a disparate network of computers. A significant feature of cryptocurrencies is that they are not issued by any central authority. Hence, making it

theoretically immune to any government interference or manipulation.

Cryptocurrencies reject the traditional method of centralized trust on some central authority and work on the concept of distributed trust which is the heart and soul of 'Blockchain Technology'. It is an intangible form of currency which is not sanctioned by any central authority that results in unforgeable, verifiable transactions which can be performed in any part of the globe. Being decentralized, there are free from the monetary policies set by the central banking authorities and depend on the market dynamics.

There revolves a mystery who invented this technology but it is believed that Satoshi Nakamoto, a kind of 'Keyser Söze of the digital era', invented it. His identity is still a mystery to the world and it is believed that Satoshi Nakamoto is just a pseudonym which could be an individual or even a group of individuals. Since the birth of cryptocurrency in 2008, the identity of Nakamoto still remains a mystery to the world to this day. It is believed that Nakamoto never intended to develop a currency instead he wanted to build a decentralized digital cash system which has easy to operate. Bitcoin, the first and the pioneer in the digital space was the first cryptocurrency to be developed. It has been the center of global attraction due to its miraculous growth and ever-increasing market value over the years. However, the field of cryptocurrencies is always expanding and there exist numerous cryptocurrencies other than the infamous Bitcoin. There were more than 4000 cryptocurrencies in existence as of January 2021.

CRYPTOCURRENCY IN INDIA

India is an emerging economy and has been accentuating growth in numerous spheres. India can emerge at the forefront of the industry of cryptocurrencies as its appetite for blockchain technology appears to be fascinating which is illustrated throughout the nation. However, the future of this digital currency has been quite uncertain since its invention and the sudden increase in chatter around this has resulted in the formulation of new rules and regulations for the same.

India's central banking authority in 2018 barred all the banks and other financial institutions from permitting transactions that facilitated cryptocurrencies. However, this decision was responded to with a lawsuit by the Cryptocurrency exchanges in the Supreme Court in September and won respite in March 2020. The RBI circular (April 6 Circular) was quashed down on the grounds of disproportionality by a bench headed by Justice Rohinton F Nariman.

Cryptocurrencies observed a surge due to the global pandemic and have emerged as a hedge against the uncertainty caused by it. People took refuge in these digital currencies to counter the loss of jobs due to pandemic and grab a side income from the same. During the quarantine season, the world has observed a shift towards cryptocurrencies and this has recently resulted in the skyrocketing prices and validation injected towards Bitcoin, the pioneer of cryptocurrencies.

Trading on crypto exchange increased several manifolds during the global pandemic and India was no stranger to this trend. 'Bitcoin' was among the most searched term on Google by Indians

as per search trends since 2017. The popularity of crypto-assets reached the new heights after the government undertook the move of demonetisation. According to the Internet & Mobile Association of India (IAMAI), there are a total of 1.7 million virtual currency users in India and the global market worth of the same is estimated to be \$430 billion.

In India, the lockdown observed a huge number of crypto enthusiasts engage, their interest in virtual currencies—apparently enough to have the Income tax department (ITD) reportedly take another close look at these crypto investors. However, there exist dilemmas for Indian investors regarding the cryptocurrency as there is a lack of simplicity and clarity over the status of digital currencies in our country.

Early in the year 2020, the Supreme Court quashed down the RBI ban on cryptocurrencies on grounds that it was ultra vires the Constitution of India as it failed to fulfil 'the test of proportionality and reasonableness' while restricting a fundamental right; however, cryptocurrency regulation is still prohibited. Cryptocurrencies are not granted the status of a 'legal tender' in India, while exchanges are still regarded to be legal. This has made it a tedious job to comprehend these assets and the ease of operation has been lost. However, the budget session of the year 2021 has resulted in a move that could attract and support those in favour of the crypto-revolution.

'The Cryptocurrency and Regulation of Official Digital Currency Bill, 2021' or simply known as the "Crypto Bill" is expected to be considered by the parliament which is a bill that seeks to prohibit all private cryptocurrencies in India. The bill mainly intends to:

1. establish a legitimate framework for an authorized digital currency which would be sanctioned and distributed by the Reserve Bank of India (RBI)
2. forbid all other private cryptocurrencies in India

However, there exist certain exceptions in the bill which states that "to promote the underlying technology of cryptocurrency and its uses" which means the promotion and embracement of the blockchain technology that acts as the driving force for these cryptocurrencies. The ban, however, wouldn't bar users from dealing with it.

WHAT DOES THE 'CRYPTOCURRENCY AND REGULATION OF OFFICIAL DIGITAL CURRENCY BILL, 2021' MEAN TO INDIANS?

To understand the impact of this we must study the bill closely and look at the following sections of concern:

a) DEFINITION OF CRYPTOCURRENCY

Under The Draft Bill Cryptocurrency has been defined as "Any information, code, or token which has a digital representation of value and has utility in a business activity, or acts as a store of value, or a unit of account, and is generated through cryptographic means." This means that a cryptocurrency is a digital or virtual currency that is backed by the technology of cryptography and encryption algorithms which create monetary units and verify fund transfers which makes it difficult to counterfeit providing it with top-notch security.

b) NO BAN ON USING CRYPTO-TECH I.e., BLOCKCHAIN TECHNOLOGY

Bill does not pose any ban on the use of the underlying technology of blockchain which is the soul of the cryptocurrency for other research/ teaching. The government seeks the promotion of the blockchain technology in various sectors of daily life and this can be observed in the banking sector which has started adopting the blockchain technology.

c) THE RATIONALE BEHIND THE REGULATION

Cryptocurrencies are volatile in nature; hence they cannot be considered legal tender. Also, a threat to the economy of the nation as there is no central authority to regulate its supply possessing a financial risk. Difficult to trace transactions and serve as the key to undertake numerous criminal activities and money laundering.

d) WHAT ABOUT THOSE WHO HOLD CRYPTOCURRENCY?

The individuals that own these assets would be granted 90 days to liquidate these investments and sell them off outside the Indian subcontinent. However, there exists uncertainty in this realm of the bill and this leads us to the grey area that whether it would apply to Indians holding or trading cryptocurrencies anywhere else. For the time being till the bill is passed, people are free to use and trade in any crypto-assets.

There are two sides of these cryptocurrencies; one which is in favour of this digital revolution and suggests that Indians should adopt to this digital revolution; and then there another side that suggest the threats and risks posed by these virtual currencies and believes that Indian should not adopt this digital currency revolution.

ADVANTAGES OF ADOPTING 'CRYPTOCURRENCY' AS A 'LEGAL TENDER'

i) One of biggest advantages of cryptocurrencies is that it is full anonymous yet fully transparent. It does not require any personal details or KYC which is a must in case of the traditional banking system. Cryptocurrencies store the history of transactions that have took place and hence can be easily traced back.

ii) Payments made in through this system are impossible to cancel. These crypto-assets cannot be forged, copied or spent twice. This helps in reducing corruption and guarantees integrity of the system.

iii) Cryptocurrencies establish the purest forms of peer-to-peer economy as neither banking authorities nor governments can control the exchange of money. Limited amount of production of crypto-assets prevents it from facing inflation pressure.

iv) The ease of operation is one of the biggest strength of cryptocurrencies. It takes only a few minutes to create a digital wallets and transfers fund, which is much faster than the traditional banking sector. The operations cost is minimal and amounts to 0.1% of the transaction amount.

DISADVANTAGES OF ADOPTING 'CRYPTOCURRENCY' AS A 'LEGAL TENDER'

i) The implication of 'Cryptocurrency' as a 'legal tender' would result a negative impact on the Indian monetary system. Individuals would no longer depend on the monetary systems which would hamper the demand of real money severely.

ii) There exists no central authority or forum which the users can approach in case of any grievances. Lack of a centralized authority also hinders the implementation of monetary policies resulting in financial losses. The high volatile nature of these assets also accounts to the lack of a regulatory authority.

iii) The transaction procedure allows each and every transaction is visible to all public ledger chains which makes it susceptible for numerous cyber-attacks and thefts.

iv) Illegal and illicit activities like money laundering, black marketing, tax evasion etc. would increase several folds if crypto is granted the status of a legal tender. These wallets cannot be seized or audited which hampers the economy.

v) Despite of being claimed to be most secure form of payments, there have been numerous instances of cybercrime and hacking which has resulted in loss of funds. Hackers and malicious individuals can produce as much as they want from cryptocurrency if they disrupt the system and know the process of currency creation. This would result in the ability to produce fake virtual currency or steal digital currency by just altering the accounts balances.

vi) An undesirable side effect of the cryptocurrencies is the massive amount of electricity utilised in mining it.

The Indian government has always been sceptical about cryptocurrency, has been hesitant between wanting to regulate cryptocurrencies and prohibiting them. However, the government encourages the use of blockchain technology. There was been a prevailing notion across the world that cryptocurrencies are evil whereas blockchains are good. The former finance minister, Mr. Arun Jaitley during his speech in the 2018 budget told that the crypto-assets like Bitcoins cannot be considered as legal tender and must be eliminated at all costs as they might help in financing illegitimate activities. But he further adds how the government wishes to incorporate the blockchain technology in the payment systems for the welfare of the nation.

HOW CAN BLOCKCHAIN TRANSFORM OUR COUNTRY?

Several countries across the world like Japan, Dubai, Canada, Estonia, Mauritius, etc all have been formulating policies which would help them to become blockchain nations.

In India, agriculture is the source of livelihood for the majority and has 16% contribution in the GDP of the country. Blockchain in the field of agriculture can help in transforming the lives of the 12 crore farmers which are directly engaged in agriculture. Lack of agricultural equipment, which is one of the most common issues faced by the farmers can be dealt with blockchain technology which is the ideal technology to create fractional ownership, for example, 11 farmers can own one tractor which would also take care of the financial issues.

The government has been working to digitalize land records. However, these records are prone to hack which leads to numerous crimes. Blockchain can solve these problems, in fact, Andhra Pradesh has already started moving its land records into blockchains.

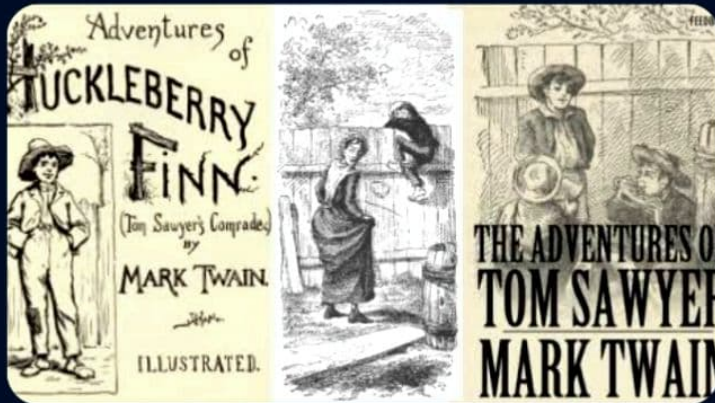
The problem of energy and power can also be dealt with the blockchain technology. Energy has always been a centralized concept and is distributed from one centralized authority to the others. However, if blockchain is adopted in this sphere, the distribution can become much more economically viable as it would be directly transported from excess power to deficit power reserves.

MARK TWAIN'S OVERLOOKED CONTRIBUTION TO THE US COPYRIGHT LAWS

- SANSKRITI BAHUGUNA

Envisage this, you are a young twenty-something writer in 1850s America, who has recently completed the final draft of your book. You go to a publishing house to get your work printed but they demand that you must sign off your rights to the book to score a deal. None can stand up to these massive corporations because of the near-monopoly they hold on the printing press in the country. To add insult to injury, the law gives you mere twenty-eight years of copyright protection, meaning, by the time you are fifty you won't make a single dime from the sale of your book. Additionally, according to the recent judgement given in *Harriet Beecher Stow V F.W Thomas*, anyone can translate your novel and sell it without your permission or any sort of compensation. Then there is also the problem of English book pirates, who are eagerly waiting to make bootleg copies of your book and sell it without any substantial consequence. In these circumstances would you put your precious time and intellect into writing a book that is predestined to be stolen, copied, translated, and adapted before its inception?

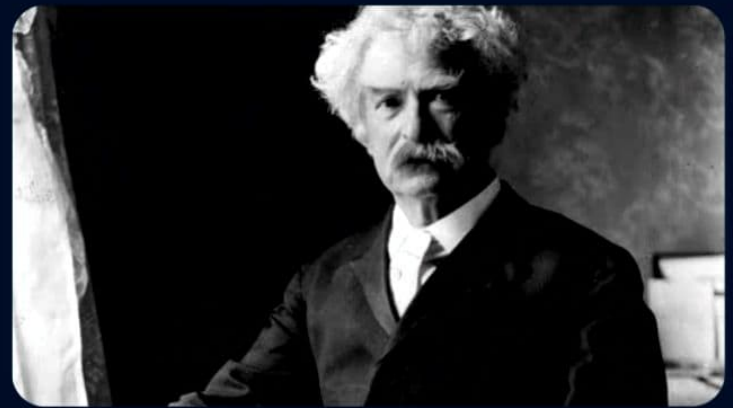
This is the exact puzzle that riddled Samuel Clemens who went on to be known as Mark Twain, throughout his career. Twain believed that he deserved to have a perpetual right over his intellectual property but there had long been concerns regarding books being owned by one person alone. Lord Camden vehemently voiced his rejection of common copyright law in *Donaldson v Beckett*, "As Knowledge and science are not things to be bound in such cobweb chains." Although concerns regarding



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the capitalists setting arbitrary prices for the books and subsequently cutting off the general public from being educated were very valid. Most scholars saw any copyright recognition as a step towards perpetual copyright ownership and in the process failed to consider shorter and more reasonable copyright protection. And so Twain took the onus of waging a war for the

Blockchain can help in establishing true peer to peer economy and crypto on the other hand, is a democratised currency. The adoption of this virtual currency if done in a legitimate way can help in transforming our nation dynamically. Adoption of crypto assets as a reserve currency can be one such move.



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want of a more sensible copyright act upon himself.

It all started back in 1865 when Twain became an overnight literary success with his first book, "The Celebrated Jumping Frog Of Calaveras County". It was a compilation of twenty-seven stories that were previously published in magazines and newspapers. In 1874, Twain wrote to the Librarian of Congress, seeking copyright protection for his book and its cover design. Still, he found that publishers were stealing short funny pieces that he had written for newspapers, putting them into books and selling them. So he brought a suit against them, a first of many. The suit failed because the publisher gave Clemens credit as "Mark Twain."

Another problem stemmed from his worldwide celebrity. The popularity of his books did not suffice to Americans but extended to the whole of the English speaking world, especially Canada and the United Kingdom. But the Berne Convention wasn't signed until 1886, meaning there didn't yet exist, a uniform international treaty on copyright. Thus, publishers outside America could sell his work without paying royalties to Twain. But more problematically they published cheap editions of Twain's books in Canada and exported them to the United States. This would make the editions for which Twain was receiving royalties costlier by comparison and the public would resort to buying from the Canadian publishers, effectively rendering Twain unpaid in the process.

So, filling in for the blank spaces the senators left in the copyright laws, he decided to journey to England in 1873, to ensure that the novel he co-authored with Charles Dudley Warner; "The Gilded Age" was published in Britain before it came out in America, two days later. This was done because the British law at the time provided for copyright protection; so long the book was published within the territory of the English empire first. He followed the same procedure during the publication of the iconic "Adventures

of Huckleberry Finn”.

American copyright law was comparatively less developed, for instance, it only applied to American publications, meaning foreign authors were unable to profit from the publication and sale of their works. To remedy this, Senator Joseph Roswell Hawley introduced a bill in 1885 that would extend the copyright protection for foreign authors. Twain vehemently spoke in favour of the bill in the senate and even went as far as to enlist the help of President, Grover Cleveland. The bill ultimately failed in the senate but it showed Twain's resilience to protect the right of all writers, irrespective of nationality. In 1900 Twain appeared before a committee of Britain's House of Lords, to testify in favour of copyright protection. This session displayed the House of Lord's general opinion on ownership over intellectual property. The idea of perpetual ownership over a book was perceived as illogical, and it was argued that there was no such thing as property in ideas and as a book was entirely built from ideas, there could be no property in it. Twain countered this assertion by claiming that there was not a single property that was not derived from an idea. Society wasn't prepared to settle for his demand to own his property in perpetuity, so he did. By December 1906, speaking before the Committee on Patents of the Senate and the House, he lobbied for the 42-year copyright period extended “to the author's life and fifty years afterwards.” The 1909 Copyright Act did not grant this but extended the period of protection to fifty-six years, which Twain praised before breathing his last the following year. In 1957 during the annual meeting of, the American Bar Association, adopted a special resolution that recognized the efforts of Mark Twain, “who was so greatly responsible for the laws relating to copyrights which have meant so much to all free peoples throughout the world.”

It was finally in 1976 that American copyright laws were amended to accommodate Twain's ‘author's life and fifty years. Since the

dawn of intellectual property, States have struggled to uphold the rights of the authors and provide them with adequate returns for their work by expanding copyright protection, but simultaneously also prevent monopolies, promote creativity and protect the wider public interests. With the 1976 Revision, the legislators were trying to strike this balance by extending the protection but also providing exceptions to the exclusive rights of owners by broadening the scopes of fair use. With the United States signing the Berne Convention in 1988, the requirement of copyright notice for copyright protection was eliminated reinforcing the inherent possession of copyright by an original literary work.

Thus, Twain's life long struggle which led to his money-hungry portrayal bore fruit sixty-six years after his death. A century that started with scepticism surrounding the idea of an author possessing ownership over a book, gave way to one with substantial improvements in copyright protection and mainstream acceptance of intellectual property as a whole. Today the United States has some of the strongest IP laws in the world. It has extended its copyright protection to the author's lifetime and seventy years, going twenty years beyond the minimum requirements under the Berne Convention. And Mark Twain's persistent championing of artists rights was instrumental in this achievement.

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JUDICIARY AND MEDIA TRIALS - SHIVANI BISHT

INTRODUCTION

As per Indian criminal jurisprudence, an accused is considered innocent until he is proved to be guilty beyond the reasonable doubt. A major role has been played by media in the criminal jurisprudence. Media covers and publishes interviews of relatives of victims, witness, etc. this coverage and publication ha every chance of moulding the judicial trial and in particular the minds of the judges. Media trial basically means the influence of television and newspapers on the reputation of the individual. Media by publishing the statements takes the shade of the protection granted by the Constitution of India under Article 19(1)(a) which talks about freedom of speech and expression. Although this freedom is not absolute and is subject to reasonable restrictions yet the media always abuses this freedom in the name of its own trial and thereby interfere with the administration of justice which is a punishable offence according to Section 12 of The Contempt of Courts Act,1971.

MEDIA INTERFERENCE

The first foot in a trial, which catches the attention, is usually set by the media, whether it's a trial of a bail, search or arrest. The



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interpretation by media might hinder the process of system hereby burdening the courts in the country.

In the famous case of Sanjeev Nanda, where the charges levied against Nanda was relating to “hit and run” and that he killed 6 peoples while driving his car under the influence of intoxication. Media intervened and hold a sitting showing that the lawyer of

Nanda is bribing the main witness of the case. Similarly, in the case of Jessica Lal murder, the accused was acquitted by the court since the witness turned hostile. The media started a campaign for Jessica which led to tehalika for giving justice to Jessica.

The continuous interference of media in the trial is posing a serious threat to the administration of justice and delay in ensuring fair trial. Therefore, the media trial will certainly affect the judicial system if the news published by media turns out to be false.

MEDIA TRIAL AND CONTEMPT OF COURT

The contempt can be civil or criminal contempt. The aim of Contempt of Court Act, 1971 is to ensure administration of justice and dignity of the courts. If any person publishes any statement that tends to lower the dignity of the court or interfere with the administration of justice is considered as contempt of court as per the act. The contempt of court is also a reasonable restriction under freedom of speech and expression. While one person is allowed to exercise freedom of speech and expression, he is also barred from lowering the dignity of the courts. The High court and Supreme Court are also given exclusive power under the Constitution of India to punish the person for the contempt of court as per Article 215 and 129 of the Constitution of India.

Media acts as a mediator between the public right to information and what transpires in the court. The tension between the media and the courts revolves around two concerns: Firstly, there should be no "trial by media" and secondly, no one should pre-judge any trial. The justice demands that people should be tried by the courts and not by the media.

In the case of Vishwanath v/s E.S Venkataramaih, the retired Chief Justice of India gave interview to a journalist who created a controversy regarding what the CJI had said. The Bombay High Court ruled that the words of retired Chief Justice did not lead to the contempt of court because statements did not diminish the image of the judicial system rather, they were made to bring a positive change in the judiciary system.



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NORMS OF JOURNALISTIC CONDUCT

There are certain ethics which media is bound to follow while collecting and publishing data that includes using socially acceptable language, verification of news and to keeping in mind the impact imposed by publication on the individuals and the society as a whole.

The norms of conduct of journalist for media trial includes following:

1. RIGHT TO PRIVACY

Media under no circumstances should publish the photographs of minor children who are involved in the forcible marriages or sexual abuse. While discussing on offences relating to women, including rape, prostitutions amongst other they are bound not to disclose the names, photographs or any other particulars which can disclose the identity.

2. INVESTIGATIVE JOURNALISM

The strict standards must be followed by the newspaper regarding fairness and accuracy of the news. They must publish the information in an objective manner and should not publish their opinion regarding the judgment in the trial. The journalist must not report on matter currently under the process of investigation. While publishing any data, the journalist is guided by the principle of criminal jurisprudence that says "a person is considered innocent until he is proved to be guilty beyond the reasonable doubt."

3) PRECAUTION IN CRITICIZING JUDICIAL ACTS

Media has freedom to public proceedings or the reports of the trial but they are not allowed to publish anything which has effect of impeding the administration of justice. Whenever in the public interest, any criticism of judicial acts is made in the newspapers, they should not reveal any malafide intentions or any personal bias towards the judges.

By these norms, it can be concluded that if one follows the norms of journalistic conduct, one will get an impression that there is nothing to worry about the media rule of law. The objective analysis drives one to the opposite conclusion. Courts are reluctant in exercising their power of contempt unless the media publicity directly prejudices the courts and judges.

4) IMPACT OF MEDIA

There is no particular legislation in India that talks about the power of media to try the case. But, in India the trials by the media have gained a lot of importance. There are many cases where the media has taken the case in their own hands and have passed the judgment against the accused that is contrary to the trails by judiciary.

The media also has power to influence the minds of individuals. For example, very recently during the time when COVID-19 had become a world pandemic, the news channels and media every morning will telecast the number of deaths, number of new cases of corona which automatically creates a frightening image in the minds of people. But if the news shows the number of recovered cases from corona this may motivate people to fight the pandemic. The media does nothing but just manipulate the minds of the people.

Similarly, very recent case of death of late actor, Sushant Singh Rajput where the media has told the whole story of death in such a way that induces the general public to believe in the complicity of person indicted.

CONCLUSION

The media is an important tool because it is mainly through the media that people become aware of the things happening in the world. But at the same time media need to be careful while passing information to the general public. While publishing any news or information, it is essential that media should follow these steps:

- a) They need to take precaution not to disseminate any writing that is formed on opinion.
- b) While reporting the proceeding of the case, it is most important to ensure accuracy.
- c) They must not interfere with the right of privacy which is our fundamental right.
- d) In case of any error. Rectification must be published without causing any delay.
- e) It is not advisable to publish the news that are based on personal opinion or mere suspicion.
- f) The news heading must not be purposely made provocative rather it should be appropriate for the data published under it.
- g) It is advisable to avoid the appreciation of act of violence.

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'DECEPTIVE SIMILARITY' UNDER TRADEMARKS LAW: A CRITICAL STUDY' - HARNOOR KAUR & CHAHAT BHANDARI

1.1 TRADEMARKS: INTRODUCTION AND EVOLUTION

Trademark has turned out to be a buzz word in today's arena. Nevertheless, the trend of trademarking the articles started thousands of years back even before the term was known.

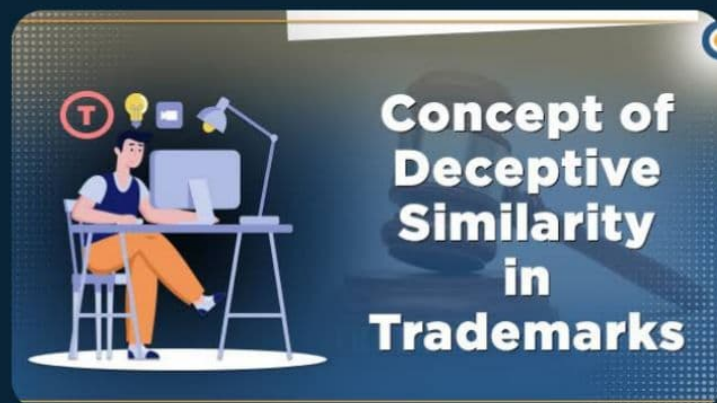
The evolution and progression of Trademarks did not take place overnight but underwent a long journey. Almost 3000 years back, Indian craftsmen were accustomed to the practice of inscribing their unique mark on almost every creation, be it vase, brickwork, gravestone, plumbing and what not. Absence of legal punch however did not affect this practice of engraving marks in any way.

With time, marks found its place in Roman Pottery with FORTIS



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brand becoming talk of the town. With intensified competition in the international and domestic market, trademark has now become a sine qua non of every business. A trademark is a way to give recognition to the head and intellect behind the product or service through a distinct discernible mark. Along with acknowledging maker's innovation, trademarks are also constructively differentiating one product from another in



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conjunction with ensuring its value and quality. Cutting the long story short, trademark functions as a bridge to cover communication gap between the producers and consumers. A trademark should always be distinctive and must not be deceptive. Importance of trademark has been appropriately highlighted in the case of M/S. Hindustan Pencils Pvt. Ltd. vs. M/S. India Stationery Products, whereby it was observed that "Trade mark is a representation by the owner to the consumer informing him that the goods in question bearing a particular trade mark have been manufactured or marketed by the owner of the mark."

1.2 THE CONTOURS OF DECEPTIVE SIMILARITY

"If a man is keeping an idea to himself, and that idea is taken by stealth or trickery - I say it is stealing. But once a man has revealed his ideas to others, it is no longer his alone. It belongs to the world."

- Linda Sue Park

Trademarks not only lend a hand in establishing brand value but is instrumental in giving rise to profits as well. However, the concept of Trademarks is like a double-edged sword. It is exposed to infringement and misuse as well. One such mode of

contravention is by way of fabricating a trademark which is 'Deceptively Similar' to the already existing trademark with the intent of putting the consumers in dilemma and putting the goodwill of an already recognized and well-known trademark at stake. This not only endangers the reputation of the trademark holder but results in financial loss as well. The term Deceptive Similarity has been defined in Trade Marks Act, 1999 under section 2(h) as "A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion." The existence of element of resemblance coupled with deception in the brains of the consumers becomes pertinent. "It is enough if the Court comes to the inference that the mark is likely to deceive and that conclusion must be based partly on evidence and partly upon the appeal to the eye of the judge."

The similarity in each case can be varied. Likeness of two marks may occur owing to various factors. Some of them are discussed below:

1. **Pictorial Similarity:** Size of the respective marks, usage of prefixes and suffixes, common syllables and specific elements of shape are covered under this head.
2. **Aural Similarity:** It gives rise to indistinguishability in cases where marks are pronounced. Examples of the same include WIPRO and EPRO, GLUVITA and GLUCOVITA.
3. **Conceptual Similarity:** Certain marks are alike in concept. What is significant here is to check the overall message being delivered by the marks to determine its likeness as against other mark.

1.3 TRADEMARKS PROTECTION: BEYOND THE BOUNDARIES

Every producer works with a vision to establish its name in a well-known international market. Nevertheless, all the efforts go in vain if international recognition of its trademark do not step in the shoes of reality. Various treaties to which India is signatory, have turned out to be a window of opportunity for such producers. World Intellectual Property Organization's ("WIPO") Madrid System is a notable treaty in this respect. WIPO's Madrid System along with enabling registration of these marks, ensures its international security in more than 100 countries.

Besides WIPO's Madrid System for mark registration, two other treaties, by the name of The Trademark Law Treaty ("TLT") and The Singapore Treaty, under the administration of WIPO itself, are in place. TLT aims at standardizing the registration procedure for regional and national trademarks, thereby facilitating registration procedure in multiple jurisdictions. On the other hand, The Singapore Treaty has a wider scope and is the foremost treaty to give explicit acknowledgement to non-traditional marks like three-dimensional marks, sound, holograms etc.

COURT OF LAW ON DECEPTIVE SIMILARITY: AN INDIAN PERSPECTIVE

"Courts dare and ought to say what the law is and what the law should be."

- Justice Joseph

2.1 TEST TO DETERMINE DECEPTIVE SIMILARITY

Hon'ble Delhi High Court in the case of M/S South India Beverages Pvt. Ltd. vs. General Mills Marketing Inc., came up with the 'ordinary observer' test to establish substantial similarity between two works. 'Average lay observer's' response holds a

great significance in ascertaining whether the original expression of a copyright holder is identifiable in the alleged infringing work.

Consumers have been made the ultimate judge. Therefore, the question of copyright infringement will come into picture if two products are likely to cause confusion in the mind of a reasonable man.

Further, in a landmark judgement of Lakme Ltd. vs. Subhash Trading and other, Delhi High Court confirmed injunction against defendant's trademark when defendant's company came up with the trademark "LikeMe", that was found phonetically and deceptively similar to that of plaintiff's trademark "Lakme" and there was every possibility of confusion being created in the mind of consumers regarding plaintiff's products.

Starbucks Corporation vs. Sardarbuksh Coffee & Co., is indeed a very interesting judgement where, in 2015 defendant allegedly started its new venture under the identical name and logo of plaintiff "Starbucks." With an intent to mislead the consumers, defendants named its venture as "Sardarbuksh Coffee & Co.". The logo was no doubt changed by the defendant subsequent to a request being made by plaintiff. However, name was amended through a legal action, when the Delhi High Court in 2018 awarded interim relief to "Starbucks" by ordering defendants to replace "Sardarbuksh" to "Sardarji- Baksh" for all its outlets.

2.2 MENS REA: SIGNIFICANT OR NOT?

Intention to deceive is by no means the guiding principle in calling off the trademark. Actus Non Facit Reum Nisi Mens Sit Rea becomes extraneous to prove that the mark in question is deceptive. The same has been upheld by the Supreme Court in sundry of cases, taking for instance, the case of Kirloskar Diesel Recon Pvt. Ltd. vs. Kirloskar Proprietary Ltd., whereby, it was observed that fraudulent intention on the part of defendant or respondent, as the case may be, is not a pre-requisite to prove guilt.

2.3 COMPARISON OF TRADEMARKS

In F. Hoffmann- La Roche and Co. Ltd. vs. Geoffrey Manners and Co. Pvt. Ltd. , it was observed that the marks shall be compared as "wholes". If the mark in 'totality' has a prospect to deceive the buyers, the said mark will be deceptive in nature. Accordingly, a portion of a mark shall not be the test to determine its genuineness.

The anti - dissection rule makes it mandatory for the Courts whilst dealing with cases of trademark infringement involving composite marks, to consider the composite marks in their totality as an indivisible rather than dismembering them into its constituent parts and make comparison with the corresponding parts of a rival mark to ascertain the prospect of confusion.

This rule was also highlighted by Justice Johnston in Lavroma case by stating that "we are not bound to scan the words as we would in a question of comparatio literarum. It is not a matter for microscopic inspection, but to be taken from the general and even casual point of view of a customer walking into a shop."

CONCLUDING REMARKS

In this face paced world of commerce and industry, it becomes utmost important to develop brand value of one's own business, so as to leave a deep impact of its brand over consumer's mind and to establish a good position in the market. Trademarks can accelerate this process and enable a business to establish market niche. A quality product along with the trademark is undoubtedly, the best combination to rule the market.

Judicial activism has played a crucial role in protecting trademarks and safeguarding the consumer's interests. Judiciary has freed itself from the shackles of legislation to ensure that justice should not be denied to such trademark holders.

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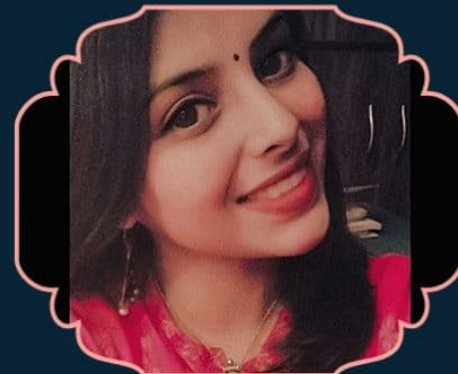
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