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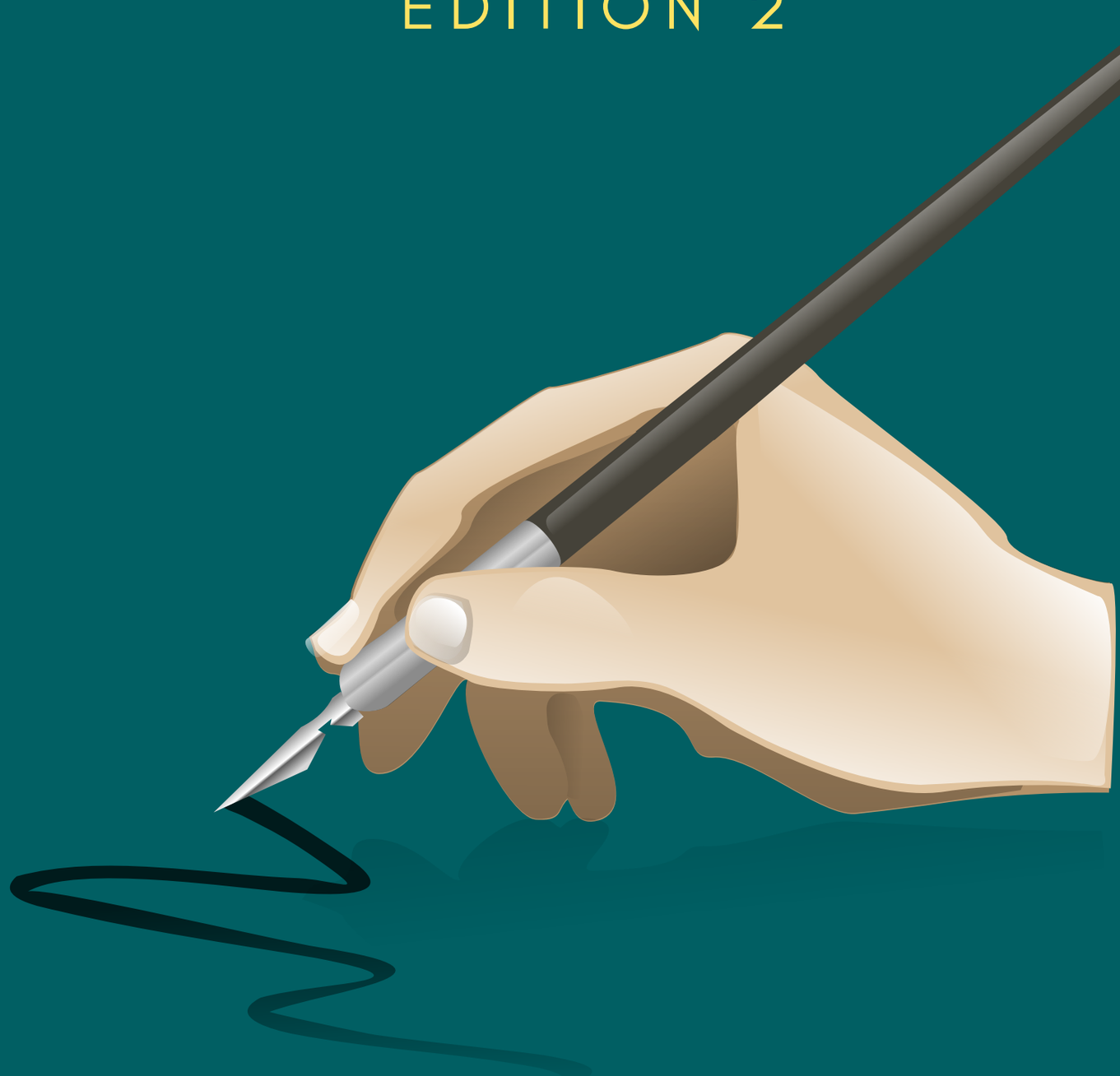

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"From Pages to Pixels: A Modern Article Compilation" Edition 2

"**From Pages to Pixels: A Modern Article Compilation"** is a comprehensive anthology that brings together a diverse collection of legal articles authored by experts in the field.This thought-provoking compilation navigates the intersection of traditional legal discourse and the contemporary digital landscape, providing readers with a nuanced exploration of legal concepts, challenges, and advancements in an era dominated by technology.

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CHAPTERS

YourLawArticle ebook

From Pages to Pixels: A Modern Article Compilation (Edition 2)
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Guiding Governance: The Impact of Directive Principles of State Policy on Human Rights Realization

Asna Jabi

B.B.A.LL. B (4th Year Student), Kalinga University

Published Year: December 2024

Chapter 1

Abstract

This article focuses on the role of DPSP in effects of some human rights in countries, aimed at looking at how these guidelines affect governance or policymaking processes. DPSPs are not judicially enforceable principles but assist governments in preparing legislation and policies towards the achievement of social justice, economic welfare, and human dignity. The paper argues on how these principles influence legislative frameworks and contribute to socio-economic rights realization that is spread over education, health, and social security with examples being taken from India, South Africa, Ireland, Bangladesh, and Nigeria. It further posits difficulties in the implementation of DPSPs - resource constraints, for instance, or that they are not properly enforceable. This concentration is towards the interface between DPSPs and international human rights instruments. It brings out how constitutional obligations can align with global rules. The last conclusion derived is that such instructions, though legally not enforceable, are important towards policy definition and human rights advancement in a fair and just society. The rationale of this argument is founded on the fact that socio-economic issues should be integrated into governance by having a potent discourse on the importance of DPSPs to ensure the implementation of human rights obligations.

Keywords- Directive Principles of State Policy, Human Rights, Socio-Economic Rights, Governance, Non-Justiciable Principles, Policy Framework, Social Justice, International Human Rights Law, Comparative Analysis, Constitutional Law, Legal Framework, Judicial Activism, Welfare State, Rights-Based Approach, Socio-Economic Development, Political Will, Accountability, Resource Constraints, Global Practices, Sustainable Development

1. Introduction

Human rights: recognized as inherent and inalienable rights of all human beings, have emerged as the central concern of governance across the world. The role of the State in the protection and promotion of such rights is explicitly prescribed by Governments in the formulation of their policies and actions. One of the most important constitutional tools used by different countries to assist in the realization of human rights is the Directive Principles of State Policy (DPSP). DPSPs are not justiciable in most constitutions; however, they serve as a framework and a guiding mechanism through which the different policies are created and implemented to promote human dignity, freedom, equality, and justice. This paper aims to investigate the position of DPSP in promoting human rights, specifically, holding onto their function in shaping the government policies and ensuring the realization of human rights across jurisdictions.

2. Origin of Directive Principles of State Policy

Directive Principles of State Policy originated from the Irish Constitution of 1937, whereas inspiration for them was drawn from the social welfare principles enshrined in the constitutions of other European countries. What is noteworthy is that the Indian Constitution adopted this concept from the Irish model at the time when the Indian Constitution was drafted in 1950. They recognized that guiding governmental action by non-enforceable principles was crucial. Directive Principles are generally characteristics of a former colonial state or a society with significant socio-economic inequality. Therefore, their role would essentially be to ensure that the state adopt policies that would help improve the socio-economic conditions of the people, eliminate inequalities, and promote general welfare.

Other international human rights instruments that have influenced directive principles include the Universal Declaration of Human Rights (UDHR) of 1948, bearing different social and economic rights and civil and political rights. Though these are not directly enforceable in court, they somehow reflect what people want-justice, equality, and liberty, which governments are supposed to achieve.

3. Directive Principles and Relationship with Human Rights

DPSPs ordinarily give guiding directives, which assist the policymaking procedure. Unlike the fundamental rights, DPSPs are usually non-justiciable, which means that the person claiming

such rights cannot approach the courts directly. However, their role is indistinguishable in providing a standard for governance and attaining the human rights indirectly through some indirect channels. Non-justiciable character provides for progressive changes in the policies of states according to their available resources and socio-economic context.

Such considerations commonly fall within the ambit of social justice, economic welfare, equal distribution of resources, and environmental sustainability, all of which are intimately connected to a general human rights framework. For example, the right to education, health, and social security are generally defined as part of the DPSPs. They are the fundamental content of the economic, social, and cultural rights conceived under international human rights law. In short, it is crucial that human rights and dignity along with human freedom be brought about in those spheres, which different international covenants, including the International Covenant on Economic, Social, and Cultural Rights (ICESCR), proclaim.

4. Directive Principles and Human Rights in India

India is a complete example of how DPSPs can promote human rights through the legislative and policy actions. Part IV of the Indian Constitution enunciates DPSPs, which guide the state to apply these principles while making laws and policies. The DPSPs encompass various social, economic, and cultural rights concerning international human rights. These include the welfare state provisions under Article 38, the principles of achieving equitable distribution of resources under Article 39, and ensuring rights to education, health, and work under Articles 41-43[1].

In so far as these principles are not judicially enforceable, however, they provide a fundamental touchstone for gauging the performance of the government in relation to the realization of socio-economic rights. Indeed, many laws that have been enacted in India in the past decades are a manifestation of these principles. For example, the Right to Education Act, 2009 derives inspiration from article 45 of the Constitution mandating provision for free and compulsory education to children. Likewise, the National Food Security Act, 2013 pursues the objective of food security, which finds its roots in the mandate of DPSPs relating to the promotion of the welfare of the people.

Furthermore, the Indian judiciary has developed a progressive construction of the Constitution reading the DPSPs in consonance with fundamental rights. For example, the Indian Supreme Court had construed the principles of fundamental rights through such judgments as Maneka Gandhi v. Union of India (1978)[2] and Vishaka v. State of Rajasthan (1997), so as to include the very core of DPSPs with indirect social and economic rights enforcement. This judicial

[1] CONSTITUTION OF INDIA
[2] Maneka Gandhi v. Union of India (1978)

activism has immensely contributed to human rights realization in India.

5. DPSPs in Other Countries

The influence of Directive Principles is not exceptional to India alone. Several other countries with a history of colonization or with socialist inclinations in their constitution, have had such provisions in their constitution. A comparative analysis of the provisions made in these countries will show how DPSPs shape government policies and help to bring about improvement in human rights.

A. Ireland

Ireland, as the origin, incorporates these principles in Articles 45-50 of its Constitution. The directives of Ireland primarily revolve around social justice and economic reformation that would facilitate the welfare of the people. They emphasize minimizing inequalities, equitable distribution, and the implementation of a just social order. Although these principles are not something that one could be compelled to follow at law, they have played a massive role in influencing Irish social policy primarily with regards to factors such as healthcare, education, and welfare and labour legislation.

B. South Africa

The Constitution of South Africa, 1996, contains similar principles on DPSPs through placing an emphasis on socio-economic rights. South Africa does not employ the label "Directive Principles" but obliges her state to progressively realize socio-economic rights such as the right to housing, healthcare, food, water, and social security (Chapter 2: Bill of Rights). Most notedly, in South Africa, the Constitutional Court played an integral role in enforcing the said rights, most famously in the case of Grootboom in 2000, which declared that the state needed to take appropriate measures toward providing access to adequate housing.

The approach of South Africa differs from that of India because its socio-economic rights are directly enforceable. Philosophically, however, the approach is quite like DPSPs inasmuch as the government has an obligation to progressively realize these rights depending on available resources. This progressive realization mirrors the tenets of the ICESCR and underlines how constitutional mandates can be used for advancing human rights.

C. Bangladesh

It is under Part II of the Constitution of Bangladesh that it embraces Directive Principles, which

enumerate the "Fundamental Principles of State Policy." These provisions aim at securing a socialist economic system and promoting equality and justice in all spheres of life and provide for the material well-being of all citizens. As in India, these principles themselves are not binding but constitute a basis for social and economic policies directed to the realization of human rights.

Bangladesh has passed several acts towards the fulfilment of its DPSPs objectives like labour rights, health, education, and anti-poverty legislations. It is at the grassroots level that the government employs these values to rationalize welfare measures targeted at improving the socio-economic conditions of the deprived citizens. For example, Bangladesh's Social Safety Net Programs find inspiration from the constitutional mandate of promoting economic and social justice.

D. Nigeria

Chapter II of the 1999 Constitution of Nigeria is the Fundamental Objectives and Directive Principles of State Policy, constitutive aims aimed at guiding the state in acting towards promoting social justice and furthering the common good. Although non-justiciable provisions, these have impacted legislative measures regarding education, health, and the environment. In line with the directive principles, the Nigerian government has embarked on programs targeted at averting economic inequalities and increasing access to various services.

However, the non-enforceable nature of these principles has often been subject to criticism that they remain more aspirational than operational. Civil society organizations called for reforms in this regard with a plea to make these more binding in nature, as without enforcement mechanisms, the objectives set out in DPSPs remained unfulfilled.

6. DPSPs and Global Human Rights Frameworks

Although DPSPs are fundamentally and widely considered a domestic constitutional provision, they parallel international human rights. Moreover, much of that which deals with socio-economic rights is found in them. The Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights detail, on these aspects, rights to education, health, work, and social security-mostly all of which fall under DPSPs. Countries that incorporate such principles into their constitutions, in this way, become one of the affirmative constituents of the international human rights agenda.

In addition, the United Nations and other international organizations have advocated this rights-based approach towards development to states. This further fortifies the argument with the

governments on the entrenchment of human rights principles in the economic and social policies. DPSPs, in this regard, are committed to a just and equitable society through progressive policymaking. Not being enforceable by themselves, DPSPs themselves act as guidelines for governments regarding their action internationally on human rights standards to promote socio-economic development in dignity.

7. Obstacles in the Introduction of DPSPs

While Directive Principles are very useful guidelines to the government, their realization also presents some limitations. The first and foremost limitation is that DPSPs are non-justiciable, meaning that citizens cannot hold governments accountable for failure to live up to the standards set out in these principles. Thus, reliance on the will of the governing authority, rather than on the judicial enforcement mechanism, makes progress towards realization of socio-economic rights depend primarily on the decision of the ruling government at any particular point in time.

Another significant impediment is the problem of scarce resources in most nations. Manifestations of socio-economic rights, including health, education, and social security, demand enormous fiscal outlays. Often, states in developing countries lack the wherewithal - least of all economic stability - to enforce policies which conform to the DPSPs.

Political instability and corruption can further weaken DPSPs. Countries like Nigeria and Bangladesh, where political regimes are more frequently changed, hinder long-term compliance with directive principles. The governments are more likely to usher in populist short-term measures rather than commit themselves to enduring socio-economic reform.

8. Conclusion

The Directive Principles of State Policy play a very fundamental role in advancing human rights as guidelines for framing policies of the governments to achieve socio-economic justice, equity, and dignity to all. These, although not enforceable in courts, are necessary frameworks for states to progressively realize human rights, especially in the socio-economic and cultural rights sphere. Countries like India, Ireland, South Africa, Bangladesh, and Nigeria demonstrate how DPSPs might influence the course of legislation and policymaking as part of the broader agenda of human rights.

However, challenges remain in terms of accountability, resource constraints, and political will. To overcome the constraints, stronger advocacy for the alignment of DPSPs with enforceable

rights is necessary, as well as international cooperation to help resource-constrained countries fulfil their constitutional commitments. Yet however non-justiciable DPSPs may be, their capacity to influence human rights-oriented governance is profound and indispensable for better building just and equitable societies.

References

1. Baxi, Upendra. "The Role of Directive Principles in Realizing Socio-Economic Rights in India." The Indian Journal of Political Science, vol. 67, no. 2, 2006, pp. 267-290.
2. Basu, Durga Das. Introduction to the Constitution of India. 23rd ed., LexisNexis, 2021.
3. Bennett, Colin J. "The International Covenant on Economic, Social and Cultural Rights." Human Rights Law Journal, vol. 16, no. 1, 1995, pp. 20-34.
4. Donnelly, Jack. Universal Human Rights in Theory and Practice. 3rd ed., Cornell University Press, 2013.
5. Ghai, Yash. "Human Rights and Directive Principles of State Policy: An Uncertain Relationship." Indian Journal of Human Rights, vol. 15, no. 2, 2010, pp. 145-162.
6. Indian Constitution. "Directive Principles of State Policy." The Constitution of India, Part IV.
7. Kumar, Rajesh. "Judicial Activism and the Directive Principles of State Policy in India." Journal of Indian Law Institute, vol. 46, no. 2, 2004, pp. 217-236.
8. Mahendra, G. A. "Directive Principles of State Policy: A Comparative Study." Journal of Law and Social Policy, vol. 22, 2014, pp. 87-104.
9. Mehta, P. B. "The Politics of the Directive Principles: The Indian Experience." Asian Survey, vol. 37, no. 10, 1997, pp. 902-918.
10. Mishra, Sunil. "Socio-Economic Rights and Directive Principles of State Policy: The Indian Context." International Journal of Law and Legal Jurisprudence Studies, vol. 2, no. 4, 2015, pp. 39-47.
11. Nirmal, C. J. "Directive Principles of State Policy: Their Significance and Realization." Journal of Indian Law Institute, vol. 53, no. 1, 2011, pp. 1-30.
12. Singh, K. K. "Judicial Interpretation of Directive Principles of State Policy: An Analysis." Constitutional Law Journal, vol. 8, no. 2, 2019, pp. 123-145.
13. South African Constitution. "Chapter 2: Bill of Rights." Constitution of the Republic of South Africa, 1996.
14. The Universal Declaration of Human Rights. United Nations General Assembly, 10 December 1948, A/RES/3/217A.

15. United Nations Committee on Economic, Social and Cultural Rights. "General Comment No. 3: The Nature of States Parties Obligations." UN Document E/1991/23, 1990.
16. Yasmeen, A. "The Role of Directive Principles in Promoting Human Rights in Bangladesh." Journal of Law and Governance, vol. 9, no. 1, 2021, pp. 42-58.

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The Intersection of Technology and Human Rights in Criminal Justice: Surveillance, Privacy, and Accountability in India

Masood Ahmed

LL. M (3rd Semester Student), Kalinga University

Published Year: December 2024

Chapter 2

Abstract

In India's criminal justice system, high-tech surveillance technologies introduce a complex problematic tension between imperative state activities for national security and public order and constitutional protections, most especially the rights to privacy and a fair trial. As digital surveillance technologies are embraced by the Indian state in growing measure, from facial recognition systems and biometric databases to AI-driven predictive policing, anxieties over intrusions of individual freedoms are on the rise. This paper critically examines the implications of the emergent technologies on the human rights in a technological surveillance state, juxtaposing the state's surveillance apparatus against the foundational principles enshrined in the Indian Constitution, most notably under Articles 14, 19, 20(3), and 21.

These landmark judgments of the Supreme Court in Justice K.S. Puttaswamy v. Union of India and Selvi v. State of Karnataka form foundational legal precedents that underscore the triple test of legality, necessity, and proportionality to be observed in countering high-handed state incursions into privacy. These judicial interventions notwithstanding, the legal architecture of surveillance remains opaque: it basically consists of archaic statutes like the Indian Telegraph Act 1885 and Information Technology Act, 2000 neither of which addresses, in the least, the contemporary realities of digital surveillance. The Personal Data Protection Bill is still under a lurch, which has left citizens' rights even more in precarious situation, leaving them exposed to arbitrary state action.

This paper takes cognizance of international precedents, the ruling by the European Court of Human Rights, being Big Brother Watch and Others v. the United Kingdom, by the sense of

urgency in having in place a specific surveillance law with strong procedural safeguards and judicial oversight. Further, comparative analysis of the surveillance regime in the U.S. under Patriot Act and subsequent amendments with the help of USA Freedom Act established the necessity of actual reform from the current framework in India to regulate surveillance practices in the country.

This paper also compares dangers that come with unbridled state surveillance in relation to China's Social Credit System, and then it compares some case studies of internal invasions, like the infamous Pegasus spyware controversy that exposed vulnerabilities in India's legal and regulatory framework. Ultimately, the paper argues that without adequate legal protection that provides for checks and balances, independent judicial review, and institutional accountability, the growth of surveillance technologies threatens to subvert the very human rights they claim to protect in destabilizing the precarious balance between state security and individual liberty within the India democracy framework.

Keywords*- Surveillance *Technologies, Privacy Rights, National Security, Constitutional Protections, Judicial Oversight, Human Rights Violations

I. Introduction

The development of surveillance technologies represents an emerging frontier in modern criminal justice systems: it raises issues on efficacy technology, set against the sacrosanctity of human rights, in a delicate balance that challenges democratic polities like India on its head as the country increases its use of digital tools for surveillance in a pursuit of heightened national security and public safety. All this reminds me of, however certain deployment of such technology, stirs very grave issues of its constitutionality, especially of Right to Privacy as well as Right to Fair Trial.

This paper addresses the friction between emerging surveillance methodologies and the human rights discourse within the criminal justice apparatus of India. Using international precedents, comparative legal frameworks, and relevant case law, this research hopes to be able to outline a somewhat complex interplay among surveillance, privacy, and accountability in a democratic society that is constitutionally obliged to guarantee individual liberties.

II. Surveillance Technologies in Criminal Justice

From the CCTV cameras to the more advanced instruments that involve facial recognition software (FRS), biometric databases, and AI-driven predictive policing, surveillance technologies have entirely changed the landscape of criminal justice administration in India. The overarching state imperative is to preempt criminal activities for public order.

For instance, the applications of facial recognition systems are enlarging both in terms of scope and scale. The recent deployment of Automated Facial Recognition System by the Delhi Police during public protests in 2019 and 2020-purportedly to identify and arrest suspected rioters-is one example of how law enforcement has been progressively relying on this technology. Notable in this context is the racism and ethnic biases that have been alleged against the technology. Indeed, studies reveal a relatively much higher ratio of false positives in more minoritized populations and it testifies to growing normative tension-technological efficiency in policing being weighed against risks of discriminatory profiling and trespasses on privacy and miscarriages of justice.

A third issue is related to the Indian state's Aadhar programme-the biometric identification system that has enrolled over 1.2 billion residents-and deeply questions how personal data could be collected, stored, and used. The imbrication of this database with policing activities, especially with criminal identification and investigation, is a hallmark of the expanding surveillance architecture of India, again without a commensurate regulatory framework.

III. Human Rights Implications of Surveillance

A. Right to Privacy

The right to privacy, as such, has been recognized long enough as a bulwark against unwarranted state intrusions. In India, this right, through a landmark judgment of the Supreme Court in the case of Justice **K.S. Puttaswamy (Retd.) v. Union of India, 2017 (10) SCC 1**, has been described as a constitutional right not only under Article 21 of the Constitution but also intrinsic to it. The court categorically held that any restriction on privacy must meet the principles of legality, necessity, and proportionality.

While this is a jurisprudential affirmation, the extensive proliferation of surveillance technologies casts a long shadow over the privacy of individuals. Systems of surveillance in public spaces or even through mass data collection under the Aadhar regime operate in a jurisdictional vacuum with the barest safeguards to ensure that such intrusions conform to the tripartite test of legality, necessity, and proportionality elucidated in Puttaswamy.

In **K.S. Puttaswamy (2019)**, Justice D.Y. Chandrachud remarked that:

"Inherent to the dignity of an individual is the right to be left alone, free from the gaze of the intrusive State or the overreach of private actors in matters that are inherently personal." This dictum emphasizes judicial recognition of the centrality of privacy to human dignity; however, implementation of surveillance measures continues apace without any broad statutory framework to govern them.

B. Right to a Fair Trial

Having the right to a fair trial, legally protected under Article 21 of the Constitution, brings to play competing rights: the rights of the accused and the exigencies of criminal justice enforcement. The diffusion of AI-based technologies like facial recognition and biometric databases complicates the balance of these competing rights.

In other cases, where the evidence would be gathered from surveillance, there would be questions over authenticity and chain of custody as well as possible bias embedded in algorithmic policing tools. An example is a recent analysis by Georgetown Law Center on Privacy and Technology, which found that AI-powered facial recognition tools have a 5% higher error rate for darker skin tones. This raises constitutional concerns about equal protection under the law, as incorporated in Article 14, and underscores the need for procedural safeguards against discriminatory enforcement.

One such example of these fears is the case of **Selvi v. State of Karnataka, (2010) 7 SCC 263** where the Supreme Court of India held that administration of narco-analysis, polygraph and brain-mapping techniques on an individual behind his back is violative of Article 20(3) of the Constitution which considers self-incrimination to be a part of its protection and additionally

violative of **Article 21**. Although the case deals with intrusive techniques of investigation, the ratio decidendi of the judgment is instructive when it is considered with the use of facial recognition and AI surveillance technologies that could similarly affect one's choice, prerogatives, and sense of dignity.

IV. Accountability and Legal Framework in India

The legal regime in India overseeing surveillance is somewhat haphazard and is composed of colonial-era statutes and scattered patchwork pieces of regulations which do not consider the new realities of digital surveillance at all. The legal authorizations that may be required for state surveillance are essentially based on the Indian Telegraph Act of 1885 and the Information Technology Act, 2000. These are rather archaic enactments and do not resonate or reverberate well with the sophistication of digital and biometric surveillance systems.

The Information Technology Act framed rules for the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 envisaged allowing law enforcement agencies to access data on social media companies and digital intermediaries. However, this has been criticized for being opaque and lacking in procedural safeguarding mechanisms that may create an aura of unchecked states' power and arbitrariness in surveillance activities.

And meanwhile, the Personal Data Protection Bill, 2019, the most important legislation that was on the anvil to provide a strong data protection framework in India is still stuck in Parliament. The lacuna so created leaves citizens at the whims of state overreach, especially when accountability takes a beating when murky standards on data surveillance gradually gain the upper hand.

V. International Standards and Comparative Perspectives

A. European Union (EU) and General Data Protection Regulation (GDPR)

The General Data Protection Regulation in the European Union is the strongest law in data handling by public and private entities. This regulation will handle personal data processing in a lawful, fair, and transparent manner by giving implications for accountability and purpose limitation, data minimization, and individual consent. Article 8 of the European Convention on Human Rights provides individuals with protection against arbitrary intrusions into their private life, such as mass surveillance by state authorities.

In **Big Brother Watch and Others v. the United Kingdom, 2021 ECHR 581**, the European Court of Human Rights (ECtHR) found that the UK regime of bulk interceptions infringed Article 8 ECHR on grounds that nothing could be available to prevent abuse. The judgment in

this case is quite useful to the Indian judiciary because the absence of judicial or legislative oversight over surveillance mechanisms raise concerns regarding the possibilities of abuse and arbitrariness as seen in the Indian jurisprudence.

B. United States and the Patriot Act

It has long been since the USA PATRIOT Act passed due to the 9/11 attacks. Rather, it was always surrounded with issues of great debate regarding its infringement on the civil liberties of its citizens. The Act further enhanced the ability of federal law enforcement to obtain mass data without sufficient judicial oversight. USA Freedom Act 2015 was actually an improvement, limiting a few of the extensive surveillance provisions articulated by the Patriot Act.

On the other hand, there has been no level of judicial scrutiny and reforms in legislature as has happened in the U.S. Moreover, no FISC like Indian counterpart exists here that looks after such activities of surveillance.

VI. Case Studies: International and National Perspectives

A. The Chinese Model of Surveillance

China's Social Credit System, for instance, represents an extreme manifestation of state overreach through surveillance: it tracks in real-time the citizen's behavior, determines his score according to the degree of social appropriateness, and, based upon this score, sets access to social services as well as freedom of movement. This can indeed present a dystopian model, at least for India, but it serves as a cautionary tale for dangers inherent in a lack of surveillance regulations.

B. Indian Experience

The surveillance of Indian journalists, activists, and opposition leaders through the Pegasus spyware in 2021 raised serious concerns regarding the practices of surveillance followed by the Indian government. By way of public interest litigation, the Supreme Court established an independent expert committee to investigate these alleged abuses. In fact, the entire Pegasus controversy has brought forth the need for greater oversight mechanisms which must regulate state surveillance and ensure adherence to constitutional principles.

VII. Recommendations

To reconcile the two conflicting demands: national security and human rights, the following recommendations are submitted:

a) **All Inclusive Surveillance Act**: Particularly must one be provided for by special legislation that has to do with the use of surveillance technologies and within it, there should be a provision on transparency and results clearly accountable to judicial

oversight.

b) **Pass the Effective Data Protection Bill:** Legislative approach must be based on principle of autonomy and thus Personal Data Protection Bill in order to give rights of citizens in the digital age.

c) **Supervision by Judiciary:** Surveillance should be subject to an independent judiciary that does not permit arbitrary or discriminatory execution.

d) **Technology Surveys Impact Assessment** The government should conduct surveillance technology impact reviews regularly to ensure that the technology to be deployed cannot adversely affect or burden the weak.

VIII. Conclusion

The challenge to maintaining the precarious balance between safety for the citizens and constitutional human rights lies in introducing high-tech surveillance mechanisms in the criminal justice framework of India. Advanced surveillance mechanisms include mechanisms such as facial recognition systems, biometric databases, and AI-driven predictive policing, which can add strength to the abilities of the law enforcement machinery. Such unregulated use of the technologies is very dangerous to individual freedom rights, essentially constituting rights to privacy, right to a fair trial, and immunity from arbitrary state acts-all of which are provided for in the Constitution.

Unless there are comprehensive legal controls governing the conduct of these technologies, abuse is readily at hand. This is where judicial oversight comes into play, responsible for the guarantee of surveillance proportionate, necessary, and legal in the context of constitutionalism. Such tools, without the availability of institutional accountability, could be misused and would disadvantage and unleash further brutality on the already vulnerable populations, and naturally accentuate existing biases, thereby further eroding the people's trust in the system. It is for this reason that strong frameworks should counter these tools in a manner that prevents infringement on the very rights they are meant to protect.

REFRENCE

1. Foucault, Michel. Discipline and Punish: The Birth of the Prison. Pantheon Books, 1977.

2. Puttaswamy v. Union of India (2017) 10 SCC 1

3. Cohen, Julie E. "Examined Lives: Informational Privacy and the Subject as Object." Stanford Law Review, vol. 52, no. 5, 2000, pp. 1373–1438.

4. Selvi v. State of Karnataka (2010) 7 SCC 263

5. Zuboff, Shoshana. The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power. PublicAffairs, 2019.

6. Information Technology Act, 2000 and Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

7. Lyon, David. Surveillance Studies: An Overview. Polity Press, 2007.

8. Pegasus Spyware Investigation

9. Dworkin, Ronald. Taking Rights Seriously. Harvard University Press, 1977.

10. Georgetown Law Center on Privacy and Technology, "The Perpetual Line-Up: Unregulated Police Face Recognition in America" (2016)

11. Westin, Alan F. Privacy and Freedom. Atheneum, 1967.

12. Big Brother Watch and Others v. the United Kingdom (2021) ECHR 581

13. Harcourt, Bernard E. The Counterrevolution: How Our Government Went to War Against Its Own Citizens. Basic Books, 2018

14. General Data Protection Regulation (GDPR), Regulation (EU) 2016/679

15. "Big Data and Human Rights: A Framework for Understanding and Advancing Privacy in the Digital Age." Harvard Law Review, vol. 131, no. 3, 2017, pp. 1404–1438.

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The Law of Negligence Understanding Duty Breach and Causation

Vijay Barnwal

LL. B, Siddharth University

Published Year: December 2024

Chapter 3

Abstract

Abstract

The law of negligence is a cornerstone of tort law, addressing situations where failure to exercise reasonable care results in harm to others. This article explores the fundamental principles of negligence, focusing on the essential elements: duty of care, breach of duty, and causation. It provides an in-depth examination of these elements, supported by key case laws such as Donoghue v. Stevenson, Jacob Mathew v. State of Punjab, and others. The study also highlights distinctions between negligence as a tort and as a crime, the evolving standards of care, and the concept of "res ipsa loquitur." Additionally, the paper discusses the challenges of proving negligence, the implications of causation, and judicial interpretations that shape its application. The conclusion underscores the dynamic nature of negligence law and its role in ensuring justice and accountability in an ever-evolving legal landscape.

Keywords

Negligence, duty of care, breach of duty, causation, res ipsa loquitur, tort law, criminal negligence, foreseeability, liability, judicial interpretation.

I. Introduction

Meaning of Negligence Committing a misdeed by negligence. That is negligence in any work or negligence encroachment, nuisance, or defamation. In such a situation, neglect is indicative of mental condition.

Donogh v. Stevenson later treated negligence as a specific tort in itself in that situation. Where there is a duty to take caution, but caution was not taken.

It is said to have assigned various meanings to negligence. The definition involves three constituents of negligence :

1. A legal duty to exercise due care on the part of the party complained towards the party complaining about the former conduct within the scope of the duty.
2. Breach of the said duty.
3. Consequential damage

According to Charlesworth & Percy, forensic speech negligence has three meanings. These are

1. A state of mind in which it is opposed to intention
2. Careless conduct
3. The breach of duty to take care imposed by common or statute law.

All three meanings are applicable in different circumstances, but any one of them does not necessarily exclude the other meaning.

Negligence is related to an act or omission that violates the duty of care owed by one party (the defendant) to another (the claimant), resulting in harm and damage to that party (the claimant). The everyday use of the term negligence is associated with the failure to exercise proper care. The law recognizes this concept and aims to provide a remedy for those who are harmed by the wrongful acts of others who fail to exercise reasonable care. The tort of negligence focuses on the link between the actions or omissions of the wrongdoer and whether the risk should have been foreseeable.

Negligence -As a tort and as a crime

The term negligence is used to fasten the defendant with liability under civil law and, at times, under criminal law Generally speaking it is the number of damages incurred which Jeterminative of the extent of liability in tort, but in criminal law it is not the number of damages but the amount and degree of the negligence that is determinative of liability.

The apex court in **Jacob Mathew V. State of Punjab**[1] observed

To test liability in criminal law, the degree of negligence has to be higher than that of negligence enough to fasten liability for damages in civil law. In cases of criminal negligence, the essential element of mens rea cannot be disregarded.

Negligence is a fundamental concept in tort law, addressing situations where a person's failure to exercise reasonable care results in harm to another. To establish responsibility in negligence cases, it is essential to prove three main elements—duty of care, breach of duty, and causation. This article examines these components in depth, clarifying their significance and application in the context of key case laws.

"You should take appropriate precautions to avoid actions or omissions that you can reasonably foresee may cause harm to your neighbor."

Case Law in India

In India, the Supreme Court adopted the neighbor principle in **K. R. Maheshwari v. State of M.P. (1996),**[2] emphasizing that the duty of care extends to all foreseeable victims of one's negligent actions.

Essentials of Negligence

In a case of negligence, the plaintiff must prove the following requirements that the defendant owed a duty of care to the plaintiff:

1. That the defendant owed a duty of care to the plaintiff

2. The defendant breached that duty

3. The plaintiff suffered damages as a result

Duty of care to the plaintiff

This indicates a legal duty, rather than merely a moral, religious, or social obligation. The plaintiff must establish that the defendant had a specific legal duty to care for them, which has been breached. There is no general legal rule that defines such a duty. It depends on the circumstances of each case whether a duty exists. In **Donoghue v. Stevenson**[3], Lord Atkin said, "It is remarkable, how difficult it is to find in the English authorities statements of general application defining the relations between parties that give rise to the duty. The courts are concerned with the actual relations that come before them in actual litigation, and it is sufficient to say whether the duty exists in those circumstances. The result is that the courts have been engaged in an elaborate classification of duties In terms of property, whether real or personal, there are variations related to ownership, possession, or control, along with further divisions based on the specific

relationships of one party or another, whether it be the creator, seller, or owner, customer, tenant, stranger, etc. Thus, it can be determined at any time whether the law recognizes a duty, but only when the case pertains to a specific category that has been examined and classified. The duty of care arises from various relationships, which may not be fully enumerated, and courts recognize new duties when they deem it appropriate. Lord Macmillan stated that "the categories of negligence are never closed.

In **Booker V. Wenborn**[4] the defendant boarded a train which had just started moving but kept the door of the carriage open. The door opened saside and created a danger to those standing on the platform. The plaintiff plaintiff who was standing on the edge of the platform was hit by the bull and it was held that the defendant was liable because a person boarding A moving train had an obligation of care towards the person standing next to it on the platform.

In **Dhanaveni v. State of Tamil Nadu**[5], the deceased slipped into a pit filled with rainwater in the night. He caught hold of a nearby electric pole to vert a fall. Due to a leakage of electricity in the pole, he was electrocuted. The defendant who maintained the electric pole was deemed negligent and was held liable for the death of the deceased.

2. Breach of duty

Breach of duty means failure to exercise due care, which should be taken in a particular situation. If a person who is a reasonable person or a person of ordinary prudence has exercised due care or acted in the manner of a prudent person. So it will not be considered as careless devotion, like a carpenter exercising due care in the treatment of his wife, a skilled artisan failing to do his work, a person, or a business. Working/Employing. So his first duty is to use vigilance and knowledge in appropriate measure and through the same vigilance and life, he should also take reasonable precautions.

Negligence is the omission to do something that a sane person, directed at the ideas that govern the conduct of human affairs in general, will or will do something that an intelligent and sane person would not do. The law requires the caution that a reasonable person would observe. In the case of **Dr. Laxman Balkrishna Joshi vs. Dr. Trimbak Bapu Godbole**[6]**,** the Supreme Court clarified the nature of the duty of care of a physician. In this suit, the son of the respondents, aged 20 years, had met with an accident on a beach resulting in a fracture in the thigh bone of his right leg. He was taken to a hospital for treatment. The appellant did not give any anesthetic to the patient to reduce the fracture, rather he gave a dose of morphia injection to the patient for this purpose. For treatment, he used extreme force and also took the help of his three assistants to pull the injured leg of the patient. He then placed the leg in a plaster of Paris bag. This method of treatment resulted in severe trauma to the patient's brain and resulted in his death.

Criminal breach of trust - The offense of criminal breach of trust is committed when the person,

to whom any property is entrusted in any manner or by any Dominion**.** it, dishonestly misappropriates or converts it for his own use or dishonestly uses it or disposes of it in contravention of any direction of law prescribing how the trust is to be disclosed or any lawful contract expressed or implied by him relating to that attachment or causes pain to any other person to do so. Thus, in the commission of the offense of criminal breach of trust, two distinct parts are involved. The first involves the creation of an obligation in respect of property over which the accused acquires dominion or control. The second is misappropriation (dishonestly) and dealing with property contrary to the terms of the obligation created. Where the dominant element of the criminal breach is failure of trust, a criminal breach of trust will not be created.

Standard of care required.

Two points need to be considered in determining the standard of care required in law

(a) the significance of the objective to be achieved

(b) the magnitude of the risk, and

(c) the amount of consideration for which services

Importance of the Objective to be Achieved

The law does not require that the greatest possible precaution be taken, but the precaution that it requires is the precaution to be taken by a reasonable person under any circumstances. The law allows for the opportunity to take risks in certain situations so that a variety of activities take place in the public interest. As pointed out, if the speed of every train in this country were restricted to five miles an hour, it would result in very few accidents, but it would slow down the lifestream of our country unbearably. If the purpose to be served is of the utmost importance, then taking an unusual risk may be considered just.

The magnitude of the risk

The level of caution also changes according to different situations. What may be a careful act in one situation may be a negligence act in another. The method does not require the same level of care in every situation. It is the strike of the risk involved that decides the protection that the law requires to be exercised in the defendant.
The level of caution thus depends on the degree of risk that can be foreseen by a reasonable and prudent person.

In the case of **Glasgow Corporation v. Taylor**[7], poisonous fruits were grown in the public grove under the control of the corporation. Looking at the fruit, it looked like a cherry. So they had a tempting attraction to children. A seven-year-old boy ate the fruit and died. It was found that the trees that bore the fruits were neither properly protected by any fence nor any notice put up at the

place that the fruits were fatal. **The amount of consideration for which services, etc. are offered.**

The level of caution required depends on this. The amount of consideration given for any goods or services. For example, if any food. We will get food items like special food, water, sweets, snacks, etc. from the food cart at a very low price and they will be edible and free from infection.

If we take this food/item from a hotel like a hotel with a 5-star rating, then we will ensure that it is edible and should not be adulterated or prepared with any kind of dirt.

3. Damage

This is necessary. That the plaintiff has actually suffered damage as a result of the defendant's breach of duty and it is the plaintiff's responsibility to show that there is no foreseeable precedent for the damage/negligence caused by the defendant. The damage has been caused by the defendant's failure to exercise reasonable care.

Rebuttal of the presumption of negligence

The principle of *res ipsa* loquitur only diffuses the burden of proof and under this principle, instead of the plaintiff proving the defendant negligent, the defendant himself has to negate the charge of negligence leveled against him. If the defendant can prove that what appears to be neglect was caused by some motives that were not under his control, he can defend himself against liability. In the case of Nagamani v. Corporation of Madras, an iron pillar of the Madras Corporation erected on the track fell on a person passing through the road, resulting in his head injury and eventual death. A presumption of negligence was submitted to the Corporation but the Corporation rebutted it with merit by proving that the iron pillar which had fallen had been erected only 30 years ago, whereas its normal life was 50 years, such a pillar had been securely fixed in an iron socket to a depth of three feet. This pillar was occasionally inspected and no sign of such danger was noticed in the inspection carried out a month before the accident. Hence, the company could not be held liable.

Res Ipsa Loquitur

It is the function of the plaintiff to prove, as a saman siddha, that the defendant was negligent. The defendant's duty to structure at least a prima facie case of adverse negligence of the defendant is largely that of the plaintiff, but once this burden is discharged it becomes the defendant's function to prove a defense as if the event were either a reprisal for an unavoidable accident or caused by the plaintiff's contributory negligence. If the plaintiff cannot prove the expectation of the defendant, the defendant cannot be held liable.

In **Municipal Corporation of Delhi v. Subhagwanti**[8] The town house which was right in front of Ghanta Ghar in Chandni Chowk, the main market of Delhi, suddenly collapsed due to which some

people who were present there at that time died after falling on themselves. It was held by the court that the clock tower was 40 years old and the care of its repair was under the control of Delhi Municipal Corporation. The condition of the clock tower was very dilapidated and it was very necessary to repair it within 40-45 years, but the Delhi Municipal Corporation

For his reason, Delhi Municipal Corporation is responsible for neglecting this incident.

The principle of res ipsa loquitur was also applied in the case of **R. S. E. B. v. Jai Singh**[9]. In this dispute, electric wires were passing over a residence. There was a pile of grass on the roof of the house near those wires. The grass caught fire due to sparks from the wires, which melted the electric wires, broke and fell in the fields. The farmers died due to electrocution while trying to douse the fire. The wires had been broken several times before, but the defendants had done nothing more than tie them up.

4. Causation

The plaintiff's loss caused by the defendant's negligence is linked to the defendant's lien.

It involves two aspects:

1. **Factual Causation**: The harm must be a direct result of the defendant's actions, assessed through the **"but-for test."**
2. **Legal Causation**: The harm must not be too remote; it should be reasonably foreseeable.

Factual Causation: The But-For Test

The but-for test asks whether the harm would have occurred **but for** the defendant's negligence. If the answer is no, that reason causation is established.

Legal Causation: Foreseeability and Remoteness

The principle of foreseeability was clarified in **The Wagon Mound (No. 1) (1961)**, where the Privy Council held that only damages reasonably foreseeable at the time of the breach could be claimed.

Intervening Acts

Sometimes, an intervening act breaks the chain of causation, absolving the defendant of liability. In **State of M.P. v. Sudhakar (1998)**[10], the Indian courts emphasized that liability ceases if an independent act occurs after the breach, which directly causes harm.

Conclusion

The law of negligence plays a critical role in holding individuals and organizations accountable for carelessness that causes harm. While the principles of duty, breach, and causation provide a structured framework for determining liability, challenges like judicial delays and evolving

contexts necessitate continuous reforms. Landmark cases, both in India and abroad, have shaped negligence law into a dynamic and adaptable field, ensuring justice and fairness for claimants. As society evolves, so too must the law of negligence, expanding its reach to protect individuals from harm in an increasingly complex world.

REFERENCE

1. Jacob Mathew V. State of Punjab 2005
2. K. R. Maheshwari v. State of M.P. (1996)
3. Donoghue v. Stevenson 1932
4. Booker V. Wenborn 1962
5. Dhanaveni v. State of Tamil Nadu 1997
6. Dr. Laxman Balkrishna Joshi vs. Dr. Trimbak Bapu Godbole
7. Blyth v. Birmingham Waterworks Company 1856
8. Municipal Corporation of Delhi v. Subhagwanti 1966
9. R. S. E. B. v. Jai Singh
10. State of M.P. v. Sudhakar (1998)

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Menstrual Leave in India: Balancing Rights, Dignity, and Workplace Equity

Harsh

B.A.LL. B, Dr. B.R. Ambedkar National Law University, Sonipat

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Chapter 4

Abstract

Abstract

India is a land where various traditions, cultures, and customs flourished since ancient times which structured the societal norms which can be traced in the current Indian society as well. Since ancient times our culture has laid down a great emphasis on the position of women in Indian society. Ancient Hindu scriptures and manuscripts refer to women as Janani i.e. the source of origin and birth. The Hindu festival of Navratri and the notion to regard a girl child as an avatar of Goddess Durga and relating the title of Devi with them portrays that we as a society have always attached a sense of divinity and auspiciousness to women. It is certainly a misfortune of such a society that had once associated so much esteem and admiration with women has failed to impart the same in respect of the issues associated with them in the present times. It is a predicament that the modernism and advancement of our society came with the cost of sacrificing the teachings of our culture and traditions which has eventually led to the genesis of numerous taboos related to the biological and physiological phenomena associated with women. The implications of which are evolved as the challenges that women have to encounter in their day-to-day lives.

Keywords

Menstrual leave, India, Japan, Indonesia, South Korea, Taiwan, Spain, menstrual benefits bill, Bihar, Kerala, Odisha, workplace policy, women's rights, affirmative action, constitutional provisions, Kamakhya Devi temple, menstruation stigma

I. INTRODUCTION

Menstruation is a natural biological phenomenon in a woman's life where there is a discharge of blood and mucosal tissue that happens when a woman's body sheds the inner lining of the uterus. A menstrual cycle is not just a physiological occurrence but rather an amalgamation of various significant bodily, psychological, emotional, and hormonal changes that every woman faces every month during her lifespan.

Dysmenorrhea or to name it in a more acquainted form, Menstrual Pain, is not an alien affair, most of the females around the globe experience it during their menstrual cycle. Its major symptoms include soreness or cramping in the lower abdomen, back, or legs and fatigue, and can have certain secondary symptoms such as nausea, diarrhea, and bloating. As a consequence, most women find it strenuous and exhausting to carry on even day-to-day tasks. Depending upon the pain-bearing capacity for some it might be not that much of an issue or bearable to some extent but those who suffer from a severe and chronic form of it imply it to be causing as much pain as a heart attack. This situation furthermore amplifies to a much greater extent when it comes to working women or female students who are studying in schools, colleges, or any other educational institutions. Working or studying in such a state where your body is undergoing tremendous physiological mental and hormonal imbalances can adversely impact your productivity. Thus, the concept of Menstrual leave tends to provide a solution to this issue to uphold better, safer, and healthier working conditions and environment for the women engaging in the service, employment, or educational sectors of our society.

- **SPARK OF THE ISSUE:**

As the name implies, menstrual leave is a concept of paid leave that all the working women employed in any service sector or industry whether government or private can avail, apart from the usual cluster of leaves available to all employees such as casual, sick leaves, etc. to get some relief from the pain and discomfort which they are exposed to Due to the onset of their menstrual cycle without compromising with their salaries or wages.

The Indian socio-legal and political society has witnessed certain debates and deliberations from time to time regarding the issue of whether women employees shall be granted a legal right entitling paid menstrual leave through dedicated legislation.

Recently, the same has been put forward in a PIL by Shailendra Mani Tripathi praying to grant menstrual leave to the working women and female students. However, the apex court opined that making it a legal mandate for employers to grant menstrual leave could do more harm than benefit

for women. Imposing such compulsion on employers may result in abstaining from hiring and involving women workforce in their workplaces which will position them in even more disadvantageous places than where they are at present. The Hon'ble Court also urged the center to take into consideration formulating a model policy on the issue after the required and appropriate consultation with the states and other stakeholders. The apex court also differentiated from the view of issuing affirmative directions to the government concerning the present subject. The bench chaired by the Chief Justice of India D.Y. Chandrachud held that the issue of menstrual leave that has been put forward in the PIL falls under the ambit of policy-making of the government and must be dealt with by the centers and the states. It is in the good interest that the judiciary doesn't stand in the way of it. The bench also called on the additional solicitor general Aishwarya Bhati to request the secretary in the Ministry of Women and Child Welfare to look into this matter at the policy level after due dialogue and discussion with all the stakeholders and state government. The union government shall decide what necessary policy decision is to be taken over this issue and thereby dispose of the PIL. This instance once again fueled the debates over this topic.

- **POSITION OF MENSTRUAL LEAVE AROUND THE WORLD:**

There are few countries around the world which had given the status of statutory right to menstrual leave for women by incorporating it into their legislative framework. For the rest of the world, the topic remains a distant idea due to which it is neglected to date.

The first instance of any formal recognition of menstrual leave goes back to 1947 when Japan through Article 68 of Japan's labor standards law enacted a legal mandate on employers to grant leave to women employees as and when requested during their menstrual cycle if they engage in any work which can severe their menstrual pain. If requested so by any woman employee during her menstrual cycle, the employer can not compel her to work.

Taking inspiration from Japan many countries have enacted similar provisions for their women workforce such as:

- In Indonesia, female workers are entitled to have two days' leave during their menstrual cycle after informing the employer.
- In South Korea, female employees can avail of one day of paid leave per month depending upon the request made by her in this regard.
- In Taiwan, any female employee who finds it difficult to carry on work during her periods is entitled to avail 3 days of leave in a year.
- In Zambia as well, women employees can have the benefit of one day's leave without submitting any medical certificate in this regard whatsoever.

- Recently, Amongst the European nations, Spain became the first nation to incorporate menstrual leave in their legislative framework comprising provisions entitling women to avail 3 to 5 days leave because of menstrual pain after producing a note from the doctor and the state social security system would support the same financially.

➢ CURRENT LEGAL POSITION OF MENSTRUAL LEAVE IN INDIA:

The disposal of the PIL by the apex court implicates no dedicated legislation, statute, or provision in the current labor laws of India concretely provides paid / unpaid leave to women workers owing to menstruation. Implying that there is no legal mandate or obligation for the employers to grant the same to their women employees.

However, at the state level, some attempts have been made from time to time such as:

- Bihar government has arranged a system since 1992 that provides two succeeding days of *special leave* per month to women employees employed in any organization operating under the authority of the government.
- In 2023, the Government of Kerala granted menstrual leave to all university and educational institution female students.
- Recently, the Odisha government also came up with 1 Day menstrual leave policy for women workers which will apply to both government and private sector.
- The state of Karnataka is also considering enforcing a 6 Days a-year paid menstrual leave policy for women workforce employed in both public and private sector.
- Some private companies such as Zomato, swiggy, and byjus have also enacted menstrual leave policies for their women workers.

➢ LEGAL INTRICACIES ASSOCIATED WITH MENSTRUAL LEAVE:

The absence of any dedicated and uniform pathway in the form of central legislation regarding menstrual leave has always caused hindrance to a significant extent to most of the women employees and students in India. Though remained unsuccessful in their implementation, some attempts have been made in the past for the legal mandate of menstrual leave in India as well,

The Menstruation Benefits Bill, 2017, aimed to cater to the interest of both female employees and students in a single piece of legislation by granting two days of menstrual leave monthly to female employees along with the provision of leave from school for female students as well, carried forward by Shri Ninong Ering, a member of parliament, was initially proposed as a private member bill in the Lok Sabha but after the unsatisfactory response in the lower house of the parliament, the same bill was proposed once again by him in the same year on the first day of the budget session of

2022 before the Arunachal Pradesh Legislative Assembly which the Legislative Assembly eventually dismissed since it opined it to be an 'unclean' topic.

The most recent one is, the Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill, 2022 proposing three days of paid leave for women and transwomen owing to their menstrual cycle. The bill also takes into account the impact of mandatorily attending classes during menstruation on the health, productivity, and academic performance of female students. However, the bills had not been passed.

It is a bizarre situation that the need for maternity benefits has been catered to through structured legislation since 1961 yet alone the very initial and correlated area of that subject is still intentionally or unintentionally neglected to date.

- **WHAT DOES THE CONSTITUTION OF INDIA SAYS ABOUT THIS ISSUE?**
  - *Article 15(3)* of the constitution of India provides that to abolish the disadvantages faced by women and other oppressed sections of the society, *The state has the power to make special provisions for women and children* and such affirmative action of the state shall not be treated as violative of the right to equality enshrined under Article 14.
  - *Article 42* states that, *The State shall make provision for securing just and humane conditions of work and for maternity relief.*
  - *Article 21: Protection to life and personal liberty,* The Supreme Court in Francis Coralie Mullin vs The Administrator, Union Territory of Delhi, held that the expression "life" in Article 21 resonates with a life with human dignity rather than a mere survival or animal existence. A dignified life inherently comprises the health and well-being of humans as well.

The rationale behind awarding a legal mandate to menstrual leave for women is majorly substantiated by the virtue of these constitutional provisions.

- **THE NEED FOR MENSTRUAL LEAVE IN INDIA:**

In other societies around the world when there is some scientific or technical term that the people of the society find difficult to pronounce or inconvenient to use often in their vocabulary, then the society gives it a common name that is ordinarily and comfortably usable for the easy understanding of the masses but Indian society is a place where we use other terms to refer something not because of vocabulary or convenience but because of the stigmas that society has attached to them in the mindset of people. Our society is a place where taboo is associated even with a natural biological phenomenon of the human body. We can easily find people around us getting embarrassed to buy sanitary pads from local medical shops or to call menstruation or even periods per se by its name directly or expressly to date. Here, a significant amount of the population

including both men and women as well used to refer to menstruation through codewords such as dates, monthly sickness, woman issue, girl problem, etc. Now consider a portion of society with such a rudimentary mindset that they are still not open up to call menstruation by menstruation without embarrassment. Even if we leave the topic of menstrual leave in jobs or education behind… how socially unprogressively progressing we are as a society, that some portion of our society is lagging that much behind that they feel awkward or ashamed while even addressing this subject as a whole forget about the benefit related to the pain of it. It is an agonizing misfortune and painful irony that we as a society have vitiated our mindset so much over time that we have deviated from our roots and were unable to acknowledge, accept, and respect something natural and biological associated with a human body which our culture and tradition had accepted and trying to teach us since ages. India is the land of Kamakhya Devi temple situated in Assam which as per Hindu religion is one of the 51 Shakti peeth, each shakti peeth is a sacred shrine that depicts the divinity of women, where it is believed that Kamakhya Devi temple is the place where the Yoni i.e. genitals and womb of Sati fell off on the earth after lord Vishnu severed her body to bring peace. Kamakhya Devi temple is the place where Ambubachi Mela is celebrated every year to celebrate the menstruation of the Goddess.

Thus, we must respect this biological phenomenon rather than be embarrassed about it.

A former union minister of women and child welfare stated a reason not to frame menstrual leave policy for women that, *Menstruation is not a handicap*. Her statement's this specific part is agreeable that yes, menstruation is not a handicap and neither the one advocating for it believes it to be. It is rather an ability that nature has bestowed upon women for the continuation of life on earth. The notion behind the benefit of menstrual leave is gratitude, respect, and courtesy towards the women employees and students of our nation rather than any unethical favor upon them.

It shall also not be perceived as violative of Article 14 and discriminatory towards men since it is an affirmative action to accommodate the women employees without compromising their health and our constitution also provides for equal treatment with equals and unequal treatment with unequal and certain other constitutional provisions cited above.

- **CONCLUSION:**

A social issue like menstrual leave is a subject associated with the dignity, respect, and social positioning of women in our society therefore it shall be sincerely and sensitively dealt with whilst keeping the greater interest of the women of our society in the paramount consideration. Since women in our society have already suffered a lot in the past times and yet the women workforce of our society continued to contribute to the betterment of our society without demanding any preferential treatment. In issues like this, the state machinery should also take a progressive stand

rather than forming excuses since to reach elsewhere we have to start from somewhere. There will always be a dilemma of subjectivity in such issues as for some it will be more beneficial for some may be a bit less or not at all but then again, the choice of adjustments for the sake of one another comes in handy as a guiding light towards the pathway of a civilized society since both the employer and employee are co-dependent on each other. India doesn't need to wait in anticipation for the West to set the precedent every time rather it is high time we must take the rein welfare of our society into our own hands rather than just being catastrophic about every social change or waiting for it to fit in the vote bank politics of our country.

REFERENCE LIST:

1. "Menstrual Leave for Women in India" – Document highlights the societal, legal, and policy-based perspectives on menstrual leave within India and globally.
2. Japan Labor Standards Law, Article 68 – Earliest reference to menstrual leave provisions (1947).
3. Cases of menstrual leave adoption in countries like Indonesia, South Korea, Taiwan, and Spain for female employees.
4. The Menstruation Benefits Bill, 2017 – Proposed private member's bill for menstrual leave in India.
5. Right of Women to Menstrual Leave and Free Access to Menstrual Health Products Bill, 2022 – Another legislative attempt focusing on menstrual leave in India.
6. Bihar Government Policy (1992) – Provides two days of menstrual leave for women employees in government organizations.
7. Kerala Government Policy (2023) – Extends menstrual leave to university and educational institution students.
8. Odisha Government's recent menstrual leave policy (2023).
9. Constitutional provisions such as Articles 15(3), 42, and 21 supporting affirmative action for women's welfare in India.
10. Cultural references including Kamakhya Devi temple and its symbolism around menstruation in Indian tradition.

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Cryptocurrency and Blockchain: Patents, Trademarks, and the Future

Himanish Bhardwaj

B.A.LL. B, Lovely Professional University, Sonipat

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Chapter 5

Abstract

The article explores the interplay between cryptocurrency and blockchain technology with intellectual property rights, focusing on patents and trademarks. It outlines the critical role blockchain plays as a secure, distributed ledger and highlights trends in patent filings and innovations by leading companies and governments. The text discusses the patentability of blockchain-based systems, challenges in obtaining patents, and defensive strategies employed by corporations. Additionally, it examines global patent trends, particularly in China, Europe, South Korea, and other jurisdictions, and provides insights into how patent portfolios are shaping competition and technological advancement in the blockchain and cryptocurrency sectors.

Keywords

Cryptocurrency, Blockchain, Patents, Trademarks, Intellectual Property, Distributed Ledger, Innovation, Blockchain Technology, Financial Services, Patent Trends, Defensive Strategies, Open Source, Global Blockchain Trends.

INTRODUCTION

Cryptocurrency is a digital currency which uses cryptography to secure transactions. Instead of carrying physical currency, cryptocurrency exists purely as a digital entry to an online database describing specific transactions. When these transfers occur, they are recorded in a public ledger and are stored in digital wallets. It uses encryption to verify transactions which includes advanced coding to provide security and safety. Users can purchase currencies via brokers, then store and spend them using encrypted wallets.[1]

PATENTS AND BLOCKCHAIN TECHNOLOGY

Blockchain-based cryptocurrencies rely largely on intellectual property protection to safeguard their discoveries, innovations, protocols, and proprietary technology. Blockchain technology is a highly secure method that stores data in chunks and is utilised by cryptocurrencies. Blockchains are digital ledgers that operate in a distributed network without a central repository or authority. They are tamper obvious and resistant. Patents were created to encourage innovation and economic development by providing incentives to create and commercialise inventions. The ultimate goal of patents is to promote further innovation. Patents foster invention, which is meant to spur further innovation. Patents can be used as an isolation strategy to protect an organization's competitive advantage against copying. When using this method, the company aims to get an exclusive position in the industry and use the technology. A clustering method employs many patents on a single product, thus forming a patent wall to keep rivals out. A bracketing approach is one in which the inventor does not have a patent on the innovation but patents everything surrounding it to block competitors from exploiting it and leaving the market. The number of patents for blockchain technology is increasing at an exponential rate. Several organisations are defensively patenting blockchain technology, fearing that competitors may out-patent it and eliminate it from the field. Individuals or organisations possessing these patents may seek to restrict others from adopting the required orchestrations, use cases, or components, therefore controlling the technology's development. However, blockchain technology is still in its early stages and is expected to evolve, making these patents less potent than the owning companies anticipate.[2]

If a new type of cryptocurrency is invented, its name might be trademarked. Furthermore, just like any other trademark, your logo has the potential to be registered as one. One cryptocurrency, for example, has trademarked the name "Ripple," as well as the words "Ripplenet" and "PayString." Understanding the difference between unique and descriptive trademarks is critical. In the sense

[1] Kaspersky, “What Is Cryptocurrency and How Does It Work?” (www.kaspersky.com, May 1, 2024) <https://www.kaspersky.com/resource-center/definitions/what-is-cryptocurrency> accessed June 28, 2024

[2] Dehghani, M., Mashatan, A., & Kennedy, R. W. (2021). Innovation within networks–patent strategies for blockchain technology. *Journal of Business & Industrial Marketing*, *36*(12), 2113-2125.

that there is no evident relationship between a name and a service or item other than its literal meaning, descriptive trademarks are not "distinctive." Cryptocurrency innovators typically claim to have created new processes as a result of their inventive and complex algorithms. Consequently, it is conceivable to patent cryptocurrency.[3]

IBM, Baidu, Alipay, Toyota, Bank of America, and Microsoft are among the top industry leaders with blockchain-related patents. Companies that own patents on blockchain-related technology might restrict rivals from utilising or commercialising their discoveries.

As big organisations and governments invest time and effort in technologies such as Blockchain, intellectual property protection will become a fundamental component of conducting business. Getting a patent is increasingly tougher to obtain.[4]

The distributed public ledger uses cryptographic techniques to provide an unchangeable history of cryptocurrency transactions between various addresses, allowing coin owners' digital wallets to calculate accurate balances and ensure that each transaction uses only coins currently owned by the spender, preventing double-spending. It is claimed that transactions are paid promptly after confirmation by the decentralised network of miners. Cryptocurrencies can potentially provide financial services and stability to poor parts of the world while keeping anonymity and reducing the risk of identity theft. The patents that have been obtained so far cover a wide spectrum of Bitcoin technology. Coinbase, for example, has received several patents in recent years relating to implementing cryptocurrency transactions at a point-of-sale using a mobile device, cryptographic transaction security systems, blockchain identity management systems, a tip button for bitcoin transactions, and techniques for analysing transactions in a distributed ledger. Bank of America has also submitted applications for transaction validation, risk identification, real-time conversion, online/offline storage, and other areas of technology.[5]

The recent surge of patent filings (and permissions) in this area has raised public awareness and interest in the business. The Blockchain Intellectual Property Council (BIPC), which comprises major organisations including IBM, CoinDesk, Microsoft, Deloitte, Digital Currency Group, and

[3] Khurana and Khurana, 'Intellectual Property Rights and Cryptocurrency: Navigating the Intersection of Innovation And Protection' <https://www.mondaq.com/india/trademark/1347030/intellectual-property-rights-and-cryptocurrency-navigating-the-intersection-of-innovation-and-protection> accessed 28 June 2024

[4] Zemp B, "The Crucial Role of Patents And Intellectual Property In The Blockchain Industry" *Forbes* (August 17, 2023) <https://www.forbes.com/sites/forbesbooksauthors/2023/08/17/the-crucial-role-of-patents-and-intellectual-property-in-the-blockchain-industry/> accessed June 28, 2024

[5] Alexander D, Georges James L and Korenchan, "The Patent Landscape of Cryptocurrency and Blockchain" (MBHB, August 21, 2018) <https://www.mbhb.com/intelligence/snippets/the-patent-landscape-of-cryptocurrency-and-blockchain/> accessed June 28, 2024.

Ernst & Young, wants to "develop a global, industry-led defensive patent strategy" to avoid patent trolls. Smaller, lesser-known cryptocurrencies may make their technology public without seeing a significant adoption rate. The majority of currencies (such as Bitcoin, Ethereum, and Ripple) follow open-source software rules. Because there are several open-source cryptocurrencies, revelations about these currencies may hinder other corporations from obtaining patents.[6]

GLOBAL PATENT TRENDS

Recognising the significance of blockchain and fintech technologies to its economy, the Chinese government has called for enterprises to expedite the development of blockchain technology in 2019. Currently, China has roughly 35,000 blockchain, crypto, and DeFi applications and around 9,000 patents. To increase their chances of acquiring a patent in Europe, applications for blockchain, crypto, or DeFi solutions should focus on the technical components of the invention rather than non-technical qualities. The JPO typically considers a device, method, or programme for performing a process utilising blockchain/crypto to be patent-eligible. Although some components of blockchain technology are patentable, South Korea is considered a favourable location for blockchain, crypto, and DeFi patent applications.[7]

CONCLUSION

To increase the chances of acquiring a patent for these inventions, inventors and their patent attorneys should be knowledgeable of the various national patent offices' patent eligibility rules and standards, as well as use proper patent application writing and prosecution tactics. Blockchain patenting is a fast-growing field for organisations of all sizes. Organisations can analyse the geographical distribution of blockchain patenting to identify market gaps and opportunities. Large financial organisations should be aware that their competitors may be developing a defensive blockchain patent portfolio, even if they are not actively employing the technology. Blockchain technology enables collaborative patenting for B2B networks, facilitating shared solutions.

[6] Ibid.

[7] Michael Fainberg and Mohammad Zaryab, “Global Perspective on Patenting of Blockchain, Crypto, and DeFi Technologies” (ArentFox Schiff, December 8, 2022) <https://www.afslaw.com/perspectives/alerts/global-perspective-patenting-blockchain-crypto-and-defi-technologies> accessed June 28, 2024.

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